Decisions of The Comptroller General of the United States

VOLUME 50 Pages 827 to 1056

JUNE 1971

WITH

CUMULATIVE TABLES AND INDEX DIGEST

JULY 1, 1970–JUNE 30, 1971

UNITED STATES

GENERAL ACCOUNTING OFFICE

PCN 45300102300

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1972

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Price 25 cents (single copy) except June issue which varies in price. This issue $1. Subscription price: $2.25 per year; $1 additional for foreign mailing.

COMPTROLLER GENERAL OF THE UNITED STATES

Elmer B. Staats

ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES

Robert F. Keller

GENERAL COUNSEL

Paul G. Dembling

DEPUTY GENERAL COUNSEL

Milton J. Socolar

ASSOCIATE GENERAL COUNSELS

F. Henry Barclay, Jr.

John T. Burns

Stephen P. Haycock

TABLE OF DECISION NUMBERS

		Page
B–149270	June 23	857
B–164786	June 28	863
B–169738	June 29	868
B–171899	June 4	830
B–172031	June 9	847
B–172581	June 7	844
B–172593	June 28	866
B–172671	June 14	850
B–172684	June 4	839
B–172761	June 21	852
B–172832	June 2	827
B–172855	June 2	829

Cite Decisions as 50 Comp. Gen.—.

Uniform pagination. The page numbers in the pamphlet are identical to those in the permanent bound volume.

[B-172832]

Transportation—Household Effects—Commutation—Rate Base for Computation

An employee who incident to moving his household goods and personal effects from Allegheny County, Pennsylvania, to Montgomery County, Maryland, in his privately owned vehicle and a rental truck although entitled to reimbursement on a commuted rate basis may not have included in the commmuted rate a metropolitan area rate or a surcharge allowance. The area rate is only provided on shipments by common carrier between the two locations involved, and the employee transported his own property, and the payment of a surcharge allowance, which is no longer authorized, was intended to reimburse an employee required to pay such a charge to a common carrier and was not intended to grant increased benefits to an employee moving his own goods.

To J. E. Fowler, Jr., United States Department of the Interior, June 2, 1971:

Your letter of April 30, 1971, with enclosures, requests our decision whether you may certify for payment the voucher transmitted therewith for $1,172.05 in favor of Mr. William G. Wood, an employee of the Bureau of Mines, for reimbursement of expenses for the transportation of his household goods.

Incident to an appointment with the Bureau of Mines, Mr. Wood was authorized to travel from Sewickley, Pennsylvania, in Allegheny County, to Washington, D.C. He actually moved to Bethesda, Maryland, which is in Montgomery County. The travel authorization authorized the transportation of household goods and personal effects. You say that Mr. Wood moved his household goods by privately owned Volkswagen bus and a rented truck due to a movers' strike and has claimed reimbursement under the commuted rate system.

You further say that it appears that the employee has furnished satisfactory evidence of weight shipped which would entitle him to reimbursement for shipment of 11,000 pounds of household effects. However, since the goods were not shipped by common carrier, a decision is requested as to the allowance of (1) the additional amount authorized for a shipment originating in Allegheny County, Pennsylvania, and terminating in Montgomery County, Maryland, and (2) the usual surcharge allowance. General Services Administration Bulletin FPMR No. A-2, Supplement No. 23, dated April 10, 1970, effective October 3, 1969, issued pursuant to Office of Management and Budget Circular No. A-56, prescribing commuted rates to be used in reimbursing civilian employees of the Federal Government for transportation expenses incurred in moving their household goods and personal effects, provides in part on pages 10, 11, and 12 as follows:

METROPOLITAN AREAS: The rates shown in the table below apply to shipments originating or terminating in the particular cities and areas indicated *and* moving by common carrier. These rates are in addition to rates contained in Table 1, 2, or 3, whichever is applicable. If the shipment originates in one of the

numbered areas shown in the table and terminates in another of those areas, the allowances shown for both areas are applicable; but, if the shipment originates and terminates within the same area, the allowance shall apply only once, subject to greater allowance either at origin or destination. * * *

* * * * * * *

State	Description of Area	Area No.	Rate per 100 lbs. (Cents)
* *	* * *	*	*
MARYLAND	All points in the counties of Montgomery and Prince Georges	* * *	30
* *	* * *	*	*
PENNSYLVANIA	Pittsburgh and all points in Allegheny County	* * *	50

While the term "common carrier" is not defined in the above-mentioned regulations our view is that the term contemplates those who hold themselves out to the public as engaged in the business of transporting property from place to place for compensation. See *Washington ex rel. Stimson Lumber Company* v. *Kuykendall*, 275 U.S. 207 (1927); *Liverpool & Great Western Steam Company* v. *Phenix Insurance Company*, 129 U.S. 397 (1889); *Propeller Niagara* v. *Cordes, et al.*, 21 How. 7 (1858); *United States* v. *Ramsey*, 197 F. 144 (1912). Persons transporting their own property are not classified as common carriers. See *Cooperative Legislative Committee of R. R. Brotherhoods* v. *Public Utilities Commission*, 80 N.E. 2d 159 (1948).

Therefore, under the circumstances Mr. Wood would not be entitled to the additional metropolitan area amounts which are allowable only when a common carrier is used in transporting household goods between Allegheny County, Pennsylvania, and Montgomery County, Maryland.

As to the surcharge allowance we note that effective June 22, 1967, van carriers of household goods published certain changes in rates for transportation of household goods and related services and added a surcharge of 75 cents per 1,000 pounds. General Services Administration Bulletin FPMR No. A-2, Supplement No. 9, dated May 29, 1967, on page 27, included the surcharge in addition to the regular commuted rate which provided as follows:

SECTION 3—SURCHARGE ALLOWANCE

In addition to all other applicable allowances provided in this commuted rate schedule, an allowance of 75 cents per 1,000 pounds or fraction thereof shall be made on each shipment, based on the actual weight of the shipment or the maximum weight of household goods which the employee is entitled to move, whichever is less.

General Services Administration Bulletin FPMR A-2, Supplement No. 26, dated July 10, 1970, provided that on transportation beginning

on or after July 17, 1970, the surcharge no longer was applicable. The surcharge was included in the commuted rate schedule to enable appropriate reimbursement by the Government to employees who were required to make payments to carriers for such charges. The purpose of such provision was to prevent hardship or loss to employees who shipped by common carriers rather than to grant increased benefits in cases in which employees move their goods by privately owned automobiles or trucks and do not have a surcharge based on movement by a common carrier.

Accordingly, the voucher, which is returned herewith, may be certified for payment only after deletion of the surcharge allowance and the allowance for movement between certain metropolitan areas.

[B–172855]

Officers and Employees—Transfers—Relocation Expenses—Temporary Quarters—Time Limitation

Employees of the Federal Highway Administration who are transferred between duty stations within the State of Alaska are only entitled to subsistence expenses for a period of 30 days while occupying temporary quarters with their dependents, which is the period prescribed in 5 U.S.C. 5724a(a)(3) and implementing regulations when a new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The extension of the subsistence allowance for an additional period of up to 30 days occupancy of temporary quarters applies only when an employee transfers to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone, and, therefore, the employees transferred within Alaska are subject to the 30-day limitation.

To I. E. Gillson, United States Department of Transportation, June 2, 1971:

This is in reply to your letter of April 30, 1971, reference 08–00.14, requesting our decision whether employees transferring from Anchorage or Fairbanks, Alaska, to Juneau, Alaska, would be eligible for temporary quarters allowance for a maximum of 60 days under the provisions of 5 U.S.C. 5724a.

You say that due to a planned reorganization of the Federal Highway Administration activities in Alaska several employees with headquarters in Alaska are to be transferred to Juneau, Alaska, on or about June 1, 1971. Because of the difficulties encountered in obtaining living accommodations anywhere in Alaska each of the employees has requested the maximum of 60 days temporary quarters allowance.

Section 5724a of Title 5, United States Code, providing for the payment of relocation expenses of employees transferred or reemployed, reads in pertinent part as follows:

(a) Under such regulations as the President may prescribe and to the extent considered necessary and appropriate, as provided therein, appropriations or other funds available to an agency for administrative expenses are available

for the reimbursement of all or part of the following expenses of an employee for whom the government pays expenses of travel and transportation under section 5724(a) of this title:

* * * * * * *

(3) Subsistence expenses of the employee and his immediate family for a period of 30 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The period of residence in temporary quarters may be extended for an additional 30 days when the employee moves to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone.

Subsections 2.5b(1) and (2) of Office of Management and Budget Circular No. A–56, Revised June 26, 1969, pertaining to subsistence expenses of the employee and his immediate family while occupying temporary quarters when an employee is transferred to a new official station, provide as follows:

(1) Subsistence expenses of the employee, for whom a permanent change of station is authorized or approved, and each member of his immediate family (defined in 1.2d), for a period of not more than 30 *consecutive* days while necessarily occupying temporary quarters will be allowed when the new official station is located in the 50 States, the District of Columbia, United States territories and possessions, the Commonwealth of Puerto Rico and the Canal Zone, provided a written agreement as required in 1.3c is signed in connection with such transfer. The period of consecutive days may be interrupted to take account of the time that is allowed for travel between the old and new official stations or which is due to circumstances attributable to official necessity, as for example, an intervening temporary duty assignment.

(2) Such expenses as provided in (1) above may be allowed for a period of not to exceed an additional 30 *consecutive* days while occupying temporary quarters when the employee is transferred either to or from Hawaii, Alaska, the territories and possessions, the Commonwealth of Puerto Rico, and the Canal Zone to the extent determined to be necessary. The same considerations as expressed in (1) above are applicable in allowing any extension of the additional period.

Under the clear wording of the statute and regulations an extension of the allowance for an additional period of up to 30 days occupancy of temporary quarters may be granted only when the employee transfers to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. Transfers within that State of Alaska are subject to the 30-day limitation in the first sentence of 5 U.S.C. 5724a(a)(3) and in subsection 2.5b(1) of Circular No. A–56.

Your question is accordingly answered in the negative.

[B–171899]

Contracts—Requirements—Worldwide Performance Locations

An invitation for bids that contemplates a construction type requirements contract for the reconditioning and maintenance of radomes located worldwide, and which requested one bid price for each type service for a particular size radome regardless of location and made site inspection impracticable, is not a deficient invitation and need not be revised to require separate bids for the more than 200 possible performance sites—an insurmountable administrative

workload—to allow for varying travel and transportation expense factors since regardless of location, the work is essentially the same at each site, making site inspections unnecessary, and the scheduling of service consecutively for adjacent locations will minimize travel expenses. Requirements contracts are valid and the contracting agency unable to state locations and performance dates, having estimated its requirements in good faith may make an award under the invitation.

Contracts—Labor Stipulations—Davis-Bacon Act—Suspension—Revoked

The Davis-Bacon Act provisions and wage determinations in an invitation for bids that were to apply only to some of the worldwide performance sites at which radomes are to be reconditioned and maintained under a requirements contract, which were deleted by amendment upon issuance of Presidential Proclamation 4031, need not be reinstated because the suspension of the act was revoked by Proclamation 4040. The determination to resolicit a procurement and include the Davis-Bacon Act provisions although recommended was left to the discretion of contracting agencies by the Department of Labor, and a determination having been made that a resolicitation of the procurement would be prejudicial to bidders, a contract without the provisions may be awarded to the lowest responsive and responsible bidder.

To the Electronic Space Systems Corporation, June 4, 1971:

We refer to your protest, by letter of February 8, 1971, and subsequent correspondence, against award by the Department of the Air Force of a contract to any bidder under invitation for bids (IFB) F04606–71–B0080, issued October 30, 1970, by Sacramento Air Materiel Area, McClellan Air Force Base, California. The procurement, which is set aside for small business, involves a construction type requirements contract for the performance of depot level reconditioning and maintenance of Government-owned radomes located throughout the world.

In light of your protest, the Department of the Air Force has withheld award under the IFB. However, the procuring activity states it is imperative that award be made no later than June 1, 1971, in order to allow sufficient time for the successful bidder to obtain theater and security clearances, travel orders and immunization shots for his personnel, develop logistics plans for movement of personnel to remote sites and schedule radar site downtime. The current contract, it is stated, may be extended under option only through June 30, 1971. In addition, the procuring activity calls attention to the fact that the majority of the radome sites are located in the Northern Hemisphere and maintenance must be accomplished during the summer months. Any slippage from the periods of optimum weather conditions, it is added, will cause curtailment of Depot Level Maintenance effort which could result in severe damage to vital GFM defense equipment.

The substance of your protest is that the IFB is deficient for lack of sufficient information regarding place of performance and estimated quantities to enable bidders to properly bid. You state that one bid price is requested for each type of service for a particular size radome

regardless of its location, whereas travel and transportation expenses obviously make performance more costly for sites far removed from the contractor's place of business than for closer sites. You therefore urge that separate bids should be solicited for each of the more than 200 possible performance sites so as to allow for the varying travel and transportation expense factors. In this connection, you cite as an example of a properly prepared solicitation an invitation for bids issued by the Federal Aviation Administration under date of March 18, 1971, covering reconditioning of fiberglass reinforced plastic radomes, which specifies 12 sites in each of two schedules, all located within the continental United States, at which the required work is to be performed.

You also complain that since the procuring activity did not provide bidders with a list of the possible places of performance until 12 days before the originally scheduled bid opening, bidders were not able to inspect the radome sites. Accordingly, you contend, the Government will be denied the benefit of the clauses "Conditions Affecting the Work" and "Site Investigation" included in the IFB.

The deficiencies regarding place of performance and impracticability of inspection by bidders of the possible worksites, you further contend, work to the advantage of the incumbent contractor. In this regard, you assert that such contractor has knowledge of Air Force practice regarding place of performance and also is in a position to be aware of site conditions.

In addition, you assert that while various terms are used for the required work, no distinction is drawn between terms which are similar. Further, you charge that the IFB fails to identify the additional services required by line items 61 and 62 and that line item 59 covering emergency services is too vague, even with an estimate of 12 emergencies over a period of 9 months, to result in real competition, since the emergencies could total 221, the number of unclassified worksites listed in the IFB. A prudent bidder, you contend, would be unwilling to assume the risks involved in bidding on the item and would therefore be deterred from bidding leaving the competition to those who are so imprudent as to bid a firm fixed price on costs which may vary on a scale of 1 to 100 or more.

In line with the foregoing arguments, you urge that in order to be fair the IFB should be revised to require a separate price for each geographic area in which work may be required (to allow for variances in travel and transportation costs) and, if the estimated quantities per site are to be a factor in the evaluation of bids, to provide information to bidders as to quantities actually ordered for each site in at least each of the past 3 fiscal years.

You also contend that the IFB should include provisions making the Davis-Bacon Act, 40 U.S.C. 276a, applicable to the contract and that it should incorporate a wage rate determination for each of the areas in which services may be performed. In this connection, you assert that while Presidential Proclamation 4031 of February 23, 1971, suspended application of the act, the revocation of the suspension by Presidential Proclamation 4040 of March 29, 1971, as implemented by Memorandum No. 93, issued by the Department of Labor, makes this procurement, initiated prior to February 23, subject to the act. From page 3 of the Memorandum you quote the following paragraph in support of your position on this issue:

> Where bids or proposals for contract work were solicited subject to Davis-Bacon provisions prior to Proclamation 4031 suspending such provisions with respect to "contracts entered into" on or after February 23, 1971, and no further action has been taken and no contract entered into pursuant to such solicitation between February 23 and March 29, 1971, inclusive, it would appear that no contract or solicitation therefor became subject to the suspension proclamation before the revocation by Proclamation 4040 and that the additional effort and expense of issuing a resolicitation after March 29, 1971 would not be required as a result solely of the two proclamations. So long as the wage determination on the basis of which the solicitation was made remains in effect, a contract subject to its provisions may be entered into as it would have been if there had been no suspension during the intervening period.

The IFB describes the work as technical nonpersonal services and supplies for depot level reconditioning, maintenance, and emergency technical assistance of Government-owned air supported, rigid, space frame, and flat plane radomes located worldwide. The period of performance is 1 year commencing July 1, 1971, subject to extension for 90 additional days at the option of the Government, and the work is required to be performed in accordance with certain technical orders, directives, and specifications incorporated by reference in Appendix "A" of the IFB.

Line items 1 through 57 cover maintenance services for air supported, rigid and space frame radomes. For each type of service or combination of services specified, bids are requested on each of several sizes of radomes on a unit price basis. Next to each item a best estimated quantity is stated. The technical order which applies to these items, T.O. 31–1–69, as amended, which is attached to the IFB, defines the term "refurbishment" and specifies in detail the work which is to be performed in reconditioning, replacement, cleaning, repairing, painting, caulking and applying polyester resin, among other services.

Line item 58 covers renovation and/or repair of flat plane radomes at Eglin Field Air Force Base, Florida, and the best estimated quantity is stated as 1 unit. The work on this item is required to be performed in accordance with T.O. 31P1–2FPS85–262, dated April 1, 1969, which is among the applicable technical orders listed in Appen-

dix "A" to the IFB. The contracting officer explains that the words "renovate and/or repair" were used for this item to avoid confusion with the words "recondition and paint" which apply to the other types of radomes.

Line item 59 covers emergency technical services, and the estimated number of emergencies is 12 for the maximum period of 9 months, and the maximum number of personnel is three for any emergency. Bid prices are solicited for this item on a "per month" basis. The contracting officer states that this requirement has been included in Government contracts for many years to insure protection of vital communications and electronics equipment. While the frequency of emergencies is said be unpredictable, the contracting officer states that past experience has proven that it is minimal, and the estimate in the IFB represents the average number of emergencies, which are normally caused by acts of God, experienced over the past several years. The monthly price is solicited, according to the contracting officer, so that services may be ordered under this requirements contract at the beginning of each month and funds may be obligated to cover a specific period of time, thus dispensing with need for any further order if an emergency occurs and minimizing reaction time on the part of the contractor in line with the Government's requirement under this item.

Line item 60 covers cost reimbursable transportation services, which include transportation to overseas sites and emergency services travel. Within the continental United States, except Alaska, transportation of personnel and equipment and supplies is the obligation of the contractor for other than emergency services.

Line item 61 covers additional work of an inseverable nature not covered by items 1 through 58. Paragraph 6 of the Special Provisions of the IFB describes the inseverable work covered by this item as supplies or services so inseverable from the basic item of work that failure to perform by the contractor would preclude performance of the basic work required by a particular work order. As an example of work which would be covered by the item, the contracting officer cites missing radome panels or panels needing repair, either of which problem must be remedied before an order to paint may be filled.

Line item 62 covers additional work of a severable nature not otherwise included in items 1 through 58. Paragraph 7 of the Special Provisions in the IFB describes this work as supplies or services, the nature of which could not be determined at inception of the work order and performance of which would not preclude the contractor from performing the basic task covered by the work order. Severable work, the contracting officer further explains, is work which should be accomplished while the contractor is on the site to prevent possible

damage to the radome or CEM equipment (communications, electronics, meteorological). This work, which would include torqueing of bolts, repairing hatch assemblies, etc., cannot be determined in advance.

Line item 63 covers cost reimbursable contractor acquired property.

Only Items 1 through 59 will be considered in the evaluation of bids. Items 60 through 63 do not call for bid prices, and payment for such items will be made as the work is generated and performed.

Page 33 of the IFB carries the Requirements clause prescribed by Armed Services Procurement Regulation (ASPR) 7-1102.2(b), which advises bidders, among other things, that the quantities of supplies or services specified in the IFB are estimates only and are not purchased thereby and that the supplies or services required by the Government will be ordered by the issuance of delivery orders.

As issued on October 30, 1970, with an amendment, the IFB included a Davis-Bacon Act clause and wage determinations for 19 of the areas in which services might be required. You protested the absence of wage determinations for each performance site by your letter of February 8, 1971. On March 4, 1971, the procuring activity, acting in accordance with specific instructions in a memorandum issued on February 24, 1971, by the Assistant Secretary of Defense (Installations and Logistics) in implementation of Presidential Proclamation 4031, issued an amendment to the IFB deleting the Davis-Bacon Act provisions and specifically providing that the contractor is not required to comply with the provisions of the act. On April 12, 1971, the IFB was further amended to provide, among other things, for a new bid opening date of April 27. Further, in a letter dated April 20, Headquarters United States Air Force advised you that reinstatement of the Davis-Bacon Act by Presidential Proclamation 4040 of March 29, 1971, did not apply to the IFB in view of the fact that it was issued prior to March 29, 1971.

Headquarters United States Air Force has informed our Office that three bids, the same number as were received on last year's requirements, were received by the April 27 bid opening time, but you were not among the bidders. Further, the bid prices are reported to be $428,795 (which is $4,205 lower than the price of last year's contract with Century Aircraft), $501,600, and $639,261. Your bid on last year's requirements, according to the record, was highest at $1,434,000.

The procuring activity states that the IFB is structured along the same lines as previous solicitations which have been issued since 1967 without complaint from any of the sources solicited, including you. In addition, the procuring activity maintains that there is no violation of ASPR, and therefore award should be permitted under the IFB. The supporting statement of the contracting officer is discussed below.

The contracting officer asserts that the provisions of T.O. 31–1–69, which is included in the bid package, adequately describe the services required by the IFB. Any work not encompassed in the terms used in the IFB as defined in the T.O., the contracting officer claims, would constitute the severable or inseverable work for which reimbursement is provided under Items 61 and 62.

On the issue of separate prices for work at each of the radome sites, the contracting officer observes that regardless of location the work is essentially the same at each site. In addition, the contracting officer states that pricing by location would require inclusion of cost of round trip travel between the bidder's plant and each site, which would increase the cost of radome maintenance. Currently, the contracting officer states, in line with Government policy of scheduling services at adjacent locations consecutively wherever possible, all radomes in need of maintenance in Alaska are scheduled consecutively for the summer months, and radomes requiring maintenance in Korea and Japan are likewise scheduled consecutively. Further, the work crews used in Korea and Japan may be utilized in Taiwan and in the Philippines prior to their return to the contractor's plant, and the contractor has sufficient latitude in scheduling the work to minimize travel to, from and within the general geographical areas involved. If prices were required by individual tasks, that is, by radome type and site location throughout the world, the contracting officer points out, the administrative workload would be insurmountable. As an example, it is stated that for a 55-foot rigid molded fiberglass dome, of which there are some 75 located throughout the world, 75 prices would be required, and, if a separate price is also required for each type of work specified in the IFB, i.e., paint, or paint and caulk, or caulk alone, 225 line items would be involved for only this particular size radome.

As to site inspection, the contracting officer observes that a radome of one type in one location would be the same as a radome of the same type in another location, and the specified work would also be the same. While the additional work might vary from radome to radome, bidding is not affected since such work will be priced separately by issuance of a work request. Finally, the contracting officer asserts that since you and other qualified bidders are thoroughly familiar with the types and quantities of labor and materials required to perform the work involved under any of the specified conditions, actual site visits are not required to prepare a bid.

As to the advantage of the IFB structure insofar as experienced bidders are concerned, the contracting officer urges that simply by requiring bids on a "per site" or specific geographic area basis would not eliminate such factor. Conversely, it is urged, a contractor with

past experience or knowledge of past work, who could have compiled a maintenance history, might be at an advantage in bidding on a per site basis. By not specifying work locations, it is asserted, the possibility that a previous contractor might take advantage of esoteric information is removed.

Requirements contracts are valid contracts. 1 Corbin on Contracts 156; 1 Williston on Contracts 104A. Further, where a requirements type of contract is contemplated by an agency, the courts and our Office have held that such contracts are valid if the estimate of the probable amount of goods or services to be generated was determined in good faith. 47 Comp. Gen. 365 (1968); 37 *id.* 688 (1958) and court cases therein cited. See, also, *Shader Contractors, Inc.* v. *United States*, 149 Ct. Cl. 539 (1960). Consistent with the decisions of our Office and the courts, ASPR 3-409.2 provides that the estimate of the Government's needs under requirements contracts must be as realistic as possible. While such estimate may be obtained from records pertaining to previous requirements or consumption, there is no requirement in ASPR that the procuring activity furnish such information to bidders.

The record in this case shows that, based on past experience, the Air Force anticipates need for the services in question with respect to one or more of the radomes located throughout the world but is not now in a position to state the number and locations of the radomes. The quantities stated in the IFB, however, are described by the Air Force as the best estimated quantities, and there is no evidence of record that such estimates were made in other than good faith.

In addition, the various documents incorporated in the IFB spell out in detail the services required for each of the several types of radomes, and the additional services are also well delineated. Further, while the Air Force is unable at this time to specify the areas in which the various services will be required, it has stated its intent to schedule work in adjacent areas consecutively wherever possible. This procedure, it would appear, should result in performance of services at more than one area with minimum travel and transportation expenses, a result which could not be achieved if the prices payable under the contract for the servicing of radomes in each area included travel and transportation expenses.

As to the context of the IFB, we do not concur with your view that the IFB should have been patterned after the IFB issued by the Federal Aviation Administration. Each contracting agency bears the primary responsibility for drafting specifications to reflect its minimum needs. The Federal Aviation Administration, we note, was in a position to specify 24 sites within the continental United States with known requirements together with a schedule of performance covering only the summer months. In this case, as the Air Force

has stated, there is need at numerous sites throughout the world for the services in question, but at this time the Air Force is not in a position to state with particularity the exact places involved or the dates of performance. Further, the format used in the IFB is similar to that which has been employed in previous procurements, and there has been no decline in the number of bids received by the procuring activity. Accordingly, and since the current bid prices are comparable to the bid prices for last year's requirements, with the exception that this year's high bid is more than 50 percent lower than your high bid of $1,434,000 under last year's solicitation, it would not appear that the IFB structure has deterred competitive bidding on the procurement.

On the Davis-Bacon Act issue, you are advised that in a memorandum issued February 24, 1971, by the Assistant Secretary of Defense (Installations and Logistics), in implementation of Proclamation 4031, components of the Department of Defense were instructed, with respect to pending procurements, that in cases in which bids or offers had not been opened the opening date should be extended and the solicitation modified to remove all Davis-Bacon Act requirements. The March 4 amendment to the IFB in this procurement was in accord with such instructions.

After the issuance of Proclamation 4040, the Assistant Secretary of Defense issued a memorandum dated March 30, 1971, which superseded the February 24 memorandum and stated, among other things, that solicitations issued after March 29, 1971, would be subject to the Davis-Bacon Act but solicitations which had been issued between February 23, 1971, and March 30, 1971, should not include Davis-Bacon Act provisions. No reference was made in the March 30 memorandum to those solicitations which had been issued prior to February 23, 1971, and which had been amended between February 23 and March 30 to delete Davis-Bacon Act provisions in accordance with the instructions included in the Assistant Secretary's memorandum of February 24.

Department of Labor Memorandum No. 93, dated April 6, 1971, also issued in implementation of Proclamation 4040, included on page 2 this statement by the Under Secretary of Labor, "By its terms, Proclamation 4040 does not specifically require changes in pending procurement actions or contract procedures with respect thereto which were initiated prior to the revocation of the suspension." In addition, the Department issued Memorandum No. 94 on April 27, 1971, in which the Secretary of Labor made the following pertinent statements:

> It has been brought to our attention that a number of agencies have pending procurement actions for construction projects on which bids or proposals were solicited without Davis-Bacon wage payment provisions during the period from

February 23 to March 29, inclusive, as a result of the suspension by Proclamation 4031, and to which the Davis-Bacon Act, except for the effect of the suspension, would be applicable.

For the further guidance of the agencies of the Federal Government and the District of Columbia with respect to these pending procurement actions, the President has asked me to explain that in the case of contracts not yet entered into as a result of the solicitation of bids or proposals during the period when Proclamation 4031 was effective, each agency should, if it can do so legally and without undue hardship, take such action to accomplish a resolicitation of bids or proposals as is authorized under governing procurement laws and regulations and is most appropriate to effect a reinstatement of the application of the Davis-Bacon provisions to the proposed contract work.

While the Department's Memorandum No. 94 of April 27, 1971, expresses the sentiment of the President that procurements pending on March 30, 1971, which, but for the suspension of the Davis-Bacon Act under Proclamation 4031 during the period February 24 to March 29, 1971, inclusive, would have included Davis-Bacon Act provisions be resolicited with such provisions, the Memorandum also indicates that the decision in each case is for the particular contracting agency to make. In this connection, the Department of the Air Force has advised our Office that inasmuch as bids had been opened on April 27, 1971, under the amended IFB, which did not include Davis-Bacon Act provisions, prior to receipt of notice by the procuring activity of the issuance of Department of Labor Memorandum No. 94 of the same date, the Air Force does not consider that resolicitation of bids under a new IFB with Davis-Bacon Act provisions would be in the interest of the Government or of the competitive bidding system. In this regard, the Department points out that aside for the need of award before June 1, 1971, for the reasons advanced by the procuring activity, bid prices have been publicly exposed, and to resolicit the procurement would therefore work to the prejudice of the three bidders who in good faith and at some expense responded to the IFB. In the circumstances, we are unable to conclude that the proposal by the Department of the Air Force to make award under the IFB as presently constituted, to the lowest bidder who is determined to be both responsive and responsible, is not in accord with the requirements of the pertinent law and regulations. For your information, however, we enclose a copy of our letter of today to the Secretary of the Air Force in which we suggest that action be taken to make contract requirements more specific in future procurements.

For the reasons stated, your protest is denied.

[B-172684]

Contracts—Subcontracts—Bid Shopping—Definiteness of Subcontractor Listing Requirements

Although to be responsive, a bidder must comply with the subcontractor listing requirements of an invitation for bids as this information is necessary in order

for the contracting agency to control bid shopping, it is erroneous to require bidders to comply with the requirement for a specification classification that is not set out as a category in the subcontractor listing form attached to the invitation, for if the requirement was material, the procuring officials should have indicated in explicit terms the sections of the specifications that were subject to bid shopping. Therefore, the lowest bidder under an invitation to construct a Federal Building and Post Office who complied with the subcontractor listing requirements for all categories indicated is a responsive bidder even though all subcontractor addresses were not furnished and one name was misspelled as this is information obtainable without further bidder contact.

To the Administrator, General Services Administration, June 4, 1971:

By letter dated May 5, 1971, the General Counsel, General Services Administration (GSA), furnished our Office with a report in the protest of Wilkins Company, Inc., Boulder, Colorado, against the award of a contract to any other bidder for construction of the Federal Building and Post Office, Fort Collins, Colorado, project No. 66–124 (05046).

No award has been made pending resolution of the protest, and we are advised that bids have been extended until June 5, 1971.

The controversy in this case concerns the manner in which bidders responded to an invitation requirement to list proposed subcontractors for certain specified areas of work to be performed under the contract. Although it is the GSA conclusion that all four bidders are nonresponsive to this requirement, it is suggested that the purported nonresponsiveness be waived on the ground that no bidder would be prejudiced by such action in view of the fact that all bidders are equally nonresponsive to the same invitation requirement, and that award to the otherwise responsive bidder, Wilkins, would be in the Government's interest.

For reasons set out below, we conclude that while the bids of two of the bidders, Wilkins, the low bidder, and Hensel Phelps Construction Co., the third low bidder, are, in fact, nonresponsive to the subcontractor listing requirement, the bidder of the second low bidder, Reid Burton Construction Co., Inc., is responsive to the listing requirement, as apparently is the bid of the fourth low bidder, Weaver Construction Company.

Pertinent sections from the subcontractor listing requirement contained in the invitation Special Conditions are set out below:

5.1 For each category on the List of Subcontractors which is included as part of the Bid Form, the bidder shall submit the name and address of the individual or firm with whom he proposes to subcontract for performance of such category, *Provided*, That the bidder may enter his own name for any category which he will perform with personnel carried on his own payroll (other than operators of leased equipment) to indicate that the category will not be performed by subcontract.

5.2 If the bidder intends to subcontract with more than one subcontractor for a category or to perform a portion of a category with his own personnel and subcontract with one or more subcontractors for the balance of the category,

the bidder shall list all such individuals or firms (including himself) and state the service to be furnished by each.

* * * * * * *

5.13 If the bidder fails to comply with the requirements of paragraphs 5.1, 5.2 or 5.3 of this Clause, the bid will be rejected as nonresponsive to the invitation.

In addition, the invitation contains the following with respect to "specialists":

6.1 The term "specialist" as used in the specification shall mean an individual or firm of established reputation (or, if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workmen skilled in either (as applicable) manufacturing or fabricating items required by the contract, installing items required by the contract, or otherwise performing work required by the contract. Where the contract specification requires installation by a specialist, that term shall also be deemed to mean either the manufacturer of the item, an individual or firm licensed by the manufacturer, or an individual or firm who will perform the work under the manufacturer's direct supervision.

The form attached to the invitation for subcontractor listing sets out 10 categories and requires the listing of the names and addresses of proposed subcontractors as well as the portion of the listed category to be performed by each where more than one subcontractor per category is to be listed.

The table of contents for volume I of the specification is divided into 16 divisions with various numbered sections listed in each division. The text of volume I of the specification, however, does not repeat the division headings set out in the table of contents, but instead gives only the various section numbers with accompanying description for each.

The categories in the subcontractor listing form in two instances, those entitled "Concrete" and "Electrical Work," are substantially the same as the corresponding division captions set out in the table of contents of the specification, viz, "Concrete" and "Electrical."

Division 3 of the volume I table of contents, entitled "Concrete," is broken down into the following four sections:

SECTION 0330 STRUCTURAL CONCRETE
SECTION 0331 ARCHITECTURAL CAST-IN-PLACE CONCRETE
SECTION 0344 ARCHITECTURAL PRECAST CONCRETE
(Architectural Cast Stone)
SECTION 0352 LIGHTWEIGHT INSULATING ROOF FILL

Similarly, division 16 of the table of contents, "Electrical," contains five sections as follows:

SECTION 1605 ELECTRICAL SYSTEMS
SECTION 1636 SNOW MELTING SYSTEM (Electric)
SECTION 1638 UNDERFLOOR DUCT SYSTEM
SECTION 1640 LIGHTING FIXTURES
SECTION 1656 FIRE ALARM SYSTEM

However, while the subcontractor listing form lists "Woodwork, Including Carpentry & Millwork," the relevant division of the volume I table of contents merely lists "Carpentry" with sections thereunder

only for "Carpentry" and "Plastic Laminate Finished Panels." The remaining categories of the subcontractor list are in most instances categories which correspond roughly with specification section headings, rather than division headings.

It is the position of the administrative report that the bid of the low bidder, Wilkins, is nonresponsive because while it listed material suppliers for the concrete and woodwork subcontractor list categories, it did not list itself in order to indicate its intention that it would perform the remaining work in those categories as required by paragraph 5.1 of the invitation Special Conditions. The Hensel Phelps bid which has expired would similarly be considered nonresponsive because while it listed subcontractors for "deck forming" under the concrete category and for "millwork" under the woodwork category, it did not list itself as performing the remaining work in those categories.

With respect to the remaining bids, it is pointed out that section 0344 of the specification, Architectural Precast Concrete, is required to be performed by a "specialist" as defined by the invitation, and that while two of the four bidders listed either subcontractors or themselves for the concrete category, none of the bidders listed anyone who, in the opinion of the contracting officials, qualified as a "specialist." Thus, it is contended that all bidders are equally nonresponsive in this regard.

We agree that the failure of the Wilkins bid to list itself as intended performer of part of the work covered by the first two subcontractors listing categories is sufficient to render that bid nonresponsive in view of the explicit direction in Special Conditions paragraph 5.1, quoted above, that such listing be included, and the advice in paragraph 5.13, also quoted above, that failure to comply with section 5.1 will result in bid rejection. This conclusion is in accord with the position taken by our Office since our decision in 43 Comp. Gen. 206 (1963) that subcontractor listing requirements should be considered material invitation requirements in order to control the undesirable practice by prime contractors of bid shopping, i.e., the seeking after award by a prime contractor of lower priced contractors than those originally considered in the formulation of the bid price, and that strict compliance with subcontractor listing requirements is necessary. See B–166971, June 27, 1969, and cases cited therein.

However, in our opinion, the conclusion that bidders were required to list subcontractors for architectural precast concrete, or for any other specification classification not specifically set out as a category in the subcontractor listing form attached to the invitation, is erroneous. The subcontractor listing requirement has been determined to be a material invitation requirement not because it is necessary to assure performance in accordance with the contract specifications but rather because of a desire on the part of GSA to control bid shopping. It is the

duty of the procuring officials, then, to determine which sections of the specification work are subject to the evils of bid shopping and to list them in the invitation.

In this case, reading the specifications as a whole and the listing requirement leads us to conclude that there was no requirement to list any more than that which was listed by the second low bidder. For example, the administrative report takes the position that specification section 0331, Architectural Precast Concrete, a "specialty" category, was subject to the listing requirement apparently on the theory that the specification section entitled Architectural Precast Concrete falls under the division heading in the specification table of contents entitled "Concrete." However, to follow this rationale would mean that proposed subcontractors would also have to be listed for any of the other 10 specification sections listed under the table of contents divisions entitled "Concrete," "Carpentry," and "Electrical." At least two of these other specification sections—section 0640, "Plastic Laminate Finished Panels" and section 0352, "Lightweight Insulating Roof Fill"—also require specialist qualifications, for which the listing of the prime offeror would apparently not suffice. It does not appear, however, that listing for work under these latter specification sections was intended as they are not mentioned in the administrative report and, in fact, no bidders gave listings for them.

It is our belief that those portions of the work intended to be subject to the listing requirement should be clearly indicated in the listing form, in terms sufficiently explicit to enable bidders to determine without reference to other supporting documents what is required.

We therefore conclude that the second low bid of Reid Burton which listed itself or subcontractors for those phases of work ordinarily understood to fall within the categories of "Concrete" and "Woodwork" was responsive to those categories. While the addresses of Reid Burton's proposed subcontractors for the remaining categories are not listed in each instance and while the name of one subcontractor was misspelled, we have been advised that each listed proposed subcontractor is sufficiently identified in the bid for the contracting officer to determine its identity without further contact with Reid Burton. Inasmuch as this is all that is required by our decisions 50 Comp. Gen. 295, October 16, 1970, and B–169974, August 27, 1970, we conclude that Reid Burton is responsive with respect to the remaining categories as well.

Accordingly, if otherwise proper, award may be made to Reid Burton.

[B-172581]

Contracts—Labor Stipulations—Nondiscrimination—"Affirmative Action Programs"

When an invitation for bids to rehabilitate and remodel apartment buildings requires bidders to complete an appendix to the invitation which is intended to implement the Washington Plan that provides equal employment opportunity on Federal construction projects exceeding $500,000, and which was issued pursuant to Executive Order No. 11246, the mere signing of the appendix without submitting the required specific percentage goals for minority manpower utilization renders the low bid nonresponsive as the completion of the appendix is a condition precedent to bid acceptance. Therefore, the failure to furnish the minority manpower goals is not a minor informality that may be corrected or waived under section 1-2.405 of the Federal Procurement Regulations and the deficient bid is not eligible for award.

To Sher and Harris, June 7, 1971:

You have protested by letters of April 15, May 3 and 4, 1971, against the rejection of the low bid of the Northeast Construction Co. under invitation for bids (IFB) No. 71-481, issued by the Department of Housing and Urban Development for the general rehabilitation and remodeling of vacant apartment buildings in the Southeast section of Washington, D.C.

The next low bidder, Bird Associates, Inc., has objected to an award to Northeast because it failed to complete appendix "A" of the invitation. Appendix "A" is an implementation of the Washington Plan (see 41 CFR 60-5) for equal employment opportunity on Federal construction projects exceeding $500,000. Bird contends that completion of the appendix by a bidder "is a condition precedent to any bid being accepted as being responsive." Consequently, it is argued that the mere signing of appendix "A" in two places by Northeast without submitting therein its specific percentage goals for minority manpower utilization rendered its bid nonresponsive. For the reasons hereinafter stated, we agree.

Paragraph 2 of amendment No. 1 incorporated appendix "A" into the IFB stating that the appendix "stipulates Contractor responsibilities under government requirements for affirmative action to assure compliance with Equal Employment Opportunity Requirements of Executive Order No. 11246 for federally involved Construction Contracts."

The appendix, entitled "*NOTICE OF REQUIREMENT FOR SUBMISSION OF AFFIRMATIVE ACTION PLAN TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY*," was included in the IFB in compliance with and implementation of an order issued on June 1, 1970, by the Secretary of Labor, Assistant Secretary of Labor for Wage and Labor Standards, and the Director of the Office of Federal Contract Compliance. The order indicated that the Wash-

ington Plan is to be implemented by including in the invitation for bids a notice substantially similar to one captioned "Appendix A," which is attached to the order. Appendix "A" of the IFB contains substantially similar language to that required by the order. The Requirements, Terms and Conditions of the appendix include a statement of the prescribed ranges of minority manpower utilization for specifically designated trades covering four distinct time periods which would constitute an acceptable affirmative action program; for example:

Trade	Range of Minority Group Employment from May 31, 1971 Until May 31, 1972
Electricians	16%–22%

Bidders were required to submit specific goals for minority manpower utilization within the prescribed ranges for each particular trade to be achieved on all work of the bidder during the term of the performance of any resultant contract, as follows:

Trade	Estimated Total Employment for the Trade on the Contract from May 31, 1971 Until May 31, 1972	Number of Minority Group Employees and Their Percentage of the Total from May 31, 1971 Until May 31, 1972

While you admit that Northeast did not submit specific goals for minority manpower utilization as required by the appendix, you invite our attention to the fact that Northeast signed and dated the appendix at pages 4 and 12 thereof. Therefore, it is contended that the bid was responsive in all material respects since the signatures were "intended to mean, and indeed could only mean that Northeast * * * was committing itself and committed itself to adopt as its goals for minority manpower utilization, the goals [ranges] of the Washington Plan as set forth in the Requirements, Terms and Conditions of Appendix A." Further, it is argued that Northeast's failure to complete the blank spaces calling for specific goals of minority manpower utilization was a minor informality or irregularity, merely a matter of form and not of substance, or, at most, a variation from the exact requirement of the IFB, which can be corrected or waived in accordance with section 1-2.405 of the Federal Procurement Regulations (FPR).

Section 1 of the Requirements, Terms and Conditions of appendix "A" forbids the awarding of a construction contract of the type involved here—

> * * * unless the bidder *completes* and submits, prior to bid opening, this document designated as Appendix A * * * which *shall include* specific goals of minority manpower utilization for each trade designated below * * * during the term of his performance of the contract, *such goals to be established* * * * at least within the ranges established by this Appendix * * *.
>
> * * * * * * *
>
> *A bidder who fails or refused to complete or submit such goals shall not be deemed a responsive bidder and may not be awarded the contract* * * *. In no case shall there be any negotiation over the provisions of the specific goals

submitted by the bidder after the opening of bids and prior to the award of the contract.

To be eligible for award, *each bidder will be required to comply with this Appendix* for the hereinbefore designated trades to be used during the term of the performance of the contract * * *. [Italic supplied.]

In addition, paragraph 2 of amendment No. 1 states:

* * * Bidder is cautioned to *complete* Appendix A as required therein and return the completed Appendix A with the bid. *Failure to do so shall cause the bid to be reected as nonresponsive.* [Italic supplied.]

In view of the above, and as set forth below, we do not agree that a failure to submit specific goals for minority manpower utilization is a deviation which can be waived or corrected. Section 3 of the Requirements, Terms and Conditions of appendix "A" states that "The contractor's or subcontractor's goals established within the above ranges shall express the contractor's * * * *commitment* of the percentage of minority personnel who will be working in each specified craft on each of his projects." Also, section 4 thereof notes that the *commitment* to specific goals is to meet affirmative action obligations. [Italic supplied.] Section 5 thereof further buttresses our conclusion. It reads, in pertinent part, that:

The contractor's or subcontractor's * * * commitment to specific goals for minority manpower utilization as required by this Appendix A shall constitute a commitment to make every good faith effort to meet such goals * * *.

In the event that the contractor fails to meet the specific goals which he establishes, a determination of whether or not he exercised "good faith" in attempting to meet said goals is based and correlative upon his specific commitment thereon. Sanctions such as contract cancellation can be imposed if it is determined that the contractor did not employ the requisite "good faith." It is our view that the submission of goals by the successful bidder would operate to make the requirement for "every good faith effort" to attain such goals a material part of his contractual obligation upon award of a contract. Therefore, the obligations imposed by appendix "A" would become a part of the contract specifications against which a contractor's performance will be judged in the event he fails to attain his stated goals, just as much as his stated goals become a part of the contract specifications against which his performance will be judged in the event he does attain his stated goals.

With the foregoing in mind, we cannot agree that, because it signed appendix "A" in two places, Northeast was committed to the prescribed minimum percentage ranges for minority group employment set forth in the Requirements, Terms and Conditions of the appendix. Upon examination of the Northeast bid and the attached appendix "A," we find no basis to conclude that Northeast was legally bound to at least the minimum prescribed percentage ranges. The appendix,

read as a whole, is quite specific that the bidder must submit his goals, since his compliance is measured by his goals and not by the prescribed minimums. Accordingly, it is our opinion that a failure by a bidder to submit specific individual goals for minority manpower utilizaton constitutes such a material deviation from the stated requirements of appendix "A" that such a deficient bid cannot be regarded as eligible for award under the subject invitation.

[B-172031]

Compensation—Additional—Environmental Pay Differential—Compensatory Time in Lieu

Air National Guard technicians, whether they are wage or nongraded employees or General Schedule employees, who for a 12-hour workday receive 4 hours compensatory time for work in excess of 8 hours a day, or receive compensatory time for an 8-hour Sunday tour of duty, are not entitled to environmental differential pay, night shift differential pay, or premium pay, as 32 U.S.C. 709(g) in authorizing the Secretary concerned to prescribe the hours of duty for the technicians and to fix their basic compensation or additional compensation, provides for the granting of compensatory time in an amount equal to the time spent in irregular or overtime work with no compensation for the compensatory time, since the compensatory time is intended to be in lieu of overtime or differential pay for additional hours of work.

Compensation—Additional—Environmental Pay Differential—Premium Pay in Lieu

An Air National Guard technician who assigned to a 24-hour tour of duty at an Air National Aircraft Control and Warning Site receives 12 percent annual premium pay under 32 U.S.C. 709(g), which is prescribed for unusual tours of duty, irregular duty, or additional duty, and work on days that are ordinarily nonworkdays, when exposed to duty in a hazardous category is not entitled to environmental differential pay since premium pay not to exceed 12 percent of basic pay is authorized to be paid in lieu of additional compensation, including differentials and overtime compensation.

To the Chief, National Guard Bureau, June 9, 1971:

We refer further to your letter of February 23, 1971, reference NGB-TNS, requesting a decision concerning the entitlement of National Guard technicians to premium pay and environmental (hazardous) differential pay during periods of overtime work.

You state that the following four questions set forth typical situations common to the National Guard technician program:

Question No. 1: An Air Technician is exposed for the first time to an Explosives and Incendiary Material High Degree Hazard category in the 9th hour of a twelve hour workday (8-hours regular schedule, 4-hours compensatory time). As environmental differential pay constitutes base pay, how many hours of environmental differential pay, if any, is the technician entitled?

Question No. 2: The last four hours of an Air Technician's workday of twelve hours (8-hours regular schedule, 4-hours compensatory time) are for a period of time for which night shift differential is normally authorized. Is the technician entitled to night shift differential pay?

Question No. 3: A technician at an Air National Guard Aircraft Control and Warning Site is on a twenty-four (24) hour tour from 0800 hours Tuesday to 0800 hours Wednesday. The technician is entitled to 12% annual premium

pay for unusual tours of duty, irregular duty, additional duty (hours in excess of 80-hours during a bi-weekly pay period), and work on days that are ordinarily nonworkdays. Further, during the twenty-four (24) hour tour, the technician is credited for two hours of work for each three hours spent on site, and one hour of standby time for each three hours spent on site. During the twenty-four hour tour, the technician is exposed to a Poisons (Toxic Chemicals) Low Degree Hazard category. As environmental differential pay constitutes base pay, how many hours of environmental differential pay, if any, is the technician entitled?

Question No. 4: A technician is required to work on a Sunday in support of a Military Airlift Command Mission, outside his regularly scheduled tour of duty. The technician would be credited on the Time and Attendance Card with eight hours Compensatory Time Worked. Is the technician entitled to premium pay for Sunday Work?

You ask that a determination be made regarding the above questions and the effect 32 U.S.C. 709, as amended by the National Guard Technicians Act of 1968, Public Law 90–486, 82 Stat. 755, has upon the entitlement of National Guard technicians to premium pay and environmental pay during periods of compensatory (overtime) work.

We understand that employees subject to the General Schedule as well as wage or nongraded employees are included in the four situations described above.

Subsection 709(g) of Title 32, United States Code, provides:

(g)(1) Notwithstanding sections 5544(a) and 6102 of title 5, United States Code, or any other provision of law, the Secretary concerned may, in the case of technicians assigned to perform operational duties at air defense sites—

(A) prescribe the hours of duties;

(B) fix the rates of basic compensation; and

(C) fix the rates of additional compensation;

to reflect unusual tours of duty, irregular and additional duty, and work on days that are ordinarily nonworkdays. Additional compensation under this subsection may be fixed on an annual basis and is determined as an appropriate percentage, not in excess of 12 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10 of the General Schedule under section 5332 of title 5, United States Code.

(2) Notwithstanding sections 5544(a) and 6102 of title 5, United States Code, or any other provision of law, the Secretary concerned may, for technicians other than those described in clause (1) of this subsection, prescribe the hours of duty for technicians. Notwithstanding sections 5542 and 5543 of title 5, United States Code, or any other provision of law, such technicians shall be granted an amount of compensatory time off from their scheduled tour of duty equal to the amount of any time spent by them in irregular or overtime work, and shall not be entitled to compensation for such work.

Section 8(a) of Public Law 90–486 (32 U.S.C. 709 note) states that, except as provided in 32 U.S.C. 709(g), the Secretary concerned shall fix the rate of basic compensation in accordance with the General Schedule in 5 U.S.C. 5332 or under the appropriate prevailing rate schedule in accordance with 5 U.S.C. 5341.

Senate Report No. 1446, 90th Congress, 2d session, part of the legislative history of Public Law 90–486, states at page 3, "With regard to special pays, overtime, differential and premium pay, none is authorized under the present system, only compensatory time off." With respect to the new legislation which superseded the old, the report states at page 16:

PREMIUM PAY FOR TECHNICIANS EMPLOYED AT AIR DEFENSE SITES

The bill authorizes the Secretary concerned, in the case of technicians assigned to perform operational duties at air defense sites, to prescribe the hours of those duties, fix the rates of basic compensation, and authorize additional compensation not to exceed 12 percent of such part of the rate of basic pay as does not exceed the minimum rate of basic pay for GS–10 of the General Schedule.

There are approximately 5,100 technicians affected by this provision. About 4,500 are on duty 62 hours a week as part of their normal employment; 350 are normally on duty about 50 hours a week. The Department of Defense has indicated that those on duty for 62 hours will be authorized annual premium pay in the amount of 12 percent of basic compensation and those on duty for 50 hours annual premium pay at 8 percent.

AUTHORITY OF THE SECRETARY TO PRESCRIBE THE HOURS OF WORK WITH AUTHORITY FOR COMPENSATORY TIME OFF

The bill provides that the Secretary concerned may prescribe the hours of duty for all technicians (other than those employed at air defense sites where separate authority will apply) and directs the Secretary to grant compensatory time off to a technician from a regularly scheduled tour of duty in an amount equal to the amount of time spent in irregular or overtime work in lieu of being paid for that work. This authority will continue the existing practice regarding hours of work and compensatory time off. It is the firm view of the committee that the irregular hours of work to which technicians are subjected on frequent occasions make it impractical, both from the standpoint of the Government and the individual, to be limited to the normal provisions regarding a straight 40-hour week with overtime or differential pay for additional hours of work. The frequent irregular hours are inherent in the technician job and position.

The applicable parts of the House Report No. 1823, 90th Congress, 2d session, at pages 12 and 13, are to the same effect.

We note that the statutory provision regarding compensatory time off for irregular or overtime work specifically states that no compensation is allowable for such work. Also, that portion of the legislative history quoted above dealing with compensatory time off indicates that such time off is to be in lieu of overtime or differential pay for additional hours of work.

The statutory provision and the statement in the legislative reports relating to the 12 percent additional compensation are not as clear regarding the types of compensation it supplants. No reference is made therein even to overtime compensation but it seems apparent that the language "(C) fix the rates of additional compensation" as used in the above statute includes differentials such as for night, holiday, Sunday, and hazardous duty compensation, as well as overtime compensation. Therefore, it is reasonable to say that the same language "additional compensation" used in the next sentence of the statute with respect to the 12 percent of basic pay was intended to mean that it would be in lieu of the additional compensation including differentials and overtime compensation which otherwise could be fixed.

Accordingly, as to questions 1 and 3, no environmental differential is payable. Questions 2 and 4 are answered in the negative.

[B-172671]

Compensation—Promotions—Whitten Rider Restriction—Waiver

Following the upgrading of the entrance grades for attorneys to GS–9 and GS–11 from GS–7 and GS–9, and the adjusting of grades as a consequence, the National Labor Relations Board (NLRB) negotiated an agreement with the NLRB Professional Association to consider shorter time periods for promotions and requested waiver of the Whitten Amendment requirement of 1-year ingrade except when only 5 weeks or less remained to complete the required year of service, and as the agreement entered into pursuant to Executive Order No. 10988, which reserved to the Government the authority to promote the efficiency of personnel operations, does not guarantee promotions, the exercise of the 5-week rule is administrative and its validity is not a matter for arbitration. Therefore, an attorney whose promotion was delayed by reason of the 5-week rule is not entitled to a retroactive promotion for in the absence of administrative error the general rule against retroactive promotions applies.

To the Chairman, United States Civil Service Commission, June 14, 1971:

Reference is made to your letter of April 20, 1971, requesting our decision as to whether the National Labor Relations Board (NLRB) may lawfully make a retroactive promotion of one of its employees (if an exception to the Whitten Amendment be granted by the Commission) in order to comply with an advisory arbitration award. It is stated that the arbitrator found that the Board's decision not to promote the employee at a particular time under a Board-created "five-week cut-off" rule was a violation of a negotiated agreement between the Board and a labor organization.

We understand that effective September 1, 1968, new entrance grades for attorneys were established at grades GS–9 and GS–11 instead of at GS–7 and GS–9. Attorneys hired earlier in GS–7 and GS–9, who qualified under the new standards, were promoted and the Board requested waiver by the Commission of the service-in-grade requirement when necessary. Later the Board took action to adjust the grades of attorneys in GS–11 and GS–12 who had been hired before September 1, 1968.

In October 1969 the Board negotiated agreements with the NLRB Professional Association which contained shorter time periods for consideration for promotion. The newly established time-in-grade requirements were as follows:

a. Attorneys shall be eligible for consideration for promotion from GS–9 to GS–11 after 1 year in grade.

b. Attorneys shall be eligible for consideration for promotion from GS–11 to GS–12 after 1 year in grade and a minimum of 14 months of appropriate Board experience.

c. Attorneys shall be eligible for consideration for promotion from GS–12 to GS–13 after a minimum of 16 months in grade and 30 months of appropriate Board experience.

d. Policy set forth in a–c above is not to be interpreted to imply automatic promotion or to preclude earlier promotion where appropriate for those attorneys who have had legal experience with other Federal agencies, clerking experience or experience as a private practitioner, as well as for those attorneys who by their performance indicate they are performing at a higher grade level.

Apparently, there were attorneys who had completed the specified Board service who were deserving of promotion without regard to the time-in-grade policy set forth in the above agreement but who could not be promoted without obtaining a waiver of the Whitten Amendment requirement of 1 year in grade from the Civil Service Commission. If the time required to complete the requirement of 1 year in grade was appreciable, the Board would request that a waiver be granted by the Commission. However, the Board had a practice that if the interval was 5 weeks or less no request would be made and the promotion would be made effective at the beginning of the first pay period after the 1-year service requirement was met. The reason given for this practice was a balancing of the prejudice to the individual against the expenditure of time and effort to process the request for the waiver without which the promotion could not be granted in any event.

In the specific case here involved the Board determined that Mr. Amedeo Greco, a GS–12 attorney, was eligible for promotion (apparently on April 11, 1970). However, because of the 5-week rule his promotion was not made until May 17, 1970, after he had completed 1 year in grade. Mr. Greco and the NLRB Professional Association filed a grievance which was subsequently heard by an arbitrator. The arbitrator held that Mr. Greco should be compensated for the delay in his promotion and that the 5-week rule should be abandoned. The arbitrator based his award, in part, on findings that the 5-week rule was not applied consistently and that all requests for exceptions to the Whitten Amendment sought by the Board for attorneys in situations similar to that of Mr. Greco were granted by the Commission.

Regarding the granting of retroactive pay increases we stated the following in B–168715, January 22, 1970:

> As a general rule an administrative change in salary may not be made retroactively effective in the absence of a statute so providing. 26 Comp. Gen. 706 (1947), 39 *id.* 583 (1960), 40 *id.* 207 (1960). However, we have permitted adjustments (retroactively effective) of salary rates in certain cases when errors occurred in failures to carry out *nondiscretionary* administrative regulations or policies. See 34 Comp. Gen. 380 (1955) and 39 *id.* 550 (1960). Also, we have permitted retroactive adjustments in cases where the administrative error has deprived the employee of a right granted by statute or regulation. See 21 Comp. Gen. 369, 376 (1941), 37 *id.* 300 (1957), 37 *id.* 774 (1958).

With respect to agreements with employee organizations Executive Order No. 10988, January 18, 1962, effective during the period the

agreement here concerned was entered into, provides in pertinent part as follows:

> Sec. 7. Any basic or initial agreement entered into with an employee organization as the exclusive representative of employees in a unit must be approved by the head of the agency or an official designated by him. All agreements with such employee organizations shall also be subject to the following requirements, which shall be expressly stated in the initial or basic agreement and shall be applicable to all supplemental, implementing, subsidiary or informal agreements between the agency and the organization:
>
> (1) In the administration of all matters covered by the agreement officials and employees are governed by the provisions of any existing or future laws and regulations, including policies set forth in the Federal Personnel Manual and agency regulations, which may be applicable, and the agreement shall at all times be applied subject to such laws, regulations and policies;
>
> (2) Management officials of the agency retain the right, in accordance with applicable laws and regulations, (a) to direct employees of the agency, (b) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees, (c) to relieve employees from duties because of lack of work or for other legitimate reasons, (d) to maintain the efficiency of the Government operations entrusted to them, (e) to determine the methods, means and personnel by which such operations are to be conducted; and (f) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency.

The agreement in question does not guarantee promotions of the attorneys involved, but merely states that such attorneys shall be eligible for consideration for promotion when they have completed the requisite periods of service. It cautions that the policy set forth therein is not to be interpreted to "imply automatic promotion or to preclude earlier promotion." Under section 7 of Executive Order No. 10988 the management officials of the Board retain the right, in accordance with applicable laws and regulations, to maintain the efficiency of the Government operations entrusted to them and to determine the methods and means by which such operations are to be conducted. The Board adopted the 5-week rule based on considerations of efficient personnel operation. Adoption thereof was consistent with the authority retained under section 7 *supra* and, therefore, the matter of validity of the rule does not appear properly a subject of arbitration. See 50 Comp. Gen. 708 (1971).

The action of the Board in setting the effective date of Mr. Greco's promotion was an exercise of its discretion and was in accordance with stated agency policy. Accordingly, the general rule that promotion may not be made retroactively effective is for application, there being no indication of administrative error.

[B–172761]

Bids—Omissions—Prices in Bid

The failure to submit a price for one of four military installations at which delivery is to be made of coveralls solicited under an invitation that requested individual prices on the quantities specified for each installation is not a clerical

oversight that may be waived as a minor irregularity pursuant to paragraph 2-405 of the Armed Services Procurement Regulation, and the omitted price may not be inserted on the basis the single price quoted for the other three installations applies to the entire quantity solicited because the bidder had checked the block captioned "100% of all quantities to be awarded or none" in the bid form, nor may the nonresponsive bid be considered for partial award. As an award of the whole contract is in the best interests of the Government, it may be made to the responsive and responsible bidder offering the low aggregate bid whose unit net price for the entire procurement is reasonable although slightly higher than that of the nonresponsive bidder.

To the Director, Defense Supply Agency, June 21, 1971:

Reference is made to letter dated April 26, 1971, your reference DSAH-G, with enclosures, from the Assistant Counsel, requesting a decision whether under invitation for bids No. DSA100-71-B-0987, the bid of the Kings Point Mfg. Co., Inc., may be corrected to show a bid price for an unpriced destination item when such correction will result in displacement of the apparent low bidder. Receipt is also acknowledged of supplemental reports dated June 1 and 4, 1971, from the Assistant Counsel.

The invitation, issued on March 11, 1971, by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania, solicited bids for the manufacture and delivery f.o.b. destination of 46,700 pairs of coveralls, flying, man's, CWU-27/P, sage green, high temperature, resistant, polyamide. The destination points were Mechanicsburg, Pennsylvania; Atlanta, Georgia; Memphis, Tennessee; and Ogden, Utah. While the invitation covered a total quantity of 46,700 pairs of coveralls, individual prices were required to be submitted on the basis of specified quantities designated for each of the four military installations as set forth on DPSC Forms 369-1 and 369-2, the invitation bidding sheets. The invitation did not require bidders to bid on all destinations.

At the bottom of DPSC Form 369-2 there appears the statement:

> The offeror agrees that the minimum and maximum quantities specified above as acceptable for award are the only quantity limitations applicable to this procurement, except as stated below:

Following that statement, Kings Point checked block No. 2 captioned "100% of all quantities to be awarded or none." Below such block the further statement appears:

> Failure to indicate separate minimum and maximum quantities will be deemed an offer to accept an award for the total of the quantities bid upon for *each* item of supply or destination or any part thereof.

Six bids were received and opened on March 31, 1971. Mason & Hughes, Inc., submitted the apparent overall low unit price bid of $35.94, less prompt discount of 1.95 percent for the entire quantity of 46,700 coveralls, all or none. Kings Point Mfg. Co., Inc., bid on all destinations except Mechanicsburg. Opposite each destination bid

upon, it inserted a unit price of $36.45. Kings Point has requested that its original bid be corrected to show for the Mechanicsburg destination a unit price of $36.45, the same price quoted by it for each of the other three destinations. If Kings Point is to be permitted to correct its bid by inserting the price of $36.45 for the Mechanicsburg destination, then it would become the low bidder as follows: $36.45 for the entire quantity, which price was timely reduced in telegram dated March 31, 1971, by $0.81, or to $35.64 per unit, less prompt payment discount of 2 percent. The contracting office has recommended that Kings Point should not be permitted to correct its bid and that the "all or none" bid of Mason & Hughes, Inc., be accepted as the lowest overall bid on all four destinations.

In its letter of April 12, 1971, to DPSC, Kings Point states that "the failure to type in the $36.45 price proximate to the Mechanicsburg line is a clerical oversight constituting a minor irregularity." The corporation has requested that the price of $36.45 be inserted in its original bid opposite the Mechanicsburg destination and that its bid, as corrected, and as modified by its telegram of March 31, 1971, be considered for award.

Kings Point contends that by checking the second block on DPSC Form 369–2, captioned "100% of all quantities to be awarded or none," it could only receive an award on the entire advertised 46,700 units and for a lesser quantity only if the Government unilaterally reduced the quantity "to be awarded." The corporation maintains that since its only quoted price of $36.45 must be read in conjunction with the "all or none" limitation it placed thereon, the Government must evaluate its bid as obviously having offered the entire bid quantity at a single price.

We cannot accept Kings Point's interpretation. If it was Kings Point's intention at the time of bidding to also bid on the Mechanicsburg destination, it should have inserted a bid price opposite that destination.

On page 1 of the invitation, under the section entitled "OFFER," the bidder "offers and agrees * * * to furnish any or all items upon which prices are offered, at the price set opposite each item." Since Kings Point failed to submit a price for the Mechanicsburg destination, we cannot say that it would be obligated to deliver 1,180 pairs of coveralls to that destination at the unit bid price quoted for the three other destinations. Such failure to quote a price constitutes a material deviation which may not be waived under the authority of paragraph 2–405 of the Armed Services Procurement Regulation. 41 Comp. Gen. 412 (1961); 46 *id.* 434 (1966).

Further, since a price was not inserted for the Mechanicsburg item, the bid is not responsive to that item. In 38 Comp. Gen. 819, 821 (1959), it was stated:

> *It is probable that the majority of unresponsive bids are due to oversight or error, such as the failure to quote a price,* to sign the bid, to furnish a bid bond, to submit required samples or data, or the submission of the wrong sample, incomplete data, or statements the actual meaning of which was not intended, etc. An unresponsive bid does not constitute an offer which may properly be accepted, and to permit a bidder to make his bid responsive by changing, adding to, or deleting a material part of the bid on the basis of an error alleged after the opening would be tantamount to permitting a bidder to submit a new bid. *It is our opinion that an allegation of error is proper for consideration only in cases where the bid is responsive* to the invitation and is otherwise proper for acceptance. [Italic supplied.]

See, also, 49 Comp. Gen. 749, 752 (1970). In view thereof, the failure to quote a price for the Mechanicsburg item may not be corrected as an error in bid.

In its letter of May 20, 1971, Kings Point states that if its bid cannot be corrected to show a bid price for 1,180 units covered by the Mechanicsburg destination, our Office should consider an alternative approach to acceptance of its bid. Kings Point alleges that it would be in the interest of the Government to award 45,520 units to it and to cancel the balance of 1,180 units; that a comparison of its aggregate net total bid price of $1,589,886.12 for 45,520 units and Mason & Hughes' aggregate net total bid price of $1,645,669.24 for the entire total quantity of 46,700 units shows a difference of $14,200.88; and that on the basis of a total price of $14,200.88 for 1,180 units, the unit price would be $47.27, which it states is approximately 35 percent more than Kings Point's unit price of $35.64 and Mason & Hughes' unit price of $35.94. Kings Point contends that the Government has a right to make the type of award suggested by it pursuant to paragraph 10(a) of the Solicitation Instructions and Conditions which provides that "The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered."

In regard to Kings Point's contention that by awarding the entire total quantity to Mason & Hughes the Government will be paying $47.27 each for the 1,180 units covered by the Mechanicsburg destination, the contracting officer states that the method by which Kings Point arrives at a difference of approximately 35 percent is by aggregating the difference in price of $14,200.88 over 1,180 units rather than the total quantity of 46,700 units; that having applied the difference in price to 1,180 units, Kings Point concludes that the Government would be purchasing these 1,180 units at an exorbitant price of $47.27 per unit; and that the Government will not be paying a price of $47.27 each, as alleged by Kings Point, but that it will be paying a

price of $35.23917 per unit net for the entire procurement quantity of 46,700 units, if purchased from Mason & Hughes.

The contracting officer contends the unilateral "bargain hunting" by the Government, as suggested by Kings Point, would seriously affect the rights of the bidders and would impair the integrity of the bidding system. It is pointed out by the contracting officer that the Government needs the total quantity of 46,700 units; that the difference between the net unit prices quoted by Kings Point and Mason & Hughes is only $0.31197; that he considers the unit price quoted by Mason & Hughes to be reasonable; and that in determining reasonableness, only the unit prices quoted by Kings Point and Mason & Hughes should be compared. In support of his recommendation that the "all or none" bid of Mason & Hughes be accepted, the contracting officer has cited our decisions of July 26 and September 8, 1961, B–146213, where we stated that it is proper to make an award on an "all or none" bid, which bid is the only one to provide full coverage on all items in the solicitation, *where* the price is considered reasonable in the circumstances.

Our decision, B–146213, cited by the contracting officer, involved an invitation in response to which four "all or none" bids were received, bidder No. 1 bidding on item 1, bidder No. 2 (Foremost) bidding on items 1 and 2, bidder No. 3 bidding on items 1, 2 and 3, and bidder No. 4 (Regis) bidding on items 1 through 4. The contracting officer in that case determined that the circumstances warranted cancellation of the invitation. However, our Office concluded that cogent or compelling reasons for cancellation were not present; that the original invitation should be reinstated; and that the award should be made to bidder No. 4 (Regis). In our decision of July 26, 1961, B–146213, we stated as follows:

> The basis for the contracting officer's cancellation and readvertisement was that it could not be established clearly that an award to Regis would be in the best interests of the Government in view of Foremost's offer some $6,200 lower on the first two items. However, while Foremost offered those two items at a lower cost, there were not unqualified bids on items 3 and 4 that could have been combined with the bid of Foremost on items 1 and 2 to result in a combination of prices that would have been less than the over-all price quoted by Regis. The only bidder that offered to furnish the Government everything it desired to obtain in the procurement was Regis. While a partial award on items 1 and 2 could have been made to Foremost at a lower unit cost, the obvious purpose of the invitation was to consummate an award or awards for the entire procurement. Since Regis was the only bidder permitting that result to be accomplished, the contracting officer only had to satisfy himself that the prices quoted by Regis were reasonable. Regis has stated that the unit prices it quoted were considerably below the prices paid on the previous procurement and were in line or below prices being paid by military installations within the state. Apparently, this is not denied by the procuring facility. Therefore, since Regis was the only bidder conforming to all of the Government's needs, we believe that the contracting officer had only to ascertain by a comparison with other procurements whether the prices quoted by it were reasonable in the circumstances.

In addition, in the September 8, 1961, decision, we stated as follows:

* * * However, when, as in this case, there is no other combination of bids for all the items that would result in a lower price than the aggregate bidder's price and the latter is not shown to be unreasonable, we see no reason why award should not be made on the over-all basis. To do otherwise would prejudice the interests of the bidder who offered to furnish the Government all of its needs and who in so doing had disclosed its prices to the competition. * * *

We believe in the general proposition that the Government advertises to secure its needs at the best possible prices and that award of the whole contract, when in the best interests of the Government, should be made to a responsive and responsible bidder offering a low aggregate bid, even though that bid may be higher on certain items than another bid. It also is our opinion that the fact that a partial award may be made at a price lower for certain items than the price for those items in an "all or none" bid which is low in the overall does not *per se* justify a determination that the "all or none" bid price is unreasonable, nor does it otherwise by itself qualify as a cogent or compelling reason for cancellation and readvertisement of some of the items.

The record indicates none of the bidders submitted an unqualified bid on all four destinations which could be combined with the bid of Kings Point on three of the four destinations, namely, Atlanta, Memphis and Ogden. The contracting officer has stated that the Government needs delivery of the coveralls to all four destinations. We agree with the contracting officer that in determining whether an exorbitant price would be paid for the coveralls if the "all or none" bid of Mason & Hughes were to be accepted, the *unit price* quoted by that firm would be the proper basis to be used. Since there is a difference of only $0.31197 between the net unit prices quoted by Mason & Hughes and Kings Point, we believe that there is no basis for concluding that the unit price quoted by Mason & Hughes is unreasonable. In this connection, it is reported that in the last 2 years, the award price for coveralls ranged from a high of $46.82 to a low of $41.28 for comparable quantities, both low and high prices being paid to Kings Point.

Accordingly, the bid of Kings Point Mfg. Co., Inc., may not be considered for award.

[B–149270]

Appropriations—No Year—Authorization *v.* Appropriation Act

Notwithstanding section 101 of the Emergency Home Finance Act of 1970 authorized the appropriation of funds without fiscal year limitation for the purpose of adjusting the effective interest charged by Federal home loan banks on borrowings, the Congress having in section 509 of the Independent Offices and Department of Housing and Urban Development Appropriation Act, 1971, which provided the funds to implement the enabling act, restricted the availability of the funds appropriated by the act to the current fiscal year unless otherwise ex-

pressly provided, the "no-year" provision in the authorization act is not incorporated in the appropriation act so as to meet the requirements of 31 U.S.C. 718, and, therefore, the funds appropriated for the interest adjustment payments by the Federal home loan banks are not available for obligation beyond June 30, 1971.

Appropriations—Obligation—Section 1311, Supplemental Appropriation Act, 1955—Loans—Interest Adjustment

In the implementation of the program authorized by section 101 of the Emergency Home Finance Act of 1970 for the adjustment of interest charged by Federal home loan banks on borrowings, and for which funds were appropriated on a fiscal year basis, an obligation within the meaning of section 1311 of the Supplemental Appropriation Act, 1955, as amended, 31 U.S.C. 200, will come into being at the time member institutions request commitments for allowance funds from the Federal home loan bank of which they are a member. However, so as not to nullify the fiscal year limitation, the expiration of the commitment should occur at the end of a reasonable period. Moreover, the home loan bank records constitute evidence of the obligation, unused commitments will become deobligated and may not be reobligated if the period of obligation has expired, and the certifications required by 31 U.S.C. 200(c) are not to be made by persons below the level of chief accounting officer.

To the Chairman, Federal Home Loan Bank Board, June 23, 1971:

Reference is made to your letters of May 19 and June 14, 1971, requesting our decision concerning several questions that have arisen in connection with the administration of the program authorized by section 101 of the Emergency Home Finance Act of 1970, Public Law 91–351, approved July 24, 1970, 84 Stat. 450.

Section 101 provides as follows:

Sec. 101. (a) There is authorized to be appropriated not to exceed $250,000,000, without fiscal year limitation, to be used by the Federal Home Loan Bank Board for disbursement to Federal home loan banks for the purpose of adjusting the effective interest charged by such banks on short-term and long-term borrowing to promote an orderly flow of funds into residential construction. The disbursement of sums appropriated hereunder shall be made under such terms and conditions as may be prescribed by the Board to assure that such sums are used to assist in the provision of housing for low- and middle-income families, and that such families share fully in the benefits resulting from the disbursement of such sums. No member of a Federal home loan bank shall use funds the interest charges on which have been adjusted pursuant to the provisions of this section to make any loan, if—

(1) the effective rate of interest on such loan exceeds the effective rate of interest on such funds payable by such member by a percentile amount which is in excess of such amount as the Board determines to be appropriate in furtherance of the purposes of this section; or

(2) the principal obligation of any such loan which is secured by a mortgage on a residential structure exceeds the dollar limitations on the maximum mortgage amount, in effect on the date the mortgage was originated, which would be applicable if the mortgage was insured by the Secretary of Housing and Urban Development under section 203(b) or 207 of the National Housing Act.

(b) Not more than 20 per centum of the sums appropriated pursuant to subsection (a) shall be disbursed in any one Federal home loan bank district.

Funds to finance the program were provided to the Federal Home Loan Bank Board in title IV of the Independent Offices and Department of Housing and Urban Development Appropriation Act, 1971, Public Law 91–556, approved December 17, 1970, 84 Stat. 1461, which contains the following appropriation:

For payments to Federal home loan banks for the purpose of adjusting the effective interest rates charged by such banks, as authorized by section 101 of the Emergency Home Finance Act of 1970, $85,000,000.

The first question presented for our decision is whether the above-mentioned $85 million appropriation is available for obligation after June 30, 1971.

Relative to such matter there is for consideration section 7 of the act of August 24, 1912, as amended, 31 U.S.C. 718, which provides that—

No specific or indefinite appropriation made subsequent to August 24, 1912, in any regular annual appropriation Act shall be construed to be permanent or available continuously without reference to a fiscal year unless it belongs to one of the following four classes: "Rivers and harbors," "lighthouses," "public buildings," and "pay of the Navy and Marine Corps," * * * or unless it is made in terms expressly providing that it shall continue available beyond the fiscal year for which the appropriation Act in which it is contained makes provision.

Also there is for consideration section 509 of the here-involved appropriation act which provides that—

No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

As pointed out in your letter we have stated that in the absence of legislative history to the contrary, appropriation language specifically referring to an authorization act which provides that appropriations made pursuant thereto shall remain available for longer than a fiscal year operates to incorporate the provisions of the authorizing act into the provisions of the appropriation. We have held that such incorporation by reference is sufficient to overcome the implication of fiscal year availability deriving from the enacting clause of a regular annual appropriation act and serves to meet the requirements of 31 U.S.C. 718. See 45 Comp. Gen. 236 (1965) and 508 (1966).

You urge that such reference to the authorization act in the appropriation language also serves to meet the requirement of section 509 of the appropriation act quoted above.

While we have found nothing in the legislative history of section 509 or of similar language contained in various other appropriation acts, which precisely describes the intent of such language, it seems evident that the purpose thereof is to overcome the effect of our decisions, such as those referred to above, regarding the requirements of 31 U.S.C. 718. See the discussion of this matter in House Report No. 1040, 88th Congress, pp. 55–56, which apparently gave rise to the general practice of including provisions similar to section 509 in appropriation acts. In other words the effect of such language is to require the act making the appropriation to expressly provide (rather than by incorporation by reference) for availability longer than 1 year if the enacting clause is to be overcome as to any specific appropriation contained

therein. Otherwise, the use of such language in an appropriation act would appear to serve little if any purpose.

Aside from the effect of section 509, we believe the legislative history of this particular appropriation supports the view that the Congress intended that the appropriation not be available for obligation beyond June 30, 1971. Prior to the enactment of the authorization act, the President submitted an estimate for an appropriation of $250 million, such appropriation to be effective only upon the enactment of the then pending authorization or similar legislation. The Senate Committee on Appropriations, in favorably reporting the then pending appropriation bill recommended inclusion of this item together with language making such sum "available until expended" and in such form the bill was passed by the Senate.

Before the bill came out of conference the authorization act was enacted, and the committee of conference recommended agreement on language to reduce the amount to $85 million. Also, the language which it recommended contained no provision making such sum available until expended. Concerning such action, the statement of the managers on the part of the House, printed with the conference report in House Report No. 1345, explains that the recommended language—

> Appropriates $85,000,000 for interest adjustment payments to Federal home loan banks instead of $250,000,000 as proposed by the Senate. The amount provides funds for the first year of this new program. A request for additional funds can be considered when there is demonstrated need for additional funding and specific plans are developed.

As indicated above, in view of such explanation and the omission of Senate-approved language that specifically would have made the appropriation available until expended it is our belief that the Congress when it adopted the conference recommendation did not intend that this appropriation be available for obligation beyond June 30, 1971.

You also ask when, under this appropriation and the regulations issued pursuant to section 101 of the Emergency Home Finance Act of 1970, does there come into being with respect to the appropriation an obligation within the meaning of section 1311 of the Supplemental Appropriation Act, 1955, as amended, 31 U.S.C. 200. Your letter suggests three possible answers. First, you ask whether such obligations consist of—

> The outstanding commitments made by Federal Home Loan Banks to member institutions under paragraph (b) of section 527.4 of the regulations? If so, may the "documentary evidence" required by subsection (a) of the obligation statute and the "records" required by subsection (c) of that statute consist of the records of the Federal Home Loan Banks respecting such commitments, and may the Federal Home Loan Bank Board designate officers or employees of said Banks as officials to make the certifications required by subsection (c) of the obligation statute?

It is our understanding that under the program authorized by section 101, referred to in the regulations, 12 CFR 527, as the "Housing Opportunity Allowance Program," funds provided therefor are allocated by the Federal Home Loan Bank Board in accordance with a formula established therein to the 12 Federal Home Loan Banks. Based, in general, on a formula involving the amount of outstanding mortgages on single-family dwellings held by them, member institutions request commitments for allowance funds from the district bank of which they are members.

Section 527.4 of the regulations referred to above reads, in part, as follows:

§ 527.4 Credits to member institutions.

(a) General. Each member institution having a commitment for allowance funds as provided in paragraph (b) of this section will, to the extent of such commitment, receive from the Bank of which it is a member a credit against interest due on advances in an amount equal to the total amount of allowances which the member institution has properly credited on qualifying loans as provided in § 527.3.

(b) Commitments for allowance funds. Any member institution may request in writing a commitment for allowance funds from the Bank of which it is a member. Commitments will be granted by such Bank, on such basis and for such time periods as the Bank may deem advisable, until the Bank's allocation of funds is exhausted.

(c) Procedure. Each member institution which has paid one or more allowances during a month shall, by the 20th day of the succeeding month, submit a report to the Bank of which it is a member, pursuant to paragraph (d) of this section. Such member shall deduct, from any subsequent bill for interest due on outstanding advances from the Bank, an amount equal to the allowances so reported, remitting only the net amount to the Bank.

As indicated above, your letter sets forth two additional alternatives, however, you state that the Board presently is operating on the basis that an obligation meeting the requirements of 31 U.S.C. 200(a)(5) comes into being when commitments are made by the Federal Home Loan Banks to member institutions under paragraph (b) of section 527.4 of the regulations quoted above.

With respect to grants or subsidies 31 U.S.C. 200 provides that—

(a) * * * no amount shall be recorded as an obligation of the Government of the United States unless it is supported by documentary evidence of—

* * * * * * *

(5) a grant or subsidy payable (i) from appropriations made for payment of or contributions toward, sums required to be paid in specific amounts fixed by law or in accord with formulae prescribed by law, or (ii) pursuant to agreement authorized by, or plans approved in accord with and authorized by, law; or

* * * * * * *

(b) Report by agency heads in connection with requests for proposed appropriations.

Hereafter, in connection with the submission of all requests for proposed appropriations to the Bureau of the Budget, the head of each Federal agency shall report that any statement of obligations furnished therewith consists of valid obligations as defined in subsection (a) of this section.

(c) Same; certifications and records; retention for audit; prohibition against redelegation of responsibility.

Each report made pursuant to subsection (b) of this section shall be supported by certifications of the officials designated by the head of the agency,

and such certifications shall be supported by records evidencing the amounts which are reported therein as having been obligated. Such certifications and records shall be retained in the agency in such form as to facilitate audit and reconciliation for such period as may be necessary for such purposes. The officials designated by the head of the agency to make certifications may not redelegate the responsibility.

An examination of the sample commitment forms issued by the Federal Home Loan Banks to member institutions disclose that the provisions thereof are not uniform. While the terms of some of the commitments could be construed as being firm and unconditional, others apparently could be revoked or withdrawn at least to the extent that the member institution had not committed itself to specific borrowers. Also, the forms do not establish a date as to when the commitment if not utilized will expire.

However, in your letter of June 14, 1971, you enclosed a copy of a draft letter which your General Counsel has prepared for use by the District Banks. While that draft letter would unconditionally commit a specific number of loans to a member institution, it too makes no provision for a cutoff date. Nevertheless, your letter indicates that you would have no objection to including a cutoff date in the commitment letter if it is believed to be necessary. Since the funds here involved are fiscal year funds it would appear a commitment issued to a member institution without any provision for its expiration, could, in effect, nullify the fiscal year limitation on the availability of the funds.

Accordingly, if provision is made in the commitment letter that such commitment will expire at the end of a reasonable specified period of time, it is our view that such commitment letter would meet the obligation requirements of 31 U.S.C. 200(a)(5) and the records of the Federal Home Loan Banks respecting such commitments may be considered as constituting the documentary evidence of such obligations as required by said subsection (a). To the extent, of course, that a member institution has not executed loans as of the cutoff date specified in the commitment letter, the amount of the unused commitment will become deobligated and such amount may not be reobligated if the period for obligation has expired.

Also, while we agree that the Federal Home Loan Bank Board may designate officers or employees of the Federal Home Loan Banks to make the certifications required by 31 U.S.C. 200(c), such persons should not be below the level of the chief accounting officer. In this connection, your attention is invited to page 18 of the Conference Report on the Supplemental Appropriation Bill, 1955, House Report No. 2663, 83d Congress, wherein it is stated that—

As to subsection (c) it is the intention of the committee of conference that the officials designated by the head of [an] agency to make certifications of obligations shall be those officials having overall responsibility for the recording of obligations as distinguished from those engaged in detailed recording operations and in no event should the designation be below the level of the chief accounting officer of a major bureau, service, or constituent organizational unit.

[B-164786]

Postal Service, United States—Appropriations—Transferred From Post Office Department—Status

Although the utilization by the Postal Service of obligated and unobligated appropriations available to the Post Office Department on July 1, 1970, the effective date of the transition of its functions to the Postal Service is permitted under 39 U.S.C. 2002(a)(2), unobligated balances for fiscal year 1970 and prior years that had reverted to the Treasury pursuant to 31 U.S.C. 701 would require an act of Congress to be made available to the Postal Service for the liquidation of valid obligations. However, 1971 appropriations need not be included in any reappropriation of funds since they had not expired for obligation or reverted to the Treasury. Notwithstanding 39 U.S.C. 1005(e) requires the Postal Service to assume the obligation to pay for annual leave that accrued to employees before and after the transition, since such leave is not chargeable to the unexpended balances of prior year appropriations transferred to the Service, the Federal Government pursuant to 39 U.S.C. 2002(a)(2) is liable for the payments.

To the Postmaster General, June 28, 1971:

Reference is made to letter of June 2, 1971, from Assistant Postmaster General J. W. Hargrove, requesting our concurrence in certain guidelines relating to the transition of the Post Office Department to the Postal Service on July 1, 1971, pursuant to the Postal Reorganization Act, Public Law 91-375, approved August 12, 1970.

With respect to such transition section 2002(a)(2) of Title 39, United States Code, as enacted by the Postal Reorganization Act, provides that—

> (2) All liabilities attributable to operations of the former Post Office Department shall remain liabilities of the Government of the United States, except that upon commencement of operations of the Postal Service, the unexpended balances of appropriations made to, held or used by, or available to the former Post Office Department and all liabilities chargeable thereto shall become assets and liabilities, respectively, of the Postal Service.

and section 1005(e) of such Title 39 provides that—

> Sick and annual leave, and compensatory time of officers and employees of the Postal Service, whether accrued prior to or after commencement of operations of the Postal Service, shall be obligations of the Postal Service under the provisions of this chapter.

It is reported that as of June 30, 1971, the Post Office Department will have an unfunded liability for employees' accrued annual leave in the estimated amount of $368 million.

In a memorandum dated May 28, 1971, a copy of which was furnished us, your General Counsel states that section 2002(a)(2), quoted above, establishes the rule that unfunded liabilities remain with the United States, while funded liabilities are transferred to the Postal Service. This, he states, is true notwithstanding section 1005(e), also quoted above, relating to obligations for accrued annual and sick leave, in that such provision was placed in the Postal Reorganization Act in order to reassure postal employees that their accumulated leave

would be honored and reflects no judgment as to how such liability would be funded.

The General Counsel notes, however, that his position is not shared by the Office of Management and Budget in that the fiscal year 1972 Budget Appendix, at page 845, states—

> At the beginning of 1972 the Postal Service will carry a liability of $368,500 thousand from the former Post Office Department for earned and unused annual leave of postal employees. It is anticipated that this liability will be funded over a period of years through the rate-making process.
>
> With this exception, the 1972 budget provides for full financing and places the Postal Service in a financial position to meet its obligations and commitments in a timely manner.

It is his opinion that the position taken by the Office of Management and Budget is untenable in that there is no justification for any "exception" to the unfunded liability role contained in section 2002 (a) (2) and it is quite unreasonable for future ratepayers to have to pay for past accumulations of annual leave. He then concludes that unless the accrued annual leave can be funded at the time the Postal Service commences operations, it cannot lawfully be transferred to or assumed by the Postal Service.

Section 1(a) of the act of July 25, 1956, 70 Stat. 647, as amended, 31 U.S.C. 701(a), provides as follows:

> (a) The account for each appropriation available for obligation for a definite period of time shall be closed as follows:
>
> (1) On June 30 of the second full fiscal year following the fiscal year or years for which the appropriation is available for obligation, the obligated balance shall be transferred to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligations, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and
>
> (2) Upon the expiration of the period of availability for obligation, the unobligated balance shall be withdrawn and, if the appropriation was derived in whole or in part from the general fund, shall revert to such fund, but if the appropriation was derived solely from a special or trust fund, shall revert, unless otherwise provide by law, to the fund from which derived: *Provided*, That when it is determined necessary by the head of the agency concerned that a portion of the unobligated balance withdrawn is required to liquidate obligations and effect adjustments, such portion of the unobligated balance may be restored to the appropriate accounts.

Since the obligated balances of such prior year appropriations can be used only to liquidate such prior year obligations and since the unobligated balances thereof have reverted to the general fund of the Treasury, and thus are not available to the Post Office Department except as such amounts may be needed to liquidate such prior year obligations, the unobligated balances may not be withdrawn from the Treasury except pursuant to an appropriation made by law. See Article I, section 9, clause 7, of the Constitution of the United States. Consequently, and since section 2002(a) (2) does not in specific terms appropriate to the Postal Service the unexpended unobligated balances of fiscal year 1970 and prior year appropriations made to the Post Office Department and returned to the general fund of the Treasury

as required by law, it may not be construed as having done so in view of section 9 of the act of June 30, 1906, 34 Stat. 764, 31 U.S.C. 627, which provides that no act of Congress shall be construed to make an appropriation out of the Treasury of the United States "Unless such act shall, in specific terms, declare an appropriation to be made." See 13 Comp. Gen. 77 (1933). The Postal Service, however, may exercise the right to have such unobligated balances restored to the extent provided in the cited act of July 25, 1956, for the liquidation of valid obligations against prior year appropriations. Annual leave becomes a valid obligation against the appropriations current at the time it is taken.

In view of the fact that under the provisions of section 15(a) of the Postal Reorganization Act, 39 U.S.C. Prec. 101 note, the Board of Governors could have provided that the Postal Service begin operations during the course of a fiscal year as well as at the beginning of a fiscal year, it seems evident that the language contained in section 2002(a)(2) was primarily intended to permit the Postal Service to utilize the obligated and unobligated portion of appropriations that on the date of transition were otherwise available to the Post Office Department in order that the Postal Service might liquidate the obligations incurred against such appropriations and that it might finance its operations to the end of the fiscal year from the unobligated portion.

It is our view that the express provisions of section 1005(e) require that the Postal Service assume the obligation to pay for annual leave accruing both before and after commencement of operations of the Postal Service notwithstanding that such section does not provide any funding therefor. Since the liability for accrued annual leave is not chargeable to unexpended balances of prior year appropriations transferred to the Postal Service, such liability remains a liability of the Federal Government as specifically provided in section 2002(a)(2), quoted above.

What is said above is applicable to the unobligated balances of fiscal year 1970 and prior appropriations. The annual appropriations for fiscal year 1971, however, had not expired for obligation nor been returned to the Treasury at the time the Postal Reorganization Act was enacted and it is not necessary that a current appropriation be reappropriated in order to be made available, under authority of a later law, for purposes other than those specified when the appropriation act was passed. See 23 Comp. Dec. 167, 171 (1916). It is our view, therefore, that both the obligated and unobligated balances of the annual appropriations for the fiscal year 1971 will be available to the Postal Service.

If, as indicated by your General Counsel, it is felt that it would be quite unreasonable for future ratepayers to have to pay for past accumulations of annual leave as indicated in the 1972 Budget Appendix, an

alternative would be to request appropriations therefor pursuant to section 2004 of the revised Title 39 which reads as follows:

> Such sums as are necessary to insure a sound financial transition for the Postal Service and a rate policy consistent with chapter 36 of this title are hereby authorized to be appropriated to the Fund without regard to fiscal year limitation.

We express no opinion as to whether there is a real need to fund the accrued liability for annual leave nor, if a need therefor exists, the manner in which it should be funded.

[B-172593]

Bids—Two-Step Procurement—Technical Proposals—Deficiencies—Minor Deviations

The minor revision of an unpriced technical proposal, the first-step of a two-step procurement for a retrieval system, that had initially been found unacceptable was not prejudicial to other bidders for the Government under the procedure contemplated by paragraph 2-503.1 ASPR, is free to discuss a submitted proposal with an offeror if clarification or additional information will bring a proposal to an acceptable status since the two-step procedure extends the benefits of advertising to procurements previously negotiated, and while the second-step of the procedure is conducted in accordance with formal advertising, the first-step contemplates maximizing competition. Therefore, the low bidder originally incorrectly placed in the unacceptable category, having submitted an acceptable technical proposal and confirmed the extremely low price bid may properly be awarded a contract.

To SI Handling Systems, Incorporated, June 28, 1971:

Further reference is made to your letter dated April 12, 1971, protesting against the award of a contract under letter request for technical proposals (Step 1), issued October 7, 1970, and invitation for bids No. DAAG36-71-B-0038 (Step 2), issued February 10, 1971, by the Department of the Army, New Cumberland Army Depot, Harrisburg, Pennsylvania.

Step 1 was issued October 7, 1970, and invited unpriced technical proposals for services and material for the manufacture and operational installation of an Automated Bin Material Storage/Retrieval System at New Cumberland Army Depot in accordance with purchase description specifications. Of the six technical proposals received, four were found to be "reasonably susceptible of being made acceptable by additional information clarifying or supplementing, but not basically changing the proposals as submitted" in accordance with Armed Services Procurement Regulation (ASPR) 2-503.1(e)(ii). The four offerors in the "reasonably susceptible" category were advised by telephone and confirmatory letters on January 25, 1971, to submit clarifications of their proposals by January 29, 1971. On February 2, 1971, the Commit tee for review concluded that these four proposals were acceptable. The two unacceptable offerors, Page Airways, Incorporated (PAI), and Mobility Systems, Incorporated, were notified of this determination by letter dated February 3, 1971.

The record further shows that PAI, by telegram dated February 8,

1971, requested an opportunity to discuss the rejection of their proposal. The contracting officer advised PAI by letter dated February 11, 1971, that they could present a written rebuttal to the rejection of their proposal to determine if a meeting should be held. Meanwhile, Step 2 was issued on February 10, 1971, to the four "acceptable" firms, specifying a bid opening date of March 12, 1971. On February 18, 1971, PAI submitted clarifying technical information contending their technical proposal needed only minor revision to be considered acceptable. After review of this information the Evaluation Committee determined that the clarifications submitted were minor in nature and on February 25, 1971, advised PAI that a meeting would be appropriate. On February 26, 1971, a meeting was held with PAI at the conclusion of which it was determined that the Government had inappropriately rejected PAI's technical proposal because the information submitted was sufficient to declare PAI's technical proposal as acceptable. Thus, on February 26, 1971, an invitation was issued to PAI and the bid opening date was extended by amendment, to March 23, 1971. The Commerce Business Daily in Issue PSA–5268 dated March 4, 1971, publicized this action. On March 23, 1971, the bid opening results showed the two lowest bidders to be:

a. Page Airways, Inc.—$689,745

b. SI Handling Systems, Inc.—$1,361,591

In view of the wide variance in prices between the low bidder and the other bidders, on March 24, 1971, the contracting officer in accordance with ASPR 2–406.3(e)(1)(i) requested verification of PAI's bid and requested reassurance from the Evaluation Committee that the PAI technical proposal did meet the requirements of the Purchase Description. As a result of the Evaluation Committee's reply, PAI was advised on April 6, 1971, of the areas of the purchase description which the Committee felt had the greatest potential for error and PAI was requested to consider particularly these areas in verification of their bid. By letter dated April 12, 1971, PAI verified their bid price as submitted and stated that they "are prepared to stand by their figures and specifications as offered." Thereafter, a preaward survey by DCASD, Rochester, recommended award to PAI.

You contend that the PAI proposal should not have been accepted since initially only four bidders were approved to bid under Step 2 as published in the Commerce Business Daily. You, also, request confirmation that PAI is offering a system which fully complies with the specification. In this regard, you point out that the other bidders are within 12 percent of each other and are "all constantly engaged in the material handling business."

It is administratively reported that the Technical Committee evaluated all technical proposals in accordance with the Government requirements as set forth in the Purchase Description. No deviation in

the specification was permitted. The Technical Review Committee compared the system proposed by PAI with those of the other bidders and found several areas of engineering innovations in the PAI proposal which nevertheless result in fully meeting the requirements of the purchase description but apparently permit the lower bid price. Concerning comparability, it is stated that this can only be answered by the fact that the Government has determined that the technical proposal submitted by PAI as well as those of the other bidders meet the requirements of the purchase description.

As you know, after submission of a proposal under "Step 1" of a "Two-Step procurement," the Government is free to discuss a submitted proposal with the offeror if clarification or additional information could bring the proposal to an acceptable status. This is in accordance with the procedures set out in the letter request for technical proposals (Step 1), and is contemplated in ASPR 2-503.1.

The Two-Step procedure was initiated to extend the benefits of advertising to procurements which previously were negotiated. While the second step of this procedure is conducted in accordance with the rules of formal advertising (ASPR 2-503.2), the first step, in furtherance of the goal of maximized competition, contemplates the qualification of as many sources as possible within the given time limits. The purpose of limiting the consideration to a specified time is primarily for the Government's benefit. 40 Comp. Gen. 35; *id.* 40 In the instant case, the Evaluation Committee advised the Procurement Division on February 26, 1971, regarding the PAI technical proposal that:

1. * * * it becomes increasingly apparent that the original decision to reject their proposal without discussion or clarification was inappropriate. Those items originally deemed objectionable have all been resolved. The original proposal as presented should have qualified Page Airways for the "reasonably acceptable" category. However, the misinterpretation of the severity of the discrepancies contained therein led us to the original rejection.
2. Those clarifications submitted were of a minor supplemental nature and did not comprise a basic or substantial change to the original proposal. * * *
3. Upon a full and comprehensive review of the clarifications submitted together with the basic technical proposal, there is no doubt that Page Airways qualifies for the acceptable category. * * *

We can see no prejudice to the other four bidders by the action taken in regard to the PAI proposal. In view of the above, showing that PAI was incorrectly placed in the unacceptable category originally, we will not object to the award to the low bidder. See 43 Comp. Gen. 255 (1963).

Accordingly your protest is denied.

[B-169738]

Pay—Drill—Training Assemblies—Increases—Retroactive Adjustment Entitlement

A member of the Army National Guard who was on active duty for training on April 15, 1970, whether or not fulfilling his REP 63, a term meaning an obli-

gation incurred under the Reserve Enlistment Program of 1963 to serve on active duty training for a period of at least 4 months and to serve in a Reserve component until the sixth anniversary of the date of enlistment, is not entitled to a retroactive increase in basic pay for inactive duty training drills attended subsequent to December 31, 1969, and before April 15, 1970, since both under the pertinent provisions of the Career Compensation Act and National Guard regulations a member of the National Guard on full-time training duty cannot be in a "drill pay status" while on active duty, and the acts of December 16, 1967, and April 15, 1970 only authorize a retroactive adjustment in basic pay under the 1970 rates if the member was in a "drill pay status" on April 15, 1970.

To Major C. A. Ancharski, Department of the Army, June 29, 1971:

We refer further to your letter of December 24, 1970 (file reference AHBDB–F), forwarded here by letter dated March 25, 1971, from the Office of the Comptroller of the Army, requesting a decision as to the propriety of paying 15 members of the Army National Guard, who were on active duty for training on April 15, 1970, a retroactive increase in basic pay for inactive duty training drills attended subsequent to December 31, 1969, under the circumstances disclosed. Your request has been assigned control No. DO–A–1117 by the Department of Defense Military Pay and Allowance Committee.

In view of the Department of the Army Messages 161819Z and 291649Z, April 1970, cited by you, you say that doubt exists as to the validity of making payment on the supplemental payroll since the messages contain certain restrictions to the effect that "A member who was on Active Duty for Training on April 15, 1970, but who was not in a Drill Pay Status on that date, is not entitled to any retroactive adjustment for drills performed after December 31, 1969." You express further doubt in the matter in the light of our decision of May 22, 1970, 49 Comp. Gen. 796.

You specifically ask:

a. Is a member of the Army National Guard considered to be in both an "Active Duty for Training Status" (by reason of fulfilling his REP 63 obligation) and a "Drill Pay Status" on April 15, 1970, thereby, enabling him to qualify for payment of the retroactive portion of the Uniformed Services Pay Increase of 1970, for Inactive Duty Training Drills attended subsequent to December 31, 1969?

b. Is a member of the Army National Guard considered to be in both an "Active Duty for Training Status" (other than fulfilling his REP 63 obligation) and a "Drill Pay Status" on April 15, 1970, thereby enabling him to qualify for payment of the retroactive portion of the Uniformed Services Pay Increase of 1970, for Inactive Duty Training Drills attended subsequent to December 31, 1969?

In our decision of May 22, 1970, 49 Comp. Gen. 796, which you cite, we were asked the following questions:

1. Is a member who was in a "drill pay status" on April 15, 1970, and who performed active duty or active duty for training prior to that date but subsequent to December 31, 1969, entitled to a retroactive increase in basic pay for such active duty or active duty for training?

2. Is a member who was on active duty or active duty for training on April 15, 1970 but who was not in a drill pay status on that date entitled to a retroactive increase for drills performed after December 31, 1969 but prior to April 15, 1970?

After considering the applicable provisions of law, its legislative history and implementing regulations, we held in the decision of May 22, 1970, that:

> * * * in the absence of some other specific statutory authority, there is no basis to authorize a retroactive increase in basic pay, other than that received under section 206 of title 37, for a member of the National Guard or a member of a Reserve component who was in a "drill pay status" on April 15, 1970, but who performed active duty prior to that date (January 1 to April 14, 1970) in a status different from that prescribed in section 206 of title 37. Accordingly, question 1 is answered in the negative. For the same reasons, and since the member in question 2 was not in a "drill pay status" on April 15, 1970, that question is also answered in the negative.

In asking whether a member may be considered in an "active duty for training status" and in a "drill pay status" on the same day, namely, April 15, 1970, your questions seem to be premised on whether a member's "active duty for training status" on April 15, 1970, is affected in any way "(by reason of fulfilling [or not fulfilling] his REP 63 obligation)."

The term "REP 63 obligation" is explained in paragraph 1–3d (1)(d), Army Regulation 135–90, as meaning an obligation incurred under the Reserve Enlistment Program of 1963 (REP 63) (10 U.S.C. 511(d)) to serve on active duty for training for a period of at least 4 months and to serve in a Reserve component until the sixth anniversary of the date of enlistment. "Active duty for training" is defined in Army Regulation 310–25, as follows:

> Full-time duty in the active military service of the United States, with or without pay for training purposes. This includes the initial period of training required by 10 U.S.C. 511(d) for enlisted members of the Army National Guard of the United States and Army Reserve and, with respect to the Army Reserve, annual training, attendance at Army service schools, participation in small arms competition, short tours of active duty for special projects, attendance at military conferences and participation in a command post exercise, field training exercise, or maneuver, under 10 U.S.C. 672(b), 672(d) or 683.

It appears from the enclosures forwarded with your request for decision that on April 15, 1970, the members of the National Guard here involved were participating in the 4-month minimum active duty for training established by the act of September 3, 1963, Public Law 88–110, 77 Stat. 134, 10 U.S.C. 511, which you refer to as "Active Duty for Training Status * * * (REP 63 Training)."

That 1963 law established a 6-year Reserve Enlistment Program ("REP 63") of training, under which the member enlists in the Ready Reserve of any Reserve component of the Armed Forces or National Guard to serve as a member of an organized unit thereof in accordance with 10 U.S.C. 270 or 32 U.S.C. 502 and in addition performs "active duty for training with an armed force for not less than four consecutive months." Setcion 502 of Title 32, U.S. Code, establishes the program of inactive duty training drills and training at encamp-

ments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year, for members of the National Guard.

The term "active duty" is defined in 10 U.S.C. 101, 32 U.S.C. 101, and 37 U.S.C. 101, as including "full-time training duty." It is clear that active duty for training pursuant to the 1963 law as well as other active duty for training is full-time training duty and is "active duty" within the meaning of Titles 10, 32, and 37, United States Code.

Section 501(a) of the Career Compensation Act of 1949, 63 Stat. 825, 37 U.S.C. 301(a) (1958 ed.), the pertinent part of which is now codified in 37 U.S.C. 206, contained the provisions of law governing pay ("drill pay") for inactive duty training of members of the National Guard, and section 201(e) of the 1949 law (now codified in 37 U.S.C. 204(e)) contained the provisions of law authorizing the payment of "basic pay" (active duty pay) authorized in section 201(a) thereof to members of the National Guard when on active duty, full-time training duty, and when such members are entitled by law to receive the same pay as that authorized for members of the Regular components of the armed services. Subsection 501(e) of the 1949 pay law, 37 U.S.C. 301(e), provided that the provisions of subsection 501(a) thereof "shall not apply when such members are entitled to receive basic pay as provided for in title II of this Act," which included section 201 of that law governing "basic pay."

The pertinent provisions of the Career Compensation Act as now codified in Title 37, U.S. Code, contain similar provisions. Section 204 thereof authorizes the payment of basic pay provided in 37 U.S.C. 203 to members of the National Guard when participating in full-time training or training duty with pay and subsection 206(a) provides for the payment of "drill pay" to members of the National Guard for inactive duty training who are "not entitled to basic pay under section 204 of this title." In addition section 309 authorizes additional pay for performance of administrative duty to certain officers of the National Guard, but provides that such section "does not apply to an officer who is entitled to basic pay under section 204 of this title."

Under those provisions the members concerned can not be in an active duty status and an inactive duty training status at the same time. It necessarily follows, therefore, that a member of the National Guard on full-time training duty ("active duty for training with an armed force for not less than four consecutive months") under the provisions of Public Law 88–110, 10 U.S.C. 511, or otherwise in an active duty for training status, can not be in a "drill pay status" under the provisions of the Career Compensation Act, as codified in Title 37, U.S. Code, while on active duty for training.

National Guard Regulation 350–1 defines "inactive duty training"

452-993 O - 72 - 4

and "active duty for training" as meaning (quoting in part paragraphs 3a and c):

a. *Inactive duty training.* Training or duty, other than full time, performed by units of the Army National Guard and members thereof, in State status, with or without pay, pursuant to section 502 of title 32, United States Code, and section 1002 of title 37, United States Code. * * *

* * * * * * *

c. *Active duty for training.* Training under section 672(d) of title 10, United States Code in Federal status, i.e., Reserve Enlistment Program (REP 1963) and ferrying of aircraft.

Under the provisions of paragraph 10, National Guard Regulation 37–104–2, currently in effect, a federally recognized officer, warrant officer, or enlisted member of the National Guard is considered to be in an inactive duty training status except, as here material, when he is "(1) On active duty in a Federal status" and "(2) On active duty for training or on full-time training or duty." Prior regulations on this subject provided in paragraph 10, National Guard Regulation No. 58, dated December 5, 1956, that a federally recognized officer, warrant officer or enlisted man is in an "armory drill pay status" except "(1) When he is entitled to Federal pay for active duty for training." See also paragraph 26, NGR 58 dated March 30, 1961, and paragraph 30, NGR 58, dated February 15, 1964.

It will be seen that the National Guard regulations differentiate between a member on "active duty for training" and a member in a "drill pay status"—inactive duty training status. In other words, the regulations recognized that a member cannot hold those two statuses concurrently on the same day for pay purposes.

Section 7 of the act of December 16, 1967, 81 Stat. 654, 37 U.S.C. 203 note, in conjunction with section 5 of the act of April 15, 1970, 84 Stat. 197, 5 U.S.C. 5332 note, and implementing regulations, expressly authorized a retroactive adjustment in basic pay under the 1970 rates for a member of the National Guard or a member of a Reserve component of the uniformed service who was in a "drill pay status" on "April 15, 1970." The member is either in a "drill pay status" or in an "active duty for training status" on April 15, 1970. He may not, as your questions suggest, be considered as being in both statuses on the same day for retroactive pay purposes.

In the light of the above, and since, as you state, the members in question were in an "active duty for training status" on April 15, 1970—not in a "drill pay status"—their situation falls within question 2 and the answer to that question in our decision of May 22, 1970.

Accordingly, as to the personnel here involved, there is no basis for authorizing a retroactive increase in basic pay for inactive duty training drills performed subsequent to December 31, 1969, and before April 15, 1970. The vouchers and supporting papers will be retained here.

July 1, 1970–June 30, 1971

TABLE OF DECISION NUMBERS

	Page
B-43917, Oct. 28, 1970	323
B-124074, Aug. 17, 1970	86
B-125037, May 24, 1971	813
B-131587, Sept. 18, 1970	191
B-131836, Nov. 5, 1970	334
B-133972, Sept. 2, 1970	154
B-139703, Aug. 25, 1970	128
B-141529, Sept. 3, 1970	159
B-144605, Sept. 30, 1970	229
B-145804, Nov. 3, 1970	329
B-149270, June 23, 1971	857
B-151107, Jan. 7, 1971	476
B-153007, Feb. 16, 1971	556
B-153485, Sept. 24, 1970	205
B-154218, Oct. 13, 1970	269
B-155375, Oct. 21, 1970	305
B-158097, Mar. 12, 1971	615
B-159429, Jan. 13, Apr. 12, 1971	486, 727
B-159715, Feb. 11, 1971	553
B-160778, Aug. 19, 1970	103
B-163422, Apr. 8, 1971	708
B-163654, Jan. 26, 1971	519
B-163798, Oct. 26, 1970	320
B-164186, Dec. 22, 1970	425
B-164281, Feb. 22, 1971	586
B-164515, Oct. 9, 1970, Jan. 15, Mar. 19, 1971	266, 495, 535
B-164786, Oct. 7, Dec. 18, 1970, June 28, 1971	253, 414, 863
B-164786, B-171785, Apr. 15, 1971	731
B-165571, Feb. 19, 1971	581
B-165816, Nov. 3, 1970	330
B-166130, Jan. 6, 1971	473
B-166302, Dec. 28, 1970	434
B-166772, Oct. 7, 1970	255
B-167006, Apr. 8, 1971	712
B-167198, Aug. 19, 1970	108
B-167259, B-167003, B-167846, Aug. 19, 1970	110
B-167647, Oct. 21, 1970	308
B-167926, July 15, 1970	28
B-168024, Nov. 9, 1970	343
B-168090, Aug. 18, 1970	93
B-168296, Oct. 22, 1970	314
B-168541, Apr. 23, 1971	748
B-168626, July 30, 1970	67
B-168629, Sept. 3, 1970	163
B-168633, Dec. 29, 1970	447
B-168691, July 13, 1970	22
B-168712, Sept. 24, 1970	209
B-168729, Aug. 3, 1970	71
B-169077, Oct. 13, 1970	271
B-169094, Sept. 4, 1970	167
B-169140, July 8, 1970	16
B-169148, Oct. 6, 1970	246
B-169172, Sept. 16, 1970	184
B-169174, Mar. 25, 1971	661
B-169278, B-170840, Mar. 30, 1971	691
B-169414, July 7, 1970	11
B-169429, Aug. 21, 1970	117
B-169452, Nov. 19, 1970	369
B-169535, July 2, 1970	1
B-169537, Sept. 3, 1970	164
B-169542, July 16, 1970	39
B-169627, Mar. 1, 1971	601
B-169633, Aug. 20, 1970	114
B-169645, July 24, 1970	59
B-169669, Aug. 18, 1970	94
B-169738, June 29, 1971	868
B-169760, Aug. 13, 1970	83
B-169813, July 6, Sept. 15, 1970	8, 177
B-169823, July 15, 1970	36
B-169835, Sept. 18, 1970	193
B-169843, Dec. 7, 1970	382
B-169874, Nov. 5, 1970	337
B-169913, Mar. 26, 1971	670
B-169977, July 23, 1970	50
B-169992, July 24, 1970	63
B-169998, July 20, 1970	44
B-170013, July 22, 1970	48
B-170035, July 23, 1970	54
B-170038, Mar. 29, 1971	679
B-170039, Dec. 30, 1970	456
B-170074, Aug. 25, 1970	137
B-170081, Sept. 1, 1970	151
B-170093, Sept. 28, 1970	222
B-170098, Aug. 11, 1970	80
B-170104, Sept. 30, 1970	232
B-170112, Sept. 15, 1970	180
B-170174, Jan. 22, 1971	500
B-170176, July 20, 1970	46
B-170178, Nov. 12, 1970	357
B-170182, July 24, 1970	66
B-170198, Sept. 2, 1970	156
B-170206, Mar. 29, 1971	686
B-170210, Sept. 9, 1970	174
B-170212, Aug. 11, 1970	82
B-170213, Aug. 17, 1970	89
B-170215, Aug. 18, 1970	98
B-170217, July 17, 1970	42
B-170241, Feb. 16, 1971	559
B-170247, Aug. 5, 1970	76
B-170261, Sept. 24, 1970	215
B-170266, Dec. 30, 1970	464
B-170268, Nov. 9, 1970	346
B-170269, Dec. 21, 1970	418
B-170287, Dec. 4, 1970	379
B-170303, Oct. 13, 1970	279

	Page
B-170306, Jan. 27, 1971	527
B-170352, Sept. 4, 1970	173
B-170368, Aug. 18, 1970	99
B-170388, Oct. 15, 1970	281
B-170395, Sept. 30, 1970	236
B-170398, Feb. 17, 1971	565
B-170407, Aug. 24, 1970	125
B-170421, Mar. 30, 1971	694
B-170448, Aug. 25, 1970	140
B-170451, Sept. 29, 1970	226
B-170459, Sept. 24, 1970	220
B-170470, Aug. 28, 1970	148
B-170498, Mar. 30, 1971	699
B-170513, Oct. 8, 1970	263
B-170525, Oct. 1, 1970	239
B-170527, Nov. 13, 1970	360
B-170531, Oct. 23, 1970	317
B-170536, Mar. 15, 1971	627
B-170544, Jan. 22, 1971	506
B-170584, Feb. 9, 1971	540
B-170593, Oct. 15, 1970	291
B-170595, Oct. 16, 1970	295
B-170635, Oct. 19, 1970	302
B-170655, Dec. 15, 1970	388
B-170675, Nov. 4, 1970	332
B-170682, Mar. 19, 1971	637
B-170725, Nov. 17, 1970	366
B-170751, Sept. 23, 1970	202
B-170757, Oct. 16, 1970	300
B-170773, Dec. 14, 1970	386
B-170794, Oct. 7, 1970	258
B-170836, B-170940, Nov. 2, 1970	325
B-170922, Nov. 20, 1970	374
B-170938, Feb. 10, 1971	545
B-170962, Jan. 11, 1971	480
B-170964, Apr. 14, 1971	729
B-170966, Nov. 30, 1970	376
B-170969, Dec. 28, 1970	441
B-170999, Nov. 10, 1970	355
B-171017, Jan. 28, 1971	530
B-171019, Apr. 26, 1971	750
B-171052, Dec. 11, 1970	383
B-171058, Apr. 6, 1971	705
B-171076, Dec. 16, 1970	390
B-171088, Apr. 9, 1971	720
B-171134, Jan. 22, 1971	508
B-171149, May 11, 1971	773
B-171177, May 11, 1971	777
B-171232, Feb. 10, 1971	547
B-171252, Jan. 22, 1971	513
B-171273, Dec. 22, 1970	428
B-171279, Feb. 3, 1971	537
B-171321, Mar. 9, 1971	610
B-171326, Mar. 5, 1971	604
B-171340, Mar. 26, 1971	674
B-171343, Apr. 26, 1971	753
B-171344, Dec. 30, 1970	470
B-171379, May 19, 1971	810
B-171384, Mar. 12, 1971	619
B-171391, Feb. 26, 1971	592
B-171449, Jan. 21, 1971	497
B-171457, Feb. 25, 1971	589
B-171458, Dec. 22, 1970	431
B-171459, Jan. 22, 1971	515
B-171488, Jan. 14, 1971	491
B-171537, Mar. 26, 1971	677
B-171548, B-171912, Apr. 30, 1971	759
B-171589, Mar. 23, 1971	644
B-171596, Apr. 16, 1971	736
B-171597, Feb. 9,1971	542
B-171609, May 12, 1971	788
B-171616, Jan. 29, 1971	534
B-171622, May 13, 1971	799
B-171643, Mar. 23, 1971	647
B-171651, Feb. 17, 1971	579
B-171663, Apr. 19, 1971	739
B-171669 (1), Mar. 24, 1971	648
B-171669 (3), Mar. 24, 1971	655
B-171700, Apr. 30, 1971	764
B-171727, May 24, 1971	815
B-171767, Mar 8, 1971	607
B-171781, Apr. 5, 1971	703
B-171813, Feb. 19, 1971	583
B-171827, May 13, 1971	803
B-171899, June 4, 1971	830
B-171915, Mar. 10, 1971	613
B-171936, Apr. 8, 1971	718
B-171938, Apr. 15, 1971	733
B-171983, Apr. 9, 1971	723
B-172006, May 13, 1971	807
B-172031, June 9, 1971	847
B-172046, Mar. 15, 1971	634
B-172069, May 10, 1971	767
B-172125, May 11, 1971	783
B-172138, Apr. 15, 1971	735
B-172174, May 12, 1971	794
B-172189, May 27, 1971	822
B-172266, May 10, 1971	769
B-172359, Apr. 9, 1971	726
B-172508, May 12, 1971	798
B-172557, May 24, 1971	820
B-172581, June 7, 1971	844
B-172593, June 28, 1971	866
B-172671, June 14, 1971	850
B-172684, June 4, 1971	839
B-172761, June 21, 1971	852
B-172832, June 2, 1971	827
B-172855, June 2, 1971	829

LIST OF CLAIMANTS, ETC.

	Page
Adams, D. F	366
Administrative Office of the United States Courts, Director	589
Admiral Systems Corp	11
Agency for International Development, Administrator	89
Ahrnsbrak, Clyde E	476
Alcock, N. C	125, 148, 180, 258, 314, 428, 491, 508, 607, 677
American Air Filter Co., Inc	8, 177
American Moving and Storage Co. of Marin	753
American-Standard, Inc	163
Ancharski, C. A	868
Apache Flooring Co	627
Architect of the Capitol, Acting	323
Arent, Fox, Kintner, Plotkin & Kahn	54
Arlington County, Virginia	343
Arnold & Porter	346
Associated Dairy Products Co	94
Attorney General	128
Avantek, Inc	697
Baker, C. W	279
Balboa Structural Industries, Inc	530
Baldwin-Lima-Hamilton Corp	271, 464
Barnes, James H	425
Bath Iron Works Corp	418
Batterman Construction Co	583
Belcher, Phyllis A	148
Bemis Co., Inc	534
Black, Asa C	604
Blose, William B	508
Boltin, Roy E	767
Borup, Emil J	674
Breningstall, N. R	269
British Insulated Callender's Cables Limited	151
Bruno-New York Industries Corp	448
Burkholder, J. J	156
Burress, J. W	137
Caballero, Victor	428
Canal Zone, Governor of the	644
Cann, Robert E	677
Canoga Electronics Corp	456
Canty, Henrietta	581
Carres, Mary D	173
Cartwright, Vernon A	314
Chamberlain Manufacturing Corp	777
Chapel of the Astronauts, Inc	63
Chinn, Lewis E	491
Chozick, H. Edward	733
Collins, J	723
Computer Network Corp	222, 355
Computer Sciences Corp	619
Consultants and Designers, Inc	637
Cromer, D. W	99
Cuneo, Gilbert A	337
Data-Control Systems, Inc	114
Defense Supply Agency, Director	28, 209, 239, 382, 852
District of Columbia Court of General Sessions, Chief Judge	205
District of Columbia, Mayor-Commissioner	66, 712
Dreher, D. L	425
Dynamic Enterprises, Inc	686
Economic Sciences Corp. Inc	59
Edwards, Ralph, Sportswear, Inc	48
Electronic Space Systems Corp	830
Electronics and Manufacturing Corp	357
Fairchild Hiller Corp	1
Federal City College	712
Federal Home Loan Bank Board, Chairman	857
Ferrell, Howard, & Sons, Inc	42
Filtron Co., Inc	281
Firestone Tire and Rubber Co	140
Flanagan, James O	647
Flor, Frederick H., Jr	723
Flynn, H. D	174
Foremost-McKesson, Inc	759
Fowler, J. E	827
Gadsby & Hannah	788
Galion Iron Works & Mfg. Co	691
Gardner-Zemke Co	798
Geiger, George J	180
General Dynamics Corp	739, 815
General Services Administration, Administrator	302, 355, 839
General Steamship Corp., Ltd	601
Gilson, I. E	829
Griffin, G. W	46
Henderson Engineering Co., Inc	137
Hoffman, D. W	767
Hoover Reporting Co., Inc	513
Industrial Technological Associates, Inc	16
Informatics, Inc	54
Institute of Scrap Iron and Steel	167
Interax, Inc	215
Internal Revenue Service, Commissioner	442
Irish, Jack A	89
ITT Data Services	619
Jaynes, David W	99
Jet Avion Corp	184
Johnson, Orbra Ray	174
Jones, Robert A	226
Kaiser Steel Corp	71
Kaminski, Thaddeus H	236
Kearns, W. Paul, III	773
Kennedy Electric Co., Inc	807
Kennedy, W. E	44
Kings Point Mfg. Co., Inc	852
Labutti, Norman M	156
Lane, Thomas M	108
Lang and Epstein	302

	Page
Law Enforcement Assistance Administration, Associate Administrator	750
Lawson, Richard K	44
Leavenworth, Frank L	442
Leavenworth, Marie	442
Leber, W. P	644
Lewis, Beecher F	674
LFE Corp	565
Lillick, McHose, Wheat, Adams & Charles	613
Limbaugh, Limbaugh & Russell	48
Litho Press, Inc	389, 769
Loftin, C	473
Longley Construction Co., Inc	76
Loral Electronic Systems	540
Maritime Administration, Administrator	167
Masters, Gardner & Associates	369
McNair Investment Co., d/b/a McNair Farms	305
Meisenheimer, John L	579
Military Base Management of New Jersey	679
Millar & Fallin	648
Miller, Groezinger, Pettit & Evers	759
Moore, Joseph	803
Morrow, Douglas C	803
National Aeronautics and Space Administration, Acting Administrator	542
National Aeronautics and Space Administration, Administrator	1, 63
National Credit Union Administration, Administrator	545
National Guard Bureau, Chief	847
National Maritime Union of America, National Vice President	93
National Water Commission, Executive Director	736
Naumann, David W	36
Navy Regional Finance Center, Commanding Officer	36
New York Medical College	471
Northeast Construction Co	844
Northwest Packing Co	384
Nowak, Edward L	374
Oceanic Steamship Co	164
Office of Economic Opportunity, Director	117, 581
Oleynik, Vladimir	173
Olson, Robert N	125
Orlow and Orlow	484
Otava, Kaarlo J	476
Pacific Architects & Engineers, Inc	670
Pacific Shipwrights, Inc	67
Page Communications, Engineers, Inc	391
Peoples Cartage, Inc	694
Pepper, Hamilton & Scheetz	295
Petrof Trading Co	382
Postal Service Management Institute, Director	647
Postmaster General	253, 255, 637, 720, 731, 735, 863
Produce Factors Corp	434
Propper Manufacturing Co	239
Public Printer	769
Quiller Construction Co., Inc	634
Radcliff, Bobby J	473
Raggio, Frank S	258
Ray, I. L	729
Robertson, Joseph M	519
Row, Maurice F	374
Royal Services, Inc	325, 648
Russell & Associates-Fresno, Ltd	613
Sadur, Pelland & Braude	807
San ColMar Industries, Inc	39
Schirmer's Landscape Nursery, Inc	202
Schoonmaker, A. G., Co., Inc	506
Schullery, Robert J	108, 154
Secretary of Agriculture	110, 305, 519, 583
Secretary of the Air Force	11, 76, 163, 184, 246, 360, 670, 708, 764, 783
Secretary of the Army	8, 67, 114, 215, 220, 281, 291, 317, 343, 376, 386, 432, 480, 537, 747, 586, 604, 655, 661, 705, 748, 798, 799, 810
Secretary of Commerce	86
Secretary of Defense	80, 191, 229, 232, 320, 486, 515, 718, 727, 813
Secretary of the Interior	151, 159, 691, 822
Secretary of the Navy	16, 42, 83, 202, 263, 271, 325, 329, 330, 334, 379, 388, 527, 556, 615, 619, 739, 753
Secretary of Transportation	59, 308, 357, 794
Secretary of the Treasury	703
Selective Service System, Director	726
Sellers, Conner & Cuneo	464, 530
Selman, Richard J	22
Sharratt, S. H	22
Sher and Harris	844
Shinn, R	579
SI Handling Systems, Inc	866
Singer-General Precision, Inc	788
Solan, John M	729
Southwest Engineering Co., Inc	103
Spectronics Corp	209
Springfield Building Maintenance, Inc	655
Stamford Metal Specialty Co., Inc	799
Sun Shipbuilding and Dry Dock Co	263
Surplus Tire Sales	497
Swack, G. R	22
Switlik Parachute Co., Inc	500
Sylvania Electronics Products, Inc	789
Systems Research Laboratories, Inc	246
Systems Technology, Inc	193
Templeman, Robert E	258
Terranova, Floyd F	610
Thompson Manufacturing Co., Inc	360
Trans World Airlines, Inc	592
United States Civil Service Commission, Chairman	82, 98, 266, 300, 332, 415, 553, 635, 820, 850
Universal American Enterprises, Inc	670
Universal Industries, Inc	559
Urbanetics, Inc	117
Van Heertum, Bruce	425
Vanderburgh, Robert A. A	269
vom Baur, Coburn, Simmons & Turtle	418
Warren Furniture, Inc	733
Washington Hilton	610
Washington Metropolitan Area Transit Authority	839
Webster, George W	159
Wheelabrator Corp., The	534
Wilkins, Co., Inc	346
Wilz, John P	839
	366

	Page
Winder, C. R.	226, 236
Witte and Witte	39
Wonson, Myles P., Jr.	156
Wood-Ivey Systems Corp.	50
Wood, William G.	827
Yager, J. W.	308
Yoh, H. L., Co.	637
Young, Edward D.	495
Youngdale, J. R., Construction Co.	76
Zinger Construction Co., Inc.	295

TABLES OF STATUTES, ETC., CITED IN DECISIONS OF THE COMPTROLLER GENERAL OF THE UNITED STATES

UNITED STATES STATUTES AT LARGE

For use only as supplement to U.S. Code citations

	Page
1925, Feb. 28, 43 Stat. 1063	735
1932, May 7, 47 Stat. 150	608
1934, June 4, 48 Stat. 836	795
1938, May 13, 52 Stat. 351	822
1938, June 23, 52 Stat. 973	256
1938, June 23, 52 Stat. 997	256
1938, June 25, 52 Stat. 1175	313
1938, June 25, 52 Stat. 1185	313
1948, June 29, 62 Stat. 1086	608
1951, Sept. 28, 65 Stat. 363	824
1953, Aug. 5, 67 Stat. 373	131
1961, Sept. 21, 75 Stat. 543	821
1966, Nov. 6, 80 Stat. 1324	160
1966, Nov. 7, 80 Stat. 1433	717
1967, Sept. 28, 81 Stat. 231	305
1967, Dec. 16, 81 Stat. 654	37
1969, Nov. 26, 83 Stat. 255	306
1969, Dec. 11, 83 Stat. 323	323
1969, Dec. 24, 83 Stat. 408	131
1969, Dec. 29, 83 Stat. 483	706
1969, Dec. 29, 83 Stat. 485	784
1970, Apr. 15, 84 Stat. 195	37
1970, June 29, 84 Stat. 333	785
1970, July 24, 84 Stat. 450	858
1970, Dec. 17, 84 Stat. 1461	858
1971, Jan. 2, 84 Stat. 1892	751
1971, Jan. 2, 84 Stat. 1903	826
1971, Jan. 11, 84 Stat. 2033	707
1971, Jan. 11, 84 Stat. 2035	787

UNITED STATES CODE

See, also, U.S. Statutes at Large

	Page
5 U.S. Code Ch. 41	611
5 U.S. Code 59a (1958 ed.)	482, 606
5 U.S. Code 59a(b) (1958 ed.)	484
5 U.S. Code 62 (1958 ed.)	738
5 U.S. Code 174a	528
5 U.S. Code 552	219
5 U.S. Code 554(b)	522
5 U.S. Code 652 (1952 ed.)	184
5 U.S. Code 757	493
5 U.S. Code 1071 note	99
5 U.S. Code 1152(b)	86
5 U.S. Code 2061 note	99
5 U.S. Code 2101(1)	330
5 U.S. Code 2104	739
5 U.S. Code 2105	329, 739
5 U.S. Code 3333	155
5 U.S. Code 3501	481
5 U.S. Code 3581	173
5 U.S. Code 3582(b)	173
5 U.S. Code 3584	173
5 U.S. Code 5303	417
5 U.S. Code 5332	417, 848
5 U.S. Code 5332 note	37, 100, 149, 173, 227, 516
5 U.S. Code 5334	254
5 U.S. Code 5334(a)	253, 417
5 U.S. Code 5334(b)	416
5 U.S. Code 5337	82
5 U.S. Code 5338	253
5 U.S. Code 5341	67, 848
5 U.S. Code 5341(c)	266, 495, 636
5 U.S. Code 5342(a)	93
5 U.S. Code 5343	267
5 U.S. Code 5344	267
5 U.S. Code 5514	491
5 U.S. Code 5519	154
5 U.S. Code 5523(b)	91
5 U.S. Code 5525	109
5 U.S. Code 5531	48, 604
5 U.S. Code 5531(2)	604
5 U.S. Code 5532	481
5 U.S. Code 5532(b)	481, 605
5 U.S. Code 5532(c)	481
5 U.S. Code 5532(c)(2)	605
5 U.S. Code 5533	324
5 U.S. Code 5534	48
5 U.S. Code 5537	604
5 U.S. Code 5542	520, 675, 704
5 U.S. Code 5542(b)	524, 676
5 U.S. Code 5542(b)(2)(B)	522
5 U.S. Code 5544	768
5 U.S. Code 5544 (b)(2)(B)(iv)	676
5 U.S. Code 5546(b)	524
5 U.S. Code 5564	377
5 U.S. Code 5584	47, 329
5 U.S. Code 5595	46, 476
5 U.S. Code 5595(a)(2)	727
5 U.S. Code 5596	582
5 U.S. Code 5596(b)(1)	238

	Page
5 U.S. Code 5703	813
5 U.S. Code 5722	645
5 U.S. Code 5723(b)	375
5 U.S. Code 5724a	829
5 U.S. Code 5724(a)(3)	830
5 U.S. Code 5724(l)	375
5 U.S. Code 5727(a)	375
5 U.S. Code 5911(e)	389
5 U.S. Code 5924	387
5 U.S. Code 6101	709
5 U.S. Code 6101(a)(3)	711
5 U.S. Code 6101(b)(2)	675
5 U.S. Code 6301	99, 735
5 U.S. Code 6303	481
5 U.S. Code 6303(a)	821
5 U.S. Code 6323(c)	154
5 U.S. Code 7151	582
5 U.S. Code 7154	583
5 U.S. Code 7154(b)	583
5 U.S. Code 7311	155
5 U.S. Code 8101(12)	493
5 U.S. Code 8103	493
5 U.S. Code 8105	492
5 U.S. Code 8106	492
5 U.S. Code 8107	492
5 U.S. Code 8116	492
5 U.S. Code 8116(a)	491
5 U.S. Code 8301	259, 431
5 U.S. Code 8301(a)	259
5 U.S. Code 8332(c)	81
5 U.S. Code 8332(e)	81
5 U.S. Code 8332(j)	82
5 U.S. Code 8333(a)	81
5 U.S. Code 8345(d)	81
7 U.S. Code 71	521
7 U.S. Code 87	521
7 U.S. Code 301	712
7 U.S. Code 304	713
7 U.S. Code 305	712
7 U.S. Code 307	712
7 U.S. Code 308	712
7 U.S. Code 450j	305
7 U.S. Code 1621	521
7 U.S. Code 1622	525
7 U.S. Code 1627	521
10 U.S. Code Ch. 61	310
10 U.S. Code Ch. 67	81, 312, 430
10 U.S. Code 101	871
10 U.S. Code Ch. 137	349
10 U.S. Code 270	870
10 U.S. Code 333	155
10 U.S. Code 509	37, 517
10 U.S. Code 511	870
10 U.S. Code 511(d)	870
10 U.S. Code 676	429
10 U.S. Code 687(a)	230
10 U.S. Code 687(b)	230
10 U.S. Code 687(b)(1)	230
10 U.S. Code 701(b)	331
10 U.S. Code 701(f)	330
10 U.S. Code 703(b)	765
10 U.S. Code 832	811
10 U.S. Code 849	813
10 U.S. Code 1002	587
10 U.S. Code 1035(e)	718
10 U.S. Code 1040	766
10 U.S. Code 1163(a)	229
10 U.S. Code 1201	259, 315, 483, 509
10 U.S. Code 1202	156, 482
10 U.S. Code 1203	157
10 U.S. Code 1204	260
10 U.S. Code 1208	310
10 U.S. Code 1208(a)(1)	311
10 U.S. Code 1208(a)(2)	311
10 U.S. Code 1208(b)	311
10 U.S. Code 1210	482
10 U.S. Code 1210(e)	157
10 U.S. Code 1211	677
10 U.S. Code 1211(a)	678
10 U.S. Code 1211(a)(1)	679
10 U.S. Code 1331	429
10 U.S. Code 1332	312
10 U.S. Code 1332(a)(1)	313
10 U.S. Code 1333	311, 429
10 U.S. Code 1333(4)	313
10 U.S. Code 1372	157, 260, 509
10 U.S. Code 1372(3)	509
10 U.S. Code 1372(4)	315, 510
10 U.S. Code 1374	511
10 U.S. Code 1374(a)	511
10 U.S. Code 1374(d)	511
10 U.S. Code 1401	260, 429
10 U.S. Code 1401a	232
10 U.S. Code 1401a(b)	232
10 U.S. Code 1401a(c)	232
10 U.S. Code 1401a(d)	232, 259
10 U.S. Code 1401a(e)	232
10 U.S. Code 1402(a)	232
10 U.S. Code 1402(b)	234
10 U.S. Code 1402(c)	234
10 U.S. Code 1402(d)	234
10 U.S. Code 1405	312
10 U.S. Code 1405(4)	312
10 U.S. Code 1552	125, 183, 238, 719
10 U.S. Code 1552(a)	719
10 U.S. Code 1552(c)	183, 719
10 U.S. Code 2101	487, 784
10 U.S. Code 2101(3)	487
10 U.S. Code 2104	487, 784
10 U.S. Code 2104(b)(6)	488
10 U.S. Code 2107	487, 727, 784
10 U.S. Code 2107(a)	488, 728
10 U.S. Code 2108(a)	488
10 U.S. Code 2108(b)	488
10 U.S. Code 2108(c)	487, 727
10 U.S. Code 2109	785
10 U.S. Code 2109(b)(1)	785
10 U.S. Code 2110(c)	785
10 U.S. Code 2111	487, 784
10 U.S. Code 2304	112
10 U.S. Code 2304(a)(2)	202, 282, 457
10 U.S. Code 2304(a)(6)	670
10 U.S. Code 2304(a)(7)	210, 242
10 U.S. Code 2304(a)(10)	19, 55, 69, 793
10 U.S. Code 2304(a)(11)	115, 246, 740
10 U.S. Code 2304(a)(14)	350
10 U.S. Code 2304(a)(16)	777
10 U.S. Code 2304(g)	8, 20, 69, 112, 117, 186, 205, 219, 250, 457, 542, 543, 552, 671, 684

	Page
10 U.S. Code 2305	454
10 U.S. Code 2305(a)	543
10 U.S. Code 2305(b)	544
10 U.S. Code 2305(c)	179, 385, 454, 470, 533, 635, 655
10 U.S. Code 2310(a)	350
10 U.S. Code 2310(b)	213, 350
10 U.S. Code 2634	377, 616
10 U.S. Code 2634(a)	378
10 U.S. Code 3916	260
10 U.S. Code 3963(a)	586
10 U.S. Code 4308	787
10 U.S. Code 4308(a)(8)	786
10 U.S. Code 4312(b)	786
10 U.S. Code 4313	786
10 U.S. Code 4748	616
10 U.S. Code 5082	741
10 U.S. Code 5149	23
10 U.S. Code 5149(a)	24
10 U.S. Code 5149(b)	23
10 U.S. Code 5149(c)	24
10 U.S. Code 5579	279
10 U.S. Code 5579(d)	279
10 U.S. Code 6148(a)	100
10 U.S. Code 6151	587
10 U.S. Code 6157	616
10 U.S. Code 8253(c)	270
10 U.S. Code 8309	510
10 U.S. Code 8442	126
10 U.S. Code 8447(b)	126
10 U.S. Code 8451(a)	127
10 U.S. Code 8911	677
10 U.S. Code 8914	181, 270, 491
10 U.S. Code 8916	261
10 U.S. Code 8916(a)	261
10 U.S. Code 8916(b)	261
10 U.S. Code 8921	259
10 U.S. Code 8921(a)	260
10 U.S. Code 8921(b)	260
10 U.S. Code 8961	678
10 U.S. Code 8963	587, 678
10 U.S. Code 8963(a)	587, 678
10 U.S. Code 8991	271
10 U.S. Code 9748	616
12 U.S. Code 1755	546
14 U.S. Code 291	309
14 U.S. Code 292	310
14 U.S. Code 293	310
14 U.S. Code 353	310
14 U.S. Code 354	310
14 U.S. Code 355	310
14 U.S. Code 423	311
14 U.S. Code 511	335
15 U.S. Code 1	651
15 U.S. Code 12	651
15 U.S. Code 17	652
15 U.S. Code 631	761
15 U.S. Code 637(b)(6)	550
15 U.S. Code 637(b)(7)	70
15 U.S. Code Prec. 715	661
16 U.S. Code 1c	796
16 U.S. Code 452	161
16 U.S. Code 4601-4	161
18 U.S. Code 1918	155
18 U.S. Code 3006A	130, 589
18 U.S. Code 3006A(d)	591
18 U.S. Code 3006A(e)	130
18 U.S. Code 4244	130
19 U.S. Code 267	703
19 U.S. Code 1451	704
19 U.S. Code 1452	704
20 U.S. Code 901	193
20 U.S. Code 902	193
20 U.S. Code 907	193
21 U.S. Code 455(b)	526
23 U.S. Code 120(g)	795
25 U.S. Code 47	95
26 U.S. Code 3111	555
26 U.S. Code 4261	750
28 U.S. Code 753(f)	206
28 U.S. Code 2514	436
29 U.S. Code 159(b)	598
31 U.S. Code 71	376
31 U.S. Code 71a	587, 607, 769
31 U.S. Code 74	823
31 U.S. Code 82a-1	732
31 U.S. Code 82d	823
31 U.S. Code 200	860
31 U.S. Code 200(a)(5)	861
31 U.S. Code 200(c)	862
31 U.S. Code 203	435, 471, 613
31 U.S. Code 237	607
31 U.S. Code 241	559
31 U.S. Code 484	161, 324, 546
31 U.S. Code 627	865
31 U.S. Code 628	750
31 U.S. Code 665(a)	590
31 U.S. Code 686	556
31 U.S. Code 701(a)	864
31 U.S. Code 712a	590
31 U.S. Code 718	859
31 U.S. Code 1176	826
32 U.S. Code 101	871
32 U.S. Code 502	870
32 U.S. Code 709	848
32 U.S. Code 709 note	848
32 U.S. Code 709(g)	848
33 U.S. Code 701r-1(c)	665
37 U.S. Code Ch. 7	336
37 U.S. Code Ch. 10	319
37 U.S. Code 101	871
37 U.S. Code 202	23
37 U.S. Code 202(i)	24
37 U.S. Code 202(k)	23
37 U.S. Code 202(*l*)	23
37 U.S. Code 203	259, 871
37 U.S. Code 203 note	101, 227, 516, 872
37 U.S. Code 204(e)	871
37 U.S. Code 204(g)(1)	101
37 U.S. Code 204(g)(2)	101
37 U.S. Code 204(i)	100
37 U.S. Code 206	814, 871
37 U.S. Code 206(a)	815, 871
37 U.S. Code 253(c)	318
37 U.S. Code 301	426, 815
37 U.S. Code 301(a)	814, 871
37 U.S. Code 301(a)(1)	814
37 U.S. Code 301(a)(12)	814
37 U.S. Code 301(b)	814
37 U.S. Code 301(c)	814
37 U.S. Code 301(e)	871

	Page
37 U.S. Code 301(f)	814
37 U.S. Code 308	518
37 U.S. Code 308(a)	37, 517
37 U.S. Code 308(f)	38, 517
37 U.S. Code 309	871
37 U.S. Code 310(a)	330
37 U.S. Code 401	221
37 U.S. Code 403	176
37 U.S. Code 403(b)	176
37 U.S. Code 403(d)	176
37 U.S. Code 404	85, 766, 775
37 U.S. Code 404(a)	725, 730, 805
37 U.S. Code 404(c)	433
37 U.S. Code 404(d)(3)	336
37 U.S. Code 405	85, 387, 538
37 U.S. Code 406	368, 432, 557, 706
37 U.S. Code 406(a)	85, 221, 378
37 U.S. Code 406(b)	85, 378, 557
37 U.S. Code 406(c)	85
37 U.S. Code 406(e)	83
37 U.S. Code 406(g)	433
37 U.S. Code 406(h)	83, 377
37 U.S. Code 406b	320, 334
37 U.S. Code 407	319
37 U.S. Code 407(a)(1)	580
37 U.S. Code 409	318
37 U.S. Code 412	528
37 U.S. Code 427(b)	335
37 U.S. Code 551	292
37 U.S. Code 551(2)	292, 318
37 U.S. Code 552	150
37 U.S. Code 552(a)	150
37 U.S. Code 552(b)	150
37 U.S. Code 554	293, 317, 377
37 U.S. Code 554(a)	318
37 U.S. Code 554(b)	84, 292, 319
37 U.S. Code 554(d)	292
37 U.S. Code 556(c)	149
37 U.S. Code 558	292
37 U.S. Code 906	517
39 U.S. Code Prec. 101 note	865
39 U.S. Code 410	254
39 U.S. Code 1003	254
39 U.S. Code 1003 note	253, 415
39 U.S. Code 1005(e)	863
39 U.S. Code 2002(a)(2)	863
39 U.S. Code 2004	866
39 U.S. Code 2401	732
39 U.S. Code 2601(b)	732
39 U.S. Code 3543(a)	735
39 U.S. Code 3543(f)	735
39 U.S. Code 4252	254
39 U.S. Code 5001	258
39 U.S. Code 5402(c)	258
39 U.S. Code 6423	695
40 U.S. Code 34	612
40 U.S. Code 174j-1	323
40 U.S. Code 174j-4	324
40 U.S. Code 174j-7	323
40 U.S. Code 174k	323
40 U.S. Code 174k(b)	323
40 U.S. Code 276(a)	720
40 U.S. Code 276a	103, 472, 634, 798, 808, 833
40 U.S. Code 303b	64
40 U.S. Code 471	112
40 U.S. Code 471 note	123
41 U.S. Code 10a	239, 700
41 U.S. Code 10d	239, 700
41 U.S. Code 11	590
41 U.S. Code 15	435, 471
41 U.S. Code 35 note	808
41 U.S. Code 40	810
41 U.S. Code 151 note (1952 ed.)	124
41 U.S. Code 252(c)	585
41 U.S. Code 252(c)(4)	638
41 U.S. Code 253(b)	585, 630
41 U.S. Code 254(b)	578
41 U.S. Code 257(a)	578
41 U.S. Code 321	106, 514
41 U.S. Code 351	649
41 U.S. Code 351 note	656, 721
41 U.S. Code 353	652
42 U.S. Code 293	471
42 U.S. Code 402	82
42 U.S. Code 1962a note	737
42 U.S. Code 2473(b)(3)	64
42 U.S. Code 2701 note	98
42 U.S. Code 2732	98
42 U.S. Code 2733	98
42 U.S. Code 2734(b)	98
42 U.S. Code 2751	554
42 U.S. Code 2754(6)	554
42 U.S. Code 3731(c)	752
42 U.S. Code 3731(d)	751
42 U.S. Code 4633	826
43 U.S. Code 629g	823
43 U.S. Code 1231	823
43 U.S. Code 1234	823
45 U.S. Code 151	596
46 U.S. Code 741	170
46 U.S. Code 742	171
46 U.S. Code 752	170
46 U.S. Code 864	168
46 U.S. Code 865	168
46 U.S. Code 1111	168
46 U.S. Code 1114	168
46 U.S. Code 1152	87
46 U.S. Code 1152 note	87
46 U.S. Code 1154	86
46 U.S. Code 1158	169
46 U.S. Code 1160(j)	167
46 U.S. Code 1195	172
46 U.S. Code 1213	168
49 U.S. Code 1375(h)	255
49 U.S. Code 1657	738
49 U.S. Code 1657(o)	738
49 U.S. Code 3731	751
50 U.S. Code 1431	599
50 U.S. Code 1435	599
50 U.S. Code App. 460(b)(4)	726
50 U.S. Code App. 1012	294, 319
50 U.S. Code App. 1744	167

CONSTITUTION OF THE UNITED STATES

	Page		Page
Art. I, sec. 9, cl. 7	864	Art. 4, sec. 3, cl. 2	64

PUBLISHED DECISIONS OF THE COMPTROLLER GENERAL

	Page		Page
1 Comp. Gen. 560	344	26 Comp. Gen. 676	544
2 Comp. Gen. 601	377	26 Comp. Gen. 720	738
4 Comp. Gen. 653	581	27 Comp. Gen. 171	558
4 Comp. Gen. 769	735	27 Comp. Gen. 547	738
5 Comp. Gen. 5	377	28 Comp. Gen. 57	310
5 Comp. Gen. 649	734	28 Comp. Gen. 341	648
5 Comp. Gen. 931	735	28 Comp. Gen. 662	585
9 Comp. Gen. 41	344	29 Comp. Gen. 120	344
10 Comp. Gen. 294	599	29 Comp. Gen. 419	536
10 Comp. Gen. 395	65	29 Comp. Gen. 437	608
11 Comp. Gen. 57	722	29 Comp. Gen. 526	646
11 Comp. Gen. 355	65	30 Comp. Gen. 82	83
13 Comp. Gen. 77	865	30 Comp. Gen. 179	734
14 Comp. Gen. 169	65	30 Comp. Gen. 356	93
16 Comp. Gen. 318	383	30 Comp. Gen. 363	281
16 Comp. Gen. 807	192	31 Comp. Gen. 166	254, 416
17 Comp. Gen. 554	44, 469	31 Comp. Gen. 288	775
17 Comp. Gen. 575	660	31 Comp. Gen. 320	254
17 Comp. Gen. 736	65	31 Comp. Gen. 405	344
18 Comp. Gen. 363	591	32 Comp. Gen. 104	510
18 Comp. Gen. 562	344	32 Comp. Gen. 154	318
18 Comp. Gen. 747	492	32 Comp. Gen. 242	719
19 Comp. Gen. 640	65	32 Comp. Gen. 358	824
20 Comp. Gen. 46	65	32 Comp. Gen. 367	318
20 Comp. Gen. 310	110	32 Comp. Gen. 451	318
20 Comp. Gen. 862	544	32 Comp. Gen. 567	318
21 Comp. Gen. 56	652	33 Comp. Gen. 98	806
21 Comp. Gen. 425	65	33 Comp. Gen. 394	441
21 Comp. Gen. 510	65	33 Comp. Gen. 434	749
22 Comp. Gen. 44	434	33 Comp. Gen. 524	214
22 Comp. Gen. 563	65	33 Comp. Gen. 549	533
22 Comp. Gen. 588	806	34 Comp. Gen. 7	183, 719
22 Comp. Gen. 1133	547	34 Comp. Gen. 45	433
23 Comp. Gen. 17	738	34 Comp. Gen. 380	720
23 Comp. Gen. 370	591	34 Comp. Gen. 398	344
23 Comp. Gen. 395	383	34 Comp. Gen. 415	221
23 Comp. Gen. 713	807	34 Comp. Gen. 436	176
23 Comp. Gen. 875	766	34 Comp. Gen. 549	730
23 Comp. Gen. 962	67, 333	34 Comp. Gen. 605	609
23 Comp. Gen. 989	440	34 Comp. Gen. 691	254
24 Comp. Gen. 39	67, 333	34 Comp. Gen. 708	67
24 Comp. Gen. 69	558	35 Comp. Gen. 149	441
24 Comp. Gen. 155	333	35 Comp. Gen. 161	514
24 Comp. Gen. 189	333	35 Comp. Gen. 241	184
24 Comp. Gen. 439	807	35 Comp. Gen. 311	344
24 Comp. Gen. 473	777	35 Comp. Gen. 399	294
24 Comp. Gen. 550	333	35 Comp. Gen. 436	324
24 Comp. Gen. 599	344	35 Comp. Gen. 547	730
24 Comp. Gen. 667	806	35 Comp. Gen. 581	318
25 Comp. Gen. 161	768	35 Comp. Gen. 615	324, 547
26 Comp. Gen. 49	469	35 Comp. Gen. 696	510
26 Comp. Gen. 212	333	36 Comp. Gen. 5	536
26 Comp. Gen. 322	647	36 Comp. Gen. 71	474
26 Comp. Gen. 368	253	36 Comp. Gen. 364	179
26 Comp. Gen. 484	99	36 Comp. Gen. 380	802
26 Comp. Gen. 488	646	36 Comp. Gen. 482	67
26 Comp. Gen. 530	253	36 Comp. Gen. 492	158, 510

	Page
36 Comp. Gen. 649	758
36 Comp. Gen. 705	11
36 Comp. Gen. 809	544
37 Comp. Gen. 1	524
37 Comp. Gen. 89	510
37 Comp. Gen. 110	11
37 Comp. Gen. 126	775
37 Comp. Gen. 210	498
37 Comp. Gen. 251	76
37 Comp. Gen. 300	720
37 Comp. Gen. 330	585
37 Comp. Gen. 368	96
37 Comp. Gen. 683	775
37 Comp. Gen. 688	508, 837
37 Comp. Gen. 703	291
37 Comp. Gen. 715	221
37 Comp. Gen. 760	469
37 Comp. Gen. 785	13
38 Comp. Gen. 5	261
38 Comp. Gen. 146	430
38 Comp. Gen. 188	254, 416
38 Comp. Gen. 243	492
38 Comp. Gen. 405	475
38 Comp. Gen. 532	14
38 Comp. Gen. 560	524
38 Comp. Gen. 647	430
38 Comp. Gen. 819	734, 855
38 Comp. Gen. 873	786
39 Comp. Gen. 17	452
39 Comp. Gen. 119	611
39 Comp. Gen. 133	130
39 Comp. Gen. 178	127
39 Comp. Gen. 247	452
39 Comp. Gen. 321	492
39 Comp. Gen. 396	52, 180, 470
39 Comp. Gen. 524	533
39 Comp. Gen. 695	702
39 Comp. Gen. 895	286
40 Comp. Gen. 14	517
40 Comp. Gen. 35	354, 868
40 Comp. Gen. 40	354, 868
40 Comp. Gen. 126	13
40 Comp. Gen. 174	614
40 Comp. Gen. 226	812
40 Comp. Gen. 240	158, 510
40 Comp. Gen. 256	510
40 Comp. Gen. 393	304
40 Comp. Gen. 412	822
40 Comp. Gen. 502	183
40 Comp. Gen. 508	113
40 Comp. Gen. 514	354
40 Comp. Gen. 520	663
40 Comp. Gen. 660	492
40 Comp. Gen. 684	772
40 Comp. Gen. 711	493
41 Comp. Gen. 134	472
41 Comp. Gen. 252	564
41 Comp. Gen. 255	668
41 Comp. Gen. 289	660
41 Comp. Gen. 366	201
41 Comp. Gen. 375	430
41 Comp. Gen. 404	327
41 Comp. Gen. 412	854
41 Comp. Gen. 460	81
41 Comp. Gen. 484	685
41 Comp. Gen. 706	101
41 Comp. Gen. 749	158, 509
41 Comp. Gen. 788	454
41 Comp. Gen. 807	327
42 Comp. Gen. 1	356, 598
42 Comp. Gen. 69	168
42 Comp. Gen. 197	768
42 Comp. Gen. 246	344
42 Comp. Gen. 272	590
42 Comp. Gen. 289	472
42 Comp. Gen. 342	109
42 Comp. Gen. 346	277
42 Comp. Gen. 467	454
42 Comp. Gen. 490	13, 204
42 Comp. Gen. 508	341
42 Comp. Gen. 582	183
42 Comp. Gen. 604	360, 385
42 Comp. Gen. 653	344
43 Comp. Gen. 138	434
43 Comp. Gen. 206	14, 842
43 Comp. Gen. 223	504
43 Comp. Gen. 255	868
43 Comp. Gen. 281	807
43 Comp. Gen. 332	334
43 Comp. Gen. 353	111, 123, 685
43 Comp. Gen. 514	558
43 Comp. Gen. 667	427
43 Comp. Gen. 742	260
43 Comp. Gen. 748	334
43 Comp. Gen. 821	271
43 Comp. Gen. 839	694
44 Comp. Gen. 27	215
44 Comp. Gen. 51	270
44 Comp. Gen. 143	719
44 Comp. Gen. 144	183
44 Comp. Gen. 171	254, 416
44 Comp. Gen. 266	606
44 Comp. Gen. 290	558
44 Comp. Gen. 326	777
44 Comp. Gen. 426	427
44 Comp. Gen. 439	61
44 Comp. Gen. 476	637
44 Comp. Gen. 498	809
44 Comp. Gen. 522	319
44 Comp. Gen. 626	389
44 Comp. Gen. 657	319
44 Comp. Gen. 761	556
45 Comp. Gen. 47	183
45 Comp. Gen. 71	113
45 Comp. Gen. 221	202, 342
45 Comp. Gen. 224	772
45 Comp. Gen. 228	386, 763
45 Comp. Gen. 236	859
45 Comp. Gen. 417	673
45 Comp. Gen. 434	641
45 Comp. Gen. 508	859
45 Comp. Gen. 538	127
45 Comp. Gen. 544	377
45 Comp. Gen. 577	377
45 Comp. Gen. 608	618
45 Comp. Gen. 651	654
45 Comp. Gen. 780	137
45 Comp. Gen. 785	208
45 Comp. Gen. 811	478
46 Comp. Gen. 15	488

	Page
46 Comp. Gen. 17	608
46 Comp. Gen. 34	340
46 Comp. Gen. 102	760
46 Comp. Gen. 115	554
46 Comp. Gen. 123	564
46 Comp. Gen. 191	112, 205
46 Comp. Gen. 214	637
46 Comp. Gen. 263	725
46 Comp. Gen. 295	355
46 Comp. Gen. 322	517
46 Comp. Gen. 371	360
46 Comp. Gen. 409	441
46 Comp. Gen. 434	854
46 Comp. Gen. 556	112
46 Comp. Gen. 595	720
46 Comp. Gen. 738	375
46 Comp. Gen. 745	380
46 Comp. Gen. 813	702
46 Comp. Gen. 895	590
47 Comp. Gen. 9	492
47 Comp. Gen. 29	8, 123, 673
47 Comp. Gen. 56	480
47 Comp. Gen. 103	52, 180
47 Comp. Gen. 141	678
47 Comp. Gen. 175	215
47 Comp. Gen. 185	606
47 Comp. Gen. 221	312
47 Comp. Gen. 252	61, 421, 673
47 Comp. Gen. 272	801
47 Comp. Gen. 279	116, 552
47 Comp. Gen. 336	112, 123
47 Comp. Gen. 362	388
47 Comp. Gen. 365	508, 837
47 Comp. Gen. 405	765
47 Comp. Gen. 438	768
47 Comp. Gen. 448	113
47 Comp. Gen. 459	204
47 Comp. Gen. 496	14
47 Comp. Gen. 556	319
47 Comp. Gen. 624	702
47 Comp. Gen. 728	427
47 Comp. Gen. 732	42
47 Comp. Gen. 743	766
48 Comp. Gen. 19	360
48 Comp. Gen. 22	654
48 Comp. Gen. 28	176
48 Comp. Gen. 49	355
48 Comp. Gen. 62	355
48 Comp. Gen. 110	812
48 Comp. Gen. 219	484
48 Comp. Gen. 314	20, 61, 673
48 Comp. Gen. 372	49
48 Comp. Gen. 381	740
48 Comp. Gen. 398	236
48 Comp. Gen. 436	627
48 Comp. Gen. 449	462
48 Comp. Gen. 502	582
48 Comp. Gen. 536	70, 117, 125, 226, 462, 740
48 Comp. Gen. 546	331
48 Comp. Gen. 555	14
48 Comp. Gen. 569	207
48 Comp. Gen. 580	237
48 Comp. Gen. 583	462
48 Comp. Gen. 593	113, 381
48 Comp. Gen. 603	474
48 Comp. Gen. 644	812
48 Comp. Gen. 663	69, 205
48 Comp. Gen. 702	58
48 Comp. Gen. 719	697
48 Comp. Gen. 757	382
48 Comp. Gen. 773	750
49 Comp. Gen. 97	109
49 Comp. Gen. 98	115, 641
49 Comp. Gen. 156	205
49 Comp. Gen. 195	199
49 Comp. Gen. 229	61, 121, 252, 640
49 Comp. Gen. 274	199
49 Comp. Gen. 284	344
49 Comp. Gen. 299	84
49 Comp. Gen. 305	612
49 Comp. Gen. 356	312
49 Comp. Gen. 369	562
49 Comp. Gen. 463	58, 570
49 Comp. Gen. 527	633
49 Comp. Gen. 541	75
49 Comp. Gen. 578	748
49 Comp. Gen. 581	81
49 Comp. Gen. 584	757
49 Comp. Gen. 600	364, 803
49 Comp. Gen. 618	586, 607
49 Comp. Gen. 656	182, 237
49 Comp. Gen. 740	763
49 Comp. Gen. 749	855
49 Comp. Gen. 796	869
50 Comp. Gen. 1	125
50 Comp. Gen. 8	177
50 Comp. Gen. 59	123, 575
50 Comp. Gen. 156	512
50 Comp. Gen. 215	357
50 Comp. Gen. 246	744
50 Comp. Gen. 253	732
50 Comp. Gen. 266	637
50 Comp. Gen. 295	843
50 Comp. Gen. 320	327
50 Comp. Gen. 390	600, 792
50 Comp. Gen. 486	728
50 Comp. Gen. 708	852
50 Comp. Gen. 729	805

DECISIONS OF THE COMPTROLLER OF THE TREASURY

	Page
17 Comp. Dec. 153	99
23 Comp. Dec. 167	865
24 Comp. Dec. 45	344
25 Comp. Dec. 653	806

DECISIONS OVERRULED OR MODIFIED

	Page
5 Comp. Gen. 649	734
35 Comp. Gen. 547	731
41 Comp. Gen. 404	327
45 Comp. Gen. 780	135
46 Comp. Gen. 738	375
47 Comp. Gen. 185	606
48 Comp. Gen. 398	236
B-43917, Aug. 30, 1944, unpublished decision	324
B-122060, Dec. 21, 1954, unpublished decision	327
B-156052, Mar. 22, 1965, unpublished decision	327
B-157954, Dec. 15, 1965, unpublished decision	114
B-158257, Feb. 10, 1966, unpublished decision	327
B-162035, Aug. 25, 1967, unpublished decision	327
B-166335, June 4, 1969, unpublished decision	236
B-169263, June 1, 1970, unpublished decision	327
B-169468, May 27, 1970, unpublished decision	327

DECISIONS OF THE COURTS

	Page
Alcoa Steamship Co., Inc. *v.* United States, 338 U.S. 421	166
Amell *v.* United States, 384 U.S. 158	170
American Trucking Association, Inc., United States *v.*, 310 U.S. 534	605
Apache Flooring Co. *v.* Robert L. Kunzig, Administrator of GSA, USDC DC, Civil Action No. 729-70	628
Arlington Trust Co. *v.* United States, 100 F. Supp. 817	436
Armour's Estate, In Re, 99 A.2d 374	318
Armstrong *v.* McGough, 247 S.W. 790	109
Basket *v.* Haswell, 107 U.S. 602	717
Belanger *v.* Great American Indemnity Co. of New York, 188 F. 2d 196	732
Bell Aircraft Corp. *v.* United States, 120 Ct. Cl. 398	275
Bello *v.* Union Trust Co., 267 F. 2d 190	446
Benjamin *v.* United States, Union Minerals & Alloys Corp., 162 Ct. Cl. 47	440
Binghamton Construction Co., United States *v.*, 347 U.S. 171	654
Blakey *v.* Brinson, 286 U.S. 254	717
Bofors, Aktiebolaget *v.* United States, 194 F. 2d 145	277
Brandt *v.* United States, 155 Ct. Cl. 345	158, 512
Bristol-Myers Co. *v.* F.T.C., 284 F. Supp. 745	155
Brookridge Farm, United States *v.*, 111 F. 2d 461	383, 585
Brown and Son Electric Co. *v.* United States, 163 Ct. Cl. 465	414
Burton *v.* United States, 186 Ct. Cl. 172	479
Carson, In re, 199 A. 2d 407	445
Caster *v.* United States, 319 F. 2d 850	131
Champa *v.* Consolidated Finance Corp., 110 N.E. 2d 289	321
Charles *v.* United States, 19 Ct. Cl. 316	441
Chelsea Factors, Inc. *v.* United States, 149 Ct. Cl. 202	436
Chernick *v.* United States, 178 Ct. Cl. 498	659
Christian, G. L., and Associates *v.* United States, 160 Ct. Cl. 1, 58	350
Civil Service Commission *v.* Secretary of the Navy, USDC DC, Civil Action No. 406-71	624
Clark *v.* United States, 151 Ct. Cl. 601	510
Clearfield Trust Co. *v.* United States, 318 U.S. 363	443
Coastal Cargo Co., Inc. *v.* United States, 173 Ct. Cl. 259	685
Cobb *v.* Howard University, 106 F. 2d 860	822
Cober *v.* Connolly, 128 P. 2d 519, 142 A.L.R. 367	446
Cooperative Legislative Committee of R.R. Brotherhoods *v.* Public Utilities Commission, 80 N.E. 2d 159	828
Detling, et al. *v.* United States, 193 Ct. Cl. 125	767
Dewey *v.* Metropolitan Life Ins. Co., 152 N.E. 82	446
Dynamics Corp. of America *v.* United States, 182 Ct. Cl. 62	514
Elm Spring Farm, Inc., et al. *v.* United States, 127 F. 2d 920	80
Erenreich *v.* United States, 164 Ct. Cl. 214	478
Exchange and Savings Bank of Berlin *v.* United States, 226 F. Supp. 56	437
Finn *v.* United States, 192 Ct. Cl. 814	375
France, et al. *v.* United States, 193 Ct. Cl. 125	767
Fredericksburg, City of, *v.* Sanitary Grocery Co., Inc., 190 S.E. 318	345
Fredrickson *v.* United States, 133 Ct. Cl. 890	158, 510
Friestedt *v.* United States, 173 Ct. Cl. 447	608
Fulton National Bank *v.* United States, 197 F. 2d 763	444
Gardner *v.* The Danzler, (CCA 4) 281 F. 2d 719	170
Gast, United States *v.*, 297 F. Supp. 620	135
Geiger *v.* Brown, 419 F. 2d 714	181
General Electric Co. *v.* United States, 188 Ct. Cl. 620	275
Gratiot, United States *v.*, 14 Pet. 526, 39 U.S. 526	64
Haislip *v.* United States, 152 Ct. Cl. 339	127
Hardin County Savings Bank, et al. *v.* United States, 106 Ct. Cl. 577	441
Hayes, Hal B., & Associates, United States *v.*, 221 F. Supp. 260	438
Helvering *v.* Janney, 311 U.S. 189	445
Holcombe, United States *v.*, 277 F. 2d 143	80
Holder *v.* United States, 285 F. Supp. 380	136
Holloway *v.* Wheeler, Tex. Civ. App., 261 S.W. 467	322
Howell, United States *v.*, 318 F. 2d 162	80
Huse *v.* Glover, 119 U.S. 543	344
Illingsworth, In the Matter of, 56-2 U.S.T.C. Par. 10,004	445
Jones *v.* Williams, 45 S.W. 2d 130	256
Keco Industries, Inc. *v.* United States, 176 Ct. Cl. 983	542
Lee *v.* Habib, USCA DC, No. 22,203	206

Page

Leonard v. United States, 131 Ct. Cl. 91 158, 510
Levinson v. United States, et al., 258 U.S. 198 455
Lietz v. Flemming, (CAA 6), 264 F. 2d 311 170
Liverpool & Great Western Steam Co. v. Phenix Insurance Co., 129 U.S. 397 828
Longwill v. United States, 17 Ct. Cl. 288 441
Lovetro v. Steers, 234 C.A. 2d 461, 44 Cal. Reptr. 604 447
Madison v. United States, 174 Ct. Cl. 985 478
Maffia v. United States, 143 Ct. Cl. 198 440
Maiatico Construction Co. v. United States, 79 F. 2d 418 822
Mallet, United States v., 294 F. Supp. 761 438
Maragon v. United States, 139 Ct. Cl. 544 445
May v. United States, 230 F. Supp. 659 478
McElroy v. Lynch, 232 S.W. 2d 507 446
Mempa v. Rhay, 389 U.S. 128 135
Meridian Limited v. Sippy, 128 P. 2d 884 155
Metro Novelty Manufacturing Co., Inc., United States v., 125 F. Supp. 713 40
Miller v. United States, 180 Ct. Cl. 872 608
Monroe Cattle Co. v. Becker, 147 U.S. 47 109
Monroe, C. N., Mfg. Co. v. United States, 143 F. Supp. 449 41
Montana Trust and Legacy Fund, In Re, 338 P. 2d 366 718
Mross v. United States, 186 Ct. Cl. 165 482
National Metropolitan Bank v. United States, 323 U.S. 454 444
New York and Porto Rico Steamship Co., 239 U.S. 88 772
O'Keefe v. United States, 174 Ct. Cl. 537 588
Ornbaun. v First National Bank of Cloverdale, 8 p. 2d 470 717
Ozawa, Takao, v. United States, 260 U.S. 178 605
Packet Co. v. Keokuk, 95 U.S. 80 344
Page Communications Engineers, Inc. v. Stanley R. Resor, et al., USDC DC, Civil Action No. 3173-70 574
Pan American World Airways, Inc. v. United Brotherhood of Carpenters and Joiners of America, 324 F. 2d 217 599
People v. Dilliard, 298 N.Y.S. 296 753
People's National Bank of Chicago, United States v., 249 F. 2d 637 444
Perry v. Commerce Loan Co., 383 U.S. 392 605
Phillips Chemical Co. v. Dumas School Dist., 361 U.S. 376 345
Pickett v. Williams, C.A. No. L&T 74757-69 206
Pope, United States v., 251 F. Supp. 234 591
Posey, Dennis C., United States v., USDC Dist. of Nev., Docket No. LV-1199 135
Potter v., Emerald Maintenance, Inc., USDC So. Dist. Tex., Civil Action No. 70-L-36 599, 655
Potter v. Emerald Maintenance, Inc. USDC So. Dist. Tex., Civil Action No. 70-L-38 659
Pressed Steel Car Co. v. Standard Steel Car Co. 60 A. 4 276
Prince Georges County, County School Board, Va., United States v., 221 F. Supp. 93 472
Propeller Niagara v. Cordes, et al., 21 How. 7 828
Ramsey, United States v., 197 F. 144 828
Reiner, John, and Co. v. United States, 163 Ct. Cl. 381 414, 685

Page

Routh v. List & Weatherly Constr. Co., 257 P. 721 221
Ruggiero v. United States, 190 Ct. Cl. 327 659
Sands v. Manistee River Improvement Co., 123 U.S. 288 344
Satterwhite v. United States, 123 Ct. Cl. 342 588
Schmidt v. United States, 153 Ct. Cl. 407 478
Schoenbrod v. United States, 187 Ct. Cl. 627 112, 421
Seabolt, In re, 113 F. 766 221
Shader Contractors, Inc. v. United States, 149 Ct. Cl. 539 508, 837
Sherwood Brothers, Inc. v. Dist. of Columbia, 133 F. 2d 162 109
Simmons v. Smith County Bank, 83 So. 2d 441 437
Simon v. Commissioner of Internal Revenue, 176 F. 2d 230 109
Sorensen's Estate, In Re, 115 P. 2d 241 318
Splawn v. Fitzharris, 297 F. Supp. 44 137
Standard Oil Co. v. City of Charlottesville, 42 F. 2d 88 345
Standard Oil Co. of Calif. v. Johnson, Treas. of Calif., 316 U.S. 481 80
Standard Oil Co. of Calif., United States v., 20 F. Supp. 427 438
Steelman v. United States, 162 Ct. Cl. 81 492
Stone v. United States, 358 F. 2d 503 131
Street v. United States, 133 U.S. 299 109
Strickland Transportation Co. v. United States, 223 F. 2d 466 166
Studemeyer v. Macy, 321 F. 2d 386 478
Sumter County School Dist. No. 2, United States v., 232 F. Supp. 945 472
Taft v. Helvering, 311 U.S. 195 445
Tate v. United States, 123 U.S. App. D.C. 261, 359 F. 2d 254 207
Tawes v. United States, 146 Ct. Cl. 500 492
Transportation Co. v. Parkersburg, 107 U.S. 691 344
Travelers Insurance Co. v. Tallahassee Bank and Trust Co., 133 So. 2d 463 437
24 Cans Containing Butter, United States v., (CAA 5) 148 F. 2d 365 170
Underwater Storage v. United States Rubber Co., 371 F. 2d 950 277
Utah Power & Light Co. v. United States, 243 U.S. 389 438
Vai v. Bank of America, 364 P. 2d 247 447
Virginia Electric and Power Co. v. Commonwealth, 194 S.E. 775 345
Warne, United States v., 190 F. Supp. 645 350
Warren Bros. Roads Co. v. United States, 173 Ct. Cl. 714 685
Washburn Storage Co. v. General Motors Corp., 83 S.E. 2d 26 535
Washington ex rel. Stimson Lumber Co. v. Kuykendall, 275 U.S. 207 828
Weinberg v. Weinberg, 432 P. 2d 709 447
Wheelabrator Corp., The, v. John H. Chafee, Sec. of Navy, and Margaret S. Anderson, Contracting Officer, U.S. Navy Purchasing Office, Civil Action No. 2437-70 348
Wiley, John & Sons v. Livingston, 376 U.S. 543 655
Williams v. United States, 145 Ct. Cl. 513 158, 510

INDEX DIGEST

July 1, 1970—June 30, 1971

ABSENCES — Page

Leaves of absence. (*See* Leaves of Absence)

ACCOUNTABLE OFFICERS

Relief

Procedural changes

Postal Service

The new sec. 39 U.S.C. 2601(b), which places responsibility to relieve, compromise, or otherwise settle relief cases concerning Postal matters in Postal Service and removes U.S. GAO from process does not have effect of setting aside decisions already made by GAO on relief matters under 31 U.S.C. 82a–1 or 39 U.S.C. 2401. Although procedural or remedial statutes such as 39 U.S.C. 2601(b) are not subject to general rule against retroactive application and they apply to all accrued, pending, and future actions, steps already taken, pleadings, and all things done under old law stand, unless contrary intent is manifested. Since change in procedural law does not operate retroactively, new authority of 39 U.S.C. 2601(b) does not extend to affect, change, or modify actions taken by GAO on postal relief matters prior to effective date of section 731

ADMINISTRATIVE DETERMINATIONS

Conclusiveness

Contracts

Disputes

Law questions

Interpretation of "Time for Delivery" provision in contract for court reporting and transcription service of hearings before National Transportation Safety Board, Department of Transportation, is question of law and not of fact for resolution under "Disputes" clause of contract. Requirement to deliver transcripts originating outside of Washington, D.C., to Docket Section of Board, located in Washington, within 10 days, means transcripts must be in custody of specified office within 10 calendar days from date of hearing, and mere fact of mailing transcripts before expiration of 10-day period does not constitute full compliance with delivery clause 513

Discretionary *v.* mandatory

Omission of addresses of subcontractors listed by prime contractor in bid submission is minor informality that may be waived under sec. 1–2.405 of Federal Procurement Regs. when contracting agency can independently determine omitted addresses from readily available information—contractor register, telephone directories, agency records—as well as from personal knowledge. Since incompleteness of bid did not result in ambiguity that requires clarification by bidder, no possibility of bid shopping exists, nor is bid nonresponsive on basis bidder was given "two bites at the apple." Extent to which contracting agency will extend its search for similarly named firms is discretionary matter; and if discretion is abused, protest could be filed with U.S. GAO 295

ADVERTISING Page

Advertising *v.* negotiation distinctions

While rigid rules applicable to formally advertised procurements generally require award to lowest (price) responsive, responsible bidder, flexibility inherent in concept of negotiation permits award to be made to best advantage of Govt., price and other factors considered. Therefore, utilization in "competitive negotiation" of price as factor in selection of contractor will not adversely affect selection of qualified contractor by Forest Service for performance of firefighting services ---------- 110

AGENTS

Of private parties

Authority

Contracts

Signatures

Under rule that there is no prohibition to furnishing proof of agency after bid opening—although requiring bidders to submit such proof before bid opening is recommended to avoid challenges from other bidders—confirmation after bid opening of employee's authority to bind his employer was properly accepted and bid considered responsive, entitling low bidder to contract award ---------- 627

AGRICULTURE DEPARTMENT

Milk indemnity program

Contamination of milk

Milk indemnity payments authorized by Pub. L. 90–484 to be made to dairy farmers who are directed to remove milk from commercial markets because milk contained residues of chemicals registered and approved for use by Federal Govt., may not be allowed pursuant to Pub. L. 91–127 when milk is removed as result of farmer's willful failure to follow procedures prescribed by Govt. Where dairy farmer predicates milk indemnity claim on compliance with procedures for use of DDT pesticides on cotton fields sprayed from airplanes, it is not sufficient that it cannot be proved farmer was at fault; but rather to receive indemnity payments for contaminated milk, burden is on farmer to establish that he was not at fault ---------- 305

ALASKA

Employees

Transfers

Within Alaska

Relocation expenses

Employees of Federal Highway Administration who are transferred between duty stations within State of Alaska are only entitled to subsistence expenses for period of 30 days while occupying temporary quarters with their dependents, which is period prescribed in 5 U.S.C. 5724a(a)(3) and implementing regulations when new official station is located within U.S., its territories or possessions, Commonwealth of Puerto Rico, or Canal Zone. Extension of subsistence allowance for additional period of up to 30 days occupancy of temporary quarters applies only when employee transfers to or from Hawaii, Alaska, territories or possessions, Commonwealth of Puerto Rico, or Canal Zone, and, therefore, employees transferred within Alaska are subject to 30-day limitation ---------- 829

ALIENS Page

Employment

Compensation payments

Overpayments

Authority in 5 U.S.C. 5584 to waive erroneous payments of compensation made to employees of executive agencies is applicable to non-U.S. citizens employed by U.S. in foreign areas, as term "employee" as used in sec. 5584 means employee as defined in 5 U.S.C. 2105; that is, individual appointed in "civil service," which constitutes all appointive positions in executive, judicial, and legislative branches of Govt., except positions in uniformed services (5 U.S.C. 2101(1)). Therefore, Philippine citizen, properly appointed to position in executive branch to perform Federal function supervised by Federal employee, is employee under 5 U.S.C. 5584 and entitled to waiver of erroneous compensation payments without regard to fact employment is under labor agreement with Philippine Govt 329

Retired

Member of the United States military

Retired pay eligibility. (*See* Pay, retired, foreign residence effect)

ALLOWANCES

Evacuation allowances

Overseas civilian employees

Under broad authority in 5 U.S.C. 5523(b), special allowances, prescribed by Standardized Regs. incident to evacuation of dependents at overseas post of duty, may be paid to employee in behalf of dependents who are not at his post at time of evacuation but who are directly affected by orders. However, as payments of additional allowances for unusual expenses must be attributable to post evacuation order, when dependents are absent for personal reasons at time evacuation order issues, with no intention of returning to post for duration of evacuation, employee is not entitled to special allowance, having incurred no unusual expenses; but if an absent dependent is prevented from returning by reason of evacuation order issued during his absence, unusual expenses incurred are payable from time intended return is blocked 89

Separate maintenance allowance paid at lower rate than special allowance authorized when dependents are evacuated from overseas post of employee, involves situations where dependents are not permitted to reside at employee's post under circumstances known well in advance to allow for reasonable planning and, therefore, serves different purpose than special allowances authorized incident to evacuation of dependents who, intending to reside at employee's post, are prevented from so doing by emergency under circumstances which do not permit orderly planning of employee's household. Furthermore, sec. 262.32 of Standardized Regs. prohibits payment of separation allowance for period that is less than 90 days—a limitation that does not apply to special allowance 89

Family separation. (*See* Family Allowances, separation)

Military personnel

Dislocation allowance

Members with dependents. (*See* Transportation, dependents, military personnel, dislocation allowance)

Excess living costs outside United States, etc. (*See* Station Allowances, military personnel, excess living costs outside United States, etc.)

Quarters allowance. (*See* Quarters Allowance)

ALLOWANCES—Continued Page

Subsistence. (*See* Subsistence Allowance)

Temporary lodging allowance

Military personnel. (*See* Station Allowances, military personnel, temporary lodgings)

ANNUAL LEAVE

(*See* Leaves of Absence, annual)

ANTITRUST MATTERS

Labor organizations

The jurisdiction to enforce antitrust statutes lies with Dept. of Justice and U.S. General Accounting Office is without authority to issue determination respecting applicability or violation of statutes. However, under 15 U.S.C. 17, labor organizations engaged in lawful pursuits are exempted from restrictions of antitrust statutes---------- 648

APPOINTMENTS

Applications for employment

Conditional

Indication in Standard Form 57, Application for Federal Employment, that applicant would not accept employment outside State of residence does not make him as Federal employee immune from reassignment, as purpose of Form 57 is to inform appointing officers and not to embody contract of employment; and, therefore, condition imposed in employment application does not entitle employee who refuses to accept reassignment outside initial State of employment in interests of Govt. to severance pay authorized in 5 U.S.C. 5595 for employees involuntarily separated from service through no fault of their own---------- 476

Discrimination

Race or sex

Upon determination that employee who received excepted Schedule B appointment at grade GS–9 was discriminated against because of race or sex, which is expressly prohibited by 5 U.S.C. 7154(b) and 5 CFR 713.202, as she qualified for a GS–11 position and was assigned and performed work warranting a GS–11 classification, correction of personnel action and adjustment in pay is legally justified on basis original classification and appointment as GS–9 was illegal, and corrective action is not viewed as retroactive promotion such as ordinarily is prohibited by law---------- 581

APPROPRIATIONS

Availability

Expenses incident to specific purposes

Necessary expenses

Propriety of Forest Service of Dept. of Agriculture to use appropriation entitled "Forest Protection and Utilization" for payment of plastic litter bags is for determination on basis of whether contract involved is reasonably necessary or incident to execution of program or activity authorized by appropriation. If no other appropriation provides more specifically for items such as litter bags, appropriation may be used to satisfy contract---------- 584

APPROPRIATIONS—Continued Page
Availability—Continued
Indigent persons
Court costs

Psychiatric examination of criminal defendant to determine his mental competency to understand proceedings against him or assist in his own defense authorized by subsec. (e) of Criminal Justice Act of 1964, 18 U.S.C. 3006 A(e), providing for investigative, expert, or other services necessary to adequate defense to 18 U.S.C. 4244, and subpoena of witnesses at no cost to defendant authorized under Rule 17(b) of Federal Rules of Criminal Procedure when defendant is financially unable to pay fees of witness whose presence is necessary to adequate defense are distinct services for payment purposes. Services pursuant to 1964 act are payable by Administrative Office of U.S. Courts and those rendered in accordance with Rule 17(b) are payable by Dept. of Justice..... 128

Cost of psychiatric examination of indigent criminal defendant for purpose of establishing insanity at time offense is committed is payable from funds appropriated for implementation of Criminal Justice Act of 1964 by Administrative Office of U.S. Courts, and cost of examination to determine defendant's mental competency to stand trial for purposes of 18 U.S.C. 4244 is expense to be borne by Dept. of Justice in accordance with guidelines issued by Judicial Conference of U.S. in recognition of distinction between two purposes served by psychiatric examination. Where examination serves dual purpose, cost to determine competency to stand trial should be borne by Justice and additional expense to determine insanity at time of offense to Criminal Justice Act appropriation.. 128

Defense Department
Fees for meetings

Registration fees incurred by member of uniformed services while on temporary duty, incident to attendance at meeting, conference, or workshop sponsored by Federal agency, may be reimbursed to member from appropriations available to Dept. of Defense for travel expenses under appropriate Departmental regulations when member is otherwise properly directed by orders of competent authority to attend meeting in temporary duty status; but since Federal agency meeting is not meeting of technical, scientific, professional, or similar organization within contemplation of 37 U.S.C. 412, approval of Secretary of Defense required by sec. 412 is not necessary..... 527

Justice Department
Litigation expenses
Probational proceedings

Where probationer charged with violation of probation conditions moves for psychiatric examination, examination fee is payable by Dept. of Justice when psychiatric services involve 18 U.S.C. 4244 proceeding to determine defendant's mental competency for purpose of continuing hearing for revocation of probation..... 128

In view of *Mempa* v. *Rhay*, 389 U.S. 128 (1967), involving right to counsel in probation revocation coupled with deferred sentencing proceeding, 45 Comp. Gen. 780 (1966) need no longer be considered controlling in connection with proceedings involving deferred sentencing, whether or not such proceedings are coupled with revocation of probation, but decision remains in effect insofar as simple revocation of pro-

APPROPRIATIONS—Continued Page

Justice Department—Continued

Litigation expenses—Continued

Probational proceedings—Continued

bation proceedings are concerned. Whether cost of psychiatric examination is for payment under Criminal Justice Act or under 18 U.S.C. 4244, depends on purpose of examination; that is, whether it is intended to establish insanity of defendant at time of offense or serves as tool for his defense ---------- 128

No-Year

Authorization *v.* appropriation act

Notwithstanding sec. 101 of Emergency Home Finance Act of 1970 authorized appropriation of funds without fiscal year limitation for purpose of adjusting effective interest charged by Federal home loan banks on borrowings, Congress having in sec. 509 of Independent Offices and Department of Housing and Urban Development Appropriation Act, 1971, which provided funds to implement enabling act, restricted availability of funds appropriated by act to current fiscal year unless otherwise expressly provided, "no-year" provision in authorization act is not incorporated in appropriation act so as to meet requirements of 31 U.S.C. 718, and, therefore, funds appropriated for interest adjustment payments by Federal home loan banks are not available for obligation beyond June 30, 1971 ---------- 857

Obligations

Definite commitment

Accounting procedure employed by Administrative Office of U.S. Courts with respect to paying court-appointed attorneys under provisions of Criminal Justice Act of 1964 from appropriation current at time of appointment regardless of date voucher, subject to court review, is submitted, may not be revised to make payment from appropriation current at time voucher is approved in order to eliminate holding obligated appropriation account open beyond close of normal fiscal year. Contractual obligation for payment of attorney occurs at time he is appointed, even though exact amount of obligation remains to be determined; and pursuant to secs. 3732 and 3679, R. S., and 41 U.S.C. 11; 31 *id.* 665(a); *id.* 712a, fee payable is chargeable to appropriation for fiscal year in which obligation was incurred ---------- 589

Transfers

Postal services

Status of appropriations

Although utilization by Postal Service of obligated and unobligated appropriations available to Post Office Dept. on July 1, 1970, effective date of transition of its functions to Postal Service is permitted under 39 U.S.C. 2002(a)(2), unobligated balances for fiscal year 1970 and prior years that had reverted to Treasury pursuant to 31 U.S.C. 701 would require act of Congress to be made available to Postal Service for liquidation of valid obligations. However, 1971 appropriations need not be included in any reappropriation of funds since they had not expired for obligation or reverted to Treasury. Notwithstanding 39 U.S.C. 1005 (e) requires Postal Service to assume obligation to pay for annual leave that accrued to employees before and after transition, since such leave is not chargeable to unexpended balances of prior year appropriations transferred to Service, Federal Govt. pursuant to 39 U.S.C. 2002(a)(2) is liable for payments ---------- 868

APPROPRIATIONS—Continued Page

What constitutes appropriated funds

Special deposit accounts

House and Senate restaurants

Special deposit accounts established under 40 U.S.C. 174k(b) and 174j–4, with Treasurer of U.S. by Architect of Capitol as manager of House and Senate restaurants, constitute permanent indefinite appropriations for use similar to revolving fund in view of fact the funds otherwise would be for deposit as miscellaneous receipts; and funds do not lose their identity as appropriated funds, because funds appropriated for contingent expenses of House and Senate are deposited and disbursed from accounts. Therefore, since restaurant employees are paid from funds considered appropriated funds, restriction in Pub. L. 91–144, against payment of compensation from appropriated funds to other than U.S. citizens, prohibits employment of aliens by restaurants. Overrules B–43917, Aug. 30, 1944, relative to special deposit accounts; but pursuant to 5 U.S.C. 5533, restaurant employees are now exempt from dual compensation prohibition ---------- 323

ARBITRATION

Advisory

Executive Order No. 10988 procedures

Establishment of first 40 hours of duty as basic workweek of Govt. quality control inspectors due to release from work of contractor employees when unpredictable interruptions and delays occur in checkout of missiles prior to launch—countdown—was in accord with 5 U.S.C. 6101 and Civil Service Reg. 610.111, which authorize uncommon tours of duty to maintain efficient operations and prevent cost increases. Therefore, determination of arbitration board under E.O. No. 10988 procedures that new work schedule was in violation of collective bargaining contract, requires no compensation and leave adjustments. Moreover, Executive order provides that arbitration "shall be advisory in nature with any decision or recommendation subject to approval of the agency head." ---------- 708

Employee personnel actions

Following upgrading of entrance grades for attorneys to GS–9 and GS–11 from GS–7 and GS–9, and adjusting of grades as consequence, National Labor Relations Board (NLRB) negotiated agreement with NLRB Professional Assn. to consider shorter time periods for promotions and requested waiver of Whitten Amendment requirement of 1-year ingrade except when only 5 weeks or less remained to complete required year of service, and as agreement entered into pursuant to E.O. No. 10988, which reserved to Govt. authority to promote efficiency of personnel operations, does not guarantee promotions, exercise of 5-week rule is administrative and its validity is not matter for arbitration. Therefore, attorney whose promotion was delayed by reason of 5-week rule is not entitled to retroactive promotion for in absence of administrative error general rule against retroactive promotions applies ---------- 850

ASSIGNMENT OF CLAIMS

(*See* Claims, assignment)

AUTOMATIC DATA PROCESSING SYSTEMS

(*See* Equipment, Automatic Data Processing Systems)

BIDDERS Page

Qualifications

Business clearance requirement

In negotiation under 10 U.S.C. 2304(a)(11) of cost-plus-incentive-fee research and development contract for radar sets where contracting agency left choice of one of three power tubes to be used to offerors, selection of other than low offeror on basis of change in tube preferred and acceptance of price reduction, although selected offeror was not "successful offeror" contemplated by par. 3-506(b) of ASPR, and business clearance required by ASPR 1-403 had not been satisfied, without giving all offerors within competitive range opportunity to compete on basis of its preference was inconsistent with concept of competitive negotiation, as time for negotiating price and technical aspects is during source selection competitive phase of negotiating process and, therefore, negotiations should be reopened to afford all offerors opportunity to revise their technical and price proposals ---------- 739

Capacity, etc.

Disqualified on erroneous basis

In negotiation of procurement, exception in 10 U.S.C. 2304(g) to conducting discussions with all responsible offerors within competitive range may not be invoked by contracting officer to make award to other than low responsible offeror where price is sole evaluation factor and, therefore, award to second low offeror, incumbent contractor, without obtaining Certificate of Competency (COC) on low offeror, a small business concern considered nonresponsible on factors relating to capacity and credit, was illegal and award should be canceled. No award should have been made unless SBA refused to issue COC or did not respond to referral within 15 days, or in alternative if low proposal was unacceptable without clarification, discussions should have been conducted with all offerors within competitive range ---------- 67

Experience

Specialized, etc.

Under letter request, first step of two-step procurement, which contained "Bidder's Technical Qualification Clause" stating technical proposals would be accepted only from those contractors who have manufactured and can demonstrate at operating airfield a Solid State Conventional Instrument Landing System, evaluation of capabilities of prime contractor and its subcontractor—French firm who manufactured and demonstrated system in France—although within policy enunciated in par. 4-117 of Armed Services Procurement Reg., which recognizes integrity and validity of contractor team arrangements, was contrary to intent of clause, and proposal premised on subcontractor's system should not have been considered. Therefore, in future procurements, clause should specify permissible relationships or refer to ASPR provision ---------- 163

Financial responsibility

Evaluation

Under request for proposals that contained "Submission of Financial Data" clause and was issued pursuant to public exigency authority in 10 U.S.C. 2304(a)(2), contracting officer, in accepting recommendation of Contractor Evaluation Board based on inadequate financial data that low offeror was financially nonresponsible, avoided information-

BIDDERS—Continued Page

Qualifications—Continued

Financial responsibility—Continued

Evaluation—Continued

gathering duty prescribed by Defense Contract Financing Reg., part 2, appendix "E" of Armed Services Procurement Reg., notwithstanding urgency of procurement. Because of doubtful findings and wide disparity between two offers received, further negotiations should have been conducted before awarding contract to high offeror who initially had not complied with clause. Although nearly completed contract will not be disturbed, future responsibility determinations should be adequately supported ---------- 281

Geographical location requirement

A requirement in invitation for bids that contract be performed in restricted geographical area is reasonable limitation on competition when contracting agency needs prompt service and plant accessibility, and restriction relating to bidder responsibility, compliance with requirement results in valid contract. Therefore, although contractor's unauthorized action subsequent to contract awards to effect performance of printing of technical publications restricted to Dallas-Fort Worth area in San Antonio constitutes breach of contract and Govt. has vested right to insist on performance in restricted area, since performance in San Antonio area will not deprive Govt. of contemplated rights, contracts may be modified to delete restriction with adequate price adjustment, however, future procurements should broaden competition by enlarging performance area ---------- 769

License requirement

Bidders not licensed prior to bidding

Bidder who could not certify that it had or could obtain prior to award, necessary ICC authority in its own name as required by invitation for bids (IFB) for movement or storage of household effects and therefore would have to rely on subcontractors to furnish services it could not perform is nonresponsive bidder, notwithstanding subcontracting clause of IFB permits qualified bidder after obtaining award to subcontract with prior approval of contracting officer as subcontracting clause does not purport to modify requirement that prospective contractor possess necessary operating authority prior to award. However, since award is recommended to bidder unable to comply with 100 percent operating authority requirement, requirement appears unessential and unduly restrictive of competition and, therefore, IFB should be canceled and resolicited ---------- 758

Manufacturer or dealer

Criteria

Invitation for installation of heavy equipment replacements that omitted Davis-Bacon Act on basis procurement did not contemplate construction, alteration, or repair of public building, and incorporated provisions of Walsh-Healey Act, which requires contractor to be manufacturer of or regular dealer in equipment to be supplied, and provision for bidders to attest to their experience and competency should be canceled and reissued by contracting agency under guidelines in sec. 1–12.402–2 of Federal Procurement Regs. for determining whether substantial amounts of construction, alteration, or repair work would be involved, also taking

BIDDERS—Continued Page

Qualifications—Continued

Manufacturer or dealer—Continued

Criteria—Continued

into consideration fact that no bidder qualified as manufacturer or dealer to be eligible for award, and that solicitation in requiring experience and competency attestation was unduly restrictive of competition..... 807

Preaward surveys

Small business concerns

Unsatisfactory

Under small business set-aside for award of requirements type contract, evaluation of low bid for purpose of Certificate of Competency (COC) procedures on basis of initial quantity to be purchased rather than estimated quantity to be ordered during contract period was inconsistent with use of estimated quantity to determine low bidder and to perform preaward survey, and resulted in erroneous refusal of contracting officer to refer low bidder's unfavorable preaward survey to Small Business Administration (SBA) as required by par. 1-705(c) of Armed Services Procurement Reg. (ASPR). Therefore, procedure in ASPR 1-705.4(c)(vi) should be implemented and if SBA determines that COC would have been granted at time of award and that such determination is still valid, contract awarded should be canceled and award made to low bidder..... 799

Small business concerns

Certification referral procedure

In negotiation of procurement, exception in 10 U.S.C. 2304(g) to conducting discussions with all responsible offerors within competitive range may not be invoked by contracting officer to make award to other than low responsible offeror where price is sole evaluation factor and, therefore, award to second low offeror, incumbent contractor, without obtaining Certificate of Competency (COC) on low offeror, a small business concern considered nonresponsible on factors relating to capacity and credit, was illegal and award should be canceled. No award should have been made unless SBA refused to issue COC or did not respond to referral within 15 days, or in alternative if low proposal was unacceptable without clarification, discussions should have been conducted with all offerors within competitive range..... 67

Subcontractors

As bid evaluation factor

Under letter request, first step of two-step procurement, which contained "Bidder's Technical Qualification Clause" stating technical proposals would be accepted only from those contractors who have manufactured and can demonstrate at operating airfield a Solid State Conventional Instrument Landing System, evaluation of capabilities of prime contractor and its subcontractor—French firm who manufactured and demonstrated system in France—although within policy enunciated in par. 4-117 of Armed Services Procurement Reg., which recognizes integrity and validity of contractor team arrangements, was contrary to intent of clause, and proposal premised on subcontractor's system should not have been considered. Therefore, in future procurements, clause should specify permissible relationships or refer to ASPR provision..... 163

BIDDERS—Continued Page
Qualifications—Continued
Tenacity and perseverance
Imputed to successor concern
Lack of tenacity and perseverance known to two principals of delinquent concern in Sept. 1969, when they first undertook to reorganize concern, although they did not acquire formal control until Apr. 1970, at which time they assumed administration and management of reorganized corporate entity and changed its operating personnel, may be imputed to new owners from Sept. 1969, as they then could have cured contract delinquencies even without a novation of delinquent contracts. Therefore, negative preaward survey of new concern, low under request for proposals to furnish bomb release units, which was based on its predecessor's lack of tenacity and perseverance, should be reevaluated under par. 1-903.1(iii) of Armed Services Procurement Reg.; and if adverse, referred to Small Business Administration 360
Small business concerns. (*See* Contracts, awards, small business concerns)
BIDS
Acceptance time limitation
Extension
Effect of request to extend
Fact that bidders are asked to extend their bid acceptance time pursuant to par. 2-404.1(c) of Armed Services Procurement Reg. does not give bidders option to withdraw bids, and bidder who does not extend bid acceptance time must accept contract awarded to him prior to expiration of initial bid acceptance period; and as request for extension of bid acceptance time does not convert formally advertised procurement into negotiated procurement, bidders may not be permitted to revise bid prices when granting extension, for this would be tantamount to permitting them to submit second bid after bid opening contrary to competitive bidding principles 383
Protest determination
Where second low bidder, during period for accepting its bid, filed protest with U.S. GAO as to unacceptability of low bid, consideration of its bid submitted under invitation for bids on electronic equipment is not precluded because bid acceptance period was extended only after acceptance date had expired, since filing of protest tolled expiration of bid acceptance period until after resolution of protest. As no other bidder is eligible for award, integrity of competitive system is not involved; and, therefore, there is no "compelling reason" to reject second low bid. However, in future procurements should award be delayed until after expiration of bid acceptance period, procedures prescribed in secs. 1-2.404-1(c) and 1-2.407-8(b)(2) of Federal Procurement Regs. should be followed ... 357
Aggregate *v.* separable items, prices, etc.
Award basis
Invitation for bids issued pursuant to 41 U.S.C. 252(c) that requested lump-sum bids for construction of campus facilities (base bid), plus bids on each of four additive items, and indicated award for base bid, plus additives, if any, would be made to low bidder on base bid without regard to his overall bid price, did not conform with requirements in 41 U.S.C. 253(b) that award should be made to responsible bidder whose bid "will be most advantageous to Govt., price and other factors considered."

BIDS—Continued Page

Aggregate *v.* separable items, prices, etc.—Continued

Award basis—Continued

Therefore, award for facilities and additives to lowest overall bidder who was not low on base bid would be proper and in accord with sec. 253(b), as lowest bidder must be measured by total work to be awarded in order to obtain benefits of full competition, which is purpose of public procurement statutes ---------- 583

All or none

Award to one bidder advantageous

Failure to submit price for one of four military installations at which delivery is to be made of coveralls solicited under invitation that requested individual prices on quantities specified for each installation is not clerical oversight that may be waived as minor irregularity pursuant to par. 2-405 of Armed Services Procurement Reg., and omitted price may not be inserted on basis single price quoted for other three installations applies to entire quantity solicited because bidder had checked block captioned "100% of all quantities to be awarded or none" in bid form, nor may nonresponsive bid be considered for partial award. As award of whole contract is in best interests of Govt., it may be made to responsive and responsible bidder offering low aggregate bid whose per unit net price for entire procurement is reasonable although slightly higher than that of nonresponsive bidder ---------- 852

Alternative

Acceptability

Low alternate bid offering to use polyethylene bags with Kraft paper overwrap in lieu of cartons to ship fuel-resistant baffle material satisfying packaging and packing requirements set forth in applicable military specifications and included in invitation for bids, neither of which spelled out type of material or construction of container, was responsive bid, acceptance of which was proper. Invitation for bids did not require use of fiberboard cartons and military specifications require only that materials be packed in manner to insure acceptance by common carrier and provide protection against damage during shipment. Furthermore, overwrapped polyethylene bags constitute "containers" within meaning of "Glossary of Packaging Terms" and par. 1-1204 of Armed Services Procurement Reg ---------- 140

Ambiguous

Construction

Against bidder

Telegraphic modification of bid on Govt. surplus property, which read "Increase Item 13 bid $8900," is ambiguous modification, as it can be interpreted to increase original bid "by" $8900 or "to" $8900; and telegram, therefore, should be disregarded in determining highest bidder on item. Telegraphic bid modification reasonably susceptible of two varying interpretations, one only making bid price high, it would be prejudicial to other bidders to permit bidder who created ambiguity to select after bid opening the interpretation to be adopted ---------- 802

Page

BIDS—Continued

Ambiguous—Continued

Two possible interpretations

Both reasonable

Where two different interpretations of delivery provision in bid that offered delivery in "approximately 120 days (as requested)" in response to invitation stating delivery was desired within 120 days, but required within 150 days, are reasonable, delivery term stated is at best ambiguous; and, therefore, B–170287, dated Aug. 18, 1970, holding bid should be rejected as nonresponsive, is affirmed 379

What constitutes an ambiguity

Omission of addresses of subcontractors listed by prime contractor in bid submission is minor informality that may be waived under sec. 1–2.405 of Federal Procurement Regs. when contracting agency can independently determine omitted addresses from readily available information—contractor register, telephone directories, agency records—as well as from personal knowledge. Since incompleteness of bid did not result in ambiguity that requires clarification by bidder, no possibility of bid shopping exists, nor is bid nonresponsive on basis bidder was given "two bites at the apple." Extent to which contracting agency will extend its search for similarly named firms is discretionary matter; and if discretion is abused, protest could be filed with U.S. GAO.. 295

Auction technique bidding. (*See* **Contracts, negotiation, auction technique prohibition**)

Awards. (*See* **Contracts, awards**)

Bid forms

Initialing bid changes

Bid sent by certified mail that was not directed to bid opening room or did not list information required by invitation, and which although timely delivered to mail room, as shown by Post Office Dept. form considered acceptable documentary evidence, was not identified until after bids were opened, may be considered on basis that failure to recognize from corporate name and size of envelope that envelope contained bid constitutes Govt. mishandling, and that lapse of time between receipt, opening, and delivery of bid was unreasonable for certified mail, and fact that price alteration was uninitialed does not require rejection of low bid where intended bid price is not in doubt and remained low, and there is no indication bidder had opportunity to reclaim and alter bid 71

Bid shopping. (*See* **Contracts, subcontracts, bid shopping**)

Block bidding

Prevention

Quantity Limitation Prohibition Clause intended to prevent block bidding that was included in invitation for bids to manufacture flight jackets for delivery at several destinations which provided each bidder may submit one quantity *only* at one price for each item bid, and may stipulate maximum/minimum quantity acceptable for each item or overall procurement caused no ambiguity in invitation, and offer bidding on first 7,470 for each destination and then including this same quantity with additional 1,000 for next increment of 8,470 each and so on until each additional 1,000 added thereon reached total procurement quantity

BIDS—Continued Page
Block bidding—Continued
Prevention—Continued
of 16,470 each, offered more than one price for quantity and violation of clause may not be waived under par. 2-405 of Armed Services Procurement Reg. as informality ---- 48
Bonds. (*See* Bonds, bid)
Brand name or equal. (*See* Contracts, specifications, restrictive, particular make)
Buy American Act
Buy American Certificate
Acceptance
Where offer is accepted from offeror who excludes no products from Buy American Certificate, or otherwise indicates he is not offering domestic source end item, general acceptance of certificate by contracting officials is proper since offeror is legally obligated under contract to furnish Govt. domestic source end product, and compliance with that obligation is matter of contract administration which has no effect on validity of contract award ---- 697
Evaluation
Erroneous
Award to higher bidder offering surgical steel blade manufactured in U.S. from imported stainless steel, based on erroneous determination item is domestic source and product as defined in par. 6-101(a) of Armed Services Procurement Reg. under rule in ASPR 6-001(d) relating to nonavailability of domestic steel, rather than award to low bidder proposing to use similar steel and manufacture blade abroad—considered foreign end product—will not be disturbed, as award was made under mistaken belief held by all participants that only use of imported steel was authorized, notwithstanding availability of domestic carbon steel. Furthermore, adding 50-percent differential prescribed by ASPR 6-104.4(b) displaces low bid ---- 239
Foreign product determination
Comparison of foreign and domestic component costs
In evaluation under par. 6-104.4 of Armed Services Procurement Reg. of microwave transistors of foreign make to be used in electronic equipment solicited under request for proposals to determine if price differential imposed by Buy American Act (41 U.S.C. 10a-d) should be considered, transistors were properly held to be domestic source end item as evidenced by offeror's entry of "none" in block entitled "Excluded End Products" of Buy American Certificate, in view of fact cost—materials, labor, and other items of expense—of power unit manufactured in-house and its case, which together with transistor comprise amplifier, exceeds cost of foreign transistors, therefore, constituting amplifier as domestic source end product within meaning of Buy American Act ---- 697
Component *v.* end product
Procedure that invites bidders and offerors to furnish surgical steel blades made from either domestic carbon steel or imported stainless steel without indicating preference, leaving determination of availability of domestic steel to bidders or offerors, is defective procedure as composition of steel selected for end product is, under definition in par. 6-001 of Armed Services Procurement Reg., component of end product and

BIDS—Continued Page
Buy American Act—Continued
Foreign product determination—Continued
Component *v.* end product—Continued
subject to restrictions of Buy American Act, 41 U.S.C. 10a–d. Therefore, when carbon steel is available, restrictions of act may not be waived for product manufactured in U.S. from foreign steel. Furthermore, determination to exempt item from restrictions of act must, in accordance with ASPR 6–103.2(a), be included in solicitation ---- 239
Cost information
Although cost information which procuring activities obtain when domestic source of item offered is questioned under Buy American Act (41 U.S.C. 10a–d), need not be made public as part of bid, agency should obtain sufficient information to ascertain that foreign materials constitute less than 50 percent of cost of those materials directly incorporated in item being procured ---- 697
"Buying in" basis. (*See* Bids, prices, "buying in" basis)
Cancellation. (*See* Bids, discarding all bids)
Competitive system
Aggregate bid requirement
Invitation for bids issued pursuant to 41 U.S.C. 252(c) that requested lump-sum bids for construction of campus facilities (base bid), plus bids on each of four additive items, and indicated award for base bid, plus additives, if any, would be made to low bidder on base bid without regard to his overall bid price, did not conform with requirements in 41 U.S.C. 253(b) that award should be made to responsible bidder whose bid "will be most advantageous to Govt., price and other factors considered." Therefore, award for facilities and additives to lowest overall bidder who was not low on base bid would be proper and in accord with sec. 253(b), as lowest bidder must be measured by total work to be awarded in order to obtain benefits of full competition, which is purpose of public procurement statutes ---- 583
Ambiguous bids
Unsolicited insertion of plant part numbers in low bid to furnish engine air filters without express statement that specifications would be complied with created ambiguity that may not be resolved by reference to "catalog cut sheets" and other data available to Govt. before bid opening, as reliance on this information would afford bidder option to affect responsiveness of bid—an option detrimental to the competitive bidding system. Therefore, as contracting officer cannot determine whether bidder offered conforming article or that part numbers were included for purpose of internal control, bid is considered qualified bid and may not be considered for award ---- 8
Bid acceptance time
Fact that bidders are asked to extend their bid acceptance time pursuant to par. 2–404.1(c) of Armed Services Procurement Reg. does not give bidders option to withdraw bids, and bidder who does not extend bid acceptance time must accept contract awarded to him prior to expiration of initial bid acceptance period; and as request for extension of bid acceptance time does not convert formally advertised procurement into negotiated procurement, bidders may not be permitted to revise bid prices

BIDS—Continued Page

Competitive system—Continued

Bid acceptance time—Continued

when granting extension, for this would be tantamount to permitting them to submit second bid after bid opening contrary to competitive bidding principles 383

Bidder qualification information

Bidder who could not certify that it had or could obtain prior to award, necessary ICC authority in its own name as required by invitation for bids (IFB) for movement or storage of household effects and therefore would have to rely on subcontractors to furnish services it could not perform is nonresponsive bidder, notwithstanding subcontracting clause of IFB permits qualified bidder after obtaining award to subcontract with prior approval of contracting officer as subcontracting clause does not purport to modify requirement that prospective contractor possess necessary operating authority prior to award. However, since award is recommended to bidder unable to comply with 100 percent operating authority requirement, requirement appears unessential and unduly restrictive of competition and, therefore, IFB should be canceled and resolicited 753

"Buy Indian Act"

Grant of preferential treatment by negotiating contract without competition with dairy corporation that is 51 percent owned by persons of Indian descent; that is located 30 miles from Indian reservation, but will employ Indian help; and that is financed by Small Business Administration loan, conforms to reasonable criteria established to accomplish purposes of so-called Buy Indian Act (25 U.S.C. 47), to acquire products and services from Indian industry, and to loan criteria established by Administration. Fact that minority owner is non-Indian and will furnish expertise and managerial ability does not impute that firm is "straw" organization or is unqualified as Indian industry. Therefore, firm may be considered eligible if prior to award it obtains required interstate shipper's permit 94

"Buying in" prices

Where low bid price had been confirmed, negating existence of mistake, suspicion of "buying in" does not require rejection of bid because low bidder submitted unprofitable price. Par. 1-311(a) of Armed Services Procurement Reg. in defining "buying in" as practice of attempting to obtain contract award by knowingly offering price or cost estimate less than anticipated costs with expectation of recovering any losses, either during contract performance or in future "follow-on" contracts, does not provide for bid rejection and, therefore, there is no legal basis upon which award may be precluded or disturbed because low bidder submitted unprofitable price 50

Effect of erroneous awards

Where invitation for bids provided for consideration of late bid modification only if delay was due to Western Union and par. 2-303.4 of Armed Services Procurement Reg., in effect at time, provided for consideration only if late receipt of modification was caused by Govt. mishandling, inconsistency of provisions was prejudicial to bidders and detrimental to competitive bidding system. Therefore, contract award made on basis of regulation to low bidder at its reduced telegraphic

BIDS—Continued Page
Competitive system—Continued
Effect of erroneous awards—Continued
price pursuant to par. 2–305 of regulation, although second low bidder's telegraphic modified bid price was lower, both modifications having been timely received by Western Union but not delivered until after bid opening, should be canceled and procurement resolicited only from two involved concerns---------- 42
Negotiated contracts. (*See* Contracts, negotiation, competition)
Prebid conferences
Mandatory requirements to attend prebid conference contained in request for proposals for purpose of explaining extremely complex project may not be considered condition precedent to submission of proposal, as conditions or requirements that tend to restrict competition are unauthorized unless reasonably necessary to accomplish legislative purposes of contract appropriation involved or are expressly authorized by statute. To satisfy maximum competitive requirements of Federal Procurement Regs., prospective offeror who failed to attend conference should be permitted to submit proposal and given copy of prebid transcript. However, date for receipt of proposals having passed, new closing date should be set to enable firm denied opportunity to participate to submit proposal, and responding offerors to revise proposals---------- 355
Preservation of system's integrity
Data contained in literature that was not prepared to quote back salient features of brand name model but was published to disseminate information to public does not constitute sufficient descriptive literature for purpose of determining whether product equals brand name. Furthermore, offer to conform does not satisfy descriptive literature requirement of brand name or equal clause for detailed information, and submission of data after bid opening may not be considered under fundamental principle of competitive bidding system that responsiveness of bid must be determined from bid without reference to extraneous aids or explanation submitted after bid opening, in fairness to those bidders whose offers strictly complied with all solicitation requirements---------- 193
Price no substitute for competition
Awards made under sales invitation for bids on basis of lots drawn by three bidders who had submitted identical bids because there was no other evidence of collusive bidding, where Justice Dept. had taken no action on report of receipt of identical bids, and bid prices submitted were reasonable, were not proper, even though provisions of DOD Manual 4160.21–M were followed. Although awards will not be disturbed, steps should be taken to obtain in future surplus sales the full and unrestricted competition contemplated by competitive bidding system and to avoid acceptance of reasonable bid prices as substitute for adequate competition; and if circumstances do not permit reasonable determination that price competition was adequate, sale should be resolicited ---------- 382
Qualified products use
Proposed "NASA Microelectronics Reliability Program" that would establish Qualified Products List for microcircuits and require production line certification of manufacturers prior to procurement although restrictive of competition is considered acceptable on basis of agency

BIDS—Continued Page
Competitive system—Continued
Qualified products use—Continued
need since testing of microcircuits to determine extremely high level of quality and reliability assurance demanded by space program is either impossible or impractical and criticality of product justifies pre-qualification procedures. Therefore, restriction on competition resulting from program is not unreasonable or invalid restriction in conflict with 10 U.S.C. 2304(g) and 10 U.S.C. 2305(a) and (b). However, as line certification is departure from normal procedures, right is reserved to give matter further consideration 542
Construction
Two possible interpretations of bid
Principles applicable to interpretation of existing contracts may not be applied to determine whether bid is responsive, and responsiveness of bid must be determined from bid itself without reference to matters extraneous to bid 379
Contracts, generally. (*See* Contracts)
Delivery provisions
Packaging and packing requirements
Deviation acceptability
Low alternate bid offering to use polyethylene bags with Kraft paper overwrap in lieu of cartons to ship fuel-resistant baffle material satisfying packaging and packing requirements set forth in applicable military specifications and included in invitation for bids, neither of which spelled out type of material or construction of container, was responsive bid, acceptance of which was proper. Invitation for bids did not require use of fiberboard cartons and military specifications require only that materials be packed in manner to insure acceptance by common carrier and provide protection against damage during shipment. Furthermore, overwrapped polyethylene bags constitute "containers" within meaning of "Glossary of Packaging Terms" and par. 1–1204 of Armed Services Procurement Reg 140
Deviations from advertised specifications. (*See* Contracts, specifications, deviations)
Discarding all bids
Administrative determination
No obligation to accept any bids
Rejection of all bids because they failed to conform to essential requirements of invitation for pumping station, which invitation had been revised by six amendments, and changes and clarifications made in specifications before readvertising canceled invitation, in order to overcome difficulties of obtaining responsive bids, were proper actions within responsibility of administrative officers of purchasing agency in absence of clear proof that exercise of administrative discretion was abused. An invitation for bids does not import any obligation on Govt. to accept any of offers received; and where bids received are nonresponsive because specifications are inadequate or ambiguous to extent bidders are prevented from submitting responsive bids, there is cogent reason to discard all bids 464

BIDS—Continued Page

Discarding all bids—Continued

Davis-Bacon Act suspension

Discarding of all bids for construction of family housing at military installation under invitation that contained prescribed minimum wage rates determined by Secretary of Labor for laborers and mechanics in accordance with Davis-Bacon Act, 40 U.S.C. 276a, because of Presidential Proclamation 4031, dated Feb. 23, 1971, which suspended act, and reissuance of invitation without requirements of act were actions in public interest within meaning of 10 U.S.C. 2305(c), and Proclamation was compelling reason contemplated by par. 2-404.1 of Armed Services Procurement Reg. that justified cancellation of invitation for bids---- 634

Late arrival of bid modification

Where invitation for bids provided for consideration of late bid modification only if delay was due to Western Union and par. 2-303.4 of Armed Services Procurement Reg., in effect at time, provided for consideration only if late receipt of modification was caused by Govt. mishandling, inconsistency of provisions was prejudicial to bidders and detrimental to competitive bidding system. Therefore, contract award made on basis of regulation to low bidder at its reduced telegraphic price pursuant to par. 2-305 of regulation, although second low bidder's telegraphic modified bid price was lower, both modifications having been timely received by Western Union but not delivered until after bid opening, should be canceled and procurement resolicited only from two involved concerns---- 42

Needs of Government not properly stated

Invitation for bids that states required man-year level of effort to perform engineering services for systems and program definition of combat systems maintenance training facility at erroneously fixed rather than estimated level, fails to show Govt.'s minimum needs and, therefore, successful contractor would be unable to produce results required in view of correlation between level of effort and ultimate work product. Failure to accurately reflect man-year level of effort required constitutes compelling reason for canceling invitation contemplated by par. 2-404.1(a) of Armed Services Procurement Reg. and for readvertisement of procurement. However, cancellation emphasizes need for effective administrative definition and expression of Govt.'s requirements during procurement planning process---- 50

"One Responsive Bid" clause

Cancellation, pursuant to par. 2-404.1(b)(viii) of Armed Services Procurement Reg. as being in best interest of Govt., of invitation for bids that contained "One Responsive Bid" clause to assure adequate price competition, and resolicitation of procurement when low bid was determined to be nonresponsive and only other bid received excessively priced, was in accord with par. 2-404.2(e) ASPR, which authorizes rejection of unreasonably priced bids, and was proper, even though intitally the reasons for cancellation of invitation should have been advanced, as par 2-404.1(b)(viii) is not self-executing, and clause should not have been used as it only created uncertainty and was superfluous because mere recitation of clause did not establish sufficient reason for bid rejection and resolicitation of procurement---- 177

BIDS—Continued Page
Discarding all bids—Continued
Reinstatement
Davis-Bacon Act suspension revoked
Low bidder under invitation for bids that was canceled upon issuance of Presidential Proclamation 4031, dated Feb. 23, 1971, which suspended provisions of Davis-Bacon Act, 40 U.S.C. 276a, who is second low bidder under reissued invitation is not entitled to award under canceled invitation when Presidential Proclamation 4040 of Mar. 29, 1971 revoked suspension of act. Presidential Proclamation 4040 effectively revoked Davis-Bacon Act only as to construction contracts for which solicitations for bids or proposals were issued after Mar. 29, 1971, and implementing Defense Dept. regulation confirms that solicitations issued after Feb. 23, 1971, but before Mar. 30, 1971, shall not contain Davis-Bacon Act provisions and, therefore, award to lowest responsible, responsive bidder under reissued invitation would be in accordance with intent of proclamation and regulation 798
Specifications defective
Federal Procurement Regulations requirements
Invitation for installation of heavy equipment replacements that omitted Davis-Bacon Act on basis procurement did not contemplate construction, alteration, or repair of public building, and incorporated provisions of Walsh-Healey Act, which requires contractor to be manufacturer of or regular dealer in equipment to be supplied, and provision for bidders to attest to their experience and competency should be canceled and reissued by contracting agency under guidelines in sec. 1-12.402-2 of Federal Procurement Regs. for determining whether substantial amounts of construction, alteration, or repair work would be involved, also taking into consideration fact that no bidder qualified as manufacturer or dealer to be eligible for award, and that solicitation in requiring experience and competency attestation was unduly restrictive of competition 807
Needs not properly stated
Rejection of all bids because they failed to conform to essential requirements of invitation for pumping station, which invitation had been revised by six amendments, and changes and clarifications made in specifications before readvertising canceled invitation, in order to overcome difficulties of obtaining responsive bids, were proper actions within responsibility of administrative officers of purchasing agency in absence of clear proof that exercise of administrative discretion was abused. An invitation for bids does not import any obligation on Govt. to accept any of offers received; and where bids received are nonresponsive because specifications are inadequate or ambiguous to extent bidders are prevented from submitting responsive bids, there is cogent reason to discard all bids 464
Needs overstated
The discarding of all bids for movement or storage of personal property by naval installation upon discovering that item in one of three service schedules was 100 percent overstated in invitation for bids was proper administrative determination pursuant to par. 2-404.1(b) of Armed Services Procurement Reg., notwithstanding protesting bidder may not be qualified bidder, as any bidder may properly bring to atten-

BIDS—Continued Page
Discarding all bids—Continued
Specifications defective—Conitnued
Needs overstated—Continued
tion of concerned Govt. officials any factor indicating that particular procurement action is defective. Also since reissued invitation contained erroneous weight estimate and misstated actual operating authorities necessary to perform solicited services, this second invitation, too, may be canceled ---- 753
Specifications restrictive
Bidder license requirements
Bidder who could not certify that it had or could obtain prior to award, necessary ICC authority in its own name as required by invitation for bids (IFB) for movement or storage of household effects and therefore would have to rely on subcontractors to furnish services it could not perform is nonresponsive bidder, notwithstanding subcontracting clause of IFB permits qualified bidder after obtaining award to subcontract with prior approval of contracting officer as subcontracting clause does not purport to modify requirement that prospective contractor possess necessary operating authority prior to award. However, since award is recommended to bidder unable to comply with 100 percent operating authority requirement, requirement appears unessential and unduly restrictive of competition and, therefore, IFB should be canceled and resolicited ---- 753
Evaluation
Aggregate *v.* separable items, prices, etc.
Evaluation formula erroneous
Invitation for bids issued pursuant to 41 U.S.C. 252(c) that requested lump-sum bids for construction of campus facilities (base bid), plus bids on each of four additive items, and indicated award for base bid, plus additives, if any, would be made to low bidder on base bid without regard to his overall bid price, did not conform with requirements in 41 U.S.C. 253(b) that award should be made to responsible bidder whose bid "will be most advantageous to Govt., price and other factors considered." Therefore, award for facilities and additives to lowest overall bidder who was not low on base bid would be proper and in accord with sec. 253(b), as lowest bidder must be measured by total work to be awarded in order to obtain benefits of full competition, which is purpose of public procurement statutes ---- 583
Basis for evaluation
Bid itself
Principles applicable to interpretation of existing contracts may not be applied to determine whether bid is responsive, and responsiveness of bid must be determined from bid itself without reference to matters extraneous to bid ---- 379
Buy American Act. (*See* Bids, Buy American Act, evaluation)
Delivery provisions
Parcel post costs
When a procurement item is shipped by parcel post under Govt. mailing indicia pursuant to par. 19–403.3(a) of Armed Services Procurement Reg., transportation costs as bid evaluation factor are eliminated, even though eventually contracting agency is required to reimburse Post Office Department for postal services ---- 447

BIDS—Continued Page
Evaluation—Continued
Delivery provisions—Continued
Reasonable delivery date
Under invitation for bids (IFB) that stated that delivery was desired within 120 days, but was required within 150 days; that bidders may propose different date but not beyond 150 days; and that if no delivery date was offered, desired 120 days would apply, offer of delivery within "approximately 120 days" takes exception to desired schedule and fails to state definite delivery date, and bid is nonresponsive. To interpret "approximately 120 days" to mean time period not substantially varying from 120 days, and that in no case would delivery period extend beyond 150 days, requires reasonableness test that would result in uneven or unpredictable treatment of bidders; whereas terms of IFB demand that ascertainment of time chosen by bidder be made on objective basis without recourse to subjective processes of evaluation involved in application of reasonableness test 379
Factors other than price
Notice of factors to bidders
Use of phrase "other factors considered" pursuant to par. 2-407.1 of Armed Services Procurement Reg., implementing 10 U.S.C. 2305, does not authorize award of contracts under advertised procurements to other than low, responsive, qualified bidder; and when bids are to be evaluated on some basis in addition to price, it is required that those additional factors and relative importance to be attached to each factor be clearly stated in invitation so all bidders are aware of factors in preparation of their bids 447
Information after bid opening
Data contained in literature that was not prepared to quote back salient features of brand name model but was published to disseminate information to public does not constitute sufficient descriptive literature for purpose of determining whether product equals brand name. Furthermore, offer to conform does not satisfy descriptive literature requirement of brand name or equal clause for detailed information, and submission of data after bid opening may not be considered under fundamental principle of competitive bidding system that responsiveness of bid must be determined from bid without reference to extraneous aids or explanation submitted after bid opening, in fairness to those bidders whose offers strictly complied with all solicitation requirements 193
Method of evaluation defective, etc.
Evaluation factors uncertain
Request for proposals that failed to include evaluation criteria or indicate criteria's relative importance because of erroneous belief these standards were inapplicable to civilian procurement was defective and was not in accordance with sound procurement policy and public interest. Also scoring of offer by comparison with predetermined score, overlooked that primary consideration in negotiated procurement is discussion with all offerors in competitive range and that borderline cases should not automatically be excluded from consideration, and as result maximum competition was not obtained. Request for proposals should be amended to establish omitted criteria and offerors permitted to sub-

BIDS—Continued Page

Evaluation—Continued

Method of evaluation defective, etc—Continued

Evaluation factors uncertain—Continued

mit additional information or revise proposals, and if within competitive range, afforded opportunity for discussion to extent required by sec. 1-3.802(c) of Federal Procurement Regs---------- 59

Negotiation. (*See* **Contracts, negotiation, evaluation factors**)

Qualified bids. (*See* **Bids, qualified**)

Worldwide performance locations

Invitation for bids that contemplates construction type requirements contract for reconditioning and maintenance of radomes located worldwide, and which requested one bid price for each type service for particular size radome regardless of location and made site inspection impracticable, is not deficient invitation and need not be revised to require separate bids for more than 200 possible performance sites—an insurmountable administrative workload—to allow for varying travel and transportation expense factors since regardless of location, work is essentially same at each site, making site inspections unnecessary, and scheduling of service consecutively for adjacent locations will minimize travel expenses. Requirements contracts are valid and contracting agency unable to state locations and performance dates, having estimated its requirements in good faith may make award under invitation---------- 830

Failure to furnish something required. (*See* **Contracts, specifications, failure to furnish something required**)

Forms

Bid forms. (*See* **Bids, bid forms**)

Identical

Lot drawing basis for award

Awards made under sales invitation for bids on basis of lots drawn by three bidders who had submitted identical bids because there was no other evidence of collusive bidding, where Justice Dept. had taken no action on report of receipt of identical bids, and bid prices submitted were reasonable, were not proper, even though provisions of DOD Manual 4160.21-M were followed. Although awards will not be disturbed, steps should be taken to obtain in future surplus sales the full and unrestricted competition contemplated by competitive bidding system and to avoid acceptance of reasonable bid prices as substitute for adequate competition; and if circumstances do not permit reasonable determination that price competition was adequate, sale should be resolicited---------- 882

Labor stipulations. (*See* **Contracts, labor stipulations**)

Labor surplus area performance. (*See* **Contracts, awards, labor surplus areas**)

Late

Mail delivery evidence

Certified mail

Mere fact that delivery of test mailings subsequent to bid opening involved more time than reported by postmaster of delivering post office to be normal delivery time does not render incorrect the statement of destination post office concerning *normal* delivery time on bid opening date ---------- 825

BIDS—Continued Page

Late—Continued

Mishandling determination

Bids received at one place for delivery to another place

Bid sent by certified mail that was not directed to bid opening room or did not list information required by invitation, and which although timely delivered to mail room, as shown by Post Office Dept. form considered acceptable documentary evidence, was not identified until after bids were opened, may be considered on basis that failure to recognize from corporate name and size of envelope that envelope contained bid constitutes Govt. mishandling, and that lapse of time between receipt, opening, and delivery of bid was unreasonable for certified mail, and fact that price alteration was uninitialed does not require rejection of low bid where intended bid price is not in doubt and remained low, and there is no indication bidder had opportunity to reclaim and alter bid--- 71

Determination to open late bid received on one of two technical proposals submitted under first step of two-step procurement and found acceptable, even though equipment offered did not meet all details of specifications, was proper since delay in delivery of bid received more than 24 hours before bid opening was due to Govt. mishandling. Although bid was accompanied by covering letter and unsolicited descriptive literature at variance with specifications, it is nevertheless responsive bid; for it is inconceivable that low bidder, who had qualified under first step, would disqualify itself in second step and, therefore, deviating material is viewed as attempt to identify which of two accepted first-step proposals was being priced in second step---------- 337

Negotiated procurement. (*See* **Contracts, negotiation, late proposals and quotations**)

Prior telegram referring to bid

Receipt before opening bids of telegraphic notice advising that bid is en route, or of telegram modifying bid, does not constitute basis for accepting bid received after opening of bids. Whether bid should be considered as acceptable late bid depends upon whether bid meets requirements of late bid regulations set forth in par. 2-303 of Armed Services Procurement Reg---------- 325

Return to sender

Bid consideration

Return unopened to bidder of late bid that had been forwarded by certified mail, where prior to bid opening a modifying telegram had been received, without compliance by certifying officer with late bid regulations that require bidder to be notified and given opportunity to furnish original certified mail receipt and that require mail delivery information to be obtained from post office in order to determine acceptability of late bid in accordance with criteria in par. 2-3033(a) of Armed Services Procurement Reg., was unjustified. Notwithstanding possibility of tampering with bid once it leaves Govt.'s custody, late bids unjustifiably returned are not *prima facie* unacceptable; and on basis of proof that late bid should have been timely delivered, and that sealed bid envelope had not been opened, late bid may be considered for award. Prior conflicting decisions are modified---------- 325

BIDS—Continued Page
Late—Continued
Telegraphic modifications
Delay due to Western Union
Bid reduction received at base exchange telegraph office operated under contract for Western Union, which although timely received could not be delivered before opening of bids as telephone line to procurement office was busy, may not be considered in determining low bid. Both invitation provisions and par. 2-303 of Armed Services Procurement Reg. provide for consideration of late telegraphic modification when delay is due to Govt. mishandling but preclude consideration of late telegraphic bids or modification when delay is caused by telegraph company, and under contract, post exchange, instrumentality of U.S. for some purposes, and its employees act as agent of Western Union, and delay, therefore, is attributable to Western Union and price reduction may not be considered ---------- 76
Inconsistent provisions
Where invitation for bids provided for consideration of late bid modification only if delay was due to Western Union and par. 2-303.4 of Armed Services Procurement Reg., in effect at time, provided for consideration only if late receipt of modification was caused by Govt. mishandling, inconsistency of provisions was prejudicial to bidders and detrimental to competitive bidding system. Therefore, contract award made on basis of regulation to low bidder at its reduced telegraphic price pursuant to par. 2-305 of regulation, although second low bidder's telegraphic modified bid price was lower, both modifications having been timely received by Western Union but not delivered until after bid opening, should be canceled and procurement resolicited only from two involved concerns ---------- 42
Mistakes
Allegation after award. (*See* Contracts, mistakes)
Correction
General rule
Bid submitted under invitation that incorporated Service Contract Act clause prescribed by par. 2-1004 of Armed Services Procurement Reg., which provided for application of pertinent Dept. of Labor wage determination, and included information relating to "Successor Employers' Collective Bargaining Obligations"—information bidder overlooked in preparing bid—may be withdrawn under mistake in bid principles enunciated in *Ruggiero* v. *U.S.*, 420 F. 2d 709, to effect law of mistaken bids includes mistakes which are inexplicable, and rule does not turn on any fault or ambiguity in specifications nor need contractor be free from blame. Therefore, since bidder was entitled to give consideration to impact of union agreement upon performance costs, and bid may not be corrected as agreed union rates were not factor in bid preparation, bid may be withdrawn from consideration ---------- 655
Modification
Ambiguous
Telegraphic modification of bid on Govt. surplus property, which read "Increase Item 13 bid $8900," is ambiguous modification, as it can be interpreted to increase original bid "by" $8900 or "to" $8900; and tele-

BIDS—Continued Page
Modification—Continued
Ambiguous—Continued
gram, therefore, should be disregarded in determining highest bidder on item. Telegraphic bid modification reasonably susceptible of two varying interpretations, one only making bid price high, it would be prejudicial to other bidders to permit bidder who created ambiguity to select after bid opening the interpretation to be adopted---------- 302
Telegraphic
Late receipt. (*See* Bids, late, telegraphic modifications)
Negotiation matters. (*See* Contracts, negotiation)
Omissions
Prices in bid
Failure to submit price for one of four military installations at which delivery is to be made of coveralls solicited under invitation that requested individual prices on quantities specified for each installation is not clerical oversight that may be waived as minor irregularity pursuant to par. 2-405 of Armed Services Procurement Reg., and omitted price may not be inserted on basis single price quoted for other three installations applies to entire quantity solicited because bidder had checked block captioned "100% of all quantities to be awarded or none" in bid form, nor may nonresponsive bid be considered for partial award. As award of whole contract is in best interests of Govt., it may be made to responsive and responsible bidder offering low aggregate bid whose per unit net price for entire procurement is reasonable although slightly higher than that of nonresponsive bidder---------- 852
Options
Exercise of option. (*See* Contracts, options)
Peddling. (*See* Contracts, subcontracts, bid shopping)
Prebid conference effect
Mandatory requirement to attend prebid conference contained in request for proposals for purpose of explaining extremely complex project may not be considered condition precedent to submission of proposal, as conditions or requirements that tend to restrict competition are unauthorized unless reasonably necessary to accomplish legislative purposes of contract appropriation involved or are expressly authorized by statute. To satisfy maximum competitive requirements of Federal Procurement Regs., prospective offeror who failed to attend conference should be permitted to submit proposal and given copy of prebid transcript. However, date for receipt of proposals having passed, new closing date should be set to enable firm denied opportunity to participate to submit proposal, and responding offerors to revise proposals---------- 355
Prices
Block bidding. (*See* Bids, block bidding)
"Buying in" basis
Where low bid price had been confirmed, negating existence of mistake, suspicion of "buying in" does not require rejection of bid because low bidder submitted unprofitable price. Par. 1-311(a) of Armed Services Procurement Reg. in defining "buying in" as practice of attempting to obtain contract award by knowingly offering price or cost estimate less than anticipated costs with expectation of recovering any losses, either during contract performance or in future "follow-on" contracts,

BIDS—Continued Page
Prices—Continued
"Buying in" basis—Continued
does not provide for bid rejection and, therefore, there is no legal basis upon which award may be precluded or disturbed because low bidder submitted unprofitable price 50
Qualified
Ambiguous bid
Unsolicited insertion of plant part numbers in low bid to furnish engine air filters without express statement that specifications would be complied with created ambiguity that may not be resolved by reference to "catalog cut sheets" and other data available to Govt. before bid opening, as reliance on this information would afford bidder option to affect responsiveness of bid—an option detrimental to the competitive bidding system. Therefore, as contracting officer cannot determine whether bidder offered conforming article or that part numbers were included for purpose of internal control, bid is considered qualified bid and may not be considered for award 8
Interest on past due invoices
Rejection of bid under solicitation issued for Federal Supply Schedule contract to furnish wood office furniture because of inclusion of qualifying provision "1½% interest per month on past due invoices," which contracting officer refused to delete, was proper under sec. 1-2.404-2(b)(5) of Federal Procurement Regs. Regulation provides for rejection of bid if bidder imposes conditions which would modify requirements of invitation, or limit his liability or rights of Govt. to his advantage, and although objectionable conditions may be deleted if they do not go to substance of bid—that is, that they only have trivial or negligible effect on price, quantity, quality, or delivery—condition imposed affected price and could not be deleted. Furthermore, contracting officer is without authority to obligate Govt. to pay interest on unpaid invoices. 5 Comp. Gen. 649, modified 733
Letter containing conditions not in invitation
Determination to open late bid received on one of two technical proposals submitted under first step of two-step procurement and found acceptable, even though equipment offered did not meet all details of specifications, was proper since delay in delivery of bid received more than 24 hours before bid opening was due to Govt. mishandling. Although bid was accompanied by covering letter and unsolicited descriptive literature at variance with specifications, it is nevertheless responsive bid; for it is inconceivable that low bidder, who had qualified under first step, would disqualify itself in second step and, therefore, deviating material is viewed as attempt to identify which of two accepted first-step proposals was being priced in second step 337
Qualified products. (*See* Contracts, specifications, qualified products)
Sales. (*See* Sales)
Samples. (*See* Contracts, specifications, samples)
Signatures
Agents
Authority. (*See* Agents, of private parties, authority, contracts, signatures)
Small business concerns. (*See* Contracts, awards, small business concerns)

BIDS—Continued Page

Specifications. (*See* Contracts, specifications)

Surplus property. (*See* Sales)

"Two bites at the apple." (*See* Contracts, specifications, failure to furnish something required, information)

Two-step procurement

Changes in requirements

Notice

Requirement in par. 2-208(a) of Armed Services Procurement Reg. (ASPR) that amendments to invitations for bids must be sent to everyone to whom invitations had been furnished has reference to amendments issued under competitive system prior to opening of bids; and, therefore, amendment issued after closing date for receipt of technical proposals to only two concerns out of 37 potential suppliers solicited under first step of two-step procurement who had responded to Request for Technical Proposals (RFTP) was proper and in accord with ASPR 3-805.1(e), relative to changes occurring in requirements during negotiations. In fact, if firms who had not responded to RFTP had been furnished copies of amendment and responded, provisions of "Late Proposals and Modifications" clause would be for application---------- 346

Second step

Deviating from first step

Determination to open late bid received on one of two technical proposals submitted under first step of two-step procurement and found acceptable, even though equipment offered did not meet all details of specifications, was proper since delay in delivery of bid received more than 24 hours before bid opening was due to Govt. mishandling. Although bid was accompanied by covering letter and unsolicited descriptive literature at variance with specifications, it is nevertheless responsive bid; for it is inconceivable that low bidder, who had qualified under first step, would disqualify itself in second step and, therefore, deviating material is viewed as attempt to identify which of two accepted first-step proposals was being priced in second step---------- 337

Technical proposals

Deficiencies

Minor deviations

Minor revision of unpriced technical proposal, first-step of two-step procurement for retrieval system, that had initially been found unacceptable was not prejudicial to other bidders for Govt. under procedure contemplated by par. 2-503.1 is free to discuss submitted proposal with offeror if clarification or additional information will bring proposal to acceptable status since two-step procedure extends benefits of advertising to procurements previously negotiated, and while second-step of procedure is conducted in accordance with formal advertising, first-step contemplates maximizing competition. Therefore, low bidder originally incorrectly placed in unacceptable category, having submitted acceptable technical proposal and confirmed extremely low price bid may properly be awarded contract---------- 866

BIDS—Continued Page
Two-step procurement—Continued
Technical proposals—Continued
Qualification requirements
Under letter request, first step of two-step procurement, which contained "Bidder's Technical Qualification Clause" stating technical proposals would be accepted only from those contractors who have manufactured and can demonstrate at operating airfield a Solid State Conventional Instrument Landing System, evaluation of capabilities of prime contractor and its subcontractor—French firm who manufactured and demonstrated system in France—although within policy enunciated in par. 4–117 of Armed Services Procurement Reg., which recognizes integrity and validity of contractor team arrangements, was contrary to intent of clause, and proposal premised on subcontractor's system should not have been considered. Therefore, in future procurements, clause should specify permissible relationships or refer to ASPR provision---------- 163
Use basis
Administrative authority
While second step of two-step method of procurement is conducted under principles of formal advertising pursuant to par. 2–503.2 of Armed Services Procurement Reg., first step of procedure, in furtherance of goal of maximized competition, contemplates qualification of as many technical proposals as possible under negotiation procedures; and as this two-step procedure is intended to extend benefits of competitive advertising to procurements which previously were either negotiated competitively or negotiated on sole source basis, determination how to best satisfy Govt.'s requirements is within ambit of sound administrative discretion, and use of two-step procedure will not be questioned when supported by record---------- 346
Injunction to prevent
Offeror who was granted court injunction to prevent opening of bids and award of contract under two-step procurement, and who protested use of two-step method to obtain ship's hull side blast-cleaning unit, stating Navy was required pursuant to pars. 3–108 and 3–214 of Armed Services Procurement Reg. to negotiate sole source contract with it as developer of unit, has no basis for objection. Secretary only has authority to determine that sole source procurement to avoid duplication of investment and effort is justified, and evidence did not warrant invoking his authority; and as conditions prescribed in par. 2–502(a) of regulation for use of two-step method of procurement existed, determination to use this method was within cognizance of procurement officers---------- 346
BOARDS, COMMITTEES, AND COMMISSIONS
Members
Appointment limitations
An attorney in private practice serving 3-year term as member of Advisory Council on Urban Transportation, Dept. of Transportation, established by Pub. L. 89–670, and which meets only a few days each year, who is paid per diem on "when-actually-employed basis" and travel expenses is ineligible to serve on National Water Commission, even if different days are devoted to intermittent service for each agency, as Council member is considered to have status similar to that of intermittent consultant employed and compensated on daily basis and held to

BOARDS, COMMITTEES, AND COMMISSIONS—Continued Page
Members—Continued
Appointment limitations—Continued
be officer or employee of U.S., and, therefore, is prohibited from accepting appointment with Commission by language of National Water Commission Act that "no member of the Commission, during his period of service on the Commission, hold any other position as an officer or employee of the United States * * *."---------- 736
BONDS
Bid
Joint venture
Bid acceptability
Low bid submitted under total small business set-aside for Air Force Base construction project which bore three names of joint venture shown in bid bond accompanying bid, but was signed by president of only small business concern involved, may not be awarded to either joint venture or small business concern on basis two large business firms had associated with small business concern only for purpose of obtaining bid bond. As to joint venture, there was none at time of bid submission or opening, and subsequently submitted information could not create joint venture for purpose of bid ratification—even if it could, joint venture as large concern would be ineligible for award, nor would award to small concern be proper as bid bond named joint venture as principal---------- 530
BRIDGES
Construction
Necessitated by highway relocation
As replacement highway bridge over Cross-Florida Barge Canal is required to be constructed in accordance with sec. 207(c), Pub. L. 87-874, Oct. 23, 1962, which limits construction of replacement facility to State design standards that apply to roads of same classification, determined on basis of traffic existing at time of taking, approval by Corps of Engineers of two two-lane bridges to be constructed at Govt. expense in lieu of existing two-land highway in order to accommodate future growth constitutes betterment of facility in contravention of sec. 207(c) and, therefore, funds available to Corps may not be used to construct second bridge, whether or not design standard was in actual practice or published. However, State standards that provide for range of traffic rather than projected future traffic count are acceptable---------- 661
BUY AMERICAN ACT
Applicability
Contractors' purchases from foreign sources
Effect
Procedure that invites bidders and offerors to furnish surgical steel blades made from either domestic carbon steel or imported stainless steel without indicating preference, leaving determination of availability of domestic steel to bidders or offerors, is defective procedure as composition of steel selected for end product is, under definition in par. 6-001 of Armed Services Procurement Reg., component of end product and subject to restrictions of Buy American Act, 41 U.S.C. 10a-d. Therefore, when carbon steel is available, restrictions of act may not be waived for product manufactured in U.S. from foreign steel. Furthermore, determination to exempt item from restrictions of act must, in accordance with ASPR 6-103.2(a), be included in solicitation---------- 239
Bids. (*See* Bids, Buy American Act)
Contracts. (*See* Contracts, Buy American Act)

CANAL ZONE Page
Employees
Hired overseas
Residence in United States, etc.
Former employee of Canal Zone Govt. whose place of actual residence was in California, but who at time of appointment was temporarily residing in Costa Rica, and who had transported his household goods to Costa Rica in his own truck prior to signing employment agreement, which he signed in Costa Rica prior to travel to Canal Zone, may be reimbursed travel and transportation expenses from Costa Rica to Canal Zone in accordance with provisions of Office of Management and Budget Cir. No. A–56, but he may not be reimbursed expenses of moving from California to Costa Rica since these expenses were not incurred in anticipation of his appointment in Canal Zone ---------- 644
CHECKS
Endorsement
Other than payee
Tax refund
Liability for proceeds of income tax refund check bearing only initials of husband and wife still married but separated at time of endorsement by husband and deposited in joint account with his mother, whose initials were similar to wife's, is for determination by Federal and not State law in interest of uniformity. Although use of initials did not facilitate forgery and ordinarily cashing bank would be required to refund one-half of check, as in "same name cases," reclamation proceedings against bank are not required since joint income tax is treated as return of single individual and payment to husband as one of joint obligees extinguished liability of Govt. for tax overpayment, and ownership rights of spouses are for determination by local law in appropriate proceedings ---------- 441
CITIES, CORPORATE LIMITS
Erroneous determinations
Retroactive adjustments
Treatment of Fort Stewart and Hunter Army Airfield, located 40 miles apart, as one installation with one staff which resulted in movement of military and civilian personnel freely between both installations without competent orders directing permanent change-of-station or performance of temporary duty may not be corrected by issuance of retroactive orders to confirm assignments and authorize travel allowances for temporary duty or permanent change-of-station allowances incident to assignments, even though for purposes of Joint Travel Regs., installations are considered different stations since retroactive orders would be without effect to change vested rights of personnel involved ---------- 803
CLAIMS
Assignment
Federal grants-in-aid
Legality of assignment
Amounts due or to become due under grants of Federal funds to medical college for construction and restoration of facilities authorized by Public Health Service Act, as amended, may be assigned to bank pursuant to Assignment of Claims Act of 1940, as amended, to enable grantee to obtain interim financing for purpose of making progress payments to contractor, as acceptance of grant subject to conditions imposed

CLAIMS—Continued Page
Assignment—Continued
Federal grants-in-aid—Continued
Legality of assignment—Continued
by Govt. created valid contract within meaning of 1940 act, and as assignment is not forbidden under grant. However, in accordance with requirements of act, assignment should cover amount payable under grants without regard to status of account between college and bank; and, furthermore, grantee is not foreclosed from financing non-Federal share of costs with borrowed funds---------- 470
"Financing Institutions" requirement
Pension funds
Assignment of moneys to become due from U.S. under lease agreement may be made to Public Employees' Retirement System and State Teacher's Retirement System of State of California using trust funds to furnish permanent financing for building being constructed for Govt. The Systems qualify as "financing institutions" within purview of Assignment of Claims Act of 1940, as amended, 31 U.S.C. 203, as nothing in act indicates exclusion of pension funds, and primary functions of trust corpus, together with trustees, is investing of assets of trust. However, act limits assignment to one party, "except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing."---------- 613
Fraud perpetrated by assignor
Government's liability
Since under Assignment of Claims Act of 1940, as amended, Govt. is not insurer as to fraudulent schemes devised by assignor against assignee, nor is Govt. required to involve assignee in matters of contract administration, claim for amount of fictitious invoices presented by assignee of drayage company performing services for Govt., which were retrieved by assignor prior to payment, may not be honored as record presents no grounds to impute negligence to or assert estoppel against Govt., but instead raises doubt as to validity of assignee's claim. Although claim must be rejected, as jurisdiction of GAO to pay claims is based upon legal liability of U.S., assignee's right to see judicial determination of its claim is not prejudiced---------- 434
Doubtful
Compensation
Procedure for handling
Claims for 8 hours of additional compensation at overtime rates that are presented to Corps of Engineers by civilian wage board employees who performed 24-hour tours of duty on dredges and other floating plants, receiving compensation for only 8 hours of work on straight-time basis may be paid, if properly documented, by Corps on basis of two-thirds rule in *Detling* and *France* consolidated cases, 432 F. 2d 462 (1970). However, doubtful claims should be forwarded for settlement to Claims Division of U.S. GAO pursuant to 4 GAO 5.1, and when 10-year limitation act of Oct. 9, 1940 is involved and claims cannot be promptly approved and paid in full amount claimed, they should be forwarded to Claims Division for recording under 4 GAO 7.1, and after recording claims will be returned to Corps for payment, denial, or referral back to GAO for adjudication---------- 767

CLAIMS—Continued Page
Evidence to support
Best evidence available
Acceptability
Where claims of civilian wage board employees of Corps of Engineers for 8 hours overtime compensation, which are presented on basis of consolidated cases of *Detling* and *France*, 432 F. 2d 462, incident to 24-hour port watch aboard hopper dredges or other floating plants and receipt of only 8 hours straight-time compensation, cannot be adequately documented, payment may be made by Corps on basis of most accurate estimate after considering all available records. For example, if time and attendance records are missing for some part of period claimed but available pay and leave records support reasonably accurate estimates of standby duty, estimates will be considered sufficiently documented, or where no signed logs can be found for standby duty claimed, next best evidence—duty rosters—may be used to substantiate payment of overtime 767
Settlement by General Accounting Office
Claim denied
Claim submitted for consideration under settlement authority in 31 U.S.C. 71 for additional compensation to cover required correction in printing of technical publication, which had been disallowed by contracting officer and appeal to disallowance denied by administrative officer, may not be paid on basis prior uncorrected orders had been accepted, where record shows contractor agreed to correct error without cost to Govt., and supplemental agreement providing charge for work—insertion of fold-ins in publication in indicated sequence—has reference to future orders. Furthermore, alleged subsequent oral agreement may not be considered, as review is restricted to record before contracting agency at time the head of agency rendered decision 369
Statutes of limitation. (*See* Statutes of Limitation, claims)
COAST GUARD
Enlisted personnel
Service credits
Inactive time
Inactive Naval Reserve cadet or midshipman time served before July 1949 by Regular Coast Guard officer or enlisted man retiring either for years of service under 14 U.S.C. 291, 292, 354, or 355, for age pursuant to 14 U.S.C. 293 or 353, or for disability as provided in ch. 61, Title 10, U.S. Code, is not allowable for purpose of retirement. Sec. 291, in providing for voluntary retirement of commissioned officers after 20 years of service requires such service to have been "active service;" word "service" in secs. 292, 354, and 355, authorizing voluntary retirement for commissioned officers after 30 years, and for enlisted men after 30 or 20 years, has been interpreted since 1948 as "active service;" secs. 293 and 353 in providing for compulsory retirement at age 62 make no reference to years of service; and under 10 U.S.C. 1208 disability retirement is computed on basis of active service 308
Although inactive Naval Reserve cadet or midshipman time served before July 1949 by Regular Coast Guard officer or enlisted man retiring either for years of service, for age, or for disability, may not be credited for purpose of retirement, service counts for multiplier credit and in

COAST GUARD—Continued Page
Enlisted personnel—Continued
Service credits—Continued
Inactive time—Continued
accordance with 14 U.S.C. 423, years of service are to be computed under 10 U.S.C. 1405(4), due to fact that pursuant to 10 U.S.C. 1333 such service is "service other than active service) in a reserve component of an armed force." However, full-time credit may not be given inactive service in determining multiplier factor under 14 U.S.C. 423 and 10 U.S.C. 1405(4), since service is subject to computation method provided in 10 U.S.C. 1333(4)---------- 308
In crediting inactive Naval Reserve cadet or midshipman service performed before July 1949 by Regular Coast Guard officer or enlisted man for retirement purposes, there is no distinction to be drawn between status of "Cadet, MMR, USNR," or "Midshipman, MMR, USNR," inasmuch as persons having either status are regarded as members of U.S. Naval Reserve---------- 308
COLLECTIONS
Debt. (*See* Debt Collections)
COLLEGES, SCHOOLS, ETC.
Land grant colleges
Investments
Since Federal City College is land grant college within purview of "First Morrill Act" as provided by Dist. of Columbia Education Act, land grant funds available to college are exempted from 47 D.C. Code 135, which directs investment in U.S. Treasury securities, and Congress in education act approved investment in accordance with land grant act in "bonds of the United States or of the States or some other safe bonds." "Other safe bonds" are obligations of various Federal agencies, other than Treasury securities, that are guaranteed by U.S., industrial bonds approved for investment by fiduciaries under Rules of U.S. Dist. Court, and certificates of deposit in federally insured banks, but not savings accounts in banks or savings and loan associations. Furthermore, deficiencies from investments may be made up from appropriations, and to minimize losses, bonds may be sold before maturity---------- 712
Teachers employed by Defense Department overseas. (*See* Defense Department, teachers employed in areas overseas)
Work study programs
Economic Opportunity Act
Agency participation apart from grant agreement
Limitation in Economic Opportunity Act (42 U.S.C. 2754(b)) requiring that work-study grant agreements with institutions of higher education provide that "Federal share" of compensation of students employed in College Work-Study Program will not exceed 80 percentum of compensation paid to students, pertaining only to payments from grants made by Office of Education to institutions and not to payments made by other Federal agencies where students are employed, employing agencies may bear larger portion than 20 percent of student earnings so that grant funds may be spread over greater number of students. Whether agency should pay social security tax on its contribution to student's salary, and if so in what amount, is for determination by Commissioner of Internal Revenue Service---------- 553

COMPENSATION Page

Additional

Evironmental pay differential

Compensatory time in lieu

Air National Guard technicians, whether they are wage or nongraded employees or General Schedule employees, who for 12-hour workday receive 4 hours compensatory time for work in excess of 8 hours a day, or receive compensatory time for 8-hour Sunday tour of duty, are not entitled to environmental differential pay, night shift differential pay, or premium pay, as 32 U.S.C. 709(g) in authorizing Secretary concerned to prescribe hours of duty for technicians and to fix their basic compensation or additional compensation, provides for granting of compensatory time in amount equal to time spent in irregular or overtime work with no compensation for compensatory time, since compensatory time is intended to be in lieu of overtime or differential pay for additional hours of work ---------- 847

Constitutes basic pay

Environmental pay differential for dirty work having been authorized for Dist. of Columbia wage employees by proper wage fixing authority in accordance with 5 U.S.C. 5341, and in conformity with commercial practices, differential may be considered basic pay, whether stated separately or included in scheduled rates, for purposes of computing wage board overtime and Sunday rates prescribed in 5 U.S.C. 5544, the Civil Service Retirement Deductions authorized in 5 U.S.C. 8334, and for determining annual rate of pay for group life insurance provided in Federal Personnel Manual, Supp. 870–1, Subch. 83–3a, and differential may be paid to employees while in leave status ---------- 66

Premium pay in lieu

Air National Guard technician who assigned to 24-hour tour of duty at Air National Aircraft Control and Warning Site receives 12 percent annual premium pay under 32 U.S.C. 709(g), which is prescribed for unusual tours of duty, irregular duty, or additional duty, and work on days that are ordinarily nonworkdays, when exposed to duty in hazardous category is not entitled to environment differential pay since premium pay not to exceed 12 percent of basic pay is authorized to be paid in lieu of additional compensation, including differentials and overtime compensation ---------- 847

Adjustment

Appointment erroneous

Upon determination that employee who received excepted Schedule B appointment at grade GS–9 was discriminated against because of race or sex, which is expressly prohibited by 5 U.S.C. 7154(b) and 5 CFR 713.202, as she qualified for a GS–11 position and was assigned and performed work warranting a GS–11 classification, correction of personnel action and adjustment in pay is legally justified on basis original classification and appointment as GS–9 was illegal, and corrective action is not viewed as retroactive promotion such as ordinarily is prohibited by law ---------- 581

Basic. (*See* **Compensation, what constitutes**)

COMPENSATION—Continued Page

Double

Civilian and disability compensation

Regular Air Force sergeant retired pursuant to 10 U.S.C. 8914, who while employed as civilian in Federal Govt. loses use of finger, is not entitled to concurrent payment of civilian disability compensation and military retired pay on basis the compensation would be paid for permanent partial disability and not temporary total disability, thus bringing payment within exception to dual payment prohibition contained in 5 U.S.C. 8116(a). In application of limitation in sec. 8116(a), there has been no recognition of distinction between temporary and permanent disability, as statute makes no such distinction insofar as concurrent receipt of military or naval retired pay is concerned, and legislation would have to be enacted to permit concurrent payment of retired pay and disability compensation 491

Concurrent military retired and civilian service pay

Reduction in retired pay

Not required

Although civilian position held by retired officer of Regular component of uniformed services in U.S. Army Special Services Agency, Europe—local nonappropriated fund activity—is position subject to reduction of retired pay prescribed by 5 U.S.C. 5532(b), reduction is not required in officer's retired pay as reduction would exceed amount officer receives from civilian employment with additional reduction in retired pay, result that is not within contemplation of Dual Compensation Act of 1964, for it is unreasonable to require retired officer to accept smaller amount after employment in civilian position with Govt. than amount of retired pay he was receiving before that time 604

Concurrent military retired pay and disability compensation. (*See* Officers and Employees, death or injury, disability compensation, etc.)

Exemptions

Dual Compensation Act

Disability "as a direct result of armed conflict," etc.

Conclusion that exemption provision in Dual Compensation Act (5 U.S.C. 5532(c)) to requirement that retired pay of Regular officer must be reduced when employed as civilian by Federal Govt. (5 U.S.C. 5532(b)) applies only if retirement was direct result of armed conflict, or was caused by instrumentality of war in wartime, is justified on basis of legislative history of provision and its longstanding administrative interpretation; and, therefore, *Mross* v. *United States*, 186 Ct. Cl. 165, holding that disability—perforated eardrum—that was war-incurred but was not disabling and did not constitute significant factor in officer's retirement met requirements of exception to dual compensation restriction will not be followed as case is based on particular facts involved 480

Military retired pay and civilian retirement

A retired member of uniform services whose military service upon retirement from civilian employment is not used to establish civil service annuity eligibility but is only used in computation of annuity to increase amount payable, may withdraw his waiver of retired pay and have pay reinstated as no double benefit would result from same service by terminating use of military service to compute civil service annuity

COMPENSATION—Continued Page

Double—Continued

Military retired pay and civilian retirement—Continued

and reinstating retired pay, and 5 U.S.C. 8332(e) provides that civil service retirement does not affect right of employee to retired pay, pension, or compensation in addition to annuity payable upon retirement from Federal civilian service 80

Downgrading

Saved compensation

Temporary promotions

Employee demoted from GS–5, step 9, to GS–4, step 10, with salary retention pursuant to 5 U.S.C. 5337, who accepts temporary promotion and then returns to same grade to which initially demoted has not forfeited entitlement to salary retention authorized for 2 years by sec. 5337, retention period to commence on date of demotion, Sept. 16, 1968. Temporary promotion did not affect running of salary-retention period, as employee by virtue of temporary promotion is not considered as having become "entitled to a higher rate of basic pay by operation of" the classification law within meaning of 5 U.S.C. 5337—a bar to salary-retention coverage 82

Highest previous rate. (*See* **Compensation, rates, highest previous rate**)

Increases

Retroactive

Employee separated prior to effective date of increase

Employee of Federal Govt. who transferred to public international organization with reemployment rights under 5 U.S.C. 3582(b), prior to enactment of Federal Employees Salary Act of 1970, is not entitled to retroactive salary adjustment authorized by act for employees on rolls on effective date of act—Apr. 15, 1970—condition precedent to entitlement. However, since under sec. 3582(b) employee who transfers to public international organization is guaranteed that upon reemployment compensation payable will not be less than if employee had remained on Govt. rolls, any salary adjustment required upon reemployment may include retroactive salary payment employee would have received if on rolls on Apr. 15, 1970 173

Highest previous rate

Where agency has policy to extend benefit of highest previous rate rule prescribed in 5 U.S.C. 5334(a), salary of employee who left Post Office Dept. during retroactive period between enactment of Postal Reorganization Act and its effective date may be adjusted to reflect increase authorized by act; and where agency does not have established policy, but did give employee benefit of last Post Office Dept. rate, it is within agency's discretion whether or not to adjust employee's salary to reflect increase in Post Office rate. However, sec. 531.203(d)(4) of Civil Service Commission Regs. relating to general increases in General Schedule and not to special increases, employee who was not on rolls at time of enactment of Reorganization Act may not be given benefit of increased rate for purposes of "highest previous rate" rule 414

COMPENSATION—Continued Page
Increases—Continued
Retroactive—Continued
Military service furlough during retroactive period
Fact that reemployed civilian who while on military furlough served on active military duty was on civilian roll on Apr. 15, 1970, date of enactment of Federal Employees Salary Act of 1970, Pub. L. 91-231, does not entitle him under act to retroactive adjustment in basic pay for active military duty performed during period Jan. 1, 1970, through Mar. 15, 1970, as act provides compensation increases for Federal classified employees only. However, although Pub. L. 90-207, Dec. 16, 1967, provides for increase in basic pay for military personnel whenever general schedule of compensation for Federal classified employees is increased. Secretary of Defense in implementing 1970 act pursuant to E. O. No. 11525 prescribed that member must have been on active duty on Apr. 15, 1970, to be entitled to retroactive adjustment in pay 226
Status changes during period
Former General Schedule employees of Post Office Dept. who transferred to higher General Schedule position in another agency between Aug. 12, 1970, date of enactment of Postal Reorganization Act, which provides approximately 8-percent salary increase, and effective date of act, first pay period beginning on or after Apr. 16, 1970, are entitled to have "not less than two-step increase" authorized in 5 U.S.C. 5334(b) for employees who are promoted or transferred, computed on revised General Schedule rate of Post Office Dept.; for in absence of specific language to contrary, rule for application is that retroactive salary increases apply as if increase had been in force and effect at time of change of status of employee 414
Military pay. (*See* Pay)
Night work
Basic compensation determination
When employee's wage board position is changed by agency action to General Schedule while he is working night shift, basic rate of pay preserved to employee under sec. 539.203 of Civil Service Regs. includes night differential, as it is "rate of pay fixed by * * * administrative action" within contemplation of sec. 539.202(c), defining "rate of basic pay." Inclusion of night differential in establishing employee's General Schedule rate of pay does not preclude receipt of prescribed 10 percent night differential so long as he remains on night shift, but differential is not to be included in employee's retirement and life insurance base ... 332
Compensatory time in lieu
Air National Guard technicians, whether they are wage or nongraded employees or General Schedule employees, who for 12-hour workday receive 4 hours compensatory time for work in excess of 8 hours a day, or receive compensatory time for 8-hour Sunday tour of duty, are not entitled to environmental differential pay, night shift differential pay, or premium pay, as 32 U.S.C. 709(g) in authorizing Secretary concerned to prescribe hours of duty for technicians and to fix their basic compensation or additional compensation, provides for granting of compensatory time in amount equal to time spent in irregular or overtime work with no compensation for compensatory time, since compensatory time is intended to be in lieu of overtime or differential pay for additional hours of work 847

COMPENSATION—Continued Page

Overpayments

Waiver

Aliens

Authority in 5 U.S.C. 5584 to waive erroneous payments of compensation made to employees of executive agencies is applicable to non-U.S. citizens employed by U.S. in foreign areas, as term "employee" as used in sec. 5584 means employee as defined in 5 U.S.C. 2105; that is, individual appointed in "civil service," which constitutes all appointive positions in executive, judicial, and legislative branches of Govt., except positions in uniformed services (5 U.S.C. 2101(1)). Therefore, Philippine citizen, properly appointed to position in executive branch to perform Federal function supervised by Federal employee, is employee under 5 U.S.C. 5584 and entitled to waiver of erroneous compensation payments without regard to fact employment is under labor agreement with Philippine Govt ---------- 329

Public Law 90-616. (*See* Debt Collections, waiver, civilian employees)

Overtime

Inspectional service employees

Skyjacking prevention

Customs inspectors who conduct predeparture inspection of air passengers bound for overseas as deterrent to skyjacking in accordance with Presidential program are not entitled to payment of overtime compensation under 19 U.S.C. 267, but rather under Federal Employees Pay Act of 1945 (5 U.S.C. 5542), even though inspections are necessary for safety of passengers and for protection of air carriers against air piracy, as inspection duties involved would not be custom duties prescribed by 19 U.S.C. 267, which are duties performed in connection with lading on Sundays, holidays, or at night of merchandise or baggage entered for transportation under bond or for exportation with benefit of drawback, or other merchandise or baggage required to be laden under customs supervision ---------- 703

Traveltime

In administration of inspection and grading programs, when events are not within control of Dept. of Agriculture, and Agricultural Commodity Grader is required to travel 8½ hours on Sunday to report for duty at 8 a.m. on Monday to inspect and checkload shipment of peanut butter being purchased by Dept., travel is compensable at overtime rates prescribed in 5 U.S.C. 5542(b)(2)(B), as travel could not have been scheduled within employee's regular hours. Fact that Govt. is reimbursed for all costs incurred in providing inspection and checkloading services has no bearing on employee's entitlement to payment of overtime for services performed ---------- 519

Dept. of Agriculture employee returning from performing temporary duties of Agriculture Commodity Grader, whose air flight was delayed, is entitled under 5 U.S.C. 5542 to compensation for "usual waiting time" for interrupted travel that is prescribed by Federal Personnel Manual, which means time necessary to make connections in ordinary travel situation, consistent with performance of travel as expeditiously as possible, with extension of time for heavy holiday traffic and inclement weather, minus time for eating and rest. As traveltime that cannot be scheduled or controlled qualifies for work, employee whose regular tour of duty is

COMPENSATION—Continued Page
Overtime—Continued
Inspectional service employees—Continued
Traveltime—Continued
8 a.m. until 4:30 p.m., having traveled from 3:10 a.m. to 10:30 a.m. on Thanksgiving day, is entitled to payment at overtime rate from 3:10 a.m. to 8 a.m. and at holiday premium pay rate from 8 a.m. to 10:30 a.m. 519
Under Agricultural Marketing Act of 1946 (7 U.S.C. 1622), Dept. of Agriculture is required to perform inspection and grading services when products are shipped or received in interstate commerce; and, therefore, required services are not within control of Dept. to enable scheduling of inspector's travel during regular duty hours. Therefore, Agricultural Commodity Grader whose travel could not be scheduled during regular duty hours is entitled to be compensated for travel at overtime rates prescribed by 5 U.S.C. 5542(b)(2)(B) ---------- 519
Standby, etc., time
Two-thirds rule
Aboard vessels
A Corps of Engineers civilian wage board employee who performed 24-hour port watch duty aboard seagoing hopper dredge and received only 8 straight-time hours of compensation is entitled to payment for additional 8 hours claimed, and properly documented, at overtime rates on basis of consolidated cases of *Detling et al.* v. *U.S.*, and *France et al.* v. *U.S.*, 432 F. 2d 462 (1970), in which court held plaintiffs were in standby duty for time in excess of 8 hours and applied two-thirds rule, allowing 8 hours for sleeping and eating time, and awarded plaintiffs 8 hours of additional compensation at overtime rates pursuant to 5 U.S.C. 5544, rule that has been followed in decisions of Comptroller General ---------- 767
Claims for 8 hours of additional compensation at overtime rates that are presented to Corps of Engineers by civilian wage board employees who performed 24-hour tours of duty on dredges and other floating plants, receiving compensation for only 8 hours of work on straight-time basis may be paid, if properly documented, by Corps on basis of two-thirds rule in *Delting* and *France* consolidated cases, 432 F. 2d 462 (1970). However, doubtful claims should be forwarded for settlement to Claims Division of U.S. GAO pursuant to 4 GAO 5.1, and when 10-year limitation act of Oct. 9, 1940 is involved and claims cannot be promptly approved and paid in full amount claimed, they should be forwarded to Claims Division for recording under 4 GAO 7.1, and after recording claims will be returned to Corps for payment, denial, or referral back to GAO for adjudication ---------- 767
Where claims of civilian wage board employees of Corps of Engineers for 8 hours overtime compensation, which are presented on basis of consolidated cases of *Delting* and *France*, 432 F. 2d 462, incident to 24-hour port watch aboard hopper dredges or other floating plants and receipt of only 8 hours straight-time compensation, cannot be adequately documented, payment may be made by Corps on basis of most accurate estimate after considering all available records. For example, if time and attendance records are missing for some part of period claimed but available pay and leave records support reasonably accurate estimates of standby duty, estimates will be considered sufficiently documented, or

COMPENSATION—Continued Page
Overtime—Continued
Standby, etc., time—Continued
Two-thirds rule—Continued
Aboard vessels—Continued
where no signed logs can be found for standby duty claimed, next best evidence—duty rosters—may be used to substantiate payment of overtime ---------- 767
Traveltime
Administratively controllable
In administration of inspection and grading programs, when events are not within control of Dept. of Agriculture, and Agricultural Commodity Grader is required to travel 8½ hours on Sunday to report for duty at 8 a.m. on Monday to inspect and checkload shipment of peanut butter being purchased by Dept., travel is compensable at overtime rates prescribed in 5 U.S.C. 5542(b)(2)(B), as travel could not have been scheduled within employee's regular hours. Fact that Govt. is reimbursed for all costs incurred in providing inspection and checkloading services has no bearing on employee's entitlement to payment of overtime for services performed---------- 519
When employee of Dairy Division of Division of Consumer and Marketing Services of Dept. of Agriculture is ordered to travel on Sunday in order to attend two national milk hearings scheduled during week, one on Monday morning and other on Friday, requirement in Administrative Procedure Act, 5 U.S.C. 554(b), which provides that convenience of participants should be considered in fixing time and place for hearings, does not remove scheduling of hearings from Dept.'s control, for while provision imposes rule of reasonableness upon agency's freedom in scheduling hearings, it does not require hearings to be scheduled at any particular time. Therefore, traveltime of employee is not traveltime within meaning of 5 U.S.C. 5542(b)(2)(B) that is compensable as overtime---- 519
Under Agricultural Marketing Act of 1946 (7 U.S.C. 1622), Dept. of Agriculture is required to perform inspection and grading services when products are shipped or received in interstate commerce; and, therefore, required services are not within control of Dept. to enable scheduling of inspector's travel during regular duty hours. Therefore, Agricultural Commodity Grader whose travel could not be scheduled during regular duty hours is entitled to be compensated for travel at overtime rates prescribed by 5 U.S.C. 5542(b)(2)(B)---------- 519
Traveltime of Food Inspector in Consumer Protection Program of Division of Consumer and Marketing Services of Dept. of Agriculture, performed from 9 p.m. Sunday until 4 a.m. Monday—hours outside regular tour of duty—in order to relieve inspector who had been granted nonemergency annual leave, is not compensable as overtime since in scheduling annual leave the need for relief inspector should have been considered and travel of relief inspector scheduled within regular duty hours. Also, return travel of relief inspector outside regular tour of duty was not required by event that could not be scheduled or controlled administratively; and, therefore, return travel from inspection site is not compensable under 5 U.S.C. 5542(b)(2)(B) as overtime---------- 519
Employee performing Sunday through Thursday tour of duty who when directed on Wednesday to travel 100 miles to report for temporary duty at 8 a.m. Saturday, travels on Friday and returns on Saturday in-

COMPENSATION—Continued Page
Overtime—Continued
Traveltime—Continued
Administratively controllable—Continued
stead of traveling Thursday and Sunday, regular workdays, is not entitled under 5 U.S.C. 5544(b) to overtime compensation for traveltime, which having been administratively controllable may not be considered employment. Even if Saturday work was held to be administratively uncontrollable, in view of advance notice to employee, two other requisites must be met to qualify traveltime as hours of work—an official necessity for services and at least two successive off-duty days of travel, and travel requirement was not met by employee---------- 674
Status
Waiting for transportation
Dept. of Agriculture employee returning from performing temporary duties of Agriculture Commodity Grader, whose air flight was delayed, is entitled under 5 U.S.C. 5542 to compensation for "usual waiting time" for interrupted travel that is prescribed by Federal Personnel Manual, which means time necessary to make connections in ordinary travel situation, consistent with performance of travel as expeditiously as possible, with extension of time for heavy holiday traffic and inclement weather, minus time for eating and rest. As traveltime that cannot be scheduled or controlling qualifies for work, employee whose regular tour of duty is 8 a.m. until 4:30 p.m., having traveled from 3:10 a.m. to 10:30 a.m. on Thanksgiving Day, is entitled to payment at overtime rate from 3:10 a.m. to 8 a.m. and at holiday premium pay rate from 8 a.m. to 10:30 a.m---------- 519
Postal service
Rates
Highest previous rate
Postal Reorganization Act increases
Increase in rates of basic compensation authorized by Postal Reorganization Act, approved Aug. 12, 1970, to take "effect on the first day of the first pay period which begins on or after April 16, 1970," and to provide 108 percent of compensation rates in effect prior to enactment of act, may be extended by regulation to employees who transferred to Post Office Dept. prior to Aug. 12, 1970, without regard to "highest previous salary rule" stated in sec. 531.203(c) of Civil Service Regs. issued pursuant to 5 U.S.C. 5334(a) and 5338, thus preserving salary rates of transferred employees in accord with those salary increase acts that over the years contained provisions to overcome restrictions of "highest previous salary rule"—rule that continues to apply to employees transferred on and after Aug. 12, 1970---------- 253
Premium
Compensatory time in lieu
Air National Guard technicians, whether they are wage or nongraded employees or General Schedule employees, who for 12-hour workday receive 4 hours compensatory time for work in excess of 8 hours a day, or receive compensatory time for 8-hour Sunday tour of duty, are not entitled to environmental differential pay, night shift differential pay, or premium pay, as 32 U.S.C. 709(g) in authorizing Secretary concerned to prescribe hours of duty for technicians and to fix their basic compensation or additional compensation, provides for granting of compensatory

COMPENSATION—Continued Page
Premium—Continued
Compensatory time in lieu—Continued
time in amount equal to time spent in irregular or overtime work with no compensation for compensatory time, since compensatory time is intended to be in lieu of overtime or differential pay for additional hours of work ---------- 847
Environmental pay differential
Nonentitlement
Air National Guard technician who assigned to 24-hour tour of duty at Air National Aircraft Control and Warning Site receives 12 percent annual premium pay under 32 U.S.C. 709(g), which is prescribed for unusual tours of duty, irregular duty, or additional duty, and work on days that are ordinarily nonworkdays, when exposed to duty in hazardous category is not entitled to environmental differential pay since premium pay not to exceed 12 percent of basic pay is authorized to be paid in lieu of additional compensation, including differentials and overtime compensation ---------- 847
Promotions
Retroactive
Appointment correction
Upon determination that employee who received excepted Schedule B appointment at grade GS–9 was discriminated against because of race or sex, which is expressly prohibited by 5 U.S.C. 7154(b) and 5 CFR 713.202, as she qualified for a GS–11 position and was assigned and performed work warranting a GS–11 classification, correction of personnel action and adjustment in pay is legally justified on basis original classification and appointment as GS–9 was illegal, and corrective action is not viewed as retroactive promotion such as ordinarily is prohibited by law ---------- 581
Whitten Rider Restriction
Waiver
Following upgrading of entrance grades for attorneys to GS–9 and GS–11 from GS–7 and GS–9, and adjusting of grades as consequence, National Labor Relations Board (NLRB) negotiated agreement with NLRB Professional Assn. to consider shorter time periods for promotions and requested waiver of Whitten Amendment requirement of 1-year ingrade except when only 5 weeks or less remained to complete required year of service, and as agreement entered into pursuant to E.O. No. 10988, which reserved to Govt. authority to promote efficiency of personnel operations, does not guarantee promotions, exercise of 5-week rule is administrative and its validity is not matter for arbitration. Therefore, attorney whose promotion was delayed by reason of 5-week rule is not entitled to retroactive promotion for in absence of administrative error general rule against retroactive promotions applies ---------- 850
Rates
Highest previous rate
Retroactive salary increases
Where agency has policy to extend benefit of highest previous rate rule prescribed in 5 U.S.C. 5334(a), salary of employee who left Post Office Dept. during retroactive period between enactment of Postal Reorganization Act and its effective date may be adjusted to reflect increase

COMPENSATION—Continued Page
Rates—Continued
Highest previous rate—Continued
Retroactive salary increases—Continued
authorized by act; and where agency does not have established policy, but did give employee benefit of last Post Office Dept. rate, it is within agency's discretion whether or not to adjust employee's salary to reflect increase in Post Office rate. However, sec. 531.203(d)(4) of Civil Service Commission Regs. relating to general increases in General Schedule and not to special increases, employee who was not on rolls at time of enactment of Reorganization Act may not be given benefit of increased rate for purposes of "highest previous rate" rule---------- 414
Transfers
Increase in rates of basic compensation authorized by Postal Reorganization Act, approved Aug. 12, 1970, to take "effect on the first day of the first pay period which begins on or after April 16, 1970," and to provide 108 percent of compensation rates in effect prior to enactment of act, may be extended by regulation to employees who transferred to Post Office Dept. prior to Aug. 12, 1970, without regard to "highest previous salary rule" stated in sec. 531.203(c) of Civil Service Regs. issued pursuant to 5 U.S.C. 5334(a) and 5338, thus preserving salary rates of transferred employees in accord with those salary increase acts that over the years contained provisions to overcome restrictions of "highest previous salary rule"—rule that continues to apply to employees transferred on and after Aug. 12, 1970---------- 253
Severance pay
Eligibility
Retired members of the uniformed services
Upon reduction in force as civilian employee of U.S., retired member of uniformed services may not be paid severance pay as 1965 authorizing act (5 U.S.C. 5595) excludes payment of severance pay to person subject to Civil Service Retirement Act or any other retirement law or system applicable to Federal officers or employees or members of uniformed services who at time of separation have fulfilled requirements for immediate annuity—a term including retired pay—and prohibition against payment of severance pay is applicable without regard to when member first becomes entitled to military retired pay, or whether he is eligible under Dual Compensation Act of 1964 (5 U.S.C. 5531–5534) to receive military retired pay concurrently in whole or in part with compensation of his civilian office or position---------- 46
Overpayments
Erroneous payments of severance pay made under 5 U.S.C. 5595 to retired members of uniformed services, who employed as civilians by U.S. were reduced in force, may be waived under provisions of act of Oct. 21, 1968, Pub. L. 90–616---------- 46
Unemployment. (*See* Unemployment Compensation)
Vessel employees
Overtime
Twenty-four hour port watch duty
A Corps of Engineers civilian wage board employee who performed 24-hour port watch duty aboard seagoing hopper dredge and received only 8 straight-time hours of compensation is entitled to payment for

COMPENSATION—Continued Page
Vessel employees—Continued
Overtime—Continued
Twenty-four hour port watch duty—Continued
additional 8 hours claimed, and properly documented, at overtime rates on basis of consolidated cases of *Detling et al.* v. *U.S.*, and *France et al.* v. *U.S.*, 432 F. 2d 462 (1970), in which court held plaintiffs were in standby duty for time in excess of 8 hours and applied two-thirds rule, allowing 8 hours for sleeping and eating time, and awarded plaintiffs 8 hours of additional compensation at overtime rates pursuant to 5 U.S.C. 5544, rule that has been followed in decisions of Comptroller General ---------- 767

Claims for 8 hours of additional compensation at overtime rates that are presented to Corps of Engineers by civilian wage board employees who performed 24-hour tours of duty on dredges and other floating plants, receiving compensation for only 8 hours of work on straight-time basis may be paid, if properly documented, by Corps on basis of two-thirds rule in *Detling* and *France* consolidated cases, 432 F. 2d 462 (1970). However, doubtful claims should be forwarded for settlement to Claims Division of U.S. GAO pursuant to 4 GAO 5.1, and when 10-year limitation act of Oct. 9, 1940 is involved and claims cannot be promptly approved and paid in full amount claimed, they should be forwarded to Claims Division for recording under 4 GAO 7.1, and after recording claims will be returned to Corps for payment, denial, or referral back to GAO for adjudication---------- 767

Where claims of civilian wage board employees of Corps of Engineers for 8 hours overtime compensation, which are presented on basis of consolidated cases of *Detling* and *France*, 432 F. 2d 462, incident to 24-hour port watch aboard hopper dredges or other floating plans and receipt of only 8 hours straight-time compensation, cannot be adequately documented, payment may be made by Corps on basis of most accurate estimate after considering all available records. For example, if time and attendance records are missing for some part of period claimed but available pay and leave records support reasonably accurate estimates of standby duty, estimates will be considered sufficiently documented, or where no signed logs can be found for standby duty claimed, next best overtime ---------- 767
Wage board employees
Conversion to classified positions
Rate establishment
When employee's wage board position is changed by agency action to General Schedule while he is working night shift, basic rate of pay preserved to employee under sec. 539.203 of Civil Service Regs. includes night differential, as it is "rate of pay fixed by * * * administrative action" within contemplation of sec. 539.202(c), defining "rate of basic pay." Inclusion of night differential in establishing employee's General Schedule rate of pay does not preclude receipt of prescribed 10 percent night differential so long as he remains on night shift, but differential is not to be included in employee's retirement and life insurance base---------- 332

COMPENSATION—Continued Page

Wage board employees—Continued

Coordinated Federal wage system

Compensation adjustments

Employees in wage area converted to Coordinated Federal Wage System in July 1969 who subsequent to consolidation in November 1969 with another wage area became entitled to higher wage rates retroactively prescribed by "Monroney Amendment," 5 U.S.C. 5341(c), may be paid higher rates from retroactive effective date of amendment to date their wage area was consolidated but not beyond that date, for to do so would require giving retroactive effect, contrary to general rule, to Oct. 2, 1970, salary retention provision added to Coordinated Wage System to provide for indefinite salary retention for employees adversely affected by changes in wage area boundaries---------- 635

Environmental differential payments

Environmental pay differential for dirty work having been authorized for Dist. of Columbia wage employees by proper wage fixing authority in accordance with 5 U.S.C. 5341, and in conformity with commercial practices, differential may be considered basic pay, whether stated separately or included in scheduled rates, for purposes of computing wage board overtime and Sunday rates prescribed in 5 U.S.C. 5544, the Civil Service Retirement Deductions authorized in 5 U.S.C. 8334, and for determining annual rate of pay for group life insurance provided in Federal Personnel Manual, Supp. 8.70–1, Subch. 83–3a, and differential may be paid to employees while in leave status---------- 66

Increases

Retroactive

Separated employees

Wage board employees who are no longer on Govt. rolls when regulations issue to implement Monroney Amendment, Pub. L. 90–560, approved Oct. 12, 1968, 5 U.S.C. 5341(c), which authorizes equating Federal wage board employees having special skills with comparable positions in private enterprise in wage survey areas outside local wage survey area, are entitled to retroactive wage adjustment on basis action is corrective and required by act, rather than grant of wage increase within meaning of 5 U.S.C. 5344, and retroactive wage increases should be viewed as proper salary rates of employees for purposes of separation. If whereabouts of former employee is unknown, notification of entitlement should be sent to last known address; and if employee has died, notice should be mailed to last known address of widow---------- 266

Wage adjustments

In retroactive application of Monroney Amendment wage schedule, 5 U.S.C. 5341(c), pursuant to U.S. Civil Service Bulletin No. 532–9, dated Sept. 23, 1970, when comparison of individual wage payments evidences previous wage schedule payments were less than employee is entitled to under Monroney Amendment, employee should be paid difference; and if previous payment was greater than amount due under amendment, employee may retain difference. However, where comparison of individual payments shows that underpayments equal overpayments, no payment is due employee---------- 495

COMPENSATION—Continued Page
Wage board employees—Continued
Overtime
Night work
Constitutes basic compensation
When employee's wage board position is changed by agency action to General Schedule while he is working night shift, basic rate of pay preserved to employee under sec. 539.203 of Civil Service Regs. includes night differential, as it is "rate of pay fixed by * * * administrative action" within contemplation of sec. 539.202(c), defining "rate of basic pay." Inclusion of night differential in establishing employee's General Schedule rate of pay does not preclude receipt of prescribed 10 percent night differential so long as he remains on night shift, but differential is not to be included in employee's retirement and life insurance base------ 332
What constitutes
Environmental differential
Environmental pay differential for dirty work having been authorized for Dist. of Columbia wage employees by proper wage fixing authority in accordance with 5 U.S.C. 5341, and in conformity with commercial practices, differential may be considered basic pay, whether stated separately or included in scheduled rates, for purposes of computing wage board overtime and Sunday rates prescribed in 5 U.S.C. 5544, the Civil Service Retirement Deductions authorized in 5 U.S.C. 8334, and for determining annual rate of pay for group life insurance provided in Federal Personnel Manual, Supp. 870–1, Subch. 83–3a, and differential may be paid to employees while in leave status---------- 66
Withholding
Union dues
Discontinuance
Timely mailed revocation of dues allotment to employee organization made pursuant to 5 U.S.C. 5525, which was received in payroll office on Monday, Mar. 2, first workday after Mar. 1 deadline set by Civil Service Commission, 5 C.F.R. 550.308, constitutes compliance with regulation under rule that when act is to be performed by certain date and last day of period falls on Sunday, requirement is complied with if act is performed on following day. Therefore, discontinuance of allotment having become effective at beginning of first full pay period following Mar. 1 deadline, dues deducted subsequent to revocation are for collection from employee organization and repayment to employee---------- 108
CONGRESS
Constitutional authority
Property matters
Lease of land adjacent to Visitors' Information Center at John F. Kennedy Center, Fla., for construction of nondenominational chapel from funds raised by public subscription is pursuant to Art. IV, sec. 3, cl. 2 of Constitution of U.S., a congressional and not executive function, unless otherwise specifically provided by statute, and leasing authority in sec. 203(b)(3) of National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(b)(3)), does not appear to be intended as specific authority for execution of proposed 30-year lease. Therefore, because of nature of its use, land within Federal enclave should not be leased without congressional approval of chapel construction, and payment of annual rental has no significance in considering lack of specific authority to lease land---------- 63

CONGRESS—Continued Page
Employees
Restaurant employees
Alien employment prohibited
Special deposit accounts established under 40 U.S.C. 174k(b) and 174j–4, with Treasurer of U.S. by Architect of Capitol as manager of House and Senate restaurants, constitute permanent indefinite appropriations for use similar to revolving fund in view of fact the funds otherwise would be for deposit as miscellaneous receipts; and funds do not lose their identity as appropriated funds, because funds appropriated for contingent expenses of House and Senate are deposited and disbursed from accounts. Therefore, since restaurant employees are paid from funds considered appropriated funds, restriction in Pub. L. 91–144, against payment of compensation from appropriated funds to other than U.S. citizens, prohibits employment of aliens by restaurants. Overrules B–43917, Aug. 30, 1944, relative to special deposit accounts; but pursuant to 5 U.S.C. 5533, restaurant employees are now exempt from dual compensation prohibition ---------- 323
CONTRACTORS
Conflicts of interest
Developmental or prototype items
Determination and findings of conflict of interest in procurement of analysis and design services to update obsolescent automatic data processing equipment, and proposal that design contract ban successful contractor from participating in future procurement of hardware, satisfies requirement in Dept. of Defense Directive 5500.10, Rules for Avoidance of Organizational Conflicts of Interest, that contractor "agrees to prepare and furnish complete specifications," notwithstanding design contract does not constitute whole specifications and exclusion from ban of purchase of data processing equipment to be handled by other than procuring agency. However, to carry out intent of Directive, ban should extend to date of award of first production contract rather than specific date proposed ---------- 54
CONTRACTS
Amounts
Estimates
Requirements contracts. (*See* Contracts, requirements)
Assignment. (*See* Claims, assignment)
Awards
Aggregate basis
Best interests of Government
Failure to submit price for one of four military installations at which delivery is to be made of coveralls solicited under invitation that requested individual prices on quantities specified for each installation is not clerical oversight that may be waived as minor irregularity pursuant to par. 2–405 of Armed Services Procurement Reg., and omitted price may not be inserted on basis single price quoted for other three installations applies to entire quantity solicited because bidder had checked block captioned "100% of all quantities to be awarded or none" in bid form, nor may nonresponsive bid be considered for partial award. As award of whole contract is in best interest of Govt., it may be made

CONTRACTS—Continued Page
Awards—Continued
Aggregate basis—Continued
Best interests of Government—Continued
to responsive and responsible bidder offering low aggregate bid whose per unit net price for entire procurement is reasonable although slightly higher than that of nonresponsive bidder---------- 852
Cancellation
Contract voidable *v.* void *ab initio*
Although first preference labor surplus certificate of eligibility furnished by small business concern was invalid as bidder had no plant in labor surplus area at time certificate was issued, plant being acquired month after award of set-aside portion of procurement for detecting sets to concern on basis of labor surplus preference, award need not be canceled as it is voidable at Govt.'s option rather than void *ab initio*, since it was made in good faith as contracting officer was required to accept certificate in absence of preaward protest or evidence of error on face of certificate, which prospectively located plant in surplus labor area, and also contracting officer properly waived omission of plant's address in surplus labor area as minor deviation---------- 559
Erroneous awards
Bid evaluation base
Although offeror's estimated prices are not deciding factor in selecting successful contractor under cost-reimbursement type contract negotiated pursuant to ASPR 3-805.2, contracting agency that during evaluation of proposals received under request for quotations soliciting preparation of Govt. publication on cost-plus-a-fixed-fee basis eliminates 25 points assigned to factor of reasonableness of cost in evaluation criteria, is required under ASPR 3-805.1 to continue negotiations with all offerors within competitive range. Therefore, award made solely on basis of technical superiority as being in best interest of Govt. without further negotiation with offerors who have necessary qualifications to perform procurement should be canceled---------- 16
In evaluation of offers under request for proposals to furnish professional architectural and engineering services, application of transition cost factor to offer of only contractor who had not previously performed services without apprising offerors that this factor would be utilized in effecting award of contract thus eliminating contractor who was lowest priced responsible offeror from competition was unwarranted and action was inconsistent with sound procurement policy which dictates that offerors be informed of all evaluation factors and relative importance of each factor, nor was waiver of transition costs for successful offeror because of available qualified personnel justified. Therefore, since award was patently erroneous and without regard to established principles of competitive negotiation, contract should be terminated---------- 637
Bid evaluation error
Issuance of stop order pending resolution of bid protest, and cancellation of award to second low bidder to award contract to low bidder whose aggregate firm bid conforming to bid instructions that were overlooked in evaluation process was displaced by erroneous application of unit price rule to estimated data prices, were proper administrative actions, notwithstanding contract did not provide for stop orders, since

CONTRACTS—Continued Page
Awards—Continued
Cancellation—Continued
Erroneous awards—Continued
Bid evaluation error—Continued
authority to issue stop orders is not dependent on contract provision but on whether action is necessary in interest of Govt., and procurement subject to statutory requirement that award be made to lowest responsive and responsible bidder, erroneous award which did not involve exercise of any authorized discretion did not create binding contract, and cancellation of award was legally permissible ---------- 447
Cancellation not required
Award of contract for road grader to second low bidder offering qualified product grader with superior engine which was not listed on applicable Qualified Products List as required by appropriate Federal specification, and was modified by contracting agency, on basis superior engine that exceeded minimum needs of Govt. was essential for area in which it was to be used, violated sec. 1–1.1101 of Federal Procurement Regs. Although award should not have been made to nonresponsive bidder since delivery and payment have been made, corrective action is precluded. Notwithstanding sec. 1–1.305.1 requires use of Federal specifications, exceptions are permitted, and since Qualified Products List item is inadequate for road grader needed, agency may deviate from Federal specifications by complying with conditions in sec. 1–1.305–3 ---------- 691
Discussion with all offerors requirement
In negotiation of procurement, exception in 10 U.S.C. 2304(g) to conducting discussions with all responsible offerors within competitive range may not be invoked by contracting officer to make award to other than low responsible offeror where price is sole evaluation factor and, therefore, award to second low offeror, incumbent contractor, without obtaining Certificate of Competency (COC) on low offeror, a small business concern considered nonresponsible on factors relating to capacity and credit, was illegal and award should be canceled. No award should have been made unless SBA refused to issue COC or did not respond to referral within 15 days, or in alternative if low proposal was unacceptable without clarification, discussions should have been conducted with all offerors within competitive range ---------- 67
Not in best interest of Government
Authority in sec. 1–3.805 of Federal Procurement Regs. to negotiate research and development, or cost-reimbursable, or special service contracts without price competition based solely on determination that particular contractor would furnish services of higher quality than any other contractor, does not cover selection of air tanker operators by Forest Service to fight forest fires as such service is not within categories contemplated by regulation for exception to price competition, and failure to include price as factor of contractor selection violates spirit and intent of Federal Property and Administrative Services Act and implementing regulations. Although it would not be in best interest of Govt. to disturb contracts awarded and options exercised, price inclusion in future offers will be required. B–157954, Dec. 15, 1965, modified ---------- 110

CONTRACTS—Continued Page

Awards—Continued

Delayed awards

After bid acceptance period

Where second low bidder, during period for accepting its bid, filed protest with U.S. GAO as to unacceptability of low bid, consideration of its bid submitted under invitation for bids on electronic equipment is not precluded because bid acceptance period was extended only after acceptance date had expired, since filing of protest tolled expiration of bid acceptance period until after resolution of protest. As no other bidder is eligible for award, integrity of competitive system is not involved; and, therefore, there is no "compelling reason" to reject second low bid. However, in future procurements should award be delayed until after expiration of bid acceptance period, procedures prescribed in secs. 1–2.404–1(c) and 1–2.407–8(b)(2) of Federal Procurement Regs. should be followed... 357

Erroneous

Mistake in fact

Award to high bidder offering surgical steel blade manufactured in U.S. from imported stainless steel, based on erroneous determination item is domestic source end product as defined in par. 6–101(a) of Armed Services Procurement Reg. under rule in ASPR 6–001(d) relating to nonavailability of domestic steel, rather than award to low bidder proposing to use similar steel and manufacture blade abroad—considered foreign end product—will not be disturbed, as award was made under mistaken belief held by all participants that only use of imported steel was authorized, notwithstanding availability of domestic carbon steel. Furthermore, adding 50-percent differential prescribed by ASPR 6–104.4(b) displaces low bid..... 239

Labor surplus areas

Certificate of eligibility

Validity

Although first preference labor surplus certificate of eligibility furnished by small business concern was invalid as bidder had no plant in labor surplus area at time certificate was issued, plant being acquired month after award of set-aside portion of procurement for detecting sets to concern on basis of labor surplus preference, award need not be canceled as it is voidable at Govt.'s option rather than void *ab initio*, since it was made in good faith as contracting officer was required to accept certificate in absence of preaward protest or evidence of error on face of certificate, which prospectively located plant in surplus labor area, and also contracting officer properly waived omission of plant's address in surplus labor area as minor deviation..... 559

Legality

Federal Highway Administration, Dept. of Transportation, in awarding cost-plus-a-fixed-fee contract for Urban Traffic Control System (UTCS) to offeror that had prepared specifications for system under research and development study, did not violate any mandatory regulations, since Federal Procurement Regs. do not contain organizational conflicts of interest provision and Dept. has not issued specific rules governing conflicts of interests, and even if Administration was subject to Dept. of Defense Directive 5500.10, "Rules for the Avoidance of Organizational Conflicts

CONTRACTS—Continued Page
Awards—Continued
Legality—Continued
of Interest," which it is not, Directive is not self-executing and would not apply in absence of notice to prospective contractors and inclusion of restrictive clause in contract. Moreover, whether UTCS program represents judicious, as distinguished from legal, expenditure of public funds would not affect legality of contract---------- 565
Multiple
Lowest overall cost to Government
Although multiple awards to four offerors responding to solicitation issued under national emergency authority in 10 U.S.C. 2304(a)(16), three operating Govt-owned contractor-operated facilities, for purpose of satisfying current needs and retaining suppliers for accelerated future demands, did not result in lowest individual offeror receiving award for maximum quantity, multiple awards produced lowest overall cost to Govt. and will not be disturbed, even though request for proposals (RFP) stated that it was expected one offeror would not be successful whereas awards were made to all offerors. Moreover, there was no quantity increase to require formal amendment to RFP, evaluation of proposals from offerors operating Govt. facilities was in accord with Bur. of Budget Cir. No. A–76, and failure to award all contracts simultaneously was justified, as was evaluation transportation factor used---------- 777
Small business concerns
Bid bond principal deviation
Low bid submitted under total small business set-aside for Air Force Base construction project which bore three names of joint venture shown in bid bond accompanying bid, but was signed by president of only small business concern involved, may not be awarded to either joint venture or small business concern on basis two large business firms had associated with small business concern only for purpose of obtaining bid bond. As to joint venture, there was none at time of bid submission or opening, and subsequently submitted information could not create joint venture for purpose of bid ratification—even if it could, joint venture as large concern would be ineligible for award, nor would award to small concern be proper as bid bond named joint venture as principal---------- 530
Certifications
Requirements contract
Under small business set-aside for award of requirements type contract, evaluation of low bid for purpose of Certificate of Competency (COC) procedures on basis of initial quantity to be purchased rather than estimated quantity to be ordered during contract period was inconsistent with use of estimated quantity to determine low bidder and to perform preaward survey, and resulted in erroneous refusal of contracting officer to refer low bidder's unfavorable preaward survey to Small Business Administration (SBA) as required by par. 1–705(c) of Armed Services Procurement Reg. (ASPR). Therefore, procedure in ASPR 1–705.4(c)(vi) should be implemented and if SBA determines that COC would have been granted at time of award and that such determination is still valid, contract awarded should be canceled and award made to low bidder---------- 799

CONTRACTS—Continued Page
Awards—Continued
Small business concerns—Continued
Set-asides
Competition sufficiency
Determination not to set aside any portion of procurement, which was made after consulting with small business representative, because most recent set-aside for same item had failed to generate sufficient competition, was within policy stated in par. 1–802 of Armed Services Procurement Reg., and within ambit of sound administrative discretion; and absent showing of abuse in exercise of that discretion, there is no basis for U.S. GAO to object to failure to set aside procurement---------- 383
Performance in foreign country
Use of small business set-aside issued pursuant to par. 1–706.5(a) (1) of Armed Services Procurement Reg. (ASPR) for procurement of dairy products overseas, on basis of reasonable expectation of competition, was proper procedure, even though ASPR 1–700 does not include foreign areas in geographical areas listed for performance of set-asides, as intent of Small Business Act is to benefit small business concerns and place of performance *per se* has no bearing other than to require consideration of greater complexities involved in performing contract in foreign area in selecting responsible offeror. Moreover, proper procedures were also followed in not referring expectation of receiving proposals at reasonable prices to higher authority, in providing for possible submission of Certificate of Current Cost or Pricing Data by successful offeror; and in manner of soliciting "courtesy bids" from large concerns---------- 759
Bid shopping. (*See* Contracts, subcontracts, bid shopping)
Bids, generally. (*See* Bids)
Brand name or equal. (*See* Contracts, specifications, restrictive, particular make)
Buy American Act
Foreign products
Nonavailability determination
Award to high bidder offering surgical steel blade manufactured in U.S. from imported stainless steel, based on erroneous determination item is domestic source end product as defined in par. 6–101(a) of Armed Services Procurement Reg. under rule in ASPR 6–001(d) relating to nonavailability of domestic steel, rather than award to low bidder proposing to use similar steel and manufacture blade abroad—considered foreign end product—will not be disturbed, as award was made under mistaken belief held by all participants that only use of imported steel was authorized, notwithstanding availability of domestic carbon steel. Furthermore, adding 50-percent differential prescribed by ASPR 6–104.4(b) displaces low bid---------- 239
Change orders. (*See* Contracts, modification, change orders)
Conflicts of interest prohibitions
Negotiated contracts. (*See* Contracts, negotiation, conflicts of interest prohibition)
Research and development contracts. (*See* Contracts, research and developmen, conflicts of interest prohibition)

CONTRACTS—Continued Page

Cost-plus

Basis for award

Cost-plus-a-fixed-fee contracts authorized by 41 U.S.C. 254(b) may be used when head of agency determines that such method of contracting is likely to be less costly than other methods or that it is impractical to secure property or services of kind or quality required without use of cost or cost-plus-a-fixed-fee or incentive type contract; and since administrative determination is afforded finality by 41 U.S.C. 257(a), there is no legal basis to require cancellation of contract simply because it is cost reimbursement type of contract 565

"Cost-plus-award fee" method of contracting

Where in evaluation of management, financial, and technical factors offered under request for quotations for operation overseas of communication system, offerors are found equally qualified technically on basis of normalizing results of numerical scoring system used by Source Selection Evaluation Board and analysis of Board's evaluation by Source Selection Advisory Council using its independent scoring and weighting—referred to as "no gain technique"—and on basis of reevaluating manpower proposals, award of cost-plus-award fee contract to lowest offeror was proper, and award is unaffected by Advisory Council's deviation, with permission, from evaluation guidelines in Army Command Pamphlet 715-3, and by changes in scoring made between evaluations, since relative weights of evaluation criteria were preserved 390

Evaluation factors

Advantage to Government

Selection of contractor for negotiation of cost-plus-award-fee type contract for support services at Kennedy Space Center that are being performed under expiring contract without binding selected contractor to "successor employer" doctrine that would impose terms of current collective bargaining agreements with incumbent union employees was valid exercise of discretion granted to contracting agency to award contract that will be most advantageous to Govt., since there is neither statutory nor judicial requirement that contractor who succeeds prior contractor in performance of service for Govt. at Govt. installation assume predecessor contractor's bargaining agreement with its union employees; moreover, selected contractor proposes to recognize bargaining representatives of incumbent employees 592

"Realism" of costs and technical approach

In award of cost-reimbursement contracts, procurement personnel are required to exercise informed judgments as to whether submitted proposals are realistic concerning proposed costs and technical approach, and such judgments must properly be left to administrative discretion of contracting agencies involved, since they are in best position to assess "realism" of costs and technical approaches, and must bear major criticism for any difficulties or expenses experienced by reason of defective cost analysis. Should Govt. fail to adequately measure "realism" of low quantum of costs, definition of "reasonable" cost to mean low cost *per se* on comparative basis would be improper for award purposes 390

CONTRACTS—Continued Page
Cost-plus—Continued
Evaluation factors—Continued
Use of point system
Although offeror's estimated prices are not deciding factor in selecting successful contractor under cost-reimbursement type contract negotiated pursuant to ASPR 3–805.2, contracting agency that during evaluation of proposals received under request for quotations soliciting preparation of Govt. publication on cost-plus-a-fixed-fee basis eliminates 25 points assigned to factor of reasonableness of cost of evaluation criteria, is required under ASPR 3–805.1 to continue negotiations with all offerors within competitive range. Therefore, award made solely on basis of technical superiority as being in best interest of Govt. without further negotiation with offerors who have necessary qualifications to perform procurement should be canceled---------- 16
Data, rights, etc.
Disclosure
Restrictive markings
Timely request
Cancellation of invitation to furnish repair parts for naval vessel propeller system, invitation accompanied by drawings submitted individually over long period of time in connection with procurement of system, and proposed sole source purchase of parts from supplier of system on basis restrictive legend requested on drawings was made within 6 months of final delivery of data package, goes beyond authority of contracting officer under par. 9–202.3(d)(1) of Armed Services Procurement Reg., which in providing that data received without restrictive legend if not alleged to be proprietary within 6 months of delivery is considered to have been furnished with unlimited rights, requires time limitation to be applied to each data submission, and request having been untimely received, cancellation of invitation was not justified---------- 271
Restrictive data rights *v.* procurement methods
"Engineering-critical" designation assigned by agreement to replacement parts for engines developed at costs shared by manufacturer and Govt. to preclude use of data for competitive purposes because of difficulty to determine rights of parties, relating to restricted data rights and not to procurement methods, additional sources of supply may be developed by instituting appropriate tests and qualification procedures, provided rights of manufacturer are not infringed. Par. 1–313 of Armed Services Procurement Reg. requires competitive procurement of spare parts, and it would be contrary to concept of "maximum practical competition" to hold that "engineering-critical" item may not be procured competitively without regard to willingness and ability of other than sole source supplier to produce parts without infringement of proprietary rights---------- 184
Status of information furnished
Where restrictive legend was not attached to drawings at time of initial transfer to Govt. and legend had not been authorized within 6 months of submission of data as provided by par. 9–202.3(d)(1) of Armed Services Procurement Reg., Govt. in partially publishing drawings violated no contractual restriction, nor is Govt. liable on basis contractor furnishing drawings had obligation as licensee to protect trade

CONTRACTS—Continued Page
Data, rights, etc.—Continued
Status of information furnished—Continued
secrets of licensor. However, restrictive legend could be authorized for unpublished drawings by obtaining deviation pursuant to ASPR 9–202.3 (a) to 6 months' time limitation in ASPR 9–202.3(d)(1) for attaching restrictive legend ---- 271
Davis-Bacon Act. (*See* Contracts, labor stipulations, Davis-Bacon Act)
Deliveries
Defective supplies, etc.
Government inspection prior to delivery
Approval by contracting agency of press proof of artwork for plastic litter bags submitted by contractor in accordance with specification requirements, notwithstanding word "Boundary" was misspelled as "Boundry," estops agency from denying payment to contractor on basis bags were defective within contemplation of par. 5(d) of Standard Form 32; and, therefore, Govt.'s acceptance was not conclusive, since inspection and approval of press proofs of artwork was separate from inspection and acceptance intended under par. 5(d) concerned with latent defect that cannot be discovered by inspection. Whether or not offer of contractor to furnish labels with word "Boundary" correctly spelled for attachment to bags is accepted does not affect agency's obligation for contract price ---- 534
Failure to meet schedule
Interpretation of "Time for Delivery" provision
Interpretation of "Time for Delivery" provision in contract for court reporting and transcription service of hearings before National Transportation Safety Board, Department of Transportation, is question of law and not of fact for resolution under "Disputes" clause of contract. Requirement to deliver transcripts originating outside of Washington, D.C., to Docket Section of Board, located in Washington, within 10 days, means transcripts must be in custody of specified office within 10 calendar days from date of hearing, and mere fact of mailing transcripts before expiration of 10-day period does not constitute full compliance with delivery clause ---- 513
Delivery provisions
Evaluation. (*See* Bids, evaluation, delivery provisions)
De minimis rule
Negotiated contracts
Since to properly terminate close of negotiations, offerors must be advised that negotiations are being conducted; asked for their "best and final" offer and not merely to confirm prior submission; and informed that any revision of proposal must be submitted by common cutoff date, cutoff date prescribed by sec. 1–3.805–1(b) of Federal Procurement Regs. is considered essential and not *de minimis* requirement, and purposes of establishing common cutoff date would be frustrated if proposal revision were permitted after common cutoff date without opening new negotiations on basis that this procedure would be favorable to Govt ---- 117

CONTRACTS—Continued Page

Disputes

Conflict between administrative report and contractor's allegations

Where there is dispute between contracting officer and proposed contractor relative to matters that are not part of written record, in accordance with policy of U.S. GAO, dispute must be resolved in favor of contracting officer, as GAO is unable to resolve questions of credibility apart from written record and must therefore defer to administrative agency ---------- 281

Equal employment opportunity requirements. (*See* Contracts, labor stipulations, nondiscrimination)

Government property

Negotiated contracts

Although multiple awards to four offerors responding to solicitation issued under national emergency authority in 10 U.S.C. 2304(a)(16), three operating Govt.-owned contractor-operated facilities, for purpose of satisfying current needs and retaining suppliers for accelerated future demands, did not result in lowest individual offeror receiving award for maximum quantity, multiple awards produced lowest overall cost to Govt. and will not be disturbed, even though request for proposals (RFP) stated that it was expected one offeror would not be successful whereas awards were made to all offerors. Moreover, there was no quantity increase to require formal amendment to RFP, evaluation of proposals from offerors operating Govt. facilities was in accord with Bur. of Budget Cir. No. A–76, and failure to award all contracts simultaneously was justified, as was evaluation transportation factor used ---------- 777

Increased costs

Additional work or quantities

Disallowance of claim

Claim submitted for consideration under settlement authority in 31 U.S.C. 71 for additional compensation to cover required correction in printing of technical publication, which had been disallowed by contracting officer and appeal to disallowance denied by administrative officer, may not be paid on basis prior uncorrected orders had been accepted, where record shows contractor agreed to correct error without cost to Govt., and supplemental agreement providing charge for work—insertion of fold-ins in publication in indicated sequence—has reference to future orders. Furthermore, alleged subsequent oral agreement may not be considered, as review is restricted to record before contracting agency at time the head of agency rendered decision------ 369

Joint ventures. (*See* Joint Ventures)

Labor stipulations

Affirmative action programs. (*See* Contracts, labor stipulations, nondiscrimination)

Applicability

To prospective contractors

A reissued invitation for bids (IFB) to perform custodial services which provided for application of Service Contract Act of 1965, and contained revised wage determination by Dept. of Labor and "Successor Employers' Collective Bargaining Obligations" clause that recognized incumbent contractor's union bargaining agreement is not restrictive

CONTRACTS—Continued Page
Labor stipulations—Continued
Applicability—Continued
To prospective contractors—Continued
of competition and award may be made to lowest responsive and responsible bidder pursuant to 10 U.S.C. 2305(c). Inclusion in IFB of Service Contract Act clause and revised determination was in accord with 29 CFR 4.6, and amendment to IFB to provide for revised wage determination conformed to par. 2-208 of Armed Services Procurement Reg., even though revision was not received at least 10 days before bid opening as required, since sufficient time was provided for acknowledgment of amendment ---- 648
Inclusion in invitation for bids of language regarding National Labor Relations Board *Burns* decision, 182 NLRB No. 50, on effect of existing collective bargaining agreements of employers upon successor employers does not require bidders to be bound by existing labor agreement as Govt. made no commitment regarding effect of decision but left matters to bidders to decide. It was not improper to place bidders on notice of *Burns* decision and incumbent contractor's union bargaining agreement and as language used was merely advisory, invitation was not ambiguous. Extension of existent bargaining agreement beyond contract period is not prohibited by procurement statutes, and whether agreement is enforceable against followup employer is for courts to decide-- 648
Davis-Bacon Act
Applicability
Criteria
Invitation for installation of heavy equipment replacements that omitted Davis-Bacon Act on basis procurement did not contemplate construction, alteration, or repair of public building, and incorporated provisions of Walsh-Healey Act, which requires contractor to be manufacturer of or regular dealer in equipment to be supplied, and provision for bidders to attest to their experience and competency should be canceled and reissued by contracting agency under guidelines in sec. 1-12.402-2 of Federal Procurement Regs. for determining whether substantial amounts of construction, alteration, or repair work would be involved, also taking into consideration fact that no bidder qualified as manufacturer or dealer to be eligible for award, and that solicitation in requiring experience and competency attestation was unduly restrictive of competition ---- 807
Maintenance contracts
Contracts for repainting mailboxes at their stationary positions, work that is regular, continuous and recurring, and is performed in accordance with Post Office Dept.'s Letter Box Maintenance Handbook approximately every 36 months, are subject to Davis-Bacon Act, 40 U.S.C. 276a, an act that is applicable to contracts in excess of $2,000 for painting and decorating of public buildings and works, whether performed in conjunction with original construction or as regular maintenance, and mailboxes are within contemplation of term "public works," which term encompasses any Govt-owned facility necessary for carrying on community life and to cover any article or structure that is placed, either permanently or temporarily, at particular location to serve public purpose ---- 720

CONTRACTS—Continued Page
Labor stipulations—Continued
Applicability—Continued
Davis-Bacon Act—Continued
Classification of workmen
Erroneous

Classification of workmen who installed "Orangeburg" fiber ducts as conduit for underground electrical wiring as laborers under contract including wage determination for electricians and laborers, and disputes clause was violation of Davis-Bacon Act, 40 U.S.C. 276a, and referral of erroneous classification to Secretary of Labor under disputes clause when contractor disagreed with contracting officer's determination based on prevailing area practice but refused to submit contrary evidence did not violate contract or prejudice contractor because it had not been advised of referral, and Secretary's confirmation, even though based on record only, that classification was erroneous—determination that is not subject to review—entitles laborers who were not supervised by journeyman electrician to wage adjustment as electricians and not electrician apprentices 103

Suspension

Discarding of all bids for construction of family housing at military installation under invitation that contained prescribed minimum wage rates determined by Secretary of Labor for laborers and mechanics in accordance with Davis-Bacon Act, 40 U.S.C. 276a, because of Presidential Proclamation 4031, dated Feb. 23, 1971, which suspended act, and reissuance of invitation without requirements of act were actions in public interest within meaning of 10 U.S.C. 2305(c), and Proclamation was compelling reason contemplated by par. 2-404.1 of Armed Services Procurement Reg. that justified cancellation of invitation for bids 634

Revoked

Low bidder under invitation for bids that was canceled upon issuance of Presidential Proclamation 4031, dated Feb. 23, 1971, which suspended provisions of Davis-Bacon Act, 40 U.S.C. 276a, who is second low bidder under reissued invitation is not entitled to award under canceled invitation when Presidential Proclamation 4040 of Mar. 29, 1971 revoked suspension of act. Presidential Proclamation 4040 effectively revoked Davis-Bacon Act only as to construction contracts for which solicitations for bids or proposals were issued after Mar. 29, 1971, and implementing Defense Dept. regulation confirms that solicitations issued after Feb. 23, 1971, but before Mar. 30, 1971, shall not contain Davis-Bacon Act provisions and, therefore, award to lowest responsible, responsive bidder under reissued invitation would be in accordance with intent of proclamation and regulation 798

Davis-Bacon Act provisions and wage determinations in invitation for bids that were to apply only to some of worldwide performance sites at which radomes are to be reconditioned and maintained under requirements contract, which were deleted by amendment upon issuance of Presidential Proclamation 4031, need not be reinstated because suspension of act was revoked by Proclamation 4040. Determination to resolicit procurement and include Davis-Bacon Act provisions although recommended was left to discretion of contracting agencies by Dept. of Labor, and determination having been made that resolicitation of procurement would be prejudicial to bidders, contract without provisions may be awarded to lowest responsive and responsible bidder 830

CONTRACTS—Continued Page
Labor stipulations—Continued
Minimum wage determinations
Not guarantee of labor costs
Issuance of wage rate determination by Dept. of Labor constitutes finding that rates specified are rates prevailing in locality, and inclusion of determination in invitation for bids or contract is not representation by Govt. that labor may be obtained by contractor at specified rates and, therefore, each bidder has burden of ascertaining probable labor costs ---------- 648
Nondiscrimination
Affirmative action programs
Responsibility for reviewing equal employment opportunity (EEO), compliance having been assigned by Sec. of Labor in implementing E.O. No. 11246, to agencies on basis of industrial classification, General Services Administration properly reviewed EEO compliance by low bidder on linoleum portion of its invitation for bids and relied on information furnished by agency responsible for determining compliance by low bidder on floor tiles. Although pursuant to 41 CFR 60–1.40(a) prime contractor is required "to develop a written affirmative action compliance program for each of its establishments," administrative determination that lack of *de facto* control by floor tile contractor of subsidiary excludes compliance as to that subsidiary is accepted as valid in absence determination was arbitrary, capricious, or not supported by evidence ---------- 627
When invitation for bids to rehabilitate and remodel apartment buildings requires bidders to complete appendix to invitation which is intended to implement Washington Plan that provides equal employment opportunity on Federal construction projects exceeding $500,000, and which was issued pursuant to E.O. No. 11246, mere signing of appendix without submitting required specific percentage goals for minority manpower utilization renders low bid nonresponsive as completion of appendix is condition precedent to bid acceptance. Therefore, failure to furnish minority manpower goals is not minor informality that may be corrected or waived under sec. 1–2.405 of Federal Procurement Regs. and deficient bid is not eligible for award ---------- 844
Service Contract Act of 1965
Minimum wage, etc., determinations
Union agreement effect
A reissued invitation for bids (IFB) to perform custodial services which provided for application of Service Contract Act of 1965, and contained revised wage determination by Dept. of Labor and "Successor Employers' Collective Bargaining Obligations" clause that recognized incumbent contractor's union bargaining agreement is not restrictive of competition and award may be made to lowest responsive and responsible bidder pursuant to 10 U.S.C. 2305(c). Inclusion in IFB of Service Contract Act clause and revised determination was in accord with 29 CFR 4.6, and amendment to IFB to provide for revised wage determination conformed to par. 2–208 of Armed Services Procurement Reg., even though revision was not received at least 10 days before bid opening as required, since sufficient time was provided for acknowledgment of amendment ---------- 648

CONTRACTS—Continued Page

Labor stipulations—Continued

"Successor employer" doctrine

Selection of contractor for negotiation of cost-plus-award-fee type contract for support services at Kennedy Space Center that are being performed under expiring contract without binding selected contractor to "successor employer" doctrine that would impose terms of current collective bargaining agreements with incumbent union employees was valid exercise of discretion granted to contracting agency to award contract that will be most advantageous to Govt., since there is neither statutory nor judicial requirement that contractor who succeeds prior contractor in performance of service for Govt. at Govt. installation assume predecessor contractor's bargaining agreement with its union employees; moreover, selected contractor proposes to recognize bargaining representatives of incumbent employees---------- 592

Inclusion in invitation for bids of language regarding National Labor Relations Board *Burns* decision, 182 NLRB No. 50, on effect of existing collective bargaining agreements of employers upon successor employers does not require bidders to be bound by existing labor agreement as Govt. made no commitment regarding effect of decision but left matter to bidders to decide. It was not improper to place bidders on notice of *Burns* decision and incumbent contractor's union bargaining agreement and as language used was merely advisory, invitation was not ambiguous. Extension of existent bargaining agreement beyond contract period is not prohibited by procurement statutes, and whether agreement is enforceable against followup employer is for courts to decide-- 648

Bid submitted under invitation that incorporated Service Contract Act clause prescribed by par. 2-1004 of Armed Services Procurement Reg., which provided for application of pertinent Dept. of Labor wage determination, and included information relating to "Successor Employers' Collective Bargaining Obligations"—information bidder overlooked in preparing bid—may be withdrawn under mistake in bid principles enunciated in *Ruggiero* v. *U.S.*, 420 F. 2d 709, to effect law of mistaken bid includes mistakes which are inexplicable, and rule does not turn on any fault or ambiguity in specifications nor need contractor be free from blame. Therefore, since bidder was entitled to give consideration to impact of union agreement upon performance costs, and bid may not be corrected as agreed union rates were not factor in bid preparation, bid may be withdrawn from consideration---------- 665

Labor surplus area awards. (*See* Contracts, awards, labor surplus areas)

Letter requests for proposals

Two-step procurement

Bidder qualifications

Under letter request, first step of two-step procurement, which contained "Bidder's Technical Qualification Clause" stating technical proposals would be accepted only from those contractors who have manufactured and can demonstrate at operating airfield a Solid State Conventional Instrument Landing System, evaluation of capabilities of prime contractor and its subcontractor—French firm who manufactured and demonstrated system in France—although within policy enunciated in par. 4-117 of Armed Services Procurement Reg., which recognizes integrity and validity of contractor team arrangements, was

CONTRACTS—Continued Page
Letter requests for proposals—Continued
Two step procurement—Continued
Bidder qualifications—Continued
contrary to intent of clause, and proposal premised on subcontractor's system should not have been considered. Therefore, in future procurements, clause should specify permissible relationships or refer to ASPR provision ---------- 163
Mail transportation. (*See* Post Office Department, mails, transportation)
Mistakes
Allegation before award. (*See* Bids, mistakes)
Contracting officer's error detection duty
Notice of error
Lacking
Request for relief under sec. 17 of Armed Services Procurement Reg. authorizing extraordinary contractual actions to facilitate national defense made after contract completion and final payment on basis bid underpricing was due to unforeseen production difficulties and misleading vendor quotes is for denial where occurrence of mistake "so obvious it was or should have been apparent" is not demonstrated, and record establishes price bid was adequately verified and was intended, and only subsequent events resulted in unprofitable contract. Even assuming existence of bona fide mistake, fact that price bid greatly exceeded Govt.'s estimate intended as funding allocation, or that prior procurements for lesser quantities were priced much higher than group of bids in price range of successful bid did not place contracting officer on actual or constructive notice of error---------- 39
Item not for evaluation
A mistake in per linear foot unit price of cable, price that would not be used for bid evaluation purposes but would be applicable should quantity of lump-sum purchase of cable be increased or decreased, and which relating to bid responsiveness would require bid rejection if not furnished, may be corrected and contract reformed to reflect intended bid price. Sec. 1-2.406-1 of Federal Procurement Regs. does not limit bid examination to those factors to be considered in bid evaluation, and in view of possibility that unit price would have substantial impact on price ultimately to be paid should right reserved to increase or decrease length of cable purchased be exercised, contracting officer should have compared unit prices and when aware of wide range of prices offered, verified erroneous unit price---------- 151
Modification
Basis for contract reformation
A requirement in invitation for bids that contract be performed in restricted geographical area is reasonable limitation on competition when contracting agency needs prompt service and plant accessibility, and restriction relating to bidder responsibility, compliance with requirement results in valid contract. Therefore, although contractor's unauthorized action subsequent to contract awards to effect performance of printing of technical publications restricted to Dallas-Fort Worth area in San Antonio constitutes breach of contract and Govt. has vested right to insist on performance in restricted area, since performance in San Antonio area will not deprive Govt. of contemplated rights, con-

CONTRACTS—Continued Page
Modification—Continued
Basis for contract reformation—Continued
tracts may be modified to delete restriction with adequate price adjustment, however, future procurements should broaden competition by enlarging performance area---------- 769
Change orders
Within scope of contract
Value engineering change substituting solid state tuner for electromechanical tuners intended as replacement components for Electronic Countermeasures Sets properly was effected by issuance of change order to sole producer of sets since competitive procurement was not required as change was within changes clause contained in letter contract for tuners and does not constitute "cardinal change" within meaning of 10 U.S.C. 2304(g) and par. 3-805 of Armed Services Procurement Reg. Change also is in accord with rule in *Keco Industries, Inc.* v. *United States*, 364 F. 2d 838, that in determining whether change is within general scope of contract, consideration should be given to both magnitude and quality of change and whether original purpose of contract had been substantially altered---------- 540
Star route contracts. (*See* Post Office Department, star route contracts)
Multi-year procurements
"Buy-ins" minimized
Provision in solicitation for negotiation of fixed price, multi-year contract for ground simulator which provides that in evaluation of proposals Govt. would assess reasonableness, realism, and completeness of price proposals and that cost analysis and negotiation would be employed in interest of establishing sound prices does not require rejection of unrealistically low offer as provision serves only as aid in determining whether offeror understands scope of work, and in uncovering mistakes and "buy-ins" in violation of par. 1-311 of Armed Services Procurement Reg. Although multi-year procurement contains option that minimizes "buy-in," contract includes special clause to protect against recoupment of losses through change orders, and submission of different freeze dates that govern financial responsibility for engineering change orders has no significant effect on source selection---------- 788
Negotiation
Addenda acknowledgment requirement
Acknowledgment of substantive amendment received after closing time for receipt of proposals under negotiated invitation for proposals issued pursuant to public exigency authority in 10 U.S.C. 2304(a)(2), and which provides for award on basis of initial proposals, may be accepted and proposal considered in view of fact negotiation procedures are more flexible than those used for advertised procurements. However, as late acceptance of addendum involves actions that constitute discussion within meaning of 10 U.S.C. 2304(g) and par. 3-805.1(a) of Armed Services Procurement Reg., negotiations must be conducted with all offerors within competitive range to obtain "best and final" offers, for notwithstanding urgency of procurement, award may no longer be made on basis of initial proposals received---------- 202

CONTRACTS—Continued Page
Negotiation—Continued
Administrative determination
Finality
Solicitation of proposals on brand name basis without "or equal" provision in accordance with par. 1-1206.1(b) of Armed Services Procurement Reg. under negotiation authority contained in 10 U.S.C. 2304(a)(7), and pursuant to "Determination and Findings" that sole source procurement of sterilizers to be purchased is justified, is restrictive of competition unless no other item will meet Govt.'s minimum requirements or no other but sole source manufacturer can produce acceptable sterilizer. Therefore, as there is nothing particularly unique about design or manufacture of brand name sterilizer, fact that it has proven satisfactory in use does not justify sole source procurement. Although justification for procurement is final determination, sole source solicitation stated in request for proposals should be eliminated 209
Auction technique prohibition
Cutoff notice of negotiations
While Govt.'s failure to establish common cutoff date under request for proposals for computer time and services prevented closing of negotiations, contracting officer's refusal to negotiate price reduction was proper in view of discussions constituting negotiations during which vital information concerning successful offeror's proposal was erroneously but innocently revealed, for to permit price reduction under circumstances would compromise Federal Procurement system by allowing auction technique precluded by sec. 1-3.805-1(b) of Federal Procurement Regs. Although contract awarded is not required to be terminated, in view of procedural deficiencies in procurement, contract option should not be exercised unless it is impracticable to reprocure services on equal competitive basis 222
What constitutes
Under request for proposals for Fleet Computer Programming Services, which was modified to remove as evaluation factor cost of failing to award contract to current contractor and possible organizational conflict of interest because one of offerors was performing as subcontractor on program to be anlayzed by new contractor, and to revise the program's manhours, continuation of negotiations during which prices were disclosed does not constitute prohibited auction technique as no competitive advantage resulted to any offeror and technique *per se* is not inherently illegal. Substantial changes in requirements and in computer industry justified amendments to solicitation issued pursuant to par. 3-805.1(e) of Armed Services Procurement Reg. and continuation of negotiations, therefore, last prices submitted may be opened and considered 619
Audit requirements
Failure to audit fourth and final round of proposals under solicitation for class destroyers did not violate pars. 3-101, 3-807.2(a), and 3-809(b)(1) of Armed Services Procurement Reg. (ASPR), where not only were proposed prices in each of first three rounds of negotiations audited and found to be based on sound business judgment, but ASPR provisions do not require audit of proposals on each and every round of negotiated procurement, and par. 3-809(b)(1) provides that audits may be waived

CONTRACTS—Continued Page
Negotiation—Continued
Audit requirements—Continued
whenever it is clear that information already available is adequate for proposed procurement, and determination of "adequate" is within discretion of procuring activity and will not be questioned unless clearly erroneous ---------- 418
Awards
Cancellation
In evaluation of offers under request for proposals to furnish professional architectural and engineering services, application of transition cost factor to offer of only contractor who had not previously performed services without apprising offerors that this factor would be utilized in effecting award of contract thus eliminating contractor who was lowest priced responsible offeror from competition was unwarranted and action was inconsistent with sound procurement policy which dictates that offerors be informed of all evaluation factors and relative importance of each factor, nor was waiver of transition costs for successful offeror because of available qualified personnel justified. Therefore, since award was patently erroneous and without regard to established principles of competitive negotiation, contract should be terminated---- 637
Erroneous
In negotiation of procurement, exception in 10 U.S.C. 2304(g) to conducting discussions with all responsible offerors within competitive range may not be invoked by contracting officer to make award to other than low responsible offeror where price is sole evaluation factor and, therefore, award to second low offeror, incumbent contractor, without obtaining Certificate of Competency (COC) on low offeror, a small business concern considered nonresponsible on factors relating to capacity and credit, was illegal and award should be canceled. No award should have been made unless SBA refused to issue COC or did not respond to referral within 15 days, or in alternative if low proposal was unacceptable without clarification, discussions should have been conducted with all offerors within competitive range---------- 67
Price one factor in determination
Authority in sec. 1-3.805 of Federal Procurement Regs. to negotiate research and development, or cost-reimbursable, or special service contracts without price competition based solely on determination that particular contractor would furnish services of higher quality than any other contractor, does not cover selection of air tanker operators by Forest Service to fight forest fires as such service is not within categories contemplated by regulation for exception to price competition, and failure to include price as factor of contractor selection violates spirit and intent of Federal Property and Administrative Services Act and implementing regulations. Although it would not be in best interest of Govt. to disturb contracts awarded and options exercised, price inclusion in future offers will be required. B-157954, Dec. 15, 1965, modified----- 110
While rigid rules applicable to formally advertised procurements generally require award to lowest (price) responsive, responsible bidder, flexibility inherent in concept of negotiation permits award to be made to best advantage of Govt., price and other factors considered. Therefore,

CONTRACTS—Continued Page
Negotiation—Continued
Awards—Continued
Price one factor in determination—Continued
utilization in "competitive negotiation" of price as factor in selection of contractor will not adversely affect selection of qualified contractor by Forest Service for performance of firefighting services ---------- 110
Propriety
Evaluation of proposals
Under solicitation issued pursuant to 10 U.S.C. 2304(a)(11), inviting proposals on cost-plus-a-fixed-fee basis for research and development services to maintain wind tunnel, award on basis of price alone was justified where both offers received were technically acceptable, as concepts in pars. 3-805.2 and 4-106.5(a) of Armed Services Procurement Reg. that price alone is not controlling factor relate to situations where favored offeror is significantly superior in technical ability and resources. Although award was not illegal because of failure to continue discussions with all offerors in competitive range when amendment change "initial proposal" requirements of solicitation and to request "best and final" offers, and failure to specify all evaluation factors, such deficiencies should be avoided in future negotiated procurements ---------- 246
Bidder qualification. (*See* Bidders, qualifications)
Changes during negotiation
Notification
Where offers received under request for proposals issued pursuant to 10 U.S.C. 2304(a)(11), relative to contracting for experimental, developmental, or research work, were unacceptable and individual conferences were held with all offerors to clarify requirements for procurement of System-Multiplex-Analog, Data Acquisition Record and Reproduce Facility, and to give each contractor opportunity to justify any deviation offered and to modify proposal submitted, reopening of negotiations to inform offerors in competitive range of specification changes negotiated at individual conferences after date set for final offers that incorporated conference agreements was proper means of correcting suspected and discovered deficiencies in negotiation process and of overcoming presumption of unfairness raised because of inability of one offerer to meet specifications ---------- 114
Changes, etc.
Specifications
Propriety of changes
Under request for proposals for Fleet Computer Programming Services, which was modified to remove as evaluation factor cost of failing to award contract to current contractor and possible organizational conflict of interest because one of offerors was performing as subcontractor on program to be analyzed by new contractor, and to revise the program's manhours, continuation of negotiations during which prices were disclosed does not constitute prohibited auction technique as no competitive advantage resulted to any offeror and technique *per se* is not inherently illegal. Substantial changes in requirements and in computer industry justified amendments to solicitation issued pursuant to par. 3-805.1(e) of Armed Services Procurement Reg. and continuation of negotiations, therefore, last prices submitted may be opened and considered ---------- 619

CONTRACTS—Continued Page
Negotiation—Continued
Competition
Adequate

Fact that several sources experienced in traffic control systems were not solicited to submit offers by Federal Highway Administration, Dept. of Transportation, under request for proposals, does not establish that adequate competition and reasonable price were not obtained, since in resolving questions concerning adequacy of solicitation of supply sources the propriety of particular procurement must be determined from Govt.'s point of view upon basis of whether adequate competition and reasonable prices were obtained and not upon whether every possible supply source was offered opportunity to bid or submit proposal..... 565

Determination of date to be specified for receipt of proposals is matter of judgment properly vested in contracting agency; and where record evidences that 40-day period for submission of proposals on Urban Traffic Control System to Federal Highway Administration, Dept. of Transportation, was adequate for any offeror who had interest in project, as well as experience, knowledge, systems expertise, and capability sufficient to meet requirements contained in request for proposals, it is concluded date specified for submission of offers was not arbitrarily or capriciously selected, nor was date unduly unrestrictive of competition for procurement 565

Changes subsequent to negotiation
"Source selection" concept

In negotiation under 10 U.S.C. 2304(a)(11) of cost-plus-incentive-fee research and development contract for radar sets where contracting agency left choice of one of three power tubes to be used to offerors, selection of other than low offeror on basis of change in tube preferred and acceptance of price reduction, although selected offeror was not "successful offeror" contemplated by par. 3-506(b) of ASPR, and business clearance required by ASPR 1-403 had not been satisfied, without giving all offerors within competitive range opportunity to compete on basis of its preference was inconsistent with concept of competitive negotiation, as time for negotiating price and technical aspects is during source selection competitive phase of negotiating process and, therefore, negotiations should be reopened to afford all offerors opportunity to revise their technical and price proposals..... 739

Competitive range formula
Cost-type contract

Although offeror's estimated prices are not deciding factor in selecting successful contractor under cost-reimbursement type contract negotiated pursuant to ASPR 3-805.2, contracting agency that during evaluation of proposals received under request for quotations soliciting preparation of Govt. publication on cost-plus-a-fixed-fee basis eliminates 25 points assigned to factor of reasonableness of cost in evaluation criteria, is required under ASPR 3-805.1 to continue negotiations with all offerors within competitive range. Therefore, award made solely on basis of technical superiority as being in best interest of Govt. without further negotiation with offerors who have necessary qualifications to perform procurement should be canceled..... 16

CONTRACTS—Continued Page

Negotiation—Continued

Competition—Continued

Competitive range formula—Continued

Information disclosure

Since to properly terminate close of negotiations, offerors must be advised that negotiations are being conducted; asked for their "best and final" offer and not merely to confirm prior submission; and informed that any revision of proposal must be submitted by common cutoff date, cutoff date prescribed by sec. 1-3.805-1(b) of Federal Procurement Regs. is considered essential and not *de minimis* requirement, and purposes of establishing common cutoff date would be frustrated if proposal revision were permitted after common cutoff date without opening new negotiations on basis that this procedure would be favorable to Govt---------- 117

Manning information

Although in evaluation of offers, information secured from manning chart may be considered "other factor" in determining whether offeror is within competitive range for purposes of conducting meaningful discussions required by 10 U.S.C. 2304(g), price factor of offer may not be disregarded and, therefore, award of contract to other than lowest offeror, who had submitted acceptable manning chart, under request for proposals to furnish mess attendant services for 1 year with 2-year renewal option was improper, but cancellation of award is not required as it was made in good faith and on basis of prior misinterpretations of phrase "price and other factors considered." However, option should not be exercised and proposals resolicited under revised procedures communicated to offerors and indicating factors on which award will be based ---------- 679

Rejection under request for proposals to furnish mess attendant services of current contractor on basis of deficient manning charts without informing contractor that written advice as to proposed manpower hours had been misinterpreted by contractor in its reply to concern price whereas its offer was considered outside competitive range prevented meaningful negotiations with contractor. Failure to inform offerors of all evaluation factors to be considered and relative weight of each factor although not conducive to obtaining proposals offering maximum competition and most reasonable prices, circumstances of awards do not disclose abuse of direction by contracting officer on any basis for imputing bad faith on his part so as to affect legality of contract awarded and, therefore, award will not be disturbed---------- 686

Resources available for performance

Request for proposals to operate Air Force facility overseas issued pursuant to authority in 10 U.S.C. 2304(a)(6) to negotiate contracts for services outside United States that failed to disclose predetermined minimum resource levels was defective and contributed to rejection of all but highest priced offer as technically unacceptable on basis that sufficient resources to perform were not demonstrated, and although contract awarded was contrary to "competitive negotiation" requirements of 10 U.S.C. 2304(g), because of essentiality of procurement, it will not be disturbed. However, although offeror's judgment of resources needed to

CONTRACTS—Continued Page
Negotiation—Continued
Competition—Continued
Competitive range formula—Continued
Resources available for performance—Continued
perform is major factor in determining capacity to perform and may be considered in determining competitive range, agency must also meet its obligation by disclosing minimum needs to insure maximum competition ---------- 670
Discussion with all offerors requirement
Fact that under 10 U.S.C. 2304(g) written or oral discussion should be conducted with all responsible offerors whose proposals are within competitive range that encompasses both price and technical considerations does not permit use of any procedure that would disclose information during negotiation period to unfair competitive advantage of any proposer ---------- 1
Request for proposals that failed to include evaluation criteria or indicate criteria's relative importance because of erroneous belief these standards were inapplicable to civilian procurement was defective and was not in accordance with sound procurement policy and public interest. Also scoring of offer by comparison with predetermined score, overlooked that primary consideration in negotiated procurement is discussion with all offerors in competitive range and that borderline cases should not automatically be excluded from consideration, and as result maximum competition was not obtained. Request for proposals should be amended to establish omitted criteria and offerors permitted to submit additional information or revise proposals, and if within competitive range, afforded opportunity for discussion to extent required by sec. 1-3.802(c) of Federal Procurement Regs---------- 59
Acknowledgment of substantive amendment received after closing time for receipt of proposals under negotiated invitation for proposals issued pursuant to public exigency authority in 10 U.S.C. 2304(a)(2), and which provides for award on basis of initial proposals, may be accepted and proposal considered in view of fact negotiation procedures are more flexible than those used for advertised procurements. However, as late acceptance of addendum involves actions that constitute discussion within meaning of 10 U.S.C. 2304(g) and par. 3-805.1(a) of Armed Services Procurement Reg., negotiations must be conducted with all offerors within competitive range to obtain "best and final" offers, for notwithstanding urgency of procurement, award may no longer be made on basis of initial proposals received---------- 202
Nonresponsive proposals
When proposal is determined upon initial evaluation to be outside competitive range, there is no requirement in accordance with sec. 1-3.805-1(a) of Federal Procurement Regs. to conduct further discussions concerning deficiencies of proposal, section requiring that after receipt of initial proposals, written or oral discussions should be conducted only with responsible offerors "who submitted proposals within a competitive range"---------- 565

CONTRACTS—Continued Page
Negotiation—Continued
Competition—Continued
Discussion with all offerors requirement—Continued
Price sole evaluation factor
In negotiation of procurement, exception in 10 U.S.C. 2304(g) to conducting discussions with all responsible offerors within competitive range may not be invoked by contracting officer to make award to other than low responsible offeror where price is sole evaluation factor and, therefore, award to second low offeror, incumbent contractor, without obtaining Certificate of Competency (COC) on low offeror, a small business concern considered nonresponsible on factors relating to capacity and credit, was illegal and award should be canceled. No award should have been made unless SBA refused to issue COC or did not respond to referral within 15 days, or in alternative if low proposal was unacceptable without clarification, discussions should have been conducted with all offerors within competitive range ---------- 67
Failure to solicit proposals from all sources
Fact that several sources experienced in traffic control systems were not solicited to submit offers by Federal Highway Administration, Dept. of Transportation, under request for proposals, does not establish that adequate competition and reasonable price were not obtained, since in resolving questions concerning adequacy of solicitation of supply sources the propriety of particular procurement must be determined from Govt.'s point of view upon basis of whether adequate competition and reasonable prices were obtained and not upon whether every possible supply source was offered opportunity to bid or submit proposal ---------- 565
Indefinite, etc., specifications
Although it is incumbent upon Govt. agency to state material requirements of procurement in clear and unambiguous manner, should any aspect of solicitation require clarification, good faith and observance of spirit of competitive solicitation, as well as sound business practice on part of competitors for Govt. contracts, dictate that appropriate time for detailed examination of any provision considered to be ambiguous or confusing should be prior to time specified for submission of proposals or bids, and any unresolved ambiguities should be subject of timely protest ---------- 565
Maximum possible extent
"Engineering-critical" designation assigned by agreement to replacement parts for engines developed at costs shared by manufacturer and Govt. to preclude use of data for competitive purposes because of difficulty to determine rights of parties, relating to restricted data rights and not to procurement methods, additional sources of supply may be developed by instituting appropriate tests and qualification procedures, provided rights of manufacturer are not infringed. Par. 1-313 of Armed Services Procurement Reg. requires competitive procurement of spare parts, and it would be contrary to concept of "maximum practical competition" to hold that "engineering-critical" item may not be procured competitively without regard to willingness and ability of other than sole source supplier to produce parts without infringement of proprietary rights ---------- 184

CONTRACTS—Continued Page
Negotiation—Continued
Competition—Continued
Maximum possible extent—Continued
Fact that proposal timely submitted by firm in response to notice of procurement in Commerce Business Daily had not been obtained from procuring agency does not justify refusal to consider offer on basis of unfairness to firms who had acquired request for proposals (RFP) from limited number made available on "first received, first served" basis but were not permitted to compete because of belief sufficient competition had been secured from firms selected to receive RFP, and unfairness to those firms unable to obtain RFP. Although purchasing agency may limit number of prospective contractors solicited, this authority is not justification for not considering unsolicited offer and for failing to obtain maximum competition. Therefore, proposal refused may be resubmitted and all offerors who had submitted proposals afforded opportunity to revise their proposals---------- 215
Prices
Authority in sec. 1-3.805 of Federal Procurement Regs. to negotiate research and development, or cost-reimbursable, or special service contracts without price competition based solely on determination that particular contractor would furnish services of higher quality than any other contractor, does not cover selection of air tanker operators by Forest Service to fight forest fires as such service is not within categories contemplated by regulation for exception to price competition, and failure to include price as factor of contractor selection violates spirit and intent of Federal property and Administrative Services Act and implementing regulations. Although it would not be in best interest of Govt. to disturb contracts awarded and options exercised, price inclusion in future offers will be required. B-157954, Dec. 15, 1965, modified---------- 110
While rigid rules applicable to formally advertised procurements generally require award to lowest (price) responsive, responsible bidder, flexibility inherent in concept of negotiation permits award to be made to best advantage of Govt., price and other factors considered. Therefore, utilization in "competitive negotiation" of price as factor in selection of contractor will not adversely affect selection of qualified contractor by Forest Service for performance of firefighting services---------- 110
Conflicts of interest prohibition
Determination and findings of conflict of interest in procurement of analysis and design services to update obsolescent automatic data processing equipment, and proposal that design contract ban successful contractor from participating in future procurement of hardware, satisfies requirement in Dept. of Defense Directive 5500.10 Rules for Avoidance of Organizational Conflicts of Interest, that contractor "agrees to prepare and furnish complete specifications," notwithstanding design contract does not constitute whole specifications and exclusion from ban of purchase of data processing equipment to be handled by other than procuring agency. However, to carry out intent of Directive, ban should extend to date of award of first production contract rather than specific date proposed---------- 54

CONTRACTS—Continued Page
Negotiation—Continued
Cost, etc., data
"Realism" of cost *v.* "reasonable" cost
In award of cost-reimbursement contracts, procurement personnel are required to exercise informed judgments as to whether submitted proposals are realistic concerning proposed costs and technical approach, and such judgments must properly be left to administrative discretion of contracting agencies involved, since they are in best position to assess "realism" of costs and technical approaches, and must bear major criticism for any difficulties or expenses experienced by reason of defective cost analysis. Should Govt. fail to adequately measure "realism" of low quantum of costs, definition of "reasonable" cost to mean low cost *per se* on comparative basis would be improper for award purposes---- 390
Cutoff date
"Clean-up" sessions
Where all proposals are evaluated on basis of same performance criteria, omission of precise numerical weights to be used in evaluation process does not reflect on adequacy of evaluation criteria stated in request for proposals for ground simulator. Moreover, any doubt as to relative importance of evaluation should have been discussed and resolved before closing date set for receipt of proposals. Also use of negotiating procedure authorized in 10 U.S.C. 2304(a) for multi-year procurement was proper because insufficiency of performance specifications did not permit advertising for bids or using two-step procedure, and "clean-up" sessions held after prescribed cutoff date to clarify matters verbally agreed upon was not prejudicial to any offeror, and sessions do not constitute violation of par. 3-805.1(b) of Armed Services Procurement Reg---- 788
Notice sufficiency
A telegram establishing cutoff date for negotiations, which instructed three offerors within competitive range—one whose timely offer under request for quotations was excessive, others whose late proposals were considered on basis of "Determination that an Otherwise Acceptable Offer is Unreasonable as to Price"—that if no proposal revision is received by cutoff date lowest offer submitted will be used for evaluation, accomplished same result as would cancellation and resolicitation of procurement, and served as adequate notice of cutoff date for submission of "best and final" offers within meaning of par. 3-805.1(b) of Armed Services Procurement Reg., prescribing method for terminating negotiations, even if telegram did not refer to Late Proposals provision of solicitation or inform offerors that only notices of unacceptability would be furnished between closing date for negotiations and date of award--- 456
Reopening of negotiations
Where offers received under request for proposals issued pursuant to 10 U.S.C. 2304(a)(11), relative to contracting for experimental, developmental, or research work, were unacceptable and individual conferences were held with all offerors to clarify requirements for procurement of System-Multiplex-Analog, Data Acquisition Record and Reproduce Facility, and to give each contractor opportunity to justify any deviation offered and to modify proposal submitted, reopening of negotiations to inform offerors in competitive range of specification changes

CONTRACTS—Continued Page
Negotiation—Continued
Cutoff date—Continued
Reopening of negotiations—Continued
negotiated at individual conferences after date set for final offers that incorporated conference agreements was proper means of correcting suspected and discovered deficiencies in negotiation process and of overcoming presumption of unfairness raised because of inability of one offeror to meet specifications 114
Since to properly terminate close of negotiations, offerers must be advised that negotiations are being conducted; asked for their "best and final" offer and not merely to confirm prior submission; and informed that any revision of proposal must be submitted by common cutoff date, cutoff date prescribed by sec. 1-3.805-1(b) of Federal Procurement Regs. is considered essential and not *de minimis* requirement, and purposes of establishing common cutoff date would be frustrated if proposal revision were permitted after common cutoff date without opening new negotiations on basis that this procedure would be favorable to Govt 117
Under request for proposals for Fleet Computer Programming Services, which was modified to remove as evaluation factor cost of failing to award contract to current contractor and possible organizational conflict of interest because one of offerors was performing as subcontractor on program to be analyzed by new contractor, and to revise the program's manhours, continuation of negotiations during which prices were disclosed does not constitute prohibited auction technique as no competitive advantage resulted to any offeror and technique *per se* is not inherently illegal. Substantial changes in requirements and in computer industry justified amendments to solicitation issued pursuant to par. 3-805.1(e) of Armed Services Procurement Reg. and continuation of negotiations, therefore, last prices submitted may be opened and considered 619
Same for all proposers
Failure to establish common cutoff date for negotiation of cost-plus-award-fee contract for final hardware design and development of Applications Technology Satellites (ATS) project with two offerors who had been awarded parallel contracts for preliminary analysis and feasibility studies of ATS, and premature distribution for evaluation of first final proposal received resulted in defective selective procedures prejudicial to contractor denied opportunity to compete on equal time basis and possibly overcome its price disadvantage, a situation compounded by premature distribution of proposal for cost evaluation. Therefore, proposed award to offeror advantaged by longer negotiation period should be reconsidered 1
Determination and findings
Basis of negotiation
Solicitation of proposals on brand name basis without "or equal" provision in accordance with par. 1-1206.1(b) of Armed Services Procurement Reg. under negotiation authority contained in 10 U.S.C. 2304(a)(7), and pursuant to "Determination and Findings" that sole source procurement of sterilizers to be purchased is justified, is restrictive of competition unless no other item will meet Govt.'s minimum requirements or no other but sole source manufacturer can produce acceptable sterilizer. Therefore, as there is nothing particularly unique about design

CONTRACTS—Continued Page
Negotiation—Continued
Determination and findings—Continued
Basis of negotiation—Continued
or manufacture of brand name sterilizer, fact that it has proven satisfactory in use does not justify sole source procurement. Although justification for procurement is final determination, sole source solicitation stated in request for proposals should be eliminated---------- 209
Disclosure of price, etc.
Auction technique prohibition
While Govt.'s failure to establish common cutoff date under request for proposals for computer time and services prevented closing of negotiations, contracting officer's refusal to negotiate price reduction was proper in view of discussions constituting negotiations during which vital information concerning successful offeror's proposal was erroneously but innocently revealed, for to permit price reduction under circumstances would compromise Federal Procurement system by allowing auction technique precluded by sec. 1-3.805-1(b) of Federal Procurement Regs. Although contract awarded is not required to be terminated, in view of procedural deficiencies in procurement, contract option should not be exercised unless it is impracticable to reprocure services on equal competitive basis ---------- 222
Evaluation factors
Cost of changing contractors
In evaluation of offers under request for proposals to furnish professional architectural and engineering services, application of transition cost factor to offer of only contractor who had not previously performed services without apprising offerors that this factor would be utilized in effecting award of contract thus eliminating contractor who was lowest priced responsible offeror from competition was unwarranted and action was inconsistent with sound procurement policy which dictates that offerors be informed of all evaluation factors and relative importance of each factor, nor was waiver of transition costs for successful offeror because of available qualified personnel justified. Therefore, since award was patently erroneous and without regard to established principles of competitive negotiation, contract should be terminated---- 637
Criteria
Request for proposals that failed to include evaluation criteria or indicate criteria's relative importance because of erroneous belief these standards were inapplicable to civilian procurement was defective and was not in accordance with sound procurement policy and public interest. Also scoring of offer by comparison with predetermined score, overlooked that primary consideration in negotiated procurement is discussion with all offerors in competitive range and that borderline cases should not automatically be excluded from consideration, and as result maximum competition was not obtained. Request for proposals should be amended to establish omitted criteria and offerors permitted to submit additional information or revised proposals, and within competitive range, afforded opportunity for discussion to extent required by sec. 1-3.802(c) of Federal Procurement Regs---------- 59
Where solicitation is deficient in not providing reasonably definite information as to relative importance of evaluation criteria or factors

CONTRACTS—Continued Page
Negotiation—Continued
Evaluation factors—Continued
Criteria—Continued
set out in request for proposals, and sufficiency of information is not questioned prior to submission of proposals, and record does not establish that any offeror was placed at competitive advantage or disadvantage by inadequacy of information, deficiency is not sufficiently material to disturb contract award 565
Where all proposals are evaluated on basis of same performance criteria, omission of precise numerical weights to be used in evaluation process does not reflect on adequacy of evaluation criteria stated in request for proposals for ground simulator. Moreover, any doubt as to relative importance of evaluation should have been discussed and resolved before closing date set for receipt of proposals. Also use of negotiating procedure authorized in 10 U.S.C. 2304(a) for multi-year procurement was proper because insufficiency of performance specifications did not permit advertising for bids or using two-step procedure, and "clean-up" sessions held after prescribed cutoff date to clarify matters verbally agreed upon was not prejudicial to any offeror, and sessions do not constitute violation of par. 3–805.1(b) of Armed Services Procurement Reg. 788
Factors other than price
Resources available for performance
Request for proposals to operate Air Force facility overseas issued pursuant to authority in 10 U.S.C. 2304(a)(6) to negotiate contracts for services outside United States that failed to disclose predetermined minimum resource levels was defective and contributed to rejection of all but highest priced offer as technically unacceptable on basis that sufficient resources to perform were not demonstrated, and although contract awarded was contrary to "competitive negotiation" requirements of 10 U.S.C. 2304(g), because of essentiality of procurement, it will not be disturbed. However, although offeror's judgment of resources needed to perform is major factor in determining capacity to perform and may be considered in determining competitive range, agency must also meet its obligation by disclosing minimum needs to insure maximum competition 670
Firefighting contracts
Factors other than price
Authority in sec. 1–3.805 of Federal Procurement Regs. to negotiate research and development, or cost-reimbursable, or special service contracts without price competition based solely on determination that particular contractor would furnish services of higher quality than any other contractor, does not cover selection of air tanker operators by Forest Service to fight forest fires as such service is not within categories contemplated by regulation for exception to price competition, and failure to include price as factor of contractor selection violates spirit and intent of Federal Property and Administrative Services Act and implementing regulations. Although it would not be in best interest of Govt. to disturb contracts awarded and options exercised, price inclusion in future offers will be required. B–157954, Dec. 15, 1965, modified 110

CONTRACTS—Continued Page

Negotiation—Continued

Evaluation factors—Continued

Government property use

Although multiple awards to four offerors responding to solicitation issued under national emergency authority in 10 U.S.C. 2304(a)(16), three operating Govt-owned contractor-operated facilities, for purpose of satisfying current needs and retaining suppliers for accelerated future demands, did not result in lowest individual offeror receiving award for maximum quantity, multiple awards produced lowest overall cost to Govt. and will not be disturbed, even though request for proposals (RFP) stated that it was expected one offeror would not be successful whereas awards were made to all offerors. Moreover, there was no quantity increase to require formal amendment to RFP, evaluation of proposals from offerors operating Govt. facilities was in accord with Bur. of Budget Cir. No. A-76, and failure to award all contracts simultaneously was justified, as was evaluation transportation factor used---------- 777

Inflation and escalation recovery costs

Award under solicitation for class destroyers that provided for inclusion in price evaluation of inflation and escalation recovery factors, to offeror whose high initial target cost was reduced by evaluating estimated escalation recovery costs as greater than estimated inflation costs rather than to low base cost offeror displaced by inclusion in evaluation of estimated inflation costs that exceeded estimated escalation recovery factors, and of higher target profits, was proper. Award on basis of initial low target costs is not required where Govt. is protected from possibility of offerors manipulating inflation and escalation recovery factors, and recouping losses under reset provision of contract---------- 418

Manning requirements

Although in evaluation of offers, information secured from manning chart may be considered "other factor" in determining whether offeror is within competitive range for purposes of conducting meaningful discussions required by 10 U.S.C. 2304(g), price factor of offer may not be disregarded and, therefore, award of contract to other than lowest offeror, who had submitted acceptable manning chart, under request for proposals to furnish mess attendant services for 1 year with 2-year renewal option was improper, but cancellation of award is not required as it was made in good faith and on basis of prior misinterpretations of phrase "price and other factors considered." However, option should not be exercised and proposals resolicited under revised procedures, communicated to offerors and indicating factors on which award will be based------ 679

Rejection under request for proposals to continue mess attendant services of current contractor on basis of deficient manning charts without informing contractor that written advice as to proposed manpower hours had been misinterpreted by contractor in its reply to concern price whereas its offer was considered outside competitive range, prevented meaningful negotiations with contractor. Failure to inform offerors of all evaluation factors to be considered and relative weight of each factor although not conducive to obtaining proposals offering maximum competition and most reasonable prices, circumstances of award do not disclose abuse of discretion by contracting officer on any basis for imputing bad faith on his part so as to affect legality of contract awarded and, therefore, award will not be disturbed---------- 686

CONTRACTS—Continued Page
Negotiation—Continued
Evaluation factors—Continued
Point rating
Competitive range formula
Although offeror's estimated prices are not deciding factor in selecting successful contractor under cost-reimbursement type contract negotiated pursuant to ASPR 3–805.2, contracting agency that during evaluation of proposals received under request for quotations soliciting preparation of Govt. publication on cost-plus-a-fixed-fee basis eliminates 25 points assigned to factor of reasonableness of cost in evaluation criteria, is required under ASPR 3–805.1 to continue negotiations with all offerors within competitive range. Therefore, award made solely on basis of technical superiority as being in best interest of Govt. without further negotiation with offerors who have necessary qualifications to perform procurement should be canceled---------- 16
Criteria factors
Where in evaluation of management, financial, and technical factors offered under request for quotations for operation overseas of communication system, offerors are found equally qualified technically on basis of normalizing results of numerical scoring system used by Source Selection Evaluation Board and analysis of Board's evaluation by Source Selection Advisory Council using its independent scoring and weighting—referred to as "no gain technique"—and on basis of reevaluating manpower proposals, award of cost-plus-award-fee contract to lowest offeror was proper, and award is unaffected by Advisory Council's deviation, with permission, from evaluation guidelines in Army Command Pamphlet 715–3, and by changes in scoring made between evaluations, since relative weights of evaluation criteria were preserved---------- 390
Although offerors under request for quotations should be informed of relative weight or importance attached to each evaluation factor, there is no requirement to disclose precise numerical weights to be used in evaluation process. If offeror is in doubt as to relative importance of evaluation criteria to be used, time for resolution of matter is before closing date set for receipt of quotations---------- 390
In second evaluation of offers to operate communication system overseas, application of bonus and penalty points in weighting system, points not provided for in request for quotations, does not constitute substantive change that should have been furnished to all offerors by means of amendment, as purpose of weighting system was to enable Source Selection Advisory Council to apply its independent judgment to evaluation criteria considered by Source Selection Evaluation Board, and inclusion of additional points was in accord with procedures established prior to receipt of quotations---------- 390
Disclosure of evaluation base
In awarding contract to highest offeror under request for proposals to conduct survey of minority firms on basis of point rating that was not structured to inform offerors of evaluation criteria to be used and relative importance of each factor, and without giving other offerors in competitive range the opportunity to discuss weaknesses, excesses, or deficiencies of their original proposals as required by sec. 1–3.805–1 of Federal Procurement Regs., principles of negotiated competitive pro-

CONTRACTS—Continued Page

Negotiation—Continued

Evaluation factors—Continued

Point rating—Continued

Disclosure of evaluation base—Continued

curement were not observed. However, contract having been completed, it would not be in best public interest to take any remedial action; but to insure that Govt. will obtain most advantageous contract available in future procurements, such procedures should be corrected---------- 117

Predetermined score

Request for proposals that failed to include evaluation criteria or indicate criteria's relative importance because of erroneous belief these standards were inapplicable to civilian procurement was defective and was not in accordance with sound procurement policy and public interest. Also scoring of offer by comparison with predetermined score, overlooked that primary consideration in negotiated procurement is discussion with all offerors in competitive range and that borderline cases should not automatically be excluded from consideration, and as result maximum competition was not obtained. Request for proposals should be amended to establish omitted criteria and offerors permitted to submit additional information or revise proposals, and if within competitive range, afforded opportunity for discussion to extent required by sec. 1-3.802(c) of Federal Procurement Regs---------- 59

Propriety of evaluation

Point system evaluation of proposals for computer time and services under which number of points to be awarded for basic costs is to be determined from offeror's "pricing out," or cost for requirements stated in sample problem included in solicitation that is not considered indicative of cost differences between suppliers for every proposed computer application contemplated under contract, but, rather, typical of work to be performed, is proper method of evaluation, notwithstanding amount of memory or core size was not frozen in sample, as factors frozen are of greater significance as to price than variations in core size of sample-- 222

Price elements for consideration

Provision in solicitation for negotiation of fixed price, multi-year contract for ground simulator which provides that in evaluation of proposals Govt. would assess reasonableness, realism, and completeness of price proposals and that cost analysis and negotiation would be employed in interest of establishing sound prices does not require rejection of unrealistically low offer as provision serves only as aid in determining whether offeror understands scope of work, and in uncovering mistakes and "buy-ins" in violation of par. 1-311 of Armed Services Procurement Reg. Although multi-year procurement contains option that minimizes "buy-in," contract includes special clause to protect against recoupment of losses through change orders, and submission of different freeze dates that govern financial responsibility for engineering change orders has no significant effect on source selection---------- 788

Source Selection Board evaluation

Where in evaluation of management, financial, and technical factors offered under request for quotations for operation overseas of communication system, offerors are found equally qualified technically on basis of normalizing results of numerical scoring system used by Source

CONTRACTS—Continued Page
Negotiation—Continued
Evaluation factors—Continued
Source Selection Board evaluation—Continued
Selection Evaluation Board and analysis of Board's evaluation by Source Selection Advisory Council using its independent scoring and weighting—referred to as "no gain technique"—and on basis of reevaluating manpower proposals, award of cost-plus-award fee contract to lowest offeror was proper, and award is unaffected by Advisory Council's deviation, with permission, from evaluation guidelines in Army Command Pamphlet 715–3, and by changes in scoring made between evaluations, since relative weights of evaluation criteria were preserved---------- 390
In second evaluation of offers to operate communication system overseas, application of bonus and penalty points in weighting system, points not provided for in request for quotations, does not constitute substantive change that should have been furnished to all offerors by means of amendment, as purpose of weighting system was to enable Source Selection Advisory Council to apply its independent judgment to evaluation criteria considered by Source Selection Evaluation Board, and inclusion of additional points was in accord with procedures established prior to receipt of quotations---------- 390
"Successor employer" doctrine
Selection of contractor for negotiation of cost-plus-award-fee type contract for support services at Kennedy Space Center that are being performed under expiring contract without binding selected contractor to "successor employer" doctrine that would impose terms of current collective bargaining agreements with incumbent union employees was valid exercise of discretion granted to contracting agency to award contract that will be most advantageous to Govt., since there is neither statutory nor judicial requirement that contractor who succeeds prior contractor in performance of service for Govt. at Govt. installation assume predecessor contractor's bargaining agreement with its union employees; moreover, selected contractor proposes to recognize bargaining representatives of incumbent employees---------- 592
Superior product offered
Under solicitation issued pursuant to 10 U.S.C. 2304(a)(11), inviting proposals on cost-plus-a-fixed-fee basis for research and development services to maintain wind tunnel, award on basis of price alone was justified where both offers received were technically acceptable, as concepts in pars. 3–805.2 and 4–106.5(a) of Armed Services Procurement Reg. that price alone is not controlling factor relate to situations where favored offeror is significantly superior in technical ability and resources. Although award was not illegal because of failure to continue discussions with all offerors in competitive range when amendment changed "initial proposal" requirements of solicitation and to request "best and final" offers, and failure to specify all evaluation factors, such deficiencies should be avoided in future negotiated procurements---------- 246
Late proposals and quotations
Acceptance in Government's interest
Propriety of considering two proposals under amendment to small business set-aside for fin assemblies that changed quantities and delivery rates—one proposal from concern whose late offer had been rejected,

CONTRACTS—Continued Page
Negotiation—Continued
Late proposals and quotations—Continued
Acceptance in Government's interest—Continued
other from concern whose proposal under amendment was initial offer which is being considered for partial award of proposed low combination award—will not be questioned. Two late offerors having expended considerable time and effort in competing for procurement, and urgent need for supplies not warranting reopening of negotiations, desirability of applying late bid concept to negotiating area in these circumstances appears appropriate even though, generally, untimely submitted initial proposals will not be admitted into award competition ---------- 547
Multi-year procurements
Negotiated contracts
Where all proposals are evaluated on basis of same performance criteria, omission of precise numerical weights to be used in evaluation process does not reflect on adequacy of evaluation criteria stated in request for proposals for ground simulator. Moreover, any doubt as to relative importance of evaluation should have been discussed and resolved before closing date set for receipt of proposals. Also use of negotiating procedure authorized in 10 U.S.C. 2304(a) for multi-year procurement was proper because insufficiency of performance specifications did not permit advertising for bids or using two-step procedure, and "clean-up" sessions held after prescribed cutoff date to clarify matters verbally agreed upon was not prejudicial to any offeror, and sessions do not constitute violation of par. 3-805.1(b) of Armed Services Procurement Reg ---------- 788
Prebid conference requirement
Mandatory requirement to attend prebid conference contained in request for proposals for purpose of explaining extremely complex project may not be considered condition precedent to submission of proposal, as conditions or requirements that tend to restrict competition are unauthorized unless reasonably necessary to accomplish legislative purposes of contract appropriation involved or are expressly authorized by statute. To satisfy maximum competitive requirements of Federal Procurement Regs., prospective offeror who failed to attend conference should be permitted to submit proposal and given copy of prebid transcript. However, date for receipt of proposals having passed, new closing date should be set to enable firm denied opportunity to participate to submit proposal, and responding offerors to revise proposals ---------- 355
Prices
Audit requirement
Failure to audit fourth and final round of proposals under solicitation for class destroyers did not violate pars. 3-101, 3-807.2(a), and 3-809(b)(1) of Armed Services Procurement Reg. (ASPR), where not only were proposed prices in each of first three rounds of negotiations audited and found to be based on sound business judgment, but ASPR provisions do not require audit of proposals on each and every round of negotiated procurement, and par. 3-809(b)(1) provides that audits may be waived whenever it is clear that information already available is adequate for proposed procurement, and determination of "adequate" is within discretion of procuring activity and will not be questioned unless clearly erroneous ---------- 418

CONTRACTS—Continued Page
Negotiation—Continued
Prices—Continued
"Buy-ins"

Provision in solicitation for negotiation of fixed price, multi-year contract for ground simulator which provides that in evaluation of proposals Govt. would assess reasonableness, realism, and completeness of price proposals and that cost analysis and negotiation would be employed in interest of establishing sound prices does not require rejection of unrealistically low offer as provision serves only as aid in determining whether offeror understands scope of work, and in uncovering mistakes and "buy-ins" in violation of par. 1-311 of Armed Services Procurement Reg. Although multi-year procurement contains option that minimizes "buy-in," contract includes special clause to protect against recoupment of losses through change orders, and submission of different freeze dates that govern financial responsibility for engineering change orders has no significant effect on source selection---------- 788

Reduction

Acceptance of late reduction in price submitted by low offeror under request for quotations was in accord with par. 3-506(g) of Armed Services Procurement Reg. that provides "a modification received from an otherwise successful offeror, which is favorable to the Government, shall be considered at any time that such modification is received," and acceptance was not prejudicial to other offerors---------- 456

Public exigency
Failure to meet conditions

Acknowledgment of substantive amendment received after closing time for receipt of proposals under negotiated invitation for proposals issued pursuant to public exigency authority in 10 U.S.C. 2304(a)(2), and which provides for award on basis of initial proposals, may be accepted and proposal considered in view of fact negotiation procedures are more flexible than those used for advertised procurements. However, as late acceptance of addendum involves actions that constitute discussion within meaning of 10 U.S.C. 2304(g) and par. 3-805.1(a) of Armed Services Procurement Reg., negotiations must be conducted with all offerors within competitive range to obtain "best and final" offers, for notwithstanding urgency of procurement, award may no longer be made on basis of initial proposals received---------- 202

Request for proposals
Ambiguous

Although it is incumbent upon Govt. agency to state material requirements of procurement in clear and unambiguous manner, should any aspect of solicitation require clarification, good faith and observance of spirit of competitive solicitation, as well as sound business practice on part of competitors for Govt. contracts, dictate that appropriate time for detailed examination of any provision considered to be ambiguous or confusing should be prior to time specified for submission of proposals or bids, and any unresolved ambiguities should be subject of timely protest ---------- 565

Cancellation

Although in evaluation of offers, information secured from manning chart may be considered "other factor" in determining whether offeror is within competitive range for purposes of conducting meaningful dis-

CONTRACTS—Continued Page
Negotiation—Continued
Request for proposals—Continued
Cancellation—Continued
cussions required by 10 U.S.C. 2304(g), price factor of offer may not be disregarded and, therefore, award of contract to other than lowest offeror, who had submitted acceptable manning chart, under request for proposals to furnish mess attendant services for 1 year with 2-year renewal option was improper, but cancellation of award is not required as it was made in good faith and on basis of prior misinterpretations of phrase "price and other factors considered." However, option should not be exercised and proposals resolicited under revised procedures, communicated to offerors and indicating factors on which award will be based ---------- 679
Rejection under request for proposals to continue mess attendant services of current contractor on basis of deficient manning charts without informing contractor that written advice as to proposed manpower hours had been misinterpreted by contractor in its reply to concern price whereas its offer was considered outside competitive range, prevented meaningful negotiations with contractor. Failure to inform offerors of all evaluation factors to be considered and relative weight of each factor although not conducive to obtaining proposals offering maximum competition and most reasonable prices, circumstances of award do not disclose abuse of discretion by contracting officer on any basis for imputing bad faith on his part so as to affect legality of contract awarded and, therefore, award will not be disturbed---------- 686
Date for receipt extended
Mandatory requirement to attend prebid conference contained in request for proposals for purpose of explaining extremely complex project may not be considered condition precedent to submission of proposal, as conditions or requirements that tend to restrict competition are unauthorized unless reasonably necessary to accomplish legislative purposes of contract appropriation involved or are expressly authorized by statute. To satisfy maximum competitive requirements of Federal Procurement Regs., prospective offeror who failed to attend conference should be permitted to submit proposal and given copy of prebid transcript. However, date for receipt of proposals having passed, new closing date should be set to enable firm denied opportunity to participate to submit proposal, and responding offerors to revise proposals---------- 355
Defective
Predetermined resources for performance
Request for proposals to operate Air Force facility overseas issued pursuant to authority in 10 U.S.C. 2304(a)(6) to negotiate contracts for services outside United States that failed to disclose predetermined minimum resource levels was defective and contributed to rejection of all but highest priced offer as technically unacceptable on basis that sufficient resources to perform were not demonstrated, and although contract awarded was contrary to "competitive negotiation" requirements of 10 U.S.C. 2304(g), because of essentiality of procurement, it will not be disturbed. However, although offeror's judgment of resources needed to perform is major factor in determining capacity to perform and may

CONTRACTS—Continued Page
Negotiation—Continued
Request for proposals—Continued
Defective—Continued
Predetermined resources for performance—Continued
be considered in determining competitive range, agency must also meet its obligation by disclosing minimum needs to insure maximum competition ---------- 670
Distribution limitation
Fact that proposal timely submitted by firm in response to notice of procurement in Commerce Business Daily had not been obtained from procuring agency does not justify refusal to consider offer on basis of unfairness to firms who had acquired request for proposals (RFP) from limited number made available on "first received, first served" basis but were not permitted to compete because of belief sufficient competition had been secured from firms selected to receive RFP, and unfairness to those firms unable to obtain RFP. Although purchasing agency may limit number of prospective contractors solicited, this authority is not justification for not considering unsolicited offer and for failing to obtain maximum competition. Therefore, proposal refused may be resubmitted and all offerors who had submitted proposals afforded opportunity to revise their proposals---------- 215
Minimum needs requirement
Same for all offerors
In procurement under request for proposals of ground simulator to be used to support training of navigators where proposal deficiencies were identified, clarified, Govt. work statement changed, and contractors allowed to determine manner of correction, since minimum requirements in several critical high cost areas established by oral clarification with one offeror were not reflected in any formal amendment, possibility that all offerors were not committed to same minimum requirements has been dispelled by independent examination made by National Bur. of Standards of technical proposals, examination conducted by Bureau as U.S. GAO was not equipped to evaluate undertakings represented in technical proposals submitted---------- 788
Submission date
Determination of date to be specified for receipt of proposals is matter of judgment properly vested in contracting agency; and where record evidences that 40-day period for submission of proposals on Urban Traffic Control System to Federal Highway Administration, Dept. of Transportation, was adequate for any offeror who had interest in project, as well as experience, knowledge, systems expertise, and capability sufficient to meet requirements contained in request for proposals, it is concluded date specified for submission of offers was not arbitrarily or capriciously selected, nor was date unduly restrictive of competition for procurement ---------- 565
Sole source basis
Authority
Offeror who was granted court injunction to prevent opening of bids and award of contract under two-step procurement, and who protested use of two-step method to obtain ship's hull side blast-cleaning unit, stating Navy was required pursuant to pars. 3-108 and 3-214 of Armed

CONTRACTS—Continued Page
Negotiation—Continued
Sole source basis—Continued
Authority—Continued
Services Procurement Reg. to negotiate sole source contract with it as developer of unit, has no basis for objection. Secretary only has authority to determine that sole source procurement to avoid duplication of investment and effort is justified, and evidence did not warrant invoking his authority; and as conditions prescribed in par. 2–502(a) of regulation for use of two-step method of procurement existed, determination to use this method was within cognizance of procurement officers------- 346
Broadening competition
"Engineering-critical" designation assigned by agreement to replacement parts for engines developed at costs shared by manufacturer and Govt. to preclude use of data for competitive purposes because of difficulty to determine rights of parties, relating to restricted data rights and not to procurement methods, additional sources of supply may be developed by instituting appropriate tests and qualification procedures, provided rights of manufacturer are not infringed. Par. 1–313 of Armed Services Procurement Reg. requires competitive procurement of spare parts, and it would be contrary to concept of "maximum practical competition" to hold that "engineering-critical" item may not be procured competitively without regard to willingness and ability of other than sole-source supplier to produce parts without infringement of proprietary rights ---------- 184
Solicitation of proposals on brand name basis without "or equal" provision in accordance with par. 1–1206.1(b) of Armed Services Procurement Reg. under negotiation authority contained in 10 U.S.C. 2304(a)(7), and pursuant to "Determination and Findings" that sole source procurement of sterilizers to be purchased is justified, is restrictive of competition unless no other item will meet Govt.'s minimum requirements or no other but sole source manufacturer can produce acceptable sterilizer. Therefore, as there is nothing particularly unique about design or manufacture of brand name sterilizer, fact that it has proven satisfactory in use does not justify sole source procurement. Although justification for procurement is final determination, sole source solicitation stated in request for proposals should be eliminated---------- 209
Unsolicited proposals
Acceptance
Fact that proposal timely submitted by firm in response to notice of procurement in Commerce Business Daily had not been obtained from procuring agency does not justify refusal to consider offer on basis of unfairness to firms who had acquired request for proposals (RFP) from limited number made available on "first received, first served" basis but were not permitted to compete because of belief sufficient competition had been secured from firms selected to receive RFP, and unfairness to those firms unable to obtain RFP. Although purchasing agency may limit number of prospective contractors solicited, this authority is not justification for not considering unsolicited offer and for failing to obtain maximum competition. Therefore, proposal refused may be resubmitted and all offerors who had submitted proposals afforded opportunity to revise their proposals---------- 215

CONTRACTS—Continued Page

Options

Not to be exercised

Procedural deficiencies in procurement

While Govt.'s failure to establish common cutoff date under request for proposals for computer time and services prevented closing of negotiations, contracting officer's refusal to negotiate price reduction was proper in view of discussions constituting negotiations during which vital information concerning successful offeror's proposal was erroneously but innocently revealed, for to permit price reduction under circumstances would compromise Federal Procurement system by allowing auction technique precluded by sec. 1–3.805–1(b) of Federal Procurement Regs. Although contract awarded is not required to be terminated, in view of procedural deficiencies in procurement, contract option should not be exercised unless it is impracticable to reprocure services on equal competitive basis ---------- 222

Although in evaluation of offers, information secured from manning chart may be considered "other factor" in determining whether offeror is within competitive range for purposes of conducting meaningful discussions required by 10 U.S.C. 2304(g), price factor of offer may not be disregarded and, therefore, award of contract to other than lowest offeror, who had submitted acceptable manning chart, under request for proposals to furnish mess attendant services for 1 year with 2-year renewal option was improper, but cancellation of award is not required as it was made in good faith and on basis of prior misinterpretations of phrase "price and other factors considered." However, option should not be exercised and proposals resolicited under revised procedures, communicated to offerors and indicating factors on which award will be based ---------- 679

Payments

Assignment. (*See* Claims, assignment)

Propriety

Propriety of Forest Service of Dept. of Agriculture to use appropriation entitled "Forest Protection and Utilization" for payment of plastic litter bags is for determination on basis of whether contract involved is reasonably necessary or incident to execution of program or activity authorized by appropriation. If no other appropriation provides more specifically for items such as litter bags, appropriation may be used to satisfy contract ---------- 534

Withholding

Protect interests of United States

Withholding 10 percent from progress payments due on each job order until expiration of 60-day guarantee period prescribed in Master Contract for Repair and Alteration of Vessels is not required where work is performed in accordance with contract terms and redelivered ship accepted by Govt. Express warranty clauses in contract neither excuse nor suspend obligation to make payment after contractor completes work under each job order, nor does payment clause require expiration of warranty period before payment is made; and neither of clauses prescribe additional work, but rather affix liability in monetary terms or through corrective action by contractor for prior acts or omissions for 60 days after completion of work covered by job order ---------- 263

CONTRACTS—Continued Page

Performance

Geographical area restriction breached

Price reduction

A requirement in invitation for bids that contract be performed in restricted geographical area is reasonable limitation on competition when contracting agency needs prompt service and plant accessibility, and restriction relating to bidder responsibility, compliance with requirement results in valid contract. Therefore, although contractor's unauthorized action subsequent to contract awards to effect performance of printing of technical publications restricted to Dallas-Fort Worth area in San Antonio constitutes breach of contract and Govt. has vested right to insist on performance in restricted area, since performance in San Antonio area will not deprive Govt. of contemplated rights, contracts may be modified to delete restriction with adequate price adjustment, however, future procurements should broaden competition by enlarging performance area---- 769

Stop orders

Issuance of stop order pending resolution of bid protest, and cancellation of award to second low bidder to award contract to low bidder whose aggregate firm bid conforming to bid instructions that were overlooked in evaluation process was displaced by erroneous application of unit price rule to estimated data prices, were proper administrative actions, notwithstanding contract did not provide for stop orders, since authority to issue stop orders is not dependent on contract provision but on whether action is necessary in interest of Govt., and procurement subject to statutory requirement that award be made to lowest responsive and responsible bidder, erroneous award which did not involve exercise of any authorized discretion did not create binding contract, and cancellation of award was legally permissible---- 447

While par. 2-407.8(c) of Armed Services Procurement Reg. provides that contracting officer seek mutual agreement with successful bidder to suspend performance of contract on no-cost basis when it appears likely that award may be invalidated and delay receipt of supplies and services, it does not bar issuance of stop order in event contractor declines to cooperate with contracting agency---- 447

Prices

Underpricing

Subsequent developments

Request for relief under sec. 17 of Armed Services Procurement authorizing extraordinary contractual actions to facilitate national defense made after contract completion and final payment on basis bid underpricing was due to unforeseen production difficulties and misleading vendor quotes is for denial where occurrence of mistake "so obvious it was or should have been apparent" is not demonstrated, and record establishes price bid was adequately verified and was intended, and only subsequent events resulted in unprofitable contract. Even assuming existence of bona fide mistake, fact that price bid greatly exceeded Govt.'s estimate intended as funding allocation, or that prior procurements for lesser quantities were priced much higher than group of bids in price range of successful bid did not place contracting officer on actual or constructive notice of error---- 89

CONTRACTS—Continued Page

Proprietary, etc., data. (*See* Contracts, data, rights, etc.)

Protests

Filing before or after award

Under procedure in 4 CFR 20.1, bid protest may be filed with U.S. GAO before as well as after award of contract and, therefore, in filing protest to award under request for proposals, regulation does not require, as prerequisite to standing or timeliness, that award should have been made or that offeror should have been informed of unacceptability of his proposal ---------- 59

Persons qualified to protest

The discarding of all bids for movement or storage of personal property by naval installation upon discovering that item in one of three service schedules was 100 percent overstated in invitation for bids was proper administrative determination pursuant to par. 2–404.1(b) of Armed Services Procurement Reg., notwithstanding protesting bidder may not be qualified bidder, as any bidder may properly bring to attention of concerned Govt. officials any factor indicating that particular procurement action is defective. Also since reissued invitation contained erroneous weight estimate and misstated actual operating authorities necessary to perform solicited services, this second invitation, too, may be canceled ---------- 753

Timeliness

Although it is incumbent upon Govt. agency to state material requirements of procurement in clear and unambiguous manner, should any aspect of solicitation require clarification, good faith and observance of spirit of competitive solicitation, as well as sound business practice on part of competitors for Govt. contracts, dictate that appropriate time for detailed examination of any provision considered to be ambiguous or confusing should be prior to time specified for submission of proposals or bids, and any unresolved ambiguities should be subject of timely protest ---------- 565

Where all proposals are evaluated on basis of same performance criteria, omission of precise numerical weights to be used in evaluation process does not reflect on adequacy of evaluation criteria stated in request for proposals for ground simulator. Moreover, any doubt as to relative importance of evaluation should have been discussed and resolved before closing date set for receipt of proposals. Also use of negotiating procedure authorized in 10 U.S.C. 2304(a) for multi-year procurement was proper because insufficiency of performance specifications did not permit advertising for bids or using two-step procedure, and "clean-up" sessions held after prescribed cutoff date to clarify matters verbally agreed upon was not prejudicial to any offeror, and sessions do not constitute violation of par. 3–805.1(b) of Armed Services Procurement Reg ---------- 788

Tolling of bid acceptance period

Where second low bidder, during period for accepting its bid, filed protest with U.S. GAO as to unacceptability of low bid, consideration of its bid submitted under invitation for bids on electronic equipment is not precluded because bid acceptance period was extended only after acceptance date had expired, since filing of protest tolled expiration of bid acceptance period until after resolution of protest. As no other

CONTRACTS—Continued Page
Protests—Continued
Tolling of bid acceptance period—Continued
bidder is eligible for award, integrity of competitive system is not involved; and, therefore, there is no "compelling reason" to reject second low bid. However, in future procurements should award be delayed until after expiration of bid acceptance period, procedures prescribed in secs. 1–2.404–1(c) and 1–2.407–8(b)(2) of Federal Procurement Regs. should be followed ---------- 357
Qualified products. (*See* Contracts, specifications, qualified products)
Requests for quotations
Cost-plus contracts. (*See* Contracts, cost-plus)
Evaluation factors
Disclosure
Although offerors under request for quotations should be informed of relative weight or importance attached to each evaluation factor, there is no requirement to disclose precise numerical weights to be used in evaluation process. If offeror is in doubt as to relative importance of evaluation criteria to be used, time for resolution of matter is before closing date set for receipt of quotations ---------- 390
In second evaluation of offerors to operate communication system overseas, application of bonus and penalty points in weighting system, points not provided for in request for quotations, does not constitute substantive change that should have been furnished to all offerors by means of amendment, as purpose of weighting system was to enable Source Selection Advisory Council to apply its independent judgment to evaluation criteria considered by Source Selection Evaluation Board, and inclusion of additional points was in accord with procedures established prior to receipt of quotations ---------- 390
Requirements
Minimum quantities
Request for proposals to furnish requirements for 10 different types of diesel-electric generator sets, that stated Govt.'s best estimate of total quantities needed but did not, because of lack of funds, guarantee purchase of minimum quantities, contemplates requirements-type contract within meaning of par. 3–409.2(b) of Armed Services Procurement Reg., and use of such contract is valid since there is no evidence Govt.'s estimate of probable needs was arrived at in bad faith, and agreement to procure all requirements without stating minimum guarantees constitutes adequate consideration. However, when funds are available and needs can be ascertained with reasonable certainty, use of more definite type contract would be assurance that firm minimum quantities, commensurate to maximum extent with estimated requirements, will be ordered ---------- 506
Small business set-asides
Certificate of Competency procedure
Under small business set-aside for award of requirements type contract, evaluation of low bid for purpose of Certificate of Competency (COC) procedures on basis of initial quantity to be purchased rather than estimated quantity to be ordered during contract period was inconsistent with use of estimated quantity to determine low bidder and to perform preaward survey, and resulted in erroneous refusal of contract-

CONTRACTS—Continued Page
Requirements—Continued
Small business set-asides—Continued
Certificate of Competency procedure—Continued
ing officer to refer low bidder's unfavorable preaward survey to Small Business Administration (SBA) as required by par. 1-705(c) of Armed Services Procurement Reg. (ASPR). Therefore, procedure in ASPR 1-705.4(c)(vi) should be implemented and if SBA determines that COC is still valid, contract awarded should be canceled and award made to is still valid, contract awarded should be canceled and award made to low bidder---- 799
Worldwide performance locations
Invitation for bids that contemplates construction type requirements contract for reconditioning and maintenance of radomes located worldwide, and which requested one bid price for each type service for particular size radome regardless of location and made site inspection impracticable, is not deficient invitation and need not be revised to require separate bids for more than 200 possible performance sites—an insurmountable administrative workload—to allow for varying travel and transportation expense factors since regardless of location, work is essentially same at each site, making site inspections unnecessary, and scheduling of service consecutively for adjacent locations will minimize travel expenses. Requirements contracts are valid and contracting agency unable to state locations and performance dates, having estimated its requirements in good faith may make award under invitation-- 830
Davis-Bacon Act provisions and wage determinations in invitation for bids that were to apply only to some of worldwide performance sites at which radomes are to be reconditioned and maintained under requirements contract, which were deleted by amendment upon issuance of Presidential Proclamation 4031, need not be reinstated because suspension of act was revoked by Proclamation 4040. Determination to resolicit procurement and include Davis-Bacon Act provisions although recommended was left to discretion of contracting agencies by Dept. of Labor, and determination having been made that resolicitation of procurement would be prejudicial to bidders, contract without provisions may be awarded to lowest responsive and responsible bidder---- 830
Research and development
Conflicts of interest prohibition
Determination and findings of conflict of interest in procurement of analysis and design services to update obsolescent automatic data processing equipment, and proposal that design contract ban successful contractor from participating in future procurement of hardware, satisfies requirement in Dept. of Defense Directive 5500.10, Rules for Avoidance of Organizational Conflicts of Interest, that contractor "agrees to prepare and furnish complete specifications," notwithstanding design contract does not constitute whole specification and exclusion from ban of purchase of data processing equipment to be handled by other than procuring agency. However, to carry out intent of Directive, ban should extend to date of award of first production contract rather than specific date proposed---- 54
Federal Highway Administration, Dept. of Transportation, in awarding cost-plus-a-fixed-fee contract for Urban Traffic Control System

CONTRACTS—Continued Page

Research and development—Continued

Conflicts of interest prohibition—Continued

(UTCS) to offeror that had prepared specifications for system under research and development study, did not violate any mandatory regulations, since Federal Procurement Regs. do not contain organizational conflicts of interest provision and Dept. has not issued specific rules governing conflicts of interests, and even if Administration was subject to Dept. of Defense Directive 5500.10, "Rules for the Avoidance of Organizational Conflicts of Interest," which it is not, Directive is not self-executing and would not apply in absence of notice to prospective contractors and inclusion of restrictive clause in contract. Moreover, whether UTCS program represents judicious, as distinguished from legal, expenditure of public funds would not affect legality of contract--- 565

Price factor

Under solicitation issued pursuant to 10 U.S.C. 2304(a)(11), inviting proposals on cost-plus-a-fixed-fee basis for research and devolpment services to maintain wind tunnel, award on basis of price alone was justified where both offers received were technically acceptable, as concepts in pars. 3-805.2 and 4-106.5(a) of Armed Services Procurement Reg. that price alone is not controlling factor relate to situations where favored offeror is significantly superior in technical ability and resources. Although award was not illegal because of failure to continue discussions with all offerors in competitive range when amendment changed "initial proposal" requirements of solicitation and to request "best and final" offers, and failure to specify all evaluation factors, such deficiencies should be avoided in future negotiated procurements---------- 246

Technical deficiencies of proposals

Correction

Where offers received under request for proposals issued pursuant to 10 U.S.C. 2304(a)(11), relative to contracting for experimental, developmental, or research work, were unacceptable and individual conferences were held with all offerors to clarify requirements for procurement of System-Multiplex-Analog, Data Acquisition Record and Reproduce Facility, and to give each contractor opportunity to justify any deviation offered and to modify proposal submitted, reopening of negotiations to inform offerors in competitive range of specification changes negotiated at individual conferences after date set for final offers that incorporated conference agreements was proper means of correcting suspected and discovered deficiencies in negotiation process and of overcoming presumption of unfairness raised because of inability of one offeror to meet specifications---------- 114

Sales, generally. (*See* Sales)

Samples. (*See* Contracts, specifications, samples)

Service Contract Act. (*See* Contracts, labor stipulations, Service Contract Act of 1965)

Small business concern awards. (*See* Contracts, awards, small business concerns)

Sole source procurements. (*See* Contracts, negotiation, sole source basis)

CONTRACTS—Continued Page
Specifications—Continued
Changes, revisions, etc.—Continued
Davis-Bacon Act provisions—Continued
act was revoked by Proclamation 4040. Determination to resolicit procurement and include Davis-Bacon Act provisions although recommended was left to discretion of contracting agencies by Dept. of Labor, and determination having been made that resolicitation of procurement would be prejudicial to bidders, contract without provisions may be awarded to lowest responsive and responsible bidder---------- 830
Conformability of equipment, etc., offered
Ambiguous bids
Unsolicited insertion of plant part numbers in low bid to furnish engine air filters without express statement that specifications would be complied with created ambiguity that may not be resolved by reference to "catalog cut sheets" and other data available to Govt. before bid opening, as reliance on this information would afford bidder option to affect responsiveness of bid—an option detrimental to the competitive bidding system. Therefore, as contracting officer cannot determine whether bidder offered conforming article or that part numbers were included for purpose of internal control, bid is considered qualified bid and may not be considered for award---------- 8
Superior product offered
Under solicitation issued pursuant to 10 U.S.C. 2304(a)(11), inviting proposals on cost-plus-a-fixed-fee basis for research and development services to maintain wind tunnel, award on basis of price alone was justified where both offers received were technically acceptable, as concepts in pars. 3-805.2 and 4-106.5(a) of Armed Services Procurement Reg. that price alone is not controlling factor relate to situations where favored offeror is significantly superior in technical ability and resources. Although award was not illegal because of failure to continue discussions with all offerors in competitive range when amendment changed "initial proposal" requirements of solicitation and to request "best and final" offers, and failure to specify all evaluation factors, such deficiencies should be avoided in future negotiated procurements---------- 246
Technical deficiencies
Determination by other than contracting agency
In procurement under request for proposals of ground simulator to be used to support training of navigators where proposal deficiencies were identified, clarified, Govt. work statement changed, and contractors allowed to determine manner of correction, since minimum requirements in several critical high cost areas established by oral clarification with one offeror were not reflected in any formal amendment, possibility that all offerors were not committed to same minimum requirements has been dispelled by independent examination made by National Bur. of Standards of technical proposals, examination conducted by Bureau as U.S. GAO was not equipped to evaluate undertakings represented in technical proposals submitted---------- 788
Negotiated procurement
Request for proposals to operate Air Force facility overseas issued pursuant to authority in 10 U.S.C. 2304(a)(6) to negotiate contracts for services outside United States that failed to disclose predetermined

CONTRACTS—Continued Page

Specifications

Adequacy

Timeliness of bidder's protest

Low bidder who after bid opening objected to use of brand name or equal invitation which listed 47 salient characteristics that did not include technical data for electronic receivers to be purchased, on basis unlisted data could have been quickly summarized and purchase description prepared that would meet requirements of sec. 1–1.307–2 of Federal Procurement Regs. for clear and accurate description of technical requirement, should have lodged his complaint before bids were opened. Invitation for bids clearly stated salient characteristics and other criteria on which bids were to be evaluated, and bidder having participated in brand name or equal procurement to point of bid opening is deemed to have acquiesced in evaluation criteria set out in invitation---------- 193

Amendments

Basis for requirement

Although multiple awards to four offerors responding to solicitation issued under national emergency authority in 10 U.S.C. 2304(a)(16), three operating Govt-owned contractor-operated facilities, for purpose of satisfying current needs and retaining suppliers for accelerated future demands, did not result in lowest individual offeror receiving award for maximum quantity, multiple awards produced lowest overall cost to Govt. and will not be disturbed, even though request for proposals (RFP) stated that it was expected one offeror would not be successful whereas awards were made to all offerors. Moreover, there was no quantity increase to require formal amendment to RFP, evaluation of proposals from offerors operating Govt. facilities was in accord with Bur. of Budget Cir. No. A–76, and failure to award all contracts simultaneously was justified, as was evaluation transportation factor used---------- 777

Furnishing requirement

Requirement in par. 2–208(a) of Armed Services Procurement Reg. (ASPR) that amendments to invitations for bids must be sent to everyone to whom invitations had been furnished has reference to amendments issued under competitive system prior to opening of bids; and, therefore, amendment issued after closing date for receipt of technical proposals to only two concerns out of 37 potential suppliers solicited under first step of two-step procurement who had responded to Request for Technical Proposals (RFTP) was proper and in accord with ASPR 3–805.1 (e), relative to changes occurring in requirements during negotiations. In fact, if firms who had not responded to RFTP had been furnished copies of amendment and responded, provisions of "Late Proposals and Modifications" clause would be for application---------- 346

Brand name or equal. (*See* Contracts, specifications, restrictive, particular name)

Changes, revisions, etc.

Davis-Bacon Act provisions

Davis-Bacon Act provisions and wage determinations in invitation for bids that were to apply only to some of worldwide performance sites at which radomes are to be reconditioned and maintained under requirements contract, which were deleted by amendment upon issuance of Presidential Proclamation 4031, need not be reinstated because suspension of

CONTRACTS—Continued Page
Specifications—Continued
Conformability of equipment, etc., offers—Continued
Technical deficiencies—Continued
Negotiated procurement—Continued
minimum resource levels was defective and contributed to rejection of all but highest priced offer as technically unacceptable on basis that sufficient resources to perform were not demonstrated, and although contract awarded was contrary to "competitive negotiation" requirements of 10 U.S.C. 2304(g), because of essentiality of procurement, it will not be disturbed. However, although offeror's judgment of resources needed to perform is major factor in determining capacity to perform and may be considered in determining competitive range, agency must also meet its obligation by disclosing minimum needs to insure maximum competition ---------- 670
Defective
Cancellation of invitation
Invitation for bids that states required man-year level of effort to perform engineering services for systems and program definition of combat systems maintenance training facility at erroneously fixed rather than estimated level, fails to show Govt.'s minimum needs and, therefore, successful contractor would be unable to produce results required in view of correlation between level of effort and ultimate work product. Failure to accurately reflect man-year level of effort required constitutes compelling reason for canceling invitation contemplated by par. 2-404.1(a) of Armed Services Procurement Reg. and for readvertisement of procurement. However, cancellation emphasizes need for effective administrative definition and expression of Govt.'s requirements during procurement planning process ---------- 50
Descriptive data
Voluntary submission
Nonconformance to specifications
Determination to open late bid received on one of two technical proposals submitted under first step of two-step procurement and found acceptable, even though equipment offered did not meet all details of specifications, was proper since delay in delivery of bid received more than 24 hours before bid opening was due to Govt. mishandling. Although bid was accompanied by covering letter and unsolicited descriptive literature at variance with specifications, it is nevertheless responsive bid; for it is inconceivable that low bidder, who had qualified under first step, would disqualify itself in second step and, therefore, deviating material is viewed as attempt to identify which of two accepted first-step proposals was being priced in second step ---------- 337
Deviations
Informal *v.* substantive
Bid prices incident to aggregate award
Failure to submit price for one of four military installations at which delivery is to be made of coveralls solicited under invitation that requested individual prices on quantities specified for each installation is not clerical oversight that may be waived as minor irregularity pursuant to par. 2-405 of Armed Services Procurement Reg., and omitted price may not be inserted on basis single price quoted for other three installations applies to entire quantity solicited because bidder had

CONTRACTS—Continued Page
Specifications—Continued
Deviations—Continued
Informal *v.* substantive—Continued
Bid prices incidents to aggregate award—Continued
checked block captioned "100% of all quantities to be awarded or none" in bid form, nor may nonresponsive bid be considered for partial award. As award of whole contract is in best interests of Govt., it may be made to responsive and responsible bidder offering low aggregate bid whose per unit net price for entire procurement is reasonable although slightly higher than that of nonresponsive bidder ---------- 852
Block bidding
Quantity Limitation Prohibition Clause intended to prevent block bidding that was included in invitation for bids to manufacture flight jackets for delivery at several destinations which provided each bidder may submit one quantity *only* at one price for each item bid, and may stipulate maximum/minimum quantity acceptable for each item or overall procurement caused no ambiguity in invitation, and offer bidding on first 7,470 for each destination and then including this same quantity with additional 1,000 for next increment of 8,470 each and so on until each additional 1,000 added thereon reached total procurement quantity of 16,470 each, offered more than one price for quantity and violation of clause may not be waived under par. 2–405 of Armed Services Procurement Reg. as informality ---------- 48
Interest on past due invoices
Rejection of bid under solicitation issued for Federal Supply Schedule contract to furnish wood office furniture because of inclusion of qualifying provision "1½% interest per month on past due invoices," which contracting officer refused to delete, was proper under sec. 1–2.404–2(b)(5) of Federal Procurement Regs. Regulation provides for rejection of bid if bidder imposes conditions which would modify requirements of invitation, or limit his liability or rights of Govt. to his advantage, and although objectonable conditions may be deleted if they do not go to substance of bid—that is, that they only have trivial or negligible effect on price, quantity, quality, or delivery—condition imposed affected price and could not be deleted. Furthermore, contracting officer is without authority to obligate Govt. to pay interest on unpaid invoices. 5 Comp. Gen. 649, modified ---------- 733
Technical proposals under two-step procurement
Minor revision of unpriced technical proposal, first-step of two-step procurement or retrieval system that had initially been found unacceptable was not prejudicial to other bidders for Govt. under procedure contemplated by par. 2–503.1 is free to discuss submitted proposal with offeror if clarification or additional information will bring proposal to acceptable status since two-step procedure extends benefits of advertising to procurements previously negotiated, and while second-step of procedure is conducted in accordance with formal advertising, first-step contemplates maximizing competition. Therefore, low bidder originally incorrectly placed in unacceptable category, having submitted acceptable technical proposal and confirmed extremely low price bid may properly be awarded contract ---------- 866

CONTRACTS—Continued Page
Specifications—Continued
Failure to furnish something required
Addenda acknowledgment
Legal relationship of parties altered
Amendment to invitation issued to implement Defense Procurement Cir. No. 74 entitled "Subcontractor Cost or Pricing Data and Audit Requirements," that recognized exemptions equivalent to those provided in so-called Truth in Negotiations Act, is material amendment, whether or not impact on price is demonstrable, or legal obligations imposed are new or being clarified, and failure to acknowledge amendment may not be waived as minor informality under ASPR 2-405, even though amendment was not received. Amendment altered legal relationship of parties, even though not necessarily varying actual work to be performed, by making submission of cost or pricing data, and price contractor's responsibility for defective subcontractor data mandatory instead of discretionary ---------- 11
Negotiated procurement
Acknowledgment of substantive amendment received after closing time for receipt of proposals under negotiated invitation for proposals issued pursuant to public exigency authority in 10 U.S.C. 2304(a)(2), and which provides for award on basis of initial proposals, may be accepted and proposal considered in view of fact negotiation procedures are more flexible than those used for advertised procurements. However, as late acceptance of addendum involves actions that constitute discussion within meaning of 10 U.S.C. 2304(g) and par. 3-805.1(a) of Armed Services Procurement Reg., negotiations must be conducted with all offerors within competitive range to obtain "best and final" offers, for notwithstanding urgency of procurement, award may no longer be made on basis of initial proposals received---------- 202
Blanket offer to conform to specifications
Where technical data necessary for drafting of purchase description for electronic receivers was lacking, use of brand name or equal specification, listing 47 salient characteristics that had to be met by any "equal" product offered was not improper, nor did evaluation of equal product on basis of whether long list of features was met operate to make salient characteristics complete purchase description prescribed by sec. 1-1.307-2 of the Federal Procurement Regs. in absence of clear and accurate description of technical requirements. Therefore, invitation for bids not constituting satisfactory purchase description, low bid that complied with only six of stated 47 characteristics and contained statement that specifications would be met was properly rejected---------- 193
Data contained in literature that was not prepared to quote back salient features of brand name model but was published to disseminate information to public does not constitute sufficient descriptive literature for purpose of determining whether product equals brand name. Furthermore, offer to conform does not satisfy descriptive literature requirement of brand name or equal clause for detailed information, and submission of data after bid opening may not be considered under fundamental principle of competitive bidding system that responsiveness of bid must be determined from bid without reference to extraneous aids or explanation submitted after bid opening, in fairness to those bidders whose offers strictly complied with all solicitation requirements---------- 193

CONTRACTS—Continued Page
Specifications—Continued
Failure to furnish something required—Continued
Information
Omission of addresses of subcontractors listed by prime contractor in bid submission is minor informality that may be waived under sec. 1–2.405 of Federal Procurement Regs. when contracting agency can independently determine omitted addresses from readily available information—contractor register, telephone directories, agency records—as well as from personal knowledge. Since incompleteness of bid did not result in ambiguity that requires clarification by bidder, no possibility of bid shopping exists, nor is bid nonresponsive on basis bidder was given "two bites at the apple." Extent to which contracting agency will extend its search for similarly named firms is discretionary matter; and if discretion is abused, protest could be filed with U.S. GAO---------- 295
Minority manpower utilization
When invitation for bids to rehabilitate and remodel apartment buildings requires bidders to complete appendix to invitation which is intended to implement Washington Plan that provides equal employment opportunity on Federal construction projects exceeding $500,000, and which was issued pursuant to E.O. No. 11246, mere signing of appendix without submitting required specific percentage goals for minority manpower utilization renders low bid nonresponsive as completion of appendix is condition precedent to bid acceptance. Therefore, failure to furnish minority manpower goals is not minor informality that may be corrected or waived under sec. 1–2.405 of Federal Procurement Regs. and deficient bid is not eligible for award---------- 844
Federal specifications
Deviation justification
Award of contract for road grader to second low bidder offering qualified product grader with superior engine which was not listed on applicable Qualified Products List as required by appropriate Federal specification, and was modified by contracting agency, on basis superior engine that exceeded minimum needs of Govt. was essential for area in which it was to be used, violated sec. 1–1.1101 of Federal Procurement Regs. Although award should not have been made to nonresponsive bidder since delivery and payment have been made, corrective action is precluded. Notwithstanding sec. 1–1.305.1 requires use of Federal specifications, exceptions are permitted, and since Qualified Products List item is inadequate for road grader needed, agency may deviate from Federal specifications by complying with conditions in sec. 1–1.305–3---------- 691
Minimum needs requirement
Administrative determination
Request for proposals to operate Air Force facility overseas issued pursuant to authority in 10 U.S.C. 2304(a)(6) to negotiate contracts for services outside United States that failed to disclose predetermined minimum resource levels was defective and contributed to rejection of all but highest priced offer as technically unacceptable on basis that sufficient resources to perform were not demonstrated, and although contract awarded was contrary to "competitive negotiation" requirements of 10 U.S.C. 2304(g), because of essentiality of procurement, it will not be disturbed. However, although offeror's judgment of resources needed to

CONTRACTS—Continued Page

Specifications—Continued

Minimum needs requirement—Continued

Administrative determination—Continued

perform is major factor in determining capacity to perform and may be considered in determining competitive range, agency must also meet its obligation by disclosing minimum needs to insure maximum competition ---------- 670

Bid, etc., deficiencies

Clarification

In procurement under request for proposals of ground simulator to be used to support training of navigators where proposal deficiencies were identified, clarified, Govt. work statement changed, and contractors allowed to determine manner of correction, since minimum requirements in several critical high cost areas established by oral clarification with one offeror were not reflected in any formal amendment, possibility that all offerors were not committed to same minimum requirements has been dispelled by independent examination made by National Bur. of Standards of technical proposals, examination conducted by Bureau as U.S. GAO was not equipped to evaluate undertakings represented in technical proposals submitted ---------- 788

Cancellation and reinstatement of invitation

Invitation for bids that states required man-year level of effort to perform engineering services for systems and program definition of combat systems maintenance training facility at erroneously fixed rather than estimated level, fails to show Govt.'s minimum needs and, therefore, successful contractor would be unable to produce results required in view of correlation between level of effort and ultimate work product. Failure to accurately reflect man-year level of effort required constitutes compelling reason for canceling invitation contemplated by par. 2-404.1(a) of Armed Services Procurement Reg. and for readvertisement of procurement. However, cancellation emphasizes need for effective administrative definition and expression of Govt.'s requirements during procurement planning process ---------- 50

Qualified products

Effect of specification revision

Administrative determination that change in weight of webbing for parachutes to be procured from Qualified Products List (QPL) did not invalidate existing test data or require requalification of manufacturers already on QPL was proper where modification was not cause of rejecting sample parachutes submitted for qualification under invitation canceled and reissued; and fact that cause for failure of parachute samples to pass drop test cannot be determined does not impose duty on Govt. to pinpoint failure where unreasonable expenditure of time and money would be involved, nor may conditional qualification be approved on basis contractor is not relieved from complying with drawings and specifications ---------- 500

Production line certification propriety

Proposed "NASA Microelectronics Reliability Program" that would establish Qualified Products List for microcircuits and require production line certification of manufacturers prior to procurement although restrictive of competition is considered acceptable on basis of agency

CONTRACTS—Continued Page

Specifications—Continued

Qualified products—Continued

Production line certification propriety—Continued

need since testing of microcircuits to determine extremely high level of quality and reliability assurance demanded by space program is either impossible or impractical and criticality of product justifies prequalification procedures. Therefore, restriction on competition resulting from program is not unreasonable or invalid restriction in conflict with 10 U.S.C. 2304(g) and 10 U.S.C. 2305 (a) and (b). However, as line certification is departure from normal procedures, right is reserved to give matter further consideration 542

Requirement

Waiver

Award of contract for road grader to second low bidder offering qualified product grader with superior engine which was not listed on applicable Qualified Products List as required by appropriate Federal specification, and was modified by contracting agency, on basis superior engine that exceeded minimum needs of Govt. was essential for area in which it was to be used, violated sec. 1–1.1101 of Federal Procurement Regs. Although award should not have been made to nonresponsive bidder since delivery and payment have been made, corrective action is precluded. Notwithstanding sec. 1–1.305.1 requires use of Federal specifications, exceptions are permitted, and since Qualified Products List item is inadequate for road grader needed, agency may deviate from Federal specifications by complying with conditions in sec. 1–1.305–3 691

Restrictive

Bidders qualifications

Invitation for installation of heavy equipment replacements that omitted Davis-Bacon Act on basis procurement did not contemplate construction, alteration, or repair of public building, and incorporated provisions of Walsh-Healey Act, which requires contractor to be manufacturer of or regular dealer in equipment to be supplied, and provision for bidders to attest to their experience and competency should be canceled and reissued by contracting agency under guidelines in sec. 1–12.402–2 of Federal Procurement Regs. for determining whether substantial amounts of construction, alteration, or repair work would be involved, also taking into consideration fact that no bidder qualified as manufacturer or dealer to be eligible for award, and that solicitation in requiring experience and competency attestation was unduly restrictive of competition .. 807

Particular make

Description availability

Since "Brand Name or Equal" clause permits purchasing activity to consider other information reasonably available to it in determining whether "or equal" product is equal to brand name item, and nothing in clause precludes bidder from making descriptive data in existence prior to bid opening—such as published catalog—available to procuring activity after bid opening—use of preexisting data to secure details of product offered by bidder obliged to furnish model indicated in his bid does not create objectionable situation where bidder could make nonresponsive bid responsive after bid opening. However, procuring agency

CONTRACTS—Continued Page
Specifications—Continued
Restrictive—Continued
Particular make—Continued
Description availability—Continued
has no obligation to go to bidder after bid opening, or to make any unreasonable effort to obtain descriptive data. Contrary dictum in B–158601, May 2, 1966, and other similar cases, is not rule---------- 137
Data contained in literature that was not prepared to quote back salient features of brand name model but was published to disseminate information to public does not constitute sufficient descriptive literature for purpose of determining whether product equals brand name. Furthermore, offer to conform does not satisfy descriptive literature requirement of brand name or equal clause for detailed information, and submission of data after bid opening may not be considered under fundamental principle of competitive bidding system that responsiveness of bid must be determined from bid without reference to extraneous aids or explanation submitted after bid opening, in fairness to those bidders whose offers strictly complied with all solicitation requirements-------- 193
Design *v.* performance criteria
When purpose of first article provision in brand name or equal invitation is to assure that product offered will perform in accordance with salient characteristics stated and not to reveal defects which could be corrected by conveying general design information as to how conforming product could be constructed, whether bidder proposes to manufacture a model which would attain performance characteristics of brand name product is for determination by evaluating information submitted with an offer in accordance with brand name or equal clause and not for determination during first article testing---------- 193
"Or equal" not solicited
Solicitation of proposals on brand name basis without "or equal" provision in accordance with par. 1–1206.1(b) of Armed Services Procurement Reg. under negotiation authority contained in 10 U.S.C. 2304(a)(7), and pursuant to "Determination and Findings" that sole source procurement of sterilizers to be purchased is justified, is restrictive of competition unless no other item will meet Govt.'s minimum requirements or no other but sole source manufacturer can produce acceptable sterilizer. Therefore, as there is nothing particularly unique about design or manufacture of brand name sterilizer, fact that it has proven satisfactory in use does not justify sole source procurement. Although justification for procurement is final determination, sole source solicitation stated in request for proposals should be eliminated---------- 209
Salient characteristics
Low bidder who after bid opening objected to use of brand name or equal invitation which listed 47 salient characteristics that did not include technical data for electronic receivers to be purchased, on basis unlisted data could have been quickly summarized and purchase description prepared that would meet requirements of sec. 1–1.307–2 of Federal Procurement Regs. for clear and accurate description of technical requirements, should have lodged his complaint before bids were opened. Invitation for bids clearly stated salient characteristics and other criteria on which bids were to be evaluated, and bidder having partici-

CONTRACTS—Continued Page
Specifications—Continued
Restrictive—Continued
Particular make—Continued
Salient characteristics—Continued
pated in brand name or equal procurement to point of bid opening is deemed to have acquiesced in evaluation criteria set out in invitation--- 193
Use limited to unavailability of adequate specifications
Where technical data necessary for drafting of purchase description for electronic receivers was lacking, use of brand name or equal specification, listing 47 salient characteristics that had to be met by any "equal" product offered was not improper, nor did evaluation of equal product on basis of whether long list of features was met operate to make salient characteristics complete purchase description prescribed by sec. 1–1.307–2 of the Federal Procurement Regs. in absence of clear and accurate description of technical requirements. Therefore, invitation for bids not constituting satisfactory purchase description, low bid that complied with only six of stated 47 characteristics and contained statement that specifications would be met was properly rejected---------- 193
Samples
Preproduction sample requirement
Brand name or equal items
When purpose of first article provision in brand name or equal invitation is to assure that product offered will perform in accordance with salient characteristics stated and not to reveal defects which could be corrected by conveying general design information as to how conforming product could be constructed, whether bidder proposes to manufacture a model which would attain performance characteristics of brand name product is for determination by evaluating information submitted with an offer in accordance with brand name or equal clause and not for determination during first article testing---------- 193
Unavailability
Brand name or equal. (*See* Contracts, specifications, restrictive, particular make)
Status
Federal grants-in-aid
Amounts due or to become due under grants of Federal funds to medical college for construction and restoration of facilities authorized by Public Health Service Act, as amended, may be assigned to bank pursuant to Assignment of Claims Act of 1940, as amended, to enable grantee to obtain interim financing for purpose of making progress payments to contractor, as acceptance of grant subject to conditions imposed by Govt. created valid contract within meaning of 1940 act, and as assignment is not forbidden under grant. However, in accordance with requirements of act, assignment should cover amount payable under grants without regard to status of account between college and bank; and, furthermore, grantee is not foreclosed from financing non-Federal share of costs with borrowed funds---------- 470

CONTRACTS—Continued Page

Subcontractors

Data pricing, etc.

Requirement

Amendment to invitation issued to implement Defense Procurement Cir. No. 74 entitled "Subcontractor Cost or Pricing Data and Audit Requirements," that recognized exemptions equivalent to those provided in so-called Truth in Negotiations Act, is material amendment, whether or not impact on price is demonstrable, or legal obligations imposed are new or being clarified, and failure to acknowledge amendment may not be waived as minor informality under ASPR 2–405, even though amendment was not received. Amendment altered legal relationship of parties, even though not necessarily varying actual work to be performed, by making submission of cost or pricing data, and prime contractor's responsibility for defective subcontractor data mandatory instead of discretionary ---------- 11

Subcontracts

Bid shopping

Definiteness of subcontractor listing requirements

Although to be responsible, bidder must comply with subcontractor listing requirements of invitation for bids as this information is necessary in order for contracting agency to control bid shopping, it is erroneous to require bidders to comply with requirement for specification classification that is not set out as category in subcontractor listing form attached to invitation, for if requirement was material, procuring officials should have indicated in explicit terms sections of specifications that were subject to bid shopping. Therefore, lowest bidder under invitation to construct Federal Building and Post Office who complied with subcontractor listing requirements for all categories indicated is responsive bidder even though all subcontractor addresses were not furnished and one name was misspelled as this is information obtainable without further bidder contact---------- 839

Listing of subcontractors

Omission of addresses of subcontractors listed by prime contractor in bid submission is minor informality that may be waived under sec. 1–2.405 of Federal Procurement Regs. when contracting agency can independently determine omitted addresses from readily available information—contractor register, telephone directories, agency records—as well as from personal knowledge. Since incompleteness of bid did not result in ambiguity that requires clarification by bidder, no possibility of bid shopping exists, nor is bid nonresponsive on basis bidder was given "two bites at the apple." Extent to which contracting agency will extend its search for similarly named firms is discretionary matter; and if discretion is abused, protest could be filed with U.S. GAO---------- 295

Types

Cost-plus-incentive-fee contract

In negotiation under 10 U.S.C. 2304(a)(11) of cost-plus-incentive-fee research and development contract for radar sets where contracting agency left choice of one of three power tubes to be used to offerors, selection of other than low offeror on basis of change in tube preferred and acceptance of price reduction, although selected offeror was not "successful offeror" contemplated by par. 3–506(b) of ASPR, and business

CONTRACTS—Continued Page
Types—Continued
Cost-plus-incentive-fee contract—Continued
clearance required by ASPR 1-403 had not been satisfied, without giving all offerors within competitive range opportunity to compete on basis of its preference was inconsistent with concept of competitive negotiation, as time for negotiating price and technical aspects is during source selection competitive phase of negotiating process and, therefore, negotiations should be reopened to afford all offerors opportunity to revise their technical and price proposals---------- 739
Unprofitable
Relief
Request for relief under sec. 17 of Armed Services Procurement Reg. authorizing extraordinary contractual actions to facilitate national defense made after contract completion and final payment on basis bid underpricing was due to unforeseen production difficulties and misleading vendor quotes is for denial where occurence of mistake "so obvious it was or should have been apparent" is not demonstrated, and record establishes price bid was adequately verified and was intended, and only subsequent events resulted in unprofitable contract. Even assuming existence of bona fide mistake, fact that price bid greatly exceeded Govt.'s estimate intended as funding allocation, or that prior procurements for lesser quantities were priced much higher than group of bids in price range of successful bid did not place contracting officer on actual or constructive notice of error.---------- 89
Voidable
Void distinguished
Although first preference labor surplus certificate of eligibiilty furnished by small business concern was invalid as bidder had no plant in labor surplus area at time certificate was issued, plant being acquired month after award of set-aside portion of procurement for detecting sets to concern on basis of labor surplus preference, award need not be canceled as it is voidable at Govt.'s option rather than void *ab initio*, since it was made in good faith as contracting officer was required to accept certificate in absence of pre-award protest or evidence of error on face of certificate, which prospectively located plant in surplus labor area, and also contracting officer properly waived omission of plant's address in surplus labor area as minor deviation.---------- 559
"Washington Plan"
Labor stipulations. (*See* Contracts, labor stipulations, nondiscrimination, "affirmative action programs")
COURTS
Costs
Government liability
Indigent persons
Appropriation chargeable
Psychiatric examination of criminal defendant to determine his mental competency to understand proceedings against him or assist in his own defense authorized by subsec. (e) of Criminal Justice Act of 1964, 18 U.S.C. 3006 A(e), providing for investigative, expert, or other services necessary to adequate defense to 18 U.S.C. 4244, and subpoena of witnesses at no cost to defendant authorized under Rule 17(b) of Federal

COURTS—Continued Page
Costs—Continued
Government liability—Continued
Indigent persons—Continued
Appropriation chargeable—Continued
Rules of Criminal Procedure when defendant is financially unable to pay fees of witness whose presence is necessary to adequate defense are distinct services for payment purposes. Services pursuant to 1964 act are payable by Administrative Office of U.S. Courts and those rendered in accordance with Rule 17(b) are payable by Dept. of Justice--- 128
Cost of psychiatric examination of indigent criminal defendant for purpose of establishing insanity at time offense is committed is payable from funds appropriated for implementation of Criminal Justice Act of 1964 by Administrative Office of U.S. Courts, and cost of examination to determine defendant's mental competency to stand trial for purposes of 18 U.S.C. 4244 is expense to be borne by Dept. of Justice in accordance with guidelines issued by Judicial Conference of U.S. in recognition of distinction between two purposes served by psychiatric examination. Where examination serves dual purpose, cost to determine competency to stand trial should be borne by Justice and additional expense to determine insanity at time of offense to Criminal Justice Act appropriation---------- 128
Court of Claims
Decisions
Acceptance
Application limited
Conclusion that exemption provision in Dual Compensation Act (5 U.S.C. 5532(c)) to requirement that retired pay of Regular officer must be reduced when employed as civilian by Federal Govt. (5 U.S.C. 5532(b)) applies only if retirement was direct result of armed conflict, or was caused by instrumentality of war in wartime, is justified on basis of legislative history of provision and its longstanding administrative interpretation; and, therefore, *Mross* v. *United States*, 186 Ct. Cl. 165, holding that disability—perforated eardrum—that was war-incurred but was not disabling and did not constitute significant factor in officer's retirement met requirements of exception to dual compensation restriction will not be followed as case is based on particular facts involved--- 480
Criminal Justice Act of 1964
Attorney fees
Appropriation chargeable
Accounting procedure employed by Administrative Office of U.S. Courts with respect to paying court-appointed attorneys under provisions of Criminal Justice Act of 1964 from appropriation current at time of appointment regardless of date voucher, subject to court review, is submitted, may not be revised to make payment from appropriation current at time voucher is approved in order to eliminate holding obligated appropriation account open beyond close of normal fiscal year. Contractual obligation for payment of attorney occurs at time he is appointed, even though exact amount of obligation remains to be determined; and pursuant to secs. 3732 and 3679, R. S., and 41 U.S.C. 11, 31 *id.* 665(a), *id.* 712a, fee payable is chargeable to appropriation for fiscal year in which obligation was incurred---------- 589

COURTS—Continued Page
Criminal Justice Act of 1964—Continued
Expense limitation
Where expert services authorized by subsec. (e) of Criminal Justice Act of 1964 are requested by indigent defendant's counsel, and expenses incurred exceed $300 maximum allowable under act, Dept. of Justice is not obligated under Rule 17(b) of Federal Rules of Criminal Procedure to pay all or part of expenses. Proper approach to limitation imposed by act is not to disregard limitation but to amend subsec. (e) of 1964 act ---------- 128
Psychiatric examination
Fee payable to psychiatrist appointed on indigent defendant's motion to conduct mental examination for testifying at trial is payable by Administrative Office of U.S. Courts from appropriations made to implement Criminal Justice Act of 1964, as psychiatrist testified as expert witness and not as lay witness whose fees are prescribed by Rule 17(b) of Federal Rules of Criminal Procedure. Purpose of 1964 act is to assure adequate representation in Federal courts of accused persons with insufficient means, and end product of adequate defense is not infrequently representation at trial, and that is so for consulted expert as well as for counsel ---------- 128
Decisions
Mross v. *United States*, 186 Ct. Cl. 165. (*See* Compensation, double, exemptions, Dual Compensation Act, disability "as a direct result of armed conflict," etc.)
District of Columbia
Court of General Sessions
Transcripts
Cost of transcript in civil matter for indigent litigant at Govt. expense ordered by Dist. of Columbia Court of General Sessions in connection with appeal may not be paid by Federal Govt. on basis U.S. Court of Appeals for Dist. of Columbia Circuit held in *Lee* v. *Habib* that U.S. must pay for transcripts that are needed to resolve substantive question when indigent litigant is allowed to appeal in *forma pauperis* to Appeals Court. *Lee* case holding that 11 D.C. Code 935 makes 28 U.S.C. 753(f) applicable to Court of General Sessions does not enlarge authority to furnish transcripts at Federal expense to include civil litigation of private parties, as both *Lee* case and cited *Tate* case involved criminal actions brought by U.S. in U.S. Branch of Court of General Sessions, whereas in civil cases Court functions as local or municipal court------ 205
Probational proceedings
Psychiatric examinations
Where probationer charged with violation of probation conditions moves for psychiatric examination, examination fee is payable by Dept. of Justice when psychiatric services involve 18 U.S.C. 4244 proceeding to determine defendant's mental competency for purpose of continuing hearing for revocation of probation---------- 128
Right to legal representation
In view of *Mempa* v. *Rhay*, 389 U.S. 128 (1967), involving right to counsel in probation revocation coupled with deferred sentencing proceeding, 45 Comp. Gen. 780 (1966) need no longer be considered controlling in connection with proceedings involving deferred sentencing,

COURTS—Continued Page
Probational proceedings—Continued
Right to legal representation—Continued
whether or not such proceedings are coupled with revocation of probation, but decision remains in effect insofar as simple revocation of probation proceedings are concerned. Whether cost of psychiatric examination is for payment under Criminal Justice Act or under 18 U.S.C. 4244, depends on purpose of examination; that is, whether it is intended to establish insanity of defendant at time of offense or serves as tool for his defense ---------- 128
CREDIT UNIONS
Federal. (*See* Federal Credit Unions)
DAMAGES
Property
Public. (*See* Property, public, damage, loss, etc.)
DEBT COLLECTIONS
Waiver
Civilian employees
Compensation overpayments
Aliens
Authority in 5 U.S.C. 5584 to waive erroneous payments of compensation made to employees of executive agencies is applicable to non-U.S. citizens employed by U.S. in foreign areas, as term "employee" as used in sec. 5584 means employee as defined in 5 U.S.C. 2105; that is, individual appointed in "civil service," which constitutes all appointive positions in executive, judicial, and legislative branches of Govt., except positions in uniformed services (5 U.S.C. 2101(1)). Therefore, Philippine citizen, properly appointed to position in executive branch to perform Federal function supervised by Federal employee, is employee under 5 U.S.C. 5584 and entitled to waiver of erroneous compensation payments without regard to fact employment is under labor agreement with Philippine Govt ---------- 329
Severance pay
Erroneous payments of severance pay made under 5 U.S.C. 5595 to retired members of uniformed services, who employed as civilians by U.S. were reduced in force, may be waived under provisions of act of Oct. 21, 1968, Pub. L. 90-616 ---------- 46
DEFENSE DEPARTMENT
Teachers employed in areas overseas
Leaves of absence
When teachers in Dept. of Defense Overseas Dependents' Schools are absent from duty without authorization, pay deduction for scheduled workdays only would be in accord with Pub. L. 86-91, as amended, 20 U.S.C. 901-907, enacted to eliminate many difficulties resulting from application of civil service laws and regulations to overseas teachers whose conditions of employment are significantly different from those of full-time civil service employees. Therefore, Secretary of Defense having broad authority under sec. 4 of act (20 U.S.C. 902) to regulate entitlement of teachers to compensation and payment of such compensation, current regulations may be amended to eliminate requirement for deduction of salary for all days from time teacher is absent without proper authorization until return to duty ---------- 191

DEPARTMENTS AND ESTABLISHMENTS Page

Administrative determinations. (*See* Administrative Determinations)

Arbitration. (*See* Arbitration)

Management

General Accounting Office recommendation compliance

When decision of Comptroller General contains instructions for corrective action in regard to departmental policy, Secretary concerned is required under sec. 236 of Legislative Reorganization Act of 1970, 84 Stat. 1140, 1171, to submit written statements as to action taken not later than 60 days after date of decision to Committees of Govt. Operations of both houses and to Committees on Appropriations in connection with request for appropriations made more than 60 days after date of decision, action that Dept. of Interior is required to take incident to recommendation that Bur. of Sport Fisheries and Wildlife correct its Realty Manual to reflect proper application of Statute of Limitation in Pub. L. 85–433 regarding submission of expenses incurred in moving from lands acquired by U.S---------- 822

Status

Howard University

Employee who by reason of transfer from Freedmen's Hospital to jurisdiction of Howard University under Pub. L. 87–262 is entitled to credit for retirement purposes for continuous employment with University, upon reemployment with Federal or District of Columbia Govt. may not have service creditable for retirement credited as service toward annual leave accrual provided in 5 U.S.C. 6303(a), as University is not Govt. instrumentality and, therefore, service with University is not considered Federal civilian service. Since former Freedmen's Hospital employees received lump-sum leave payment upon transfer to Hospital, indicating separation, and Pub. L. 87–262 makes no provision for crediting service for leave accrual purposes, continuous service with Howard may not be considered as not having had break in service---------- 820

DETAILS

Military personnel

Distinction between detail and assignment

Legislative history of Pub. L. 90–179, which authorized detailing two officers—a Navy officer (10 U.S.C. 5149(b)) and a Marine officer (10 U.S.C. 5149(c))—as Assistant Judge Advocates General of Navy entitled to rank and grade of rear admiral (lower half) or brigadier general while so serving, unless entitled to higher rank or grade under another provision of law, evidencing no intent that captain or officer of lesser rank receive pay of rear admiral (lower half) or brigadier general, as appropriate, the two Navy captains not detailed but assigned as Assistant Judge Advocates General to avoid creating entitlement to flag rank within meaning of 10 U.S.C. 5149(b), having been denied grade of rear admiral (lower half) and its benefits, may not be paid under 37 U.S.C. 202(1) at that grade---------- 22

DISTRICT OF COLUMBIA Page

Contracts

Personal service contracts

Contracts with District of Columbia Urban Corps, part of D.C. Govt., and similar Urban Corps and other organizations, including profit-making organizations, in other localities may not be entered into by Federal agencies for purpose of recruiting students and dealing with educational institutions because type of services contemplated can be performed more economically and feasibly by their own personnel. Even if contract arrangement were permitted with D.C. Urban Corps, "override" payable would constitute reimbursement to D.C. Govt. that is barred by sec. 601 of Economy Act of 1932 (31 U.S.C. 686) ; moreover, any payment received would be for deposit into Treasury of U.S. to avoid augmentation of D.C. appropriation used to fund Corps ---------- 553

Courts. (*See* Courts, District of Columbia)

Employees

Wage board

Environmental pay differential status

Environmental pay differential for dirty work having been authorized for Dist. of Columbia wage employees by proper wage fixing authority in accordance with 5 U.S.C. 5341, and in conformity with commercial practices, differential may be considered basic pay, whether stated separately or included in scheduled rates, for purposes of computing wage board overtime and Sunday rates prescribed in 5 U.S.C. 5544, the Civil Service Retirement Deductions authorized in 5 U.S.C. 8334, and for determining annual rate of pay for group life insurance provided in Federal Personnel Manual, Supp. 870–1, Subch. 83–3a, and differential may be paid to employees while in leave status ---------- 66

Federal City College

Investments

Since Federal City College is land grant college within purview of "First Morrill Act" as provided by Dist. of Columbia Education Act, land grant funds available to college are exempted from 47 D.C. Code 135, which directs investment in U.S. Treasury securities, and Congress in education act approved investment in accordance with land grant act in "bonds of the United States or of the States or some other safe bonds." "Other safe bonds" are obligations of various Federal agencies, other than Treasury securities, that are guaranteed by U.S., industrial bonds approved for investment by fiduciaries under Rules of U.S. Dist. Court, and certificates of deposit in federally insured banks, but not savings accounts in banks or savings and loan associations. Furthermore, deficiencies from investments may be made up from appropriations, and to minimize losses, bonds may be sold before maturity ---------- 712

Highways, streets, etc.

Participation in Federal-aid highway programs

Authority in Federal-Aid Highway Act of 1950, 23 U.S.C. 120(g), to pay 100 percent of cost of highways located within national parks and monuments under jurisdiction of National Park Service (NPS) does not permit financing of entire cost attendant to construction of Theodore Roosevelt Bridge over Potomac River and Little River Crossing as these areas although within NPS jurisdiction are not part of national park system for purposes of 23 U.S.C. 120(g), which authorizes Sec. of Trans-

DISTRICT OF COLUMBIA—Continued Page
Highways, streets, etc.—Continued
Participation in Federal-aid highway programs—Continued
portation to construct roads through national parks and monuments and relates only incidentally to administration and protection of parks and monuments as contemplated by act of Aug. 8, 1953, as amended. Therefore, 90–10 Interstate project agreement with Dist. of Columbia may not be amended, nor may 100 percent participation funds be made available to construct other bridges over lands mentioned in act of June 4, 1934--- 794
Leases, concessions, rental agreements, etc.
Prior appropriation necessity
Cost of catering services furnished by hotel located in Dist. of Columbia to conference held pursuant to Govt. Employees Training Act, 5 U.S.C. Ch. 41, and considered proper administrative expense when necessary to achieve objectives of training program, may be paid, prohibition in 40 U.S.C. 34 regarding procurement of hotel room accommodations in Dist. of Columbia in absence of express appropriation for rental of space for Govt. use in District having no application, even though cost of using hotel facilities are included in catering charges, as cost of space is merely cost item included by hotel in fixing catering charges and rental of space *per se* is not involved---------- 610
DOCUMENTS
Incorporation by reference
Authorization act in appropriation act
Notwithstanding sec. 101 of Emergency Home Finance Act of 1970 authorized appropriation of funds without fiscal year limitation for purpose of adjusting effective interest charged by Federal home loan banks on borrowings, Congress having in sec. 509 of Independent Offices and Department of Housing and Urban Development Appropriation Act, 1971, which provided funds to implement enabling act, restricted availability of funds appropriated by act to current fiscal year unless otherwise expressly provided, "no-year" provision in authorization act is not incorporated in appropriation act so as to meet requirements of 31 U.S.C. 718, and, therefore, funds appropriated for interest adjustment payments by Federal home loan banks are not available for obligation beyond June 30, 1971---------- 857
ECONOMIC OPPORTUNITY PROGRAM
Enrollees
Training
District of Columbia government
Status for leave purposes
Enrollees in a work-training program conducted by District of Columbia government under Title 1, Part B, of Economic Opportunity Act of 1964, who are given appointments as employees of District government and, therefore, are covered by Annual and Sick Leave Act of 1951, upon transfer to Federal positions may have unused annual and sick leave balances accumulated and accrued as District employees transferred to their Federal positions, and their service with District used to establish annual-leave-earning categories, for although officers and employees of District of Columbia government are not Federal employees, they are specifically included in Annual and Sick Leave provisions of 5 U.S.C. §301 *et seq*---------- 98

EDUCATION Page

Colleges, schools, etc. (*See* Colleges, schools, etc.)

Scholarships

Reserve Officers' Training Corps program. (*See* Military Personnel, Reserve Officers' Training Corps, scholarship benefits)

Teachers overseas

Defense Department teachers. (*See* Defense Department, teachers employed in areas overseas)

EQUAL EMPLOYMENT OPPORTUNITY

Contract provision. (*See* Contracts, labor stipulations, nondiscrimination)

EQUIPMENT

Automatic Data Processing Systems

Computer service

Evaluation propriety

Point system evaluation of proposals for computer time and services under which number of points to be awarded for basic costs is to be determined from offeror's "pricing out," or cost for requirements stated in sample problem included in solicitation that is not considered indicative of cost differences between suppliers for every proposed computer application contemplated under contract, but, rather, typical of work to be performed, is proper method of evaluation, notwithstanding amount of memory or core size was not frozen in sample, as factors frozen are of greater significance as to price than variations in core size of sample... 222

Under request for proposals for Fleet Computer Programming Services, which was modified to remove as evaluation factor cost of failing to award contract to current contractor and possible organizational conflict of interest because one of offerors was performing as subcontractor on program to be analyzed by new contractor, and to revise the program's manhours, continuation of negotiations during which prices were disclosed does not constitute prohibited auction technique as no competitive advantage resulted to any offeror and technique *per se* is not inherently illegal. Substantial changes in requirements and in computer industry justified amendments to solicitation issued pursuant to par. 3-805.1(e) of Armed Services Procurement Reg. and continuation of negotiations, therefore, last prices submitted may be opened and considered..... 619

ESTOPPEL

Against Government

Rule

Approval by contracting agency of press proof of artwork for plastic litter bags submitted by contractor in accordance with specification requirements, notwithstanding word "Boundary" was misspelled as "Boundry," estops agency from denying payment to contractor on basis bags were defective within contemplation of par. 5(d) of Standard Form 32; and, therefore, Govt.'s acceptance was not conclusive, since inspection and approval of press proofs of artwork was separate from inspection and acceptance intended under par. 5(d) concerned with latent defect that cannot be discovered by inspection. Whether or not offer of contractor to furnish labels with word "Boundary" correctly spelled for attachment to bags is accepted does not affect agency's obligation for contract price..... 534

EVIDENCE Page

Sufficiency

Burden of proof

Milk indemnity payments authorized by Pub. L. 90–484 to be made to dairy farmers who are directed to remove milk from commercial markets because milk contained residues of chemicals registered and approved for use by Federal Govt., may not be allowed pursuant to Pub. L. 91–127 when milk is removed as result of farmer's willful failure to follow procedure prescribed by Govt. Where dairy farmer predicates milk indemnity claim on compliance with procedures for use of DDT pesticides on cotton fields sprayed from airplanes, it is not sufficient that it cannot be proved farmer was at fault; but rather to receive indemnity payments for contaminated milk, burden is on farmer to establish that he was not at fault 305

FAMILY ALLOWANCES

Separation

Type 2

Ship duty

Ashore effect

Navy members who travel during 48 hours of liberty, 72 hours if holiday is involved, from place of ship overhaul to home port of ship to visit dependents and return at Govt. expense pursuant to Pub. L. 91–210, do not forfeit entitlement to $30 per month Family Separation Allowance, type II, authorized in 37 U.S.C. 427(b) for members separated from their dependents while on board ship for continuous period of more than 30 days. The legislative history of Pub. L 91–210, enacted as beneficial legislation to permit members to travel at Govt. expense from place of vessel overhaul to home port to visit dependents, evidences no intent to deprive member of other benefits by reason of short visit with dependents on usual type of Navy liberty 334

FEDERAL CREDIT UNIONS

Property lost or damaged

Disposition of moneys received in settlement

Moneys received from carriers by National Credit Union Administration (NCUA) in settlement for goods lost or damaged in transit that were shipped in connection with operations of Administration should be deposited for credit to account of Administration and not general fund of Treasury since miscellaneous receipts rule (31 U.S.C. 484) is not for application, as operating funds of NCUA are not provided by annual appropriations but by fees and assessments upon credit unions pursuant to 12 U.S.C. 1755, which provides for deposit of collections from credit unions with Treasurer of U.S. for credit to account of Administration ... 545

FEES

Meetings. (*See* Meetings, attendance, etc., fees)

Witnesses

Payment

Appropriation chargeable

Psychiatric examination of criminal defendant to determine his mental competency to understand proceedings against him or assist in his own defense authorized by subsec. (e) of Criminal Justice Act of 1964, 18 U.S.C. 3006 A(e), providing for investigative, expert, or other services necessary to adequate defense to 18 U.S.C. 4244, and subpoena of

FEES—Continued Page
Witnesses—Continued
Payment—Continued
Appropriation chargeable—Continued
witnesses at no cost to defendant authorized under Rule 17(b) of Federal Rules of Criminal Procedure when defendant is financially unable to pay fees of witness whose presence is necessary to adequate defense are distinct services for payment purposes. Services pursuant to 1964 act are payable by Administrative Office of U.S. Courts and those rendered in accordance with Rule 17(b) are payable by Dept. of Justice ---------- 128

Fee payable to psychiatrist appointed on indigent defendant's motion to conduct mental examination for testifying at trial is payable by Administrative Office of U.S. Courts from appropriations made to implement Criminal Justice Act of 1964, as psychiatrist testified as expert witness and not as lay witness whose fees are prescribed by Rule 17(b) of Federal Rules of Criminal Procedure. Purpose of 1964 act is to assure adequate representation in Federal courts of accused persons with insufficient means, and end product of adequate defense is not infrequently representation at trial, and that is so for consulted expert as well as for counsel ---------- 128

FREEDMEN'S HOSPITAL
Transferred to Howard University
Employees
Leave status
Employee who by reason of transfer from Freedmen's Hospital to jurisdiction of Howard University under Pub. L. 87–262 is entitled to credit for retirement purposes for continuous employment with University, upon reemployment with Federal or District of Columbia Govt. may not have service creditable for retirement credited as service toward annual leave accrual provided in 5 U.S.C. 6303(a), as University is not Govt. instrumentality and, therefore, service with University is not considered Federal civilian service. Since former Freedmen's Hospital employees received lump-sum leave payment upon transfer to Hospital, indicating separation, and Pub. L. 87–262 makes no provision for crediting service for leave accrual purposes, continuous service with Howard may not be considered as not having had break in service ---------- 820

FUNDS
Appropriated. (*See* Appropriations)
Federal grants, etc., to other than States
Contract status
Amounts due or to become due under grants of Federal funds to medical college for construction and restoration of facilities authorized by Public Health Service Act, as amended, may be assigned to bank pursuant to Assignment of Claims Act of 1940, as amended, to enable grantee to obtain interim financing for purpose of making progress payments to contractor, as acceptance of grant subject to conditions imposed by Govt. created valid contract within meaning of 1940 act, and as assignment is not forbidden under grant. However, in accordance with requirements of act, assignment should cover amount payable under grants without regard to status of account between college and bank; and, furthermore, grantee is not foreclosed from financing non-Federal share of costs with borrowed funds ---------- 470

452-993 O - 72 - 12

FUNDS—Continued

Federal grants, etc., to other than States—Continued Page

"Federal share"

What constitutes

Limitation in Economic Opportunity Act (42 U.S.C. 2754(b)) requiring that work-study grant agreements with institutions of higher education provide that "Federal share" of compensation of students employed in College Work-Study Program will not exceed 80 percentum of compensation paid to students, pertaining only to payments from grants made by Office of Education to institutions and not to payments made by other Federal agencies where students are employed, employing agencies may bear larger portion than 20 percent of student earnings so that grant funds may be spread over greater number of students. Whether agency should pay social security tax on its contribution to student's salary, and if so in what amount, is for determination by Commissioner of Internal Revenue Service 553

Miscellaneous receipts. (*See* **Miscellaneous Receipts**)

Nonappropriated

Civilian employee activities

Transportation request use

Use of reduced Category Z fares offered by commercial airlines to U.S. under Govt. Transportation Requests (GTRs) pursuant to tariffs filed with Civil Aeronautics Board is limited by agreement to transportation payable from public funds for official travel only, and special fares may not be made available to contractor employees or nonappropriated fund agencies in Europe or elsewhere, whether payment is made from nonappropriated funds, or appropriated funds on reimbursable basis. Restrictions on use of GTRs prescribed in GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 5, secs. 2020.10 and 2020.80 maintain integrity of travel appropriation obligations, and GTRs serve to identify that travel performed was on official business in accord with special arrangements for reduced fares and, therefore, Army regulations in conflict with purpose of Category Z fares should be amended 748

Revolving

Funds in the nature of a revolving fund

Special deposit accounts established under 40 U.S.C. 174k(b) and 174j–4, with Treasurer of U.S. by Architect of Capitol as manager of House and Senate restaurants, constitute permanent indefinite appropriations for use similar to revolving fund in view of fact the funds otherwise would be for deposit as miscellaneous receipts; and funds do not lose their identity as appropriated funds, because funds appropriated for contingent expenses of House and Senate are deposited and disbursed from accounts. Therefore, since restaurant employees are paid from funds considered appropriated funds, restrictions in Pub. L. 91–144, against payment of compensation from appropriated funds to other than U.S. citizens, prohibits employment of aliens by restaurants. Overrules B–43917, Aug. 30, 1944, relative to special deposit accounts; but pursuant to 5 U.S.C. 5533, restaurant employees are now exempt from dual compensation prohibition 323

FUNDS—Continued Page

Trust

Financing building construction for Government use

Assignment of moneys to become due from U.S. under lease agreement may be made to Public Employees' Retirement System and State Teachers' Retirement System of State of California using trust funds to furnish permanent financing for building being constructed for Govt. The Systems quality as "financing institutions" within purview of Assignment of Claims Act of 1940, as amended, 31 U.S.C. 203, as nothing in act indicates exclusion of pension funds, and primary function of trust corpus, together with trustees, is investing of assets of trust. However, act limits assignment to one party, "except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing"---------- 613

GENERAL ACCOUNTING OFFICE

Decisions

"Dictum"

To categorize views of U.S. GAO concerning areas in agency's procurement practices brought to light by protest where revisions are desirable as "dictum"—abbreviation of *obiter dictum* which means remark or opinion uttered by the way—appears futile when it is obvious that any administrative actions taken that are contrary to such stated positions may result in disallowance of credit in disbursing officer's account. ---------- 59

Finality

Effect of procedural or remedial statues

The new sec. 39 U.S.C. 2601(b), which places responsibility to relieve, compromise, or otherwise settle relief cases concerning Postal matters in Postal Service and removes U.S. GAO from process does not have effect of setting aside decisions already made by GAO on relief matters under 31 U.S.C. 82a–1 or 39 U.S.C. 2401. Although procedural or remedial statutes such as 39 U.S.C. 2601(b) are not subject to general rule against retroactive application and they apply to all accrued, pending, and future actions, steps already taken, pleadings, and all things done under old law stand, unless contrary intent is manifested. Since change is procedural law does not operate retroactively, new authority of 39 U.S.C. 2601(b) does not extend to affect, change, or modify actions taken by GAO on postal relief matters prior to effective date of section... 731

Jurisdiction

Antitrust matters

The jurisdiction to enforce antitrust statutes lies with Dept. of Justice and U.S. General Accounting Office is without authority to issue determination respecting applicability or violation of statutes. However, under 15 U.S.C. 17, labor organizations engaged in lawful pursuits are exempted from restrictions of antitrust statutes---------- 648

Claims

Finality of determination

Since under Assignment of Claims Act of 1940, as amended, Govt. is not insurer as to fraudulent schemes devised by assignor against assignee, nor is Govt. required to involve assignee in matters of contract administration, claim for amount of fictitious invoices presented by assignee of drayage company performing services for Govt., which were

GENERAL ACCOUNTING OFFICE—Continued Page
Jurisdiction—Continued
Claims—Continued
Finality of determination—Continued
retrieved by assignor prior to payment, may not be honored as record presents no grounds to impute negligence to or assert estoppel against Govt., but instead raises doubt as to validity of assignee's claim. Although claim must be rejected, as jurisdiction of GAO to pay claims is based upon legal liability of U.S., assignee's right to seek judicial determination of its claim is not prejudiced---------- 484
Recommendations
Implementation
When decision of Comptroller General contains instructions for corrective action in regard to departmental policy, Secretary concerned is required under sec. 236 of Legislative Reorganization Act of 1970, 84 Stat. 1140, 1171, to submit written statements as to action taken not later than 60 days after date of decision to Committees of Govt. Operations of both houses and to Committees on Appropriations in connection with request for appropriations made more than 60 days after date of decision, action that Dept. of Interior is required to take incident to recommendation that Bur. of Sport Fisheries and Wildlife correct its Realty Manual to reflect proper application of Statute of Limitation in Pub. L. 85–433 regarding submission of expenses incurred in moving from lands acquired by U.S---------- 822
Settlements
Evidence
Claim submitted for consideration under settlement authority in 31 U.S.C. 71 for additional compensation to cover required correction in printing of technical publication, which had been disallowed by contracting officer and appeal to disallowance denied by administrative officer, may not be paid on basis prior uncorrected orders had been accepted, where record shows contractor agreed to correct error without cost to Govt., and supplemental agreement providing charge for work—insertion of fold-ins in publication in indicated sequence—has reference to future orders. Furthermore, alleged subsequent oral agreement may not be considered, as review is restricted to record before contracting agency at time the head of agency rendered decision---------- 369
GRANTS
To other than States. (*See* Funds, Federal grants, etc., to other than States)
To States. (*See* States, Federal aid, grants, etc.)
GRATUITIES
Reenlistment bonus
Extension of enlistment
More than one
Effective date of aggregate extension
Upon reextending reenlistment for 1 year 4 months, effective July 2, 1971, member of uniformed services who at time he first extended enlistment for 10 months, effective Mar. 2, 1970, was not entitled to bonus, is subject to sec. 2(a) of E.O. No. 11525, which prohibits increase in payment of reenlistment bonus to member whose entitlement occurred after Dec. 1969 and before Apr. 15, 1970. Even though member's bonus entitlement is based on July 1971 extension of enlistment,

GRATUITIES—Continued Page
Reenlistment bonus—Continued
Extension of enlistment—Continued
More than one—Continued
Effective date of aggregate extension—Continued
for purpose of payment the day before member began serving on first extension corresponds to statutory date "of discharge and release" contained in 37 U.S.C. 308(a); and aggregate reenlistment became effective Mar. 2, 1970, requiring reenlistment bonus to be computed on basis of 1969 pay scale---------- 515
Pay increase rate applicability
Member of uniformed services who extended 4-year enlistment on Apr. 14, 1970, under 10 U.S.C. 509 for 26 months effective Apr. 15, 1970, date of issuance of E.O. No. 11525, making new pay rates authorized by Pub. L. 90–207 and Pub. L. 91–231, retroactively effective to Jan. 1, 1970, is entitled to have reenlistment bonus earned under 37 U.S.C. 308(a) computed at new pay rates as Defense Dept. implementation of Executive order, which restricts use of increased rates in computation of reenlistment bonus when entitlement occurs after Dec. 31, 1969, but before Apr. 15, 1970, has no application to member who beginning his extended enlistment on Apr. 15, 1970, is entitled to computation of reenlistment bonus under par. 10905 of Defense Military Pay and Allowances Manual---------- 36
Member of uniformed services who had been paid reenlistment bonus based on 1969 pay scale for 2-year extension of enlistment, effective Mar. 15, 1970, may only be paid upon subsequent reextension of enlistment for 1 year, effective Mar. 15, 1972, on basis of 1969 pay scale, since reenlistment bonus rate is governed by sec. 2(a) of E.O. No. 11525, under which bonus payment for first extension was limited to 1969 pay scale; and since by virtue of 10 U.S.C. 509 second extension placed member "in exactly the same status as though he originally extended his enlistment for the aggregate of all the extensions" on Mar. 15, 1970, payment for 3-year aggregate reenlistment bonus is restricted to 1969 pay scale by sec. 2(b) of E.O. No. 11525---------- 515
HIGHWAYS
Construction
Federal-aid highway programs
National park system
Percentage of participation
Authority in Federal-Aid Highway Act of 1950, 23 U.S.C. 120(g), to pay 100 percent of cost of highways located within national parks and monuments under jurisdiction of National Park Service (NPS) does not permit financing of entire cost attendant to construction of Theodore Roosevelt Bridge over Potomac River and Little River Crossing as these areas although within NPS jurisdiction are not part of national park system for purposes of 23 U.S.C. 120(g), which authorizes Sec. of Transportation to construct roads through national parks and monuments and relates only incidentally to administration and protection of parks and monuments as contemplated by act of Aug. 8, 1953, as amended. Therefore, 90–10 Interstate project agreement with Dist. of Columbia may not be amended, nor may 100 percent participation funds be made available to construct other bridges over lands mentioned in act of June 4, 1934---------- 794

HIGHWAYS—Continued Page
Construction—Continued
Federal-aid highway programs—Continued
Relocation costs
Replacement to be similar design
As replacement highway bridge over Cross-Florida Barge Canal is required to be constructed in accordance with sec. 207(c), Pub. L. 87–874, Oct. 23, 1962, which limits construction of replacement facility to State design standards that apply to roads of same classification, determined on basis of traffic existing at time of taking, approval by Corps of Engineers of two two-lane bridges to be constructed at Govt. expense in lieu of existing two-lane highway in order to accommodate future growth constitutes betterment of facility in contravention of sec. 207(c) and, therefore, funds available to Corps may not be used to construct second bridge, whether or not design standard was in actual practice or published. However, State standards that provide for range of traffic rather than projected future traffic count are acceptable---------- 661

HOLIDAYS
Monday
Effect on entitlements
Rural mail carrier allowances
Equipment maintenance allowance to rural mail carriers authorized under 39 U.S.C. 3543(f) would not be payable to carriers on five Monday national holidays established by Pub. L. 90–363, approved June 28, 1968, if carriers were not scheduled to work on those days and so notified in advance. Applying construction of act of Feb. 28, 1925, former similar authority for paying allowance, to effect allowance is payable "in the same manner as payment for regular compensation" and on basis of miles "scheduled," it follows U.S. Postal Service is not required to pay allowance if rural mail carriers are notified in advance that they will not be scheduled or required to deliver mail on their routes on particular day when they otherwise normally would do so---------- 735
Sundays
Deadline for required actions
Timely mailed revocation of dues allotment to employee organization made pursuant to 5 U.S.C. 5525, which was received in payroll office on Monday, Mar. 2, first workday after Mar. 1 deadline set by Civil Service Commission, 5 CFR 550.308, constitutes compliance with regulation under rule that when act is to be performed by certain date and last day of period falls on Sunday, requirement is complied with if act is performed on following day. Therefore, discontinuance of allotment having become effective at beginning of first full pay period following Mar. 1 deadline, dues deducted subsequent to revocation are for collection from employee organization and repayment to employee---------- 108

HOWARD UNIVERSITY
Employees
Transferred from Freedmen's Hospital
Leave status
Employee who by reason of transfer from Freedmen's Hospital to jurisdiction of Howard University under Pub. L. 87–262 is entitled to credit for retirement purposes for continuous employment with University, upon reemployment with Federal or District of Columbia Govt. may not have service creditable for retirement credited as service

HOWARD UNIVERSITY—Continued Page
Employees—Continued
Transferred from Freedmen's Hospital—Continued
Leave status—Continued
toward annual leave accrual provided in 5 U.S.C. 6303(a), as University is not Govt. instrumentality and, therefore, service with University is not considered Federal civilian service. Since former Freedmen's Hospital employees received lump-sum leave payment upon transfer to Hospital, indicating separation, and Pub. L. 87–262 makes no provision for crediting service for leave accrual purposes, continuous service with Howard may not be considered as not having had break in service------ 820

HUSBAND AND WIFE
Separation agreements
Tax refund
Liability for proceeds of income tax refund check bearing only initials of husband and wife still married but separated at time of endorsement by husband and deposited in joint account with his mother, whose initials were similar to wife's, is for determination by Federal and not State law in interest of uniformity. Although use of initials did not facilitate forgery and ordinarily cashing bank would be required to refund one-half of check, as in "same name cases," reclamation proceedings against bank are not required since joint income tax is treated as return of single individual and payment to husband as one of joint obligees extinguished liability of Govt. for tax overpayment, and ownership rights of spouses are for determination by local law in appropriate proceedings ---------- 441

INCORPORATION BY REFERENCE
(*See* Documents, incorporation by reference)

INDIAN AFFAIRS
Contracting with Government
Preference to Indian concerns
Grant of preferential treatment by negotiating contract without competition with dairy corporation that is 51 percent owned by persons of Indian descent; that is located 30 miles from Indian reservation, but will employ Indian help; and that is financed by Small Business Administration loan, conforms to reasonable criteria established to accomplish purposes of so-called Buy Indian Act (25 U.S.C. 47), to acquire products and services from Indian industry, and to loan criteria established by Administration. Fact that minority owner is non-Indian and will furnish expertise and managerial ability does not impute that firm is "straw" organization or is unqualified as Indian industry. Therefore, firm may be considered eligible if prior to award it obtains required interstate shipper's permit---------- 94

INTEREST
Adjustment
Interest charged by Federal home loan banks
Appropriation availability
Notwithstanding sec. 101 of Emergency Home Finance Act of 1970 authorized appropriation of funds without fiscal year limitation for purpose of adjusting effective interest charged by Federal home loan banks on borrowings, Congress having in sec. 509 of Independent Offices and Department of Housing and Urban Development Appropriation Act, 1971, which provided funds to implement enabling act, restricted avail-

INTEREST—Continued Page
Adjustment—Continued
Interest charged by Federal home loan banks—Continued
Appropriation availability—Continued
ability of funds appropriated by act to current fiscal year unless otherwise expressly provided, "no-year" provision in authorization act is not incorporated in appropriation act so as to meet requirements of 31 U.S.C. 718, and, therefore, funds appropriated for interest adjustment payments by Federal home loan banks are not available for obligation beyond June 30, 1971 857
Appropriation obligation
In implementation of program authorized by sec. 101 of Emergency Home Finance Act of 1970 for adjustment of interest charged by Federal home loan banks on borrowings, and for which funds were appropriated on fiscal year basis, an obligation within meaning of sec. 1311 of Supplemental Appropriation Act, 1955, as amended, 31 U.S.C. 200, will come into being at time member institutions request commitments for allowance funds from Federal home loan bank of which they are member. However, so as not to nullify fiscal year limitation, expiration of commitment should occur at end of reasonable period. Moreover, home loan bank records constitute evidence of obligation, unused commitments will become deobligated and may not be reobligated if period of obligation has expired, and certifications required by 31 U.S.C. 200(c) are not to be made by persons below level of chief accounting officer 857
Payment delay
Contracts
Rejection of bid under solicitation issued for Federal Supply Schedule contract to furnish wood office furniture because of inclusion of qualifying provision "1½% interest per month on past due invoices," which contracting officer refused to delete, was proper under sec. 1-2.404-2 (b) (5) of Federal Procurement Regs. Regulation provides for rejection of bid if bidder imposes conditions which would modify requirements of invitation, or limit his liability or rights of Govt. to his advantage, and although objectionable conditions may be deleted if they do not go to substance of bid—that is, that they only have trivial or negligible effect on price, quantity, quality, or delivery—condition imposed affected price and could not be deleted. Furthermore, contracting officer is without authority to obligate Govt. to pay interest on unpaid invoices. 5 Comp. Gen. 649, modified 733
INTERIOR DEPARTMENT
National Park Service
Land disposition
Replacement
In development of rail rapid transit system, Board of Directors of Washington Metropolitan Area Transit Authority—instrumentality created by Compact with consent of Congress—may acquire lands under admintration of National Park Service of Dept. of Interior, and should cash be paid for appraised value of parklands, cash is for deposit into Treasury in accordance with 31 U.S.C. 484. However, if congressional approval is sought to use money to replace surface parklands, amount received by Dept. may be held in escrow for period not to exceed 2 years. Furthermore, under provisions of Compact, Board has authority to purchase land to replace surface parklands needed for transit purposes 159

INTERNATIONAL ORGANIZATIONS Page

Transfer of Federal employees, etc.

Reemployment guarantees

Employee of Federal Govt. who transferred to public international organization with reemployment rights under 5 U.S.C. 3582(b), prior to enactment of Federal Employees Salary Act of 1970, is not entitled to retroactive salary adjustment authorized by act for employees on rolls on effective date of act—Apr. 15, 1970—condition precedent to entitlement. However, since under sec. 3582(b) employee who transfers to public international organization is guaranteed that upon reemployment compensation payable will not be less than if employee had remained on Govt. rolls, any salary adjustment required upon reemployment may include retroactive salary payment employee would have received if on rolls on Apr. 15, 1970 173

INVESTMENTS

Land grant colleges

Since Federal City College is land grant college within purview of "First Morrill Act" as provided by Dist. of Columbia Education Act, land grant funds available to college are exempted from 47 D.C. Code 135, which directs investment in U.S. Treasury securities, and Congress in education act approved investment in accordance with land grant act in "bonds of the United States or of the States or some other safe bonds." "Other safe bonds" are obligations of various Federal agencies, other than Treasury securities, that are guaranteed by U.S., industrial bonds approved for investment by fiduciaries under Rules of U.S. Dist. Court, and certificates of deposit in federally insured banks, but not savings accounts in banks or savings and loan associations. Furthermore, deficiencies from investments may be made up from appropriations, and to minimize losses, bonds may be sold before maturity 712

JOINT VENTURES

Small business status

Low bid submitted under total small business set-aside for Air Force Base construction project which bore three names of joint venture shown in bid bond accompanying bid, but was signed by president of only small business concern involved, may not be awarded to either joint venture or small business concern on basis two large business firms had associated with small business concern only for purpose of obtaining bid bond. As to joint venture, there was none at time of bid submission or opening, and subsequently submitted information could not create joint venture for purpose of bid ratification—even if it could, joint venture as large concern would be ineligible for award, nor would award to small concern be proper as bid bond named joint venture as principal 530

LAW ENFORCEMENT ASSISTANCE

Grants-in-aid

Restrictions on expenditures

Retroactive removal

The 1970 amendment to Omnibus Crime Control Act of 1968, which makes clear that personnel compensation limitations only apply to restrict use of grant funds for payment of police and other regular law-enforcement personnel and not to support services, may be retroactively applied to unobligated and unspent block grants awarded for fiscal years 1969 and 1970 on matching basis by Law Enforcement Assistance Admin-

LAW ENFORCEMENT ASSISTANCE—Continued Page
Grants-in-aid—Continued
Restrictions on expenditures—Continued
Retroactive removal—Continued
istration under 1963 act to States for subgranting, as well as to "discretionary" grants made to States or directly to cities and counties, as rule against retroactive application of Statutes—absent clear intent to the contrary—pertains to enactment that would prejudicially affect vested rights, or legal character of past transactions, whereas 1969 and 1970 fiscal year grant funds committeed by Govt. are yet to be obligated by States---------- 750
LEAVES OF ABSENCE
Annual
Accrual
Crediting basis
Former Freedmen's Hospital employees
Employee who by reason of transfer from Freedmen's Hospital to jurisdiction of Howard University under Pub. L. 87–262 is entitled to credit for retirement purposes for continuous employment with University, upon reemployment with Federal or District of Columbia Govt. may not have service creditable for retirement credited as service toward annual leave accrual provided in 5 U.S.C. 6303(a), as University is not Govt. instrumentality and, therefore, service with University is not considered Federal civilan service. Since former Freedmen's Hospital employees received lump-sum leave payment upon transfer to Hospital, indicating separation, and Pub. L. 87–262 makes no provision for crediting service for leave accrual purposes, continuous service with Howard may not be considered as not having had break in service---------- 820
Civilians on military duty
"To enforce the law"
Strikes
Duties performed by civilian employees who as Reserves of Armed Forces and National Guardsmen were called into active military service pursuant to Presidential Proc. 3972, dated Mar. 23, 1970, to carry out work of striking Postal Service employees are considered military aid to enforce law within meaning of 5 U.S.C. 6323(c), as military service was performed in order to cause laws relating to Post Office to have force and to protect mail; therefore, employees are entitled because of such service to military leave prescribed by 5 U.S.C. 6323(c), and their pay should be adjusted to comply with 5 U.S.C. 5519 by crediting military pay against civilian compensation payable to employees---------- 154
Compensatory time
Pay equivalent payments
National Guard technicians
Air National Guard technicians, whether they are wage or nongraded employees or General Schedule employees, who for 12-hour workday receive 4 hours compensatory time for work in excess of 8 hours a day, or receive compensatory time for 8-hour Sunday tour of duty, are not entitled to environmental differential pay, night shift differential pay, or premium pay, as 32 U.S.C. 709(g) in authorizing Secretary concerned to prescribe hours of duty for technicians and to fix their basic compensation or additional compensation, provides for granting of compensatory

LEAVES OF ABSENCE—Continued Page
Compensatory time—Continued
Pay equivalent payments—Continued
National Guard technicians—Continued
time in amount equal to time spent in irregular or overtime work with no compensation for compensatory time, since compensatory time is intended to be in lieu of overtime or differential pay for additional hours of work ---------- 847
Military personnel
Excess leave accrual
"Continuous period" interruptions
Hostile fire pay area duty
Right of member of uniformed services to accumulate 90 days' leave under 10 U.S.C. 701(f) while serving on board ship which operates in designated fire area for continuous period of at least 120 days, during which time he is entitled to special pay authorized in 37 U.S.C. 310(a), is not affected by fact that ship to which assigned operates in and out of designated hostile fire area. Since crewmembers qualify for hostile fire pay for each month of 4-month period of duty in hostile fire area, "continuous period" requirement in sec. 701(f) for accruing excess leave is satisfied, provided absence during any part of 120 days from designated area is for periods of less than calendar month---------- 330
Reenlistment leave
Transportation costs
Since under 10 U.S.C. 703(b) members of uniformed services are only authorized transportation at expense of U.S. to and from place of leave selected for 30 days' special leave provided for voluntary extension of tour of duty in hostile area, reimbursement for travel to and from place of leave in addition to actual round-trip transportation costs is restricted to taxicab or other public carrier fares for transportation to and from carrier terminals utilized in performing authorized travel, as such fares constitute part of actual transportation costs, as well as those tips that are within limitations of par. M4402–4 of Joint Travel Regs., and members may not be reimbursed for miscellaneous expenses that are not related to transportation costs, such as cost of checking and transferring baggage, or passport and visa fees---------- 764
Transfers
District of Columbia government employment
Enrollees in a work-training program conducted by District of Columbia government under Title 1, Part B, of Economic Opportunity Act of 1964, who are given appointments as employees of District government and, therefore, are covered by Annual and Sick Leave Act of 1951, upon transfer to Federal positions may have unused annual and sick leave balances accumulated and accrued as District employees transferred to their Federal positions, and their service with District used to establish annual-leave-earning categories, for although officers and employees of District of Columbia government are not Federal employees, they are specifically included in Annual and Sick Leave provisions of 5 U.S.C. 6301 *et seq*---------- 98

LEGISLATION Page

Construction. (*See* Statutory Construction)

Retroactive effect

Liability relief cases

Postal Service

The new sec. 39 U.S.C. 2601(b), which places responsibility to relieve, compromise, or otherwise settle relief cases concerning Postal matters in Postal Service and removes U.S. GAO from process does not have effect of setting aside decisions already made by GAO on relief matters under 31 U.S.C. 82a–1 or 39 U.S.C. 2401. Although procedural or remedial statutes such as 39 U.S.C. 2601(b) are not subject to general rule against retroactive application and they apply to all accrued, pending, and future actions, steps already taken, pleadings, and all things done under old law stand, unless contrary intent is manifested. Since change in procedural law does not operate retroactively, new authority of 39 U.S.C. 2601(b) does not extend to affect, change, or modify actions taken by GAO on postal relief matters prior to effective date of section ---------- 731

MARITIME MATTERS

Subsidies

Construction-differential

Rate applicable

Construction-differential subsidy rate ceiling applicable to subsidy grants made pursuant to Merchant Marine Act of 1936, as amended, is pursuant to title V of act, and its legislative history, determinable by rate in force at time ship construction contract is awarded and not at rate in effect at time administrative action is taken to effectuate grant and, therefore, for contracts entered into prior to reversion of temporary subsidy rate of 55 percent of domestic bid prices to 50 percent, applicable construction-differential subsidy rate is higher rate, even though final administrative action was not taken before subsidy rate revision downward ---------- 86

Vessels

Sales

American *v.* foreign purchasers

In sale for scrapping of vessels from national defense fleet, secs. 5 and 6 of Merchant Marine Act of 1920, affording preference to U.S. citizens, remain in effect and are applicable to sales for scrapping or otherwise, for notwithstanding secs. 508 and 510(j) of 1936 Merchant Marine Act authorizing sale of surplus vessels contain no preference provisions, Maritime Administration continued to accord preference to U.S. citizens, and addition of sec. 510(j) to 1936 act by amendment in 1965 did not repeal preference aspects of 1920 act by implication, an interpretation in accord with *Amell* v. *United States*, 384 U.S. 158. Furthermore, histories of 1936 act and 1965 amendment do not indicate intent to deprive domestic firms of preference obtained under 1920 act ---------- 167

MEETINGS Page
Attendance, etc., fees
Federally sponsored meetings
Military personnel
Registration fees incurred by member of uniformed services while on temporary duty, incident to attendance at meeting, conference, or workshop sponsored by Federal agency, may be reimbursed to member from appropriations available to Dept. of Defense for travel expenses under appropriate Departmental regulations when member is otherwise properly directed by orders of competent authority to attend meeting in temporary duty status; but since Federal agency meeting is not meeting of technical, scientific, professional, or similar organization within contemplation of 37 U.S.C. 412, approval of Secretary of Defense required by sec. 412 is not necessary ---------- 527

MILEAGE
Military personnel
Travel by privately owned automobile
Between lodging and duty station
Chief warrant officer who is detached from duty station at Hunter Army Airfield and assigned to duty overseas with temporary duty en route at Fort Stewart—both locations within 40-mile radius and considered two different duty stations under Joint Travel Regs. as they are established subdivisions with definite boundaries, even though administered as single post with single command and staff—is not entitled to travel allowance for commuting daily by privately owned automobile from residence to temporary duty station since there was no official necessity for return to old duty station and there is no evidence warrant officer could not obtain lodgings at temporary duty station, but he is entitled to per diem on basis he entered travel status day he reported for temporary duty, notwithstanding he continued to occupy his old residence ---------- 803

MILITARY PERSONNEL
Aliens
Retired pay. (*See* Pay, retired, foreign residence effect)
Allowances
Family. (*See* Family Allowances)
Quarters. (*See* Quarters Allowance)
Station allowances. (*See* Station Allowances)
Automobiles
Transportation. (*See* Transportation, automobiles)
Aviation duty
Pay. (*See* Pay, Aviation duty)
Civilian service
Double compensation. (*See* Compensation, double, concurrent military retired and civilian service pay)
Coast guard. (*See* Coast Guard)
Courts-martial
Witnesses
Travel expenses
Issuance of invitational travel orders and payment of commuted travel allowances under 5 U.S.C. 5703 to civilian persons other than Federal Govt. employees who are requested to testify at pretrial in-

MILITARY PERSONNEL—Continued Page
Courts-martial—Continued
Witnesses—Continued
Travel expenses—Continued
vestigations pursuant to Art. 32 of Uniform Code of Military Justice, 10 U.S.C. 832, which is implemented by Manual for Courts-Martial prescribed by E.O. No. 11476, June 19, 1969, may be authorized, even though manual makes no provision for subpoena of witnesses and payment of witness fees, since investigations are integral part of courts-martial proceedings. However, as approval authority is discretionary, it should be exercised within framework of Military Code, which in Art. 49 provides for depositions, and Manual, which in par. 34d prescribes guidelines and Joint Travel Regs. revised accordingly------- 810
Dependents
Dislocation allowance. (*See* Transportation, dependents, military personnel, dislocation allowance)
Transportation. (*See* Transportation, dependents, military personnel)
Details. (*See* Details, military personnel)
Disability retired pay. (*See* Pay, retired, disability)
Dislocation allowance. (*See* Transportation, dependents, military personnel, dislocation allowance)
Dual benefits
Acceptability
Navy members who travel during 48 hours of liberty, 72 hours if holiday is involved, from place of ship overhaul to home port of ship to visit dependents and return at Govt. expense pursuant to Pub. L. 91-210, do not forfeit entitlement to $30 per month Family Separation Allowance, type II, authorized in 37 U.S.C. 427(b) for members separated from their dependents while on board ship for continuous period of more than 30 days. The legislative history of Pub. L. 91-210, enacted as beneficial legislation to permit members to travel at Govt. expense from place of vessel overhaul to home port to visit dependents, evidences no intent to deprive member of other benefits by reason of short visit with dependents on usual type of Navy liberty---------- 334
Retired pay and civilian severance pay
Upon reduction in force as civilian employee of U.S., retired member of uniformed services may not be paid severance pay as 1965 authorizing act (5 U.S.C. 5595) excludes payment of severance pay to person subject to Civil Service Retirement Act or any other retirement law or system applicable to Federal officers or employees or members of uniformed services who at time of separation have fulfilled requirements for immediate annuity—a term including retired pay—and prohibition against payment of severance pay is applicable without regard to when member first becomes entitled to military retired pay, or whether he is eligible under Dual Compensation Act of 1964 (5 U.S.C. 5531-5534) to receive military retired pay concurrently in whole or in part with compensation of his civilian office or position---------- 46
Excess living costs outside United States, etc. (*See* Station Allowances, military personnel, excess living cost outside United States, etc.)
Family separation allowances. (*See* Family Allowances, separation)
Gratuities. (*See* Gratuities)

MILITARY PERSONNEL—Continued Page
Household effects
Storage. (*See* Storage, household effects, military personnel)
Transportation. (*See* Transportation, household effects, military personnel)
Leaves of absence. (*See* Leaves of Absence, military personnel)
Meetings
Attendance, etc., fees. (*See* Meetings, attendance, etc., fees)
Mileage. (*See* Mileage, military personnel)
Missing, interned, etc., persons
Housetrailer transportation
Transportation of housetrailer at Govt. expense for dependents of member of uniformed services in missing status, as defined in 37 U.S.C. 551(2), may not be provided in absence of specific authority. 37 U.S.C. 554, in authorizing transportation of dependents and household and personal effects of members in missing status, does not expressly provide for transportation of housetrailer or mobile home—and words "personal effects" as used in section may not be construed as including housetrailers—and 37 U.S.C. 409, in providing for trailer allowance in lieu of transportation of baggage and household goods, and payment of dislocation allowance, restricts entitlement to member, or in case of death to dependents, and makes no provision for payment in event member is in missing status 317
Pay. (*See* Pay, missing, interned, etc., persons)
Savings deposits
Retroactive deposits
Additional amounts due missing member of uniformed services not as result of correction of records pursuant to 10 U.S.C. 1552, but simply because amounts due were not credited through administrative oversight, may be retroactively deposited in Uniformed Services Savings Deposit Program (10 U.S.C. 1035(e)) commensurate with date deposit accrued, for it would be contrary to congressional intent in enacting Savings Deposit Program to prevent deposits from being made as they accrued merely because of administrative errors 718
National Guard. (*See* National Guard)
Orders. (*See* Orders)
Pay. (*See* Pay)
Per diem. (*See* Subsistence, per diem, military personnel)
Promotions. (*See* Pay, promotions)
Quarters allowance. (*See* Quarters Allowance)
Record correction
Deposits retroactively in the Uniformed Services Savings Deposit Program
Missing, interned, etc., persons
When as result of correction of records under 10 U.S.C. 1552 member of uniformed services in missing status becomes entitled to item of pay or allowance retroactively, amount due member may be deposited retroactively in Uniformed Services Savings Deposit Program established by Pub. L. 90–122 (10 U.S.C. 1035(e)), in same manner as if his original records had shown same information contained in corrected records, and record as corrected should show amounts and dates of all deposits made pursuant to corrected record 718

MILITARY PERSONNEL—Continued Page
Record correction—Continued
Existing record basis only
Fact that Correction of Military Records Board on Apr. 11, 1969, directed change of records pursuant to 10 U.S.C. 1552, to show that Air Force captain had not been twice passed over for promotion to temporary grade of major, and that if selected for promotion by next regularly scheduled board, promotion was to be effective from date first selection board convened, although at same time denying his request for promotion, does not entitle officer promoted pursuant to 10 U.S.C. 8442 and 8447(b) on June 27, 1969, effective Feb. 20, 1968, to increased pay prior to June 27, 1969, for until promoted, no date could be established for commencement of higher pay, and Correction Board limited to making changes in existing record, its attempt to control future contingent event of promotion is not within purview of 10 U.S.C. 1552---------- 125
Payment basis
Interim civilian earnings
In computation of active duty pay and allowances due an enlisted member of uniformed services incident to correction of military records under 10 U.S.C. 1552 to show that discharge was null and void and that he had remained on active duty until voluntarily retired under 10 U.S.C. 8914, deduction of interim civilian earnings is required, notwithstanding member retired earlier than required by decision of court in 419 F. 2d 714. Moreover, fact that Correction Board's recommendation against offsetting interim earnings was administratively approved is without effect as there is no discretionary power to make determinations of specific amounts to be paid pursuant to military records correction since payment depends solely upon proper application of statutes and regulations to facts shown in corrected record---------- 180
Amount of civilian earnings for deduction from gross pay and allowances determined to be due incident to correction of military records, pursuant to 10 U.S.C. 1552, is gross and not net amount left after deduction of Federal and State income taxes and Social Security tax withheld from interim civilian earnings of member of uniformed services. To limit deduction from back pay and allowances found to be due member to civilian earnings after taxes would be tantamount to refunding taxes withheld from interim civilian compensation earned, and question of whether taxes should be refunded is for determination by taxing authorities concerned---------- 236
Unemployment compensation
Payment for period of active duty incident to correction of military records of member of uniformed services is not subject to deduction for unemployment compensation received by member during period between premature discharge from duty and retirement, as rule in 35 Comp. Gen. 241 to effect unemployment compensation is not deductible from back pay of civilian employee restored to duty because of direct refund by employee is for application. Therefore, since unemployment compensation received by member does not come within purview of "interim civilian earnings" for purpose of administrative directive that such earnings are deductible in Correction Board cases, amount of unemployment compensation deducted from pay adjustment made to member is for refund to him---------- 180

MILITARY PERSONNEL—Continued Page

Reenlistment bonus. (*See* Gratuities, reenlistment bonus)

Reserve Officers' Training Corps

Prior military training

Excused service

Students enrolled in Reserve Officers' Training Corps (ROTC) under 10 U.S.C. 2107, which authorizes scholarship benefits, may on basis of conclusion in 46 Comp. Gen. 15 be considered to be within purview of 10 U.S.C. 2108(c), and Secretary concerned may excuse them from all or part of General Military Course (GMC) requirements, and students are eligible to receive financial benefits of scholarship award. Therefore, scholarship may be offered and all or part of GMC waived for incoming college freshman designated to receive 4-year ROTC college scholarship; college student enrolled as transfer from another institution during freshman or sophomore year; and student currently enrolled at institution but in ROTC program during freshman or sophomore year------ 486

Rifle and pistol team competition

Status for allowances

Since participation of members of Reserve Officers' Training Corps (ROTC) in rifle and pistol team competition matches is neither military training nor part of ROTC curriculum, but participation is performed on voluntary extracurricular activity basis, to provide allowances to members participating in National Matches, they may be considered to have same status as civilians within meaning of 10 U.S.C. 4313 so as to entitle them to travel allowance of $0.05 a mile and subsistence allowance of $1.50 a day, and authority in 10 U.S.C. 4308(a)(8) may be invoked to provide allowances for participation in regional and international matches if Secretary of Army upon recommendation of National Board for Promotion of Rifle Practice approves issuance of regulations to this effect---------- 783

Scholarship benefits

Military training

If student successfully completes first 2 years of 4-year Senior Reserve Officers' Training Corps course for admission to advanced training prescribed in 10 U.S.C. 2104(b)(6) by reason of prior military education and training, 6 weeks' field training or practice cruise provision of section is not preliminary requirement for admission to "advanced course"—last 2 years of college—where student qualifies for excusal of General Military Course under 10 U.S.C. 2108(c)---------- 486

Application of 10 U.S.C. 2108(c), providing for Secretary concerned to excuse all or part of General Military Course requirements for students enrolled in Reserve Officers' Training Corps, is not limited to scholarship program provided in 10 U.S.C. 2107, but excusal authority extends as well to advanced training program prescribed in 10 U.S.C. 2104. Student who is eligible for excusal on basis of previous education, military experience, or both, insofar as Reserve Officers' Training Corps Vitalization Act of 1964 (10 U.S.C. 2101–2111) is concerned, is eligible for financial benefits provided in either 10 U.S.C. 2104 or 10 U.S.C. 2107, if he otherwise qualifies---------- 486

Student currently enrolled at educational institution but not in Reserve Officers' Training Corps (ROTC) program during freshman or sophomore year may be selected for scholarship under 10 U.S.C. 2107 if he

MILITARY PERSONNEL—Continued Page

Reserve Officers' Training Corps—Continued

Scholarship benefits—Continued

Military training—Continued

possesses prerequisites for excusal from General Military Course under 10 U.S.C. 2108(c) and receive benefits of scholarship, for according to legislative history of sec. 2107, scholarship assistance may be provided for minimum of 1 year or maximum of 4 years, comments which were basis of conclusion in 50 Comp. Gen. 486, which is affirmed, and, therefore, student who does not participate in educational institution's Senior ROTC training program for 4 years may receive financial assistance authorized in sec. 2107 if he is excused by Secretary concerned from portions of 4-year program on basis of having performed equivalent military training 727

Retired

Civilian service

Civilian disability compensation and military retired pay

Regular Air Force sergeant retired pursuant to 10 U.S.C. 8914, who while employed as a civilian in Federal Govt. loses use of finger, is not entitled to concurrent payment of civilian disability compensation and military retired pay on basis the compensation would be paid for permanent partial disability and not temporary total disability, thus bringing payment within exception to dual payment prohibition contained in 5 U.S.C. 8116(a). In application of limitation in sec. 8116(a), there has been no recognition of distinction between temporary and permanent disability, as statute makes no such distinction insofar as concurrent receipt of military or naval retired pay is concerned, and legislation would have to be enacted to permit concurrent payment of retired pay and disability compensation 491

Retired pay. (*See* **Pay, retired**)

Retirement

Temporary disability retirement

Active duty subsequently

Air Force officer who was placed on temporary disability retired list in grade of major effective June 1, 1968, recalled under 10 U.S.C. 1211 to active duty in temporary grade of lieutenant colonel for 1 day, June 30, 1970, with date of rank from July 19, 1968, and then retired for years of service under 10 U.S.C. 8911 in grade of lieutenant colonel effective July 1, 1970, is entitled to payment of difference in retired pay between grades of lieutenant colonel and major for months of June and July 1970, since prior to July 1, 1970, officer satisfied requirements of 10 U.S.C. 1211(a)(1). The officer's entitlement to retired pay at higher grade for 2 months involved is not under 10 U.S.C. 8963(a), as he only "served" 1 day in temporary grade, but under 10 U.S.C. 8961, which authorizes officer to retire in grade he "holds" not the grade in which he "served" on date of retirement 677

MILITARY PERSONNEL—Continued Page

Savings deposits

Missing, interned, etc., persons

Retroactive adjustment deposits

When as result of correction of records under 10 U.S.C. 1552 member of uniformed services in missing status becomes entitled to item of pay or allowance retroactively, amount due member may be deposited retroactively in Uniformed Services Savings Deposit Program established by Pub. L. 90–122 (10 U.S.C. 1035(e)), in same manner as if his original records had shown same information contained in corrected records, and record as corrected should show amounts and dates of all deposits made pursuant to corrected record 718

Additional amounts due missing member of uniformed services not as result of correction of records pursuant to 10 U.S.C. 1552, but simply because amounts due were not credited through administrative oversight, may be retroactively deposited in Uniformed Services Savings Deposit Program (10 U.S.C. 1035(e)) commensurate with date deposit accrued, for it would be contrary to congresional intent in enacting Savings Deposit Program to prevent deposits from being made as they accrued merely because of administrative errors 718

Separation

Consent, etc., requirement

While purpose of 10 U.S.C. 1163(a) is to prevent officer of Reserve component of uniformed services with at least 3 years' commissioned service from being arbitrarily separated without officer's consent, unless separation is recommended by board of officers convened by authority designated by Secretary concerned, there is nothing in section to preclude officer who has not consented to separation from waiving consideration by board of officers 229

Involuntary

Under 10 U.S.C. 687(a), member of Reserve component, or member of Army or Air Force without component, who is relieved from active duty "involuntarily," is entitled to readjustment pay, and since it is mandatory under Air Force Reg. 36–12, which establishes procedures governing separation of officers, to discharge woman officer when determination is made by medical officer that she is pregnant, she is considered involuntarily separated and entitled to readjustment pay, whether she is separated with or without her consent, sole determining factor being that of pregnancy. Therefore, Reserve officer separated without her consent by reason of pregnancy who waived hearing and board recommendations in 10 U.S.C. 1163(a), having been involuntarily separated, is entitled to readjustment pay 229

Service credits. (*See* Pay, service credits)

Ship assignments

Ships inactivated away from home port

Transportation benefits

Transportation benefits prescribed by Pub. L. 91–210, approved Mar. 13, 1970, 37 U.S.C. 406b, for members of uniformed services permanently attached to ships being overhauled away from home port, whose dependents reside at home port, may not be extended to personnel of ships being inactivated away from home port to authorize reimbursement for round trip travel to visit dependents residing at home port.

MILITARY PERSONNEL—Continued Page
Ship assignments—Continued
Ships inactivated away from home port—Continued
Transportation benefits—Continued
Although act does not define "overhaul," and its meaning is not reflected in legislative history of act, since Navy's definition of "overhaul" does not include inactivation of ship, benefits of act may not be extended to personnel of ships being inactivated away from home port. However, no exception will be taken to payments already made---------- 320
Station allowances. (*See* Station Allowances)
Subsistence
Per diem. (*See* Subsistence, per diem)
Temporary duty
Firefighting
As members of uniformed services ordered to proceed on temporary duty in Govt. vehicles to assist Forest Service in firefighting, whether they sleep in Govt. or personal sleeping bags, in vehicles, on ground without sleeping bags, on floors of warehouses and similar structures, or do not sleep on certain nights because of duty performance, are not performing type duty identified as maneuvers, joint field exercises, Reserve training encampments, and similar activities, payment of per diem to them is governed by par. M4205-6 of Joint Travel Regs., and members who were not charged for meals or sleeping facilities provided by Forest Service nor who did not occupy commercial facilities, are entitled for each day of temporary duty, to per diem of $2.50 and $3.10 for each meal not furnished, rates prescribed by regulation---------- 773
Temporary lodging allowances. (*See* Station Allowances, military personnel, temporary lodgings)
Trailer shipments. (*See* Transportation, household effects, military personnel, trailer shipment)
Transportation
Automobiles. (*See* Transportation, automobiles, military personnel)
Dependents. (*See* Transportation, dependents, military personnel)
Household effects. (*See* Transportation, household effects, military personnel)
Travel expenses. (*See* Travel expenses, military personnel)
MISCELLANEOUS RECEIPTS
Appropriations reverted to Treasury
Availability
Although utilization by Postal Service of obligated and unobligated appropriations available to Post Office Dept. on July 1, 1970, effective date of transition of its functions to Postal Service is permitted under 39 U.S.C. 2002(a)(2), unobligated balances for fiscal year 1970 and prior years that had reverted to Treasury pursuant to 31 U.S.C. 701 would require act of Congress to be made available to Postal Service for liquidation of valid obligations. However, 1971 appropriations need not be included in any reappropriation of funds since they had not expired for obligation or reverted to Treasury. Notwithstanding 39 U.S.C. 1005(e) requires Postal Service to assume obligation to pay for annual leave that accrued to employees before and after transition, since such leave is not chargeable to unexpended balances of prior year appropriations transferred to Service, Federal Govt. pursuant to 39 U.S.C. 2002(a)(2) is liable for payments---------- 863

MISCELLANEOUS RECEIPTS—Continued Page
Special account *v.* miscellaneous receipts
Proceeds from sales, etc.
Public lands for subway
In development of rail rapid transit system, Board of Directors of Washington Metropolitan Area Transit Authority—instrumentality created by Compact with consent of Congress—may acquire lands under administration of National Park Service of Dept. of Interior, and should cash be paid for appraised value of parklands, cash is for deposit into Treasury in accordance with 31 U.S.C. 484. However, if congressional approval is sought to use money to replace surface parklands, amount received by Dept. may be held in escrow for period not to exceed 2 years. Furthermore, under provisions of Compact, Board has authority to purchase land to replace surface parklands needed for transit purposes--- 159
Property damage collections
Moneys received from carriers by National Credit Union Administration (NCUA) in settlement for goods lost or damaged in transit that were shipped in connection with operations of Administration should be deposited for credit to account of Administration and not general fund of Treasury since miscellaneous receipts rule (31 U.S.C. 484) is not for application, as operating funds of NCUA are not provided by annual appropriations but by fees and assessments upon credit unions pursuant to 12 U.S.C. 1755, which provides for deposit of collections from credit unions with Treasurer of U.S. for credit to account of Administration--- 545

NATIONAL GUARD
Pay
Increases
Member of Army National Guard who was on active duty for training on Apr. 15, 1970, whether or not fulfilling his REP 63, term meaning obligation incurred under Reserve Enlistment Program of 1963 to serve on active duty training for period of at least 4 months and to serve in Reserve component until sixth anniversary of date of enlistment, is not entitled to retroactive increase in basic pay for inactive duty training drills attended subsequent to Dec. 31, 1969, and before Apr. 15, 1970, since both under pertinent provisions of Career Compensation Act and National Guard regulations member of National Guard on full-time training duty cannot be in "drill pay status" while on active duty, and acts of Dec. 16, 1967, and Apr. 15, 1970, only authorize retroactive adjustment in basic pay under 1970 rates if member was in "drill pay status" on Apr. 15, 1970---------- 868

NONDISCRIMINATION
Contracts. (*See* Contracts, labor stipulations, nondiscrimination)
Requirement
Appointments
Upon determination that employee who received excepted Schedule B appointment at grade GS–9 was discriminated against because of race or sex, which is expressly prohibited by 5 U.S.C. 7154(b) and 5 CFR 713.202, as she qualified for a GS–11 position and was assigned and performed work warranting a GS–11 classification, correction of personnel action and adjustment in pay is legally justified on basis original classification and appointment as GS–9 was illegal, and corrective action is not viewed as retroactive promotion such as ordinarily is prohibited by law-- 581

OFFICERS AND EMPLOYEES Page

Accountable officers. (*See* **Accountable Officers**)

Allowances

Evacuation. (*See* **Officers and Employees, overseas, dependents, evacuation**)

Compensation. (*See* **Compensation**)

Compensatory time. (*See* **Leaves of absence, compensatory time**)

Concurrent receipt of two benefits

Although civilian position held by retired officer of Regular component of uniformed services in U.S. Army Special Services Agency, Europe—local nonappropriated fund activity—is position subject to reduction of retired pay prescribed by 5 U.S.C. 5532(b), reduction is not required in officer's retired pay as reduction would exceed amount officer receives from civilian employment with additional reduction in retired pay, result that is not within contemplation of Dual Compensation Act of 1964, for it is unreasonable to require retired officers to accept smaller amount after employment in civilian position with Govt. than amount of retired pay he was receiving before that time ---------- 604

Death or injury

Disability compensation, etc.

Military retired pay

Regular Air Force sergeant retired pursuant to 10 U.S.C. 8914, who while employed as civilian in Federal Govt. loses use of finger, is not entitled to concurrent payment of civilian disability compensation and military retired pay on basis the compensation would be paid for permanent partial disability and not temporary total disability, thus bringing payment within exception to dual payment prohibition contained in 5 U.S.C. 8116(a). In application of limitation in sec. 8116(a), there has been no recognition of distinction between temporary and permanent disability, as statute makes no such distinction insofar as concurrent receipt of military or naval retired pay is concerned, and legislation would have to be enacted to permit concurrent payment of retired pay and disability compensation ---------- 491

Debt collections

Waiver. (*See* **Debt collections, waiver, civilian employees**)

Dependents

Separation allowances

Special *v.* maintenance

Under broad authority in 5 U.S.C. 5523(b), special allowances, prescribed by Standardized Regs. incident to evacuation of dependents at overseas post of duty, may be paid to employee in behalf of dependents who are not at his post at time of evacuation but who are directly affected by orders. However, as payments of additional allowances for unusual expenses must be attributable to post evacuation order, when dependents are absent for personal reasons at time evacuation order issues, with no intention of returning to post for duration of evacuation, employee is not entitled to special allowance, having incurred no unusual expenses; but if an absent dependent is prevented from returning by reason of evacuation order issued during his absence, unusual expenses incurred are payable from time intended return is blocked ---------- 89

OFFICERS AND EMPLOYEES—Continued Page

Dependents—Continued

Separation allowances—Continued

Special *v.* maintenance—Continued

Separate maintenance allowance paid at lower rate than special allowance authorized when dependents are evacuated from overseas post of employee, involves situations where dependents are not permitted to reside at employee's post under circumstances known well in advance to allow for reasonable planning and, therefore, serves different purpose than special allowances authorized incident to evacuation of dependents who, intending to reside at employee's post, are prevented from so doing by emergency under circumstances which do not permit orderly planning of employee's household. Furthermore, sec. 262.32 of Standardized Regs. prohibits payment of separation allowance for period that is less than 90 days—a limitation that does not apply to special allowance---------- 89

Disputes

Arbitration

Following upgrading of entrance grades for attorneys to GS–9 and GS–11 from GS–7 and GS–9, and adjusting of grades as consequence, National Labor Relations Board (NLRB) negotiated agreement with NLRB Professional Assn. to consider shorter time periods for promotions and requested waiver of Whitten Amendment requirement of 1-year ingrade except when only 5 weeks or less remained to complete required year of service, and as agreement entered into pursuant to E.O. No. 10988, which reserved to Govt. authority to promote efficiency of personnel operations, does not guarantee promotions, exercise of 5-week rule is administrative and its validity is not matter for arbitration. Therefore, attorney whose promotion was delayed by reason of 5-week rule is not entitled to retroactive promotion for in absence of administrative error general rule against retroactive promotions applies---------- 850

Downgrading

Saved compensation. (*See* Compensation, downgrading, saved compensation)

Dual compensation

Concurrent military retired and civilian service pay. (*See* Compensation, double, concurrent military retired and civilian service pay)

Holding two offices

Board, committee, and commission members

Prohibition

An attorney in private practice serving 3-year term as member of Advisory Council on Urban Transportation, Dept. of Transportation, established by Pub. L. 89–670, and which meets only a few days each year, who is paid per diem on "when-actually-employed basis" and travel expenses is ineligible to serve on National Water Commission, even if different days are devoted to intermittent service for each agency, as Council member is considered to have status similar to that of intermittent consultant employed and compensated on daily basis and held to be officer or employee of U.S., and, therefore, is prohibited from accepting appointment with Commission by language of National Water Commission Act that "no member of the Commission, during his period of service on the Commission, hold any other position as an officer or employee of the United States * * *"---------- 736

OFFICERS AND EMPLOYEES—Continued Page

Hours of work

Administrative determination

Uncommon hours of duty

Establishment of first 40 hours of duty as basic workweek of Govt. quality control inspectors due to release from work of contractor employees when unpredictable interruptions and delays occur in checkout of missiles prior to launch—countdown—was in accord with 5 U.S.C. 6101 and Civil Service Reg. 610.111, which authorize uncommon tours of duty to maintain efficient operations and prevent cost increases. Therefore, determination of arbitration board under E.O. No. 10988 procedures that new work schedule was in violation of collective bargaining contract, requires no compensation and leave adjustments. Moreover, Executive order provides that arbitration "shall be advisory in nature with any decision or recommendation subject to approval of the agency head"--- 708

Household effects. (*See* Transportation, household effects)

Leaves of absence. (*See* Leaves of Absence)

Moving expenses

Public Law 89-516 authority. (*See* Officers and employees, transfers, relocation expenses)

Overseas

"Actual residence"

The term "actual residence" is not defined in 5 U.S.C. 5722 or implementing regulations, which authorize travel and transportation expenses for new appointees to posts of duty outside continental U.S., and is for determination from facts of each case. Although term as used in sec. 5722 generally would be understood to mean place at which appointee physically resides at time of appointment, term may include "legal residence" or "domicile" of employee---------- 644

Dependents

Evacuation

Special allowance payments

Under broad authority in 5 U.S.C. 5523(b), special allowances, prescribed by Standardized Regs. incident to evacuation of dependents at overseas post of duty, may be paid to employee in behalf of dependents who are not at his post at time of evacuation but who are directly affected by orders. However, as payments of additional allowances for unusual expenses must be attributable to post evacuation order, when dependents are absent for personal reasons at time evacuation order issues, with no intention of returning to post for duration of evacuation, employee is not entitled to special allowance, having incurred no unusual expenses; but if an absent dependent is prevented from returning by reason of evacuation order issued during his absence, unusual expenses incurred are payable from time intended return is blocked---------- 89

Separate maintenance allowance paid at lower rate than special allowance authorized when dependents are evacuated from overseas post of employee, involves situations where dependents are not permitted to reside at employee's post under circumstances known well in advance to allow for reasonable planning and, therefore, serves different purpose than special allowances authorized incident to evacuation of dependents who, intending to reside at employee's post, are prevented from so doing by emergency under cricumstances which do not permit orderly planning

OFFICERS AND EMPLOYEES—Continued Page
Overseas—Continued
Dependents—Continued
Evacuation—Continued
Special allowance payments—Continued
of employee's household. Furthermore, sec. 262.32 of Standardized Regs. prohibits payment of separation allowance for period that is less than 90 days—a limitation that does not apply to special allowance---------- 89
Hired overseas
Residence in United States, etc.
Travel and transportation expenses of newly appointed employee from foreign country may be paid by Canal Zone agencies if employee at time of appointment has place of actual residence in U.S., its territories or possessions. However, as 5 U.S.C. 5722 authorizes payment of such expenses only from employee's place of actual residence at time of appointment, reimbursement may not exceed that which would have been allowed employee for travel and transportation from place of actual residence in U.S., its territories or possessions---------- 644
Former employee of Canal Zone Govt. whose place of actual residence was in California, but who at time of appointment was temporarily residing in Costa Rica, and who had transported his household goods to Coasta Rica in his own truck prior to signing employment agreement, which he signed in Costa Rica prior to travel to Canal Zone, may be reimbursed travel and transportation expenses from Costa Rica to Canal Zone in accordance with provisions of Office of Management and Budget Cir. No. A–56, but he may not be reimbursed expenses of moving from California to Costa Rica since these expenses were not incurred in anticipation of his appointment in Canal Zone---------- 644
Overtime. (*See* Compensation, overtime)
Per diem. (*See* Subsistence, per diem)
Postal service. (*See* Post Office Department, employees)
Promotions. (*See* Compensation, promotions)
Relocation expenses
Transferred employees. (*See* Officers and employees, transfers, relocation expenses)
Retirement. (*See* Retirement, civilian)
Service agreements
Manpower shortage category
Agreements which appointees to manpower shortage positions execute pursuant to 5 U.S.C. 5723(b), to remain in service of agency to which appointed or assigned for 12 months unless separated for reasons beyond their control which are acceptable to agency, should be revised to require only that employee remain in Govt. service, as language of sec. 5723(b) is substantially same as sec. 5724(i), which has been construed in *Finn* v. *U.S.*, Ct. Cl. No. 396–69, decided July 15, 1970, to require only that employee agree to remain "in the Government service" for period of 12 months rather than in service of particular agency---------- 374
Transferred employees. (*See* Officers and Employees, transfers, service agreements)

OFFICERS AND EMPLOYEES—Continued Page

Severance pay

Compensation. (*See* Compensation, severance pay)

Eligibility

"Definite time limitation" employees

Executive secretaries of local Selective Service boards who are given career or career-conditional appointments with 10-year time limitation, subject to reappointment for another 10-year term, separation, or reassignment to another position pursuant to 50 U.S.C. App. 460(b)(4), hold positions of permanent continuing nature and their appointments are considered to be in competitive service, making them eligible upon termination of their employment to severance pay provided under 5 U.S.C. 5595(a)(2) for temporary relief of employees separated from Federal service since exclusion of employees serving under appointment with "definite time limitation" from entitlement to severance pay does not apply to executive secretaries---------- 726

Employee on military duty

Fact that civilian Air Force technician was on required active military duty in Air Force Reserve when installation was transferred does not disqualify him for severance pay, as employee has restoration rights to civilian position at place where office has been relocated, or he may decline transfer and become eligible for severance pay on basis of being involuntarily separated from civil service. Employee declining transfer should be given paper restoration to establish pay scale and involuntary separation made of record, date of restoration to be date employee applied for restoration, and involuntary, separation date, date he informed agency he would not accept reassignment---------- 300

Reassignment refused

Refusal of civilian employee to accept order of reassignment to another geographical area, made for best interests of Govt., constituting insubordination within meaning of delinquency and misconduct as contemplated by sec. 550.705 of Civil Service Regs., employee is not entitled to severance pay under 5 U.S.C. 5595, which is authorized for employee separated "through no fault of his own" when he declines to accept assignment to another commuting area in connection with transfer of functions or reduction in force and therefore loses his job because of technological innovations and improved efficiency, or closing or curtailment of Federal installations---------- 476

Indication in Standard Form 57, Application for Federal Employment, that applicant would not accept employment outside State of residence does not make him as Federal employee immune from reassignment, as purpose of Form 57 is to inform appointing officers and not to embody contract of employment; and, therefore, condition imposed in employment application does not entitle employee who refuses to accept reassignment outside initial State of employment in interests of Govt. to severance pay authorized in 5 U.S.C. 5595 for employees involuntarily separated from service through no fault of their own---------- 476

Separation status

Distinction between separations involving transfer of function or reduction-in-force situation and declination of reassignment situation is that in first situation the primary purpose of employee's transfer is to meet responsibility to employee, whereas second situation is ordered

OFFICERS AND EMPLOYEES—Continued Page

Severance pay—Continued

Separation status—Continued

reassignment of employee for good of service—first situation involves declination of offer; the second, refusal to follow order. Fact that equal treatment for employment purposes is accorded to employees in both situations under Displaced Employee Program provided by sec. 330.301 of Civil Service Regs. does not negate distinction to require equal treatment of employees in both situations for severance pay purposes..... 476

Status

Aliens

Authority in 5 U.S.C. 5584 to waive erroneous payments of compensation made to employees of executive agencies is applicable to non-U.S. citizens employed by U.S. in foreign areas, as term "employee" as used in sec. 5584 means employee as defined in 5 U.S.C. 2105; that is, individual appointed in "civil service," which constitutes all appointive positions in executive, judicial, and legislative branches of Govt., except positions in uniformed services (5 U.S.C. 2101(1)). Therefore, Philippine citizen, properly appointed to position in executive branch to perform Federal function supervised by Federal employee, is employee under 5 U.S.C. 5584 and entitled to waiver of erroneous compensation payments without regard to fact employment is under labor agreement with Philippine Govt..... 329

Training

Expenses

Meals and room at headquarters

Cost of catering services furnished by hotel located in Dist. of Columbia to conference held pursuant to Govt. Employees Training Act, 5 U.S.C. Ch. 41, and considered proper administrative expense when necnecessary to achieve objectives of training program, may be paid, prohibition in 40 U.S.C. 34 regarding procurement of hotel room accommodations in Dist. of Columbia in absence of express appropriation for rental of space for Govt. use in District having no application, even though cost of using hotel facilities are included in catering charges, as cost of space is merely cost item included by hotel in fixing catering charges and rental of space *per se* is not involved..... 610

Transfers

International organizations

Employee of Federal Govt. who transferred to public international organization with reemployment rights under 5 U.S.C. 3582(b), prior to enactment of Federal Employees Salary Act of 1970, is not entitled to retroactive salary adjustment authorized by act for employees on rolls on effective date of act—Apr. 15, 1970—condition precedent to entitlement. However, since under sec. 3582(b) employee who transfers to public international organization is guaranteed that upon reemployment compensation payable will not be less than if employee had remained on Govt. rolls, any salary adjustment required upon reemployment may include retroactive salary payment employee would have received if on rolls on Apr. 15, 1970..... 173

OFFICERS AND EMPLOYEES—Continued Page
Transfers—Continued
Relocation expenses
Temporary quarters
Time limitation
Employees of Federal Highway Administration who are transferred between duty stations within State of Alaska are only entitled to subsistence expenses for period of 30 days while occupying temporary quarters with their dependents, which is period prescribed in 5 U.S.C. 5724a(a)(3) and implementing regulations when new official station is located within U.S., its territories or possessions, Commonwealth of Puerto Rico, or Canal Zone. Extension of subsistence allowance for additional period of up to 30 days occupancy of temporary quarters applies only when employee transfers to or from Hawaii, Alaska, territories or possessions, Commonwealth of Puerto Rico, or Canal Zone, and, therefore, employees transferred within Alaska are subject to 30-day limitation ---------- 829
Service agreements
Government *v.* particular agency service
In view of *Finn* v. *U.S.*, Ct. Cl. No. 396–69, decided July 15, 1970, to effect that Govt. agency does not have authortiy under 5 U.S.C. 5724(i) to require employee to sign agreement to remain in service of agency for 12 months following effective date of transfer, holding in 46 Comp. Gen. 738 that agreements executed under sec. 5724(i) require an employee to remain with particular agency rather than "in the Government service" no longer is for application, with exception of last paragraph concerning taking of appropriate collection action if employee fails to remain in Govt. service for 12 months---------- 374
Travel expenses. (*See* Travel Expenses)
Traveltime
Overtime. (*See* Compensation, overtime, traveltime)
Wage board
Compensation. (*See* Compensation, wage board employees)
When-actually-employed, intermittent, etc., employees
Board, committee, and commission members
An attorney in private practice serving 3-year term as member of Advisory Council on Urban Transportation, Dept. of Transportation, established by Pub. L. 89–670, and which meets only a few days each year, who is paid per diem on "when-actually-employed basis" and travel expenses is ineligible to serve on National Water Commission, even if different days are devoted to intermittent service for each agency, as Council member is considered to have status similar to that of intermittent consultant employed and compensated on daily basis and held to be officer or employee of U.S., and, therefore, is prohibited from accepting appointment with Commission by language of National Water Commission Act that "no member of the Commission, during his period of service on the Commission, hold any other position as an officer or employee of the United States * * *"---------- 736

ORDERS Page
Retroactive
Military matters
Transportation and travel matters
Treatment of Fort Stewart and Hunter Army Airfield, located 40 miles apart, as one installation with one staff which resulted in movement of military and civilian personnel freely between both installations without competent orders directing permanent change-of-station or performance of temporary duty may not be corrected by issuance of retroactive orders to confirm assignments and authorize travel allowances for temporary duty or permanent change-of-station allowances incident to assignments, even though for purposes of Joint Travel Regs., installations are considered different stations since retroactive orders would be without effect to change vested rights of personnel involved---------- 803

PAY
Active duty
Grade or rank
Rear admirals
Assigned not detailed
Legislative history of Pub. L. 90–179, which authorized detailing two officers—a Navy officer (10 U.S.C. 5149(b)) and a Marine officer (10 U.S.C. 5149(c))—as Assistant Judge Advocates General of Navy, entitled to rank and grade of rear admiral (lower half) or brigadier general while so serving, unless entitled to higher rank or grade under another provision of law, evidencing no intent that captain or officer of lesser rank receive pay of rear admiral (lower half) or brigadier general, as appropriate, the two Navy captains not detailed but assigned as Assistant Judge Advocates General to avoid creating entitlement to flag rank within meaning of 10 U.S.C. 5149(b), having been denied grade of rear admiral (lower half) and its benefits, may not be paid under 37 U.S.C. 202(1) at that grade---------- 22
Record correction. (*See* Military Personnel, record corection)
Reservists
Drill pay increases
Member of Army National Guard who was on active duty for training on Apr. 15, 1970, whether or not fulfilling his REP 63, term meaning obligation incurred under Reserve Enlistment Program of 1963 to serve on active duty training for period of at least 4 months and to serve in Reserve component until sixth anniversary of date of enlistment, is not entitled to retroactive increase in basic pay for inactive duty training drills attended subsequent to Dec. 31, 1969, and before Apr. 15, 1970, since both under pertinent provisions of Career Compensation Act and National Guard regulations member of National Guard on full-time training duty cannot be in "drill pay status" while on active duty, and acts of Dec. 16, 1967, and Apr. 15, 1970, only authorize retroactive adjustment in basic pay under 1970 rates if member was in "drill pay status" on Apr. 15, 1970---------- 868
Subsequent to temporary disability retirement
Effect on retired pay
Air Force officer who was placed on temporary disability retired list in grade of major effective June 1, 1968, recalled under 10 U.S.C. 1211 to active duty in temporary grade of lieutenant colonel for 1 day, June 30,

PAY—Continued Page
Active duty—Continued
Subsequent to temporary disability retirement—Continued
Effect on retired pay—Continued
1970, with date of rank from July 19, 1968, and then retired for years of service under 10 U.S.C. 8911 in grade of lieutenant colonel effective July 1, 1970, is entitled to payment of difference in retired pay between grades of lieutenant colonel and major for months of June and July 1970, since prior to July 1, 1970, officer satisfied requirements of 10 U.S.C. 1211(a)(1). The officer's entitlement to retired pay at higher grade for 2 months involved is not under 10 U.S.C. 8963(a), as he only "served" 1 day in temporary grade, but under 10 U.S.C. 8961, which authorizes officer to retire in grade he "holds" not the grade in which he "served" on date of retirement ---------- 677
Additional
Hazardous duty
Assignment status
Officers of uniformed services trained in parachute jumping and demolition of explosives, who incident to staff billet assignments evaluate training programs and equipment, entailing observation of actual training exercises by special warfare forces, are not entitled to dual hazardous duty incentive pay provided in 37 U.S.C. 301 unless they are assigned to operational team and actually perform parachute jumping in jump status or perform demolition duty as primary assignment. Mere evaluation or observation of operational team activities does not qualify officers for incentive pay; and in absence of proper orders, any parachute jumping or demolition of explosives actually performed by officers would not entitle them to additional pay ---------- 425
Aviation duty
Flight performance evidence
Reservists
Requirement for submission of monthly flight certificates to support payment of aerial flight pay authorized in 37 U.S.C. 301(f) for members of Reserve Forces performing inactive-duty training or active-duty training may be discontinued and applicable regulations amended accordingly provided procedures are established which will insure that administrative records are maintained at base level to support payments of flight pay to reservists and will provide adequate basis for subsequent review by U.S. GAO in view of fact that regulations contained in par. 80231(a) of Dept. of Defense Military Pay and Allowances Entitlements Manual provide that flight pay to reservists shall be governed by provisions and conditions established for regular members and certificates are no longer required for such members ---------- 813
Civilian employees. (*See* Compensation)
Deductions
Pay adjustment upon restoration to duty
In computation of active duty pay and allowances due an enlisted member of uniformed services incident to correction of military records under 10 U.S.C. 1552 to show that discharge was null and void and that he had remained on active duty until voluntarily retired under 10 U.S.C. 8914, deduction of interim civilian earnings is required, notwithstanding member retired earlier than required by decision of court in 419 F. 2d 714. Moreover, fact that Correction Board's recommendation against off-

PAY—Continued Page
Deductions—Continued
Pay adustment upon restoration to duty—Continued
setting interim earnings was administratively approved is without effect as there is no discretionary power to make determinations of specific amounts to be paid pursuant to military records correction since payment depends solely upon proper application of statutes and regulations to facts shown in corrected record---------- 180

Payment for period of active duty incident to correction of military records of member of uniformed services is not subject to deduction for unemployment compensation received by member during period between premature discharge from duty and retirement, as rule in 35 Comp. Gen. 241 to effect unemployment compensation is not deductible from back pay of civilian employee restored to duty because of direct refund by employee is for application. Therefore, since unemployment compensation received by member does not come within purview of "interim civilian earnings" for purpose of administrative directive that such earnings are deductible in Correction Board cases, amount of unemployment compensation deducted from pay adjustment made to member is for refund to him---------- 180
Disability retired pay. (*See* Pay, retired, disability)
Drill
Training assemblies
Increases
Retroactive adjustment entitlement

Member of Army National Guard who was on active duty for training on Apr. 15, 1970, whether or not fulfilling his REP 63, term meaning obligation incurred under Reserve Enlistment Program of 1963 to serve on active duty training for period of at least 4 months and to serve in Reserve component until sixth anniversary of date of enlistment, is not entitled to retroactive increase in basic pay for inactive duty training drills attended subsequent to Dec. 31, 1969, and before Apr. 15, 1970, since both under pertinent provisions of Career Compensation Act and National Guard regulations member of National Guard on full-time training duty cannot be in "drill pay status" while on active duty, and acts of Dec. 16, 1967, and Apr. 15, 1970, only authorize retroactive adjustment in basic pay under 1970 rates if member was in "drill pay status" on Apr. 15, 1970---------- 868
Increases
Comparable to classified employees
Adjustment

Although members of uniformed services are authorized pay increases by Pub. L. 90-207, dated Dec. 16, 1967, whenever general schedule of compensation for Federal classified employees is increased, Secretary of Defense in implementing Federal Employees Salary Act of 1970, under authority of sec. 2(b) of E.O. No. 11525, having determined that member is not entitled to increase pursuant to 1970 act unless he was in active duty status on date of its enactment—Apr. 15, 1970—Naval Reserve officer injured while on active duty for training from Mar. 9 to Mar. 22, 1970, who continues on basis of disability to receive benefits provided by 10 U.S.C. 6148(a) and 37 U.S.C. 204(i), through Apr. 14, 1970, not having been in active duty status on Apr. 15, 1970, is not entitled to retroactive increase---------- 99

PAY—Continued Page

Increases—Continued

Comparable to classified employees—Continued

Adustment—Continued

Fact that reemployed civilian who while on military furlough served on active military duty was on civilian roll on Apr. 15, 1970, date of enactment of Federal Employees Salary Act of 1970, Pub. L. 91–231, does not entitle him under act to retroactive adjustment in basic pay for active military duty performed during period Jan. 1, 1970, through Mar. 15, 1970, as act provides compensation increases for Federal classified employees only. However, although Pub. L. 90–207, Dec. 16, 1967, provides for increase in basic pay for military personnel whenever general schedule of compensation for Federal classified employees is increased, Secretary of Defense in implementing 1970 act pursuant to E.O. No. 11525 prescribed that member must have been on active duty on Apr. 15, 1970, to be entitled to retroactive adjustment in pay---------- 226

Death of member

Widow and designated beneficiary of Air Force captain held to be in missing in action status from Mar. 28, 1969, until that status was terminated on Mar. 19, 1970, on basis of evidence establishing his death, may be paid increase in basic pay provided by Federal Employees Salary Act of 1970, and implemented by E.O. No. 11525, for period Jan. 1, 1970, retroactive effective date of act, through Mar. 19, 1970, absent contrary determination under 37 U.S.C. 556(c) by Secretary of Air Force. While Dept. of Defense Memorandum implementing Executive order permits retroactive increase in pay for any active service performed in case of person "who died" after Dec. 31, 1969, but before Apr. 15, 1970, such authority together with sec. 5 of salary act on which it is based is considered to have reference to termination of pay because of death------- 148

Effective date

Under Executive Order No. 11525

Member of uniformed services who extended 4-year enlistment on Apr. 14, 1970, under 10 U.S.C. 509 for 26 months effective Apr. 15, 1970, date of issuance of E.O. No. 11525, making new pay rates authorized by Pub. L. 90–207 and Pub. L. 91–231, retroactively effective to Jan. 1, 1970, is entitled to have reenlistment bonus earned under 37 U.S.C. 308(a) computed at new pay rates as Defense Dept. implementation of Executive order, which restricts use of increased rates in computation of reenlistment bonus when entitlement occurs after Dec. 31, 1969, but before Apr. 15, 1970, has no application to member who beginning his extended enlistment on Apr. 15, 1970, is entitled to computation of reenlistment bonus under par. 10905 of Defense Military Pay and Allowances Manual ---------- 36

PAY—Continued Page
Increases—Continued
Retired pay. (*See* Pay, retired, increases)
Retroactive
Active duty requirement
Air Force officer subject to mandatory retirement on Jan. 8, 1970, under 10 U.S.C. 8921, and pursuant to Uniform Retirement Date Act, 5 U.S.C. 8301, scheduled to retire Feb. 1, 1970, who was continued on active duty until May 25, 1970, to determine his eligibility for disability retirement under 10 U.S.C. 1201, is not entitled to retired pay computed at increased pay rates prescribed by E. O. No. 11525, dated Apr. 15, 1970, for members on active duty Jan. 1, 1970, in view of restrictions by Secretary of Defense to effect retroactive pay increases do not apply to persons who became entitled to retired or retainer pay after Dec. 31, 1969, but before Apr. 15, 1970, prohibition that relates to officer's Jan. 8, 1970, mandatory retirement date. However, for active duty performed before or after Jan. 8, officer is entitled to active duty pay computed at increased rates prescribed in Executive order---------- 258
Air Force officer whose mandatory retirement date under 10 U.S.C. 8916 was Apr. 11, 1970, and pursuant to Uniform Retirement Date Act, 5 U.S.C. 8301, he is retired on May 1, 1970—date that may not be considered because of restrictive provisions of 5 U.S.C. 8301(b), in applying E. O. No. 11525, dated Apr. 15, 1970, which retroactively prescribes pay increases authorized by act of Dec. 16, 1967, and Federal Employees Salary Act of Apr. 15, 1970—is subject to restrictions imposed by Secretary of Defense in implementing order to effect retroactive pay increases do not apply to persons who became entitled to retired or retainer pay after Dec. 31, 1969, but before Apr. 15, 1970, and, therefore, officer's retired pay is for computation on basis of active duty pay rate in effect on Apr. 11, 1970, date of his mandatory retirement; but he is entitled for active duty performed after Dec. 31, 1969, to higher pay rate provided by Executive order---------- 258
Missing, interned, etc., persons
Pay increases
Widow and designated beneficiary of Air Force captain held to be in missing in action status from Mar. 28, 1969, until that status was terminated on Mar. 19, 1970, on basis of evidence establishing his death, may be paid increase in basic pay provided by Federal Employees Salary Act of 1970, and implemented by E. O. No. 11525, for period Jan. 1, 1970, retroactive effective date of act, through Mar. 19, 1970, absent contrary determination under 37 U.S.C. 556(c) by Secretary of Air Force. While Dept. of Defense Memorandum implementing Executive order permits retroactive increase in pay for any active service performed in case of person "who died" after Dec. 31, 1969, but before Apr. 15, 1970, such authority together with sec. 5 of salary act on which it is based is considered to have reference to termination of pay because of death---------- 148
Promotions
Effective date
Record correction effect
Fact that Correction of Military Records Board on Apr. 11, 1969, directed change of records pursuant to 10 U.S.C. 1552, to show that Air Force captain had not been twice passed over for promotion to temporary

PAY—Continued Page
Promotions—Continued
Effective date—Continued
Record correction effect—Continued
grade of major, and that if selected for promotion by next regularly scheduled board, promotion was to be effective from date first selection board convened, although at same time denying his request for promotion, does not entitle officer promoted pursuant to 10 U.S.C. 8442 and 8447(b) on June 27, 1969, effective Feb. 20, 1968, to increased pay prior to June 27, 1969, for until promoted, no date could be established for commencement of higher pay, and Correction Board limited to making changes in existing record, its attempt to control future contingent event of promotion is not within purview of 10 U.S.C. 1552 125
Temporary
Saved pay
Temporary grade pay higher
Upon acceptance of permanent appointment pursuant to 10 U.S.C. 5579 as ensign in Medical Service Corps, Regular Navy, and termination of temporarily held rank of lieutenant (jg) to which appointed subsequent to serving under permanent appointment as line ensign, officer is not entitled to saved pay, for not having suffered reduction in pay "because of his former permanent status"—also that of ensign—he is unable to meet criteria in 10 U.S.C. 5579(d) for eligibility to have higher pay and allowances received under temporary appointment as lieutenant (jg) saved to him 279
Without effect
Where disability retirement orders of Air Force major carried out recommendations of Physical Evaluation Board who had found officer permanently disabled and unfit to perform duties of office, promotion of officer to temporary grade of lieutenant colonel within 3 months prior to effective date of retirement was without effect and inconsistent with governing Air Force regulations; and since officer's disability was not discovered as result of physical examination for promotion to bring promotion within purview of 10 U.S.C. 1372(4) and entitle him to retire at higher grade, there is no authority for payment of retired pay to officer computed on grade of lieutenant colonel 314
Readjustment payment to reservists on involuntary release
What constitutes involuntary
Pregnancy
Under 10 U.S.C. 687(a), member of Reserve component, or member of Army or Air Force without component, who is relieved from active duty "involuntarily," is entitled to readjustment pay, and since it is mandatory under Air Force Reg. 36–12, which establishes procedures governing separation of officers, to discharge woman officer when determination is made by medical officer that she is pregnant, she is considered involuntarily separated and entitled to readjustment pay, whether she is separated with or without her consent, sole determining factor being that of pregnancy. Therefore, Reserve officer separated without her consent by reason of pregnancy who waived hearing and board recommendations in 10 U.S.C. 1163(a), having been involuntarily separated, is entitled to readjustment pay 229

PAY—Continued Page
Rear admirals, etc.
Active duty grade or rank. (*See* Pay, active duty, grade or rank, rear admirals)
Officers serving as Judge Advocates General
Assigned not detailed
Legislative history of Pub. L. 90–179, which authorized detailing two officers—a Navy officer (10 U.S.C. 5149(b)) and a Marine officer (10 U.S.C. 5149(c))—as Assistant Judge Advocates General of Navy, entitled to rank and grade of rear admiral (lower half) or brigadier general while so serving, unless entitled to higher rank or grade under another provision of law, evidencing no intent that captain or officer of lesser rank receive pay of rear admiral (lower half) or brigadier general, as appropriate, the two Navy captains not detailed but assigned as Assistant Judge Advocates General to avoid creating entitlement to flag rank within meaning of 10 U.S.C. 5149(b), having been denied grade of rear admiral (lower half) and its benefits, may not be paid under 37 U.S.C. 202(1) at that grade 22
Record correction. (*See* Military Personnel, record correction)
Reservists
Drill pay. (*See* Pay, drill)
Pay increases
Active duty requirement
Although members of uniformed services are authorized pay increases by Pub. L. 90–207, dated Dec. 16, 1967, whenever general schedule of compensation for Federal classified employes is increased, Secretary of Defense in implementing Federal Employees Salary Act of 1970, under authority of sec. 2(b) of E. O. No. 11525, having determined that member is not entitled to increase pursuant to 1970 act unless he was in active duty status on date of its enactment—Apr. 15, 1970—Naval Reserve officer injured while on active duty for training from Mar. 9 to Mar. 22, 1970, who continues on basis of disability to receive benefits provided by 10 U.S.C. 6148(a) and 37 U.S.C. 204(i), through Apr. 14, 1970, not having been in active duty status on Apr. 15, 1970, is not entitled to retroactive increase 99
Retired
Advancement on retired list
Evidence of satisfactory service in another service
Rule in 49 Comp. Gen. 618 to effect that members of armed services would be entitled to retired pay based on pay of higher grade, whether temporary or permanent, in which member served satisfactorily, even though higher grade was in other than service from which he retired, is equally applicable to Army members, notwithstanding 10 U.S.C. 3963(a), under which members are retired, seems to require that qualifying service be in Army, since that section, as well as 10 U.S.C. 8963(a), involved in ruling, have common legislative source. Under 10 U.S.C. 3963(a), Secretary is authorized to determine qualification for higher pay; and, therefore, there is no objection to administrative settlement of retroactive retired pay due that is not barred by 31 U.S.C. 71a, and 10-year limitation period begins to run after final administrative determination of satisfactory service 586

PAY—Continued Page

Retired—Continued

Advancement on retired list—Continued

Pay adjustment

Members of uniformed services advanced in grade on retired list without regard to whether their active duty service in higher grade was in temporary or permanent grade or whether satisfactory service was in same service from which retired may be paid adjustments in retired pay from date of retirement, even though required administrative approval of satisfactory service was made more than 10 years subsequent to retirement, for under rule that claim which by statute is not payable until its validity is determined by designated agency does not accrue until determination of validity has been made, members' claims for adjustment of their retired pay are not barred by act of Oct. 9, 1940, as 10-year statute of limitation began to run from date of administrative determination of entitlement to higher grade and not date of retirement..... 607

Since claim which by statute is not payable until its validity is determined by designated agency does not accrue until determination of validity has been made, it is not barred until 10 years after administrative determination is made and, therefore, application of act of Oct. 9, 1940, 10-year statute of limitation, does not take effect until secretarial approval of advancement of members on retired list without regard to whether satisfactory active duty service was in permanent or temporary grade, or in service from which retired. Readjustment payments that had been disallowed may be paid administratively, as well as future claims, whether retirement was for disability or under 10 U.S.C. 8964, and notwithstanding member's higher grade was in service from which retired, and order effecting change to higher grade constitutes date of administrative determination of satisfactory service in higher grade when issued on same day as determination..... 607

Computation

Multiplier credit

Although inactive Naval Reserve cadet or midshipman time served before July 1949 by Regular Coast Guard officer or enlisted man retiring either for years of service, for age, or for disability, may not be credited for purpose of retirement, service counts for multiplier credit and in accordance with 14 U.S.C. 423, years of service are to be computed under 10 U.S.C. 1405(4), due to fact that pursuant to 10 U.S.C. 1333 such service is "service (other than active service) in a Reserve component of an armed force." However, full-time credit may not be given inactive service in determining multiplier factor under 14 U.S.C. 423 and 10 U.S.C. 1405(4), since service is subject to computation method provided in 10 U.S.C. 1333(4)..... 308

Concurrent military retired and civilian severance pay

Upon reduction in force as civilian employee of U.S., retired member of uniformed services may not be paid severance pay as 1965 authorizing act (5 U.S.C. 5595) excludes payment of severance pay to person subject to Civil Service Retirement Act or any other retirement law or system applicable to Federal officers or employees or members of uniformed services who at time of separation have fulfilled requirements for immediate annuity—a term including retired pay—and prohibition against payment of severance pay is applicable without regard to when

PAY—Continued Page
Retired—Continued
Concurrent military retired and civilian severance pay—Continued
member first becomes entitled to military retired pay, or whether he is eligible under Dual Compensation Act of 1964 (5 U.S.C. 5531–5534) to receive military retired pay concurrently in whole or in part with compensation of his civilian office or position 46

Although civilian position held by retired officer of Regular component of uniformed services in U.S. Army Special Services Agency, Europe—local nonappropriated fund activity—is position subject to reduction of retired pay prescribed by 5 U.S.C. 5532(b), reduction is not required in officer's retired pay as reduction would exceed amount officer receives from civilian employment with additional reduction in retired pay, result that is not within contemplation of Dual Compensation Act of 1964, for it is unreasonable to require retired officer to accept smaller amount after employment in civilian position with Govt. than amount of retired pay he was receiving before that time 604

Concurrent military retired and disability compensation
Prohibition

Conclusion that exemption provision in Dual Compensation Act (5 U.S.C. 5532(c)) to requirement that retired pay of Regular officer must be reduced when employed as civilian by Federal Govt. (5 U.S.C. 5532(b)) applies only if retirement was direct result of armed conflict, or was caused by instrumentality of war in wartime, is justified on basis of legislative history of provision and its longstanding administrative interpretation; and, therefore, *Mross* v. *United States*, 186 Ct. Cl. 165, holding that disability—perforated eardrum—that was war-incurred but was not disabling and did not constitute significant factor in officer's retirement met requirements of exception to dual compensation restriction will not be followed as case is based on particular facts involved 480

Regular Air Force sergeant retired pursuant to 10 U.S.C. 8914, who while employed as civilian in Federal Govt. loses use of finger, is not entitled to concurrent payment of civilian disability compensation and military retired pay on basis the compensation would be paid for permanent partial disability and not temporary total disability, thus bringing payment within exception to dual payment prohibition contained in 5 U.S.C. 8116(a). In application of limitation in sec. 8116(a), there has been no recognition of distinction between temporary and permanent disability, as statute makes no such distinction insofar as concurrent receipt of military or naval retired pay is concerned, and legislation would have to be enacted to permit concurrent payment of retired pay and disability compensation 491

Disability
Active duty recall
Subsequent retirement

Air Force officer who was placed on temporary disability retired list in grade of major effective June 1, 1968, recalled under 10 U.S.C. 1211 to active duty in temporary grade of lieutenant colonel for 1 day, June 30, 1970, with date of rank from July 19, 1968, and then retired for years of service under 10 U.S.C. 8911 in grade of lieutenant colonel effective July 1, 1970, is entitled to payment of difference in retired pay between grades of lieutenant colonel and major for months of June and July 1970,

PAY—Continued Page
Retired—Continued
Disability—Continued
Active duty recall—Continued
Subsequent retirement—Continued
since prior to July 1, 1970, officer satisfied requirements of 10 U.S.C. 1211(a)(1). The officer's entitlement to retired pay at higher grade for 2 months involved is not under 10 U.S.C. 8963(a), as he only "served" 1 day in temporary grade, but under 10 U.S.C. 8961, which authorizes officer to retire in grade he "holds" not the grade in which he "served" on date of retirement 677

Disability found prior to eligibility for promotion

Where disability retirement orders of Air Force major carried out recommendations of Physical Evaluation Board who had found officer permanently disabled and unfit to perform duties of office, promotion of officer to temporary grade of lieutenant colonel within 3 months prior to effective date of retirement was without effect and inconsistent with governing Air Force regulations; and since officer's disability was not discovered as result of physical examination for promotion to bring promotion within purview of 10 U.S.C. 1372(4) and entitle him to retire at higher grade, there is no authority for payment of retired pay to officer computed on grade of lieutenant colonel 314

Disability retirement and promotion simultaneously effective
Computation of retired and severance pay

Officer of uniformed service whose physical disability was not considered disqualifying prior to physical examination qualifying him for promotion denied by Physical Evaluation Board, upon his subsequent simultaneous transfer as second lieutenant to temporary disability retired list under 10 U.S.C. 1202 and advancement to grade of first lieutenant under cl. (4) of 10 U.S.C. 1372, is entitled to retired pay and disability severance pay computed on basis of higher grade; and since first determination of physical disability did not disqualify officer for service, disqualifying disability for which he was retired may be considered as having been discovered as result of physical examination for promotion within purview of cl. (4) of 10 U.S.C. 1372 156

Physical examination for promotion determination

Major in Air Force Reserves, who before recommended promotion to grade of lieutenant colonel could take effect was retired under 10 U.S.C. 1201, effective July 9, 1970, with 80-percent disability, and who had undergone two physical examinations, one in connection with "projected voluntary retirement," other incident to disability retirement, is not entitled to retired pay computed at higher grade, as disability for which officer was retired was not found to exist as result of physical examination for promotion within meaning of 10 U.S.C. 1372(3), nor are examinations within purview of *Brandt* v. *United States*, 155 Ct. Cl. 345, holding that where physical exminations in connection with promotion and retirement are given close together, physical disability can be said to be result of examination for promotion 508

Foreign residence effect

Air Force master sergeant retired under 10 U.S.C. 8914 with over 20 years of service, who during those years retained Canadian citizenship and returned to Canada to reside when he retired, is entitled to be retired

PAY—Continued Page
Retired—Continued
Foreign residence effect—Continued
with retired pay as authorized in Formula C, 10 U.S.C. 8991. Member, permitted to enlist as alien and to be sworn in without restrictions pursuant to 10 U.S.C. 8253(c), was accepted without restrictions and became "regular enlisted member of Air Force" within purview of 10 U.S.C. 8914, entitled upon retirement to be member of Air Force Reserve with obligation to perform active duty until service credits equal 30 years of both active and inactive service; and, therefore, so long as allegiance status remains unchanged, Canadian residency does not constitute bar to receipt of retired pay ---------- 269
Grade, rank, etc., at retirement
Service in higher rank than at retirement
Rule in 49 Comp. Gen. 618 to effect that members of armed services would be entitled to retired pay based on pay of higher grade, whether temporary or permanent, in which member served satisfactorily, even though higher grade was in other than service from which he retired, is equally applicable to Army members, notwithstanding 10 U.S.C. 3963(a), under which members are retired, seems to require that qualifying service be in Army, since that section, as well as 10 U.S.C. 8963(a), involved in ruling, have common legislative source. Under 10 U.S.C. 3963(a), Secretary is authorized to determine qualification for higher pay; and, therefore, there is no objection to administrative settlement of retroactive retired pay due that is not barred by 31 U.S.C. 71a, and 10-year limitation period begins to run after final administrative determination of satisfactory service ---------- 586
Members of uniformed services advanced in grade on retired list without regard to whether their active duty service in higher grade was in temporary or permanent grade or whether satisfactory service was in same service from which retired may be paid adjustments in retired pay from date of retirement, even though required administrative approval of satisfactory service was made more than 10 years subsequent to retirement, for under rule that claim which by statute is not payable until its validity is determined by designated agency does not accrue until determination of validity has been made, members' claims for adjustment of their retired pay are not barred by act of Oct. 9, 1940, as 10-year statute of limitation began to run from date of administrative determination of entitlement to higher grade and not date of retirement ---------- 607
Since claim which by statute is not payable until its validity is determined by designated agency does not accrue until determination of validity has been made, it is not barred until 10 years after administrative determination is made and, therefore, application of act of Oct. 9, 1940, 10-year statute of limitation, does not take effect until secretarial approval of advancement of members on retired list without regard to whether satisfactory active duty service was in permanent or temporary grade, or in service from which retired. Readjustment payments that had been disallowed may be paid administratively, as well as future claims, whether retirement was for disability or under 10 U.S.C. 8964, and notwithstanding member's higher grade was in service from which retired, and order effecting change to higher grade constitutes date of administrative determination of satisfactory service in higher grade when issued on same day as determination ---------- 607

PAY—Continued Page
Retired—Continued
Increases
Cost-of-living increases
Active duty recall
In recomputing retired pay under 10 U.S.C. 1401a and 1402(a) for member of uniformed services who served on active duty for 2 years subsequent to retirement, Consumer Price Index changes should be reflected by increasing retired pay by only percent that applicable base index exceeds index for calendar month immediately preceding month in which active duty pay rate upon which retired pay is based became effective. 48 Comp. Gen. 398 and B–166335, June 4, 1969, modified---------- 232
Entitlement
Air Force officer subject to mandatory retirement on Jan. 8, 1970, under 10 U.S.C. 8921, and pursuant to Uniform Retirement Date Act, 5 U.S.C. 8301, scheduled to retire Feb. 1, 1970, who was continued on active duty until May 25, 1970, to determine his eligibility for disability retirement under 10 U.S.C. 1201, is not entitled to retired pay computed at increased pay rates prescribed by E. O. No. 11525, dated Apr. 15, 1970, for members on active duty Jan. 1, 1970, in view of restrictions by Secretary of Defense to effect retroactive pay increases do not apply to persons who became entitled to retired or retainer pay after Dec. 31, 1969, but before Apr. 15, 1970, prohibition that relates to officer's Jan. 8, 1970, mandatory retirement date. However, for active duty performed before or after Jan. 8, officer is entitled to active duty pay computed at increased rates prescribed in Executive order---------- 258
Air Force officer whose mandatory retirement date under 10 U.S.C. 8916 was Apr. 11, 1970, and pursuant to Uniform Retirement Date Act, 5 U.S.C. 8301, he is retired on May 1, 1970—date that may not be considered because of restrictive provisions of 5 U.S.C. 8301(b), in applying E. O. No. 11525, dated April 15, 1970, which retroactively prescribes pay increases authorized by act of Dec. 16, 1967, and Federal Employees Salary Act of Apr. 15, 1970—is subject to restrictions imposed by Secretary of Defense in implementing order to effect retroactive pay increases do not apply to persons who became entitled to retired or retainer pay after Dec. 31, 1969, but before Apr. 15, 1970, and, therefore, officer's retired pay is for computation on basis of active duty pay rate in effect on Apr. 11, 1970, date of his mandatory retirement; but he is entitled for active duty performed after Dec. 31, 1969, to higher pay rate provided by Executive order---------- 258
Reduction
Civilian employment
Conclusion that exemption provision in Dual Compensation Act (5 U.S.C. 5532(c)) to requirement that retired pay of Regular officer must be reduced when employed as civilian by Federal Govt. (5 U.S.C. 5532 (b)) applies only if retirement was direct result of armed conflict, or was caused by instrumentality of war in wartime, is justified on basis of legislative history of provision and its longstanding administrative interpretation; and, therefore, *Mross* v. *United States*, 186 Ct. Cl. 165, holding that disability—perforated eardrum—that was war-incurred but was not disabling and did not constitute significant factor in officer's retirement met requirements of exception to dual compensation restriction will not be followed as case is based on particular facts involved--- 480

PAY—Continued Page

Retired—Continued

Re-retirement

Recomputation of retired pay

In recomputing retired pay under 10 U.S.C. 1401a and 1402(a) for member of uniformed services who served on active duty for 2 years subsequent to retirement, Consumer Price Index changes should be reflected by increasing retired pay by only percent that applicable base index exceeds index for calendar month immediately preceding month in which active duty pay rate upon which retired pay is based became effective. 48 Comp. Gen. 398 and B–166335, June 4, 1969, modified..... 232

Retention after age and service qualifications

Service credits

Basis for retention

Retention beyond age 60 of Air Force sergeant under par. 140(2) of Air National Guard Regulation 39–10 to permit him to complete 26 years of military service for pay purposes in recognition of "long and distinguished military service" would not satisfy requirement of 10 U.S.C. 676 that Secretary concerned order retention in service for purpose of acquiring additional service credits only if services are military requirement; and sergeant retired under 10 U.S.C. 1331 and 1401, and authorized retired pay on basis of "with over 22 but less than 26 years" of non-Regular service, therefore, is not eligible for retired pay computed at pay rate of over 26 years of military service..... 428

Waiver for civilian retirement benefits

Revocation

A retired member of uniformed services whose military service upon retirement from civilian employment is not used to establish civil service annuity eligibility but is only used in computation of annuity to increase amount payable, may withdraw his waiver of retired pay and have pay reinstated as no double benefit would result from same service by terminating use of military service to compute civil service annuity and reinstating retired pay, and 5 U.S.C. 8332(e) provides that civil service retirement does not affect right of employee to retired pay, pension, or compensation in addition to annuity payable upon retirement from Federal civilian service..... 80

Saved

Temporary promotions

Upon acceptance of permanent appointment pursuant to 10 U.S.C. 5579 as ensign in Medical Service Corps, Regular Navy, and termination of temporarily held rank of lieutenant (jg) to which appointed subsequent to serving under permanent appointment as line ensign, officer is not entitled to saved pay, for not having suffered reduction in pay "because of his former permanent status"—also that of ensign—he is unable to meet criteria in 10 U.S.C. 5579(d) for eligibility to have higher pay and allowances received under temporary appointment as lieutenant (jg) saved to him..... 279

PAY—Continued Page
Service credits
Inactive time
Coast Guard military personnel
Inactive Naval Reserve cadet or midshipman time served before July 1949 by Regular Coast Guard officer or enlisted man retiring either for years of service under 14 U.S.C. 291, 292, 354, or 355, for age pursuant to 14 U.S.C. 293 or 353, or for disability as provided in ch. 61, Title 10, U.S. Code, is not allowable for purpose of retirement. Sec. 291, in providing for voluntary retirement of commissioned officers after 20 years of service requires such service to have been "active service," word "service" in secs. 292, 354, and 355, authorizing voluntary retirement for commissioned officers after 30 years, and for enlisted men after 30 or 20 years, has been interpreted since 1948 as "active service," secs. 293 and 353 in providing for compulsory retirement at age 62 make no references to years of service; and under 10 U.S.C. 1208 disability retirement is computed on basis of active service ---------- 308

Although inactive Naval Reserve cadet or midshipman time served before July 1949 by Regular Coast Guard officer or enlisted man retiring either for years of service, for age, or for disability, may not be credited for purpose of retirement, service counts for multiplier credit and in accordance with 14 U.S.C. 423, years of service are to be computed under 10 U.S.C. 1405(4), due to fact that pursuant to 10 U.S.C. 1333 such service is "service (other than active service) in a reserve component of an armed force." However, full-time credit may not be given inactive service in determining multiplier factor under 14 U.S.C. 423 and 10 U.S.C. 1405(4), since service is subject to computation method provided in 10 U.S.C. 1333(4) ---------- 308

In crediting inactive Naval Reserve cadet or midshipman service performed before July 1949 by Regular Coast Guard officer or enlisted man for retirement purposes, there is no distinction to be drawn between status of "Cadet, MMR, USNR," or "Midshipman, MMR, USNR," inasmuch as persons having either status are regarded as members of U.S. Naval Reserve ---------- 308

PAYMENTS
Checks. (*See* Checks)
Contracts. (*See* Contracts, payments)

PERSONAL SERVICES
Private contract *v.* Government personnel
Employment recruiting
Contracts with District of Columbia Urban Corps, part of D.C. Govt., and similar Urban Corps and other organizations, including profit-making organizations, in other localities may not be entered into by Federal agencies for purpose of recruiting students and dealing with educational institutions because type of services contemplated can be performed more economically and feasibly by their own personnel. Even if contract arrangement were permitted with D.C. Urban Corps, "override" payable would constitute reimbursement to D.C. Govt. that is barred by sec. 601 of Economy Act of 1932 (31 U.S.C. 686); moreover, any payment received would be for deposit into Treasury of U.S. to avoid augmentation of D.C. appropriation used to fund Corps ---------- 553

POST OFFICE DEPARTMENT Page

Contracts

Labor stipulations

Davis-Bacon Act

Contracts for repainting mailboxes at their stationary positions, work that is regular, continuous and recurring, and is performed in accordance with Post Office Dept.'s Letter Box Maintenance Handbook approximately every 36 months, are subject to Davis-Beacon Act, 40 U.S.C. 276a, an act that is applicable to contracts in excess of $2,000 for painting and decorating of public buildings and works, whether performed in conjunction with original construction or as regular maintenance, and mailboxes are within contemplation of term "public works," which term encompasses any Govt-owned facility necessary for carrying on community life and to cover any article or structure that is placed, either permanently or temporarily, at particular location to serve public purpose... 720

Employees

Transfers

During retroactive period of compensation increases

Former General Schedule employees of Post Office Dept. who transferred to higher General Schedule position in another agency between Aug. 12, 1970, date of enactment of Postal Reorganization Act, which provides approximately 8-percent salary increase, and effective date of act, first pay period beginning on or after Apr. 16, 1970, are entitled to have "not less than two-step increase" authorized in 5 U.S.C. 5334(b) for employees who are promoted or transferred, computed on revised General Schedule rate of Post Office Dept.; for in absence of specific language to contrary, rule for application is that retroactive salary increases apply as if increase had been in force and effect at time of change of status of employee..... 414

Where agency has policy to extend benefit of highest previous rate rule prescribed in 5 U.S.C. 5334(a), salary of employee who left Post Office Dept. during retroactive period between enactment of Postal Reorganization Act and its effective date may be adjusted to reflect increase authorized by act; and where agency does not have established policy, but did give employee benefit of last Post Office Dept. rate, it is within agency's discretion whether or not to adjust employee's salary to reflect increase in Post Office rate. However, sec. 531.203(d)(4) of Civil Service Commission Regs. relating to general increases in General Schedule and not to special increases, employee who was not on rolls at time of enactment of Reorganization Act may not be given benefit of increased rate for purposes of "highest previous rate" rule..... 414

Mails

Transportation

Emergency contracts

Authority in 49 U.S.C. 1375(h) to use air taxi mail service contracts in event of emergency caused by flood, fire, or other calamitous visitation may not be exercised upon occurrence of any unforeseen event which renders normal mail transportation facilities unavailable, such as sudden loss of RPO train schedule, or unexpected closing of airport runway causing certified air carriers to temporarily suspend service at airport; for under the "ejusdem generis" rule of construction, general words "calamitous visitation" are restricted by particular terms "flood or fire," and term "calamity" supposes continuous state produced by natural

POST OFFICE DEPARTMENT—Continued Page
Mails—Continued
Transportation—Continued
Emergency contracts—Continued
causes. Nonconforming existing contracts should be terminated as soon as practicable, and any temporary arrangements made under Postal Reorganization Act should be terminated when emergency ceases_____ 255
Star route contracts
Readjustment compensation
Method of computation
The unilateral change by Post Office Dept. from so-called "operating ratio method" to new formula to determine readjustment of compensation under star route contracts pursuant to 39 U.S.C. 6423 whereby increases in profit are governed exclusively by additional capital expenditures incurred through purchase or maintenance of capital goods is not prohibited by statute, and denial of adjustment is not considered dispute concerning question of fact within meaning of "Disputes" clause of contract. Although sec. 6423 gives star route contractor right to ask for readjustment of compensation and to expect reasonable return, Postmaster General has discretionary authority to determine that operating ratio method converts star route contract into undesirable type of cost-plus contract whereby profit is allowed as percentage cost_____ 694
Strikes
Duty performance by military reservists
Duties performed by civilian employees who as Reserves of Armed Forces and National Guardsmen were called into active military service pursuant to Presidential Proc. 3972, dated Mar. 23, 1970, to carry out work of striking Postal Service employees are considered military aid to enforce law within meaning of 5 U.S.C. 6323(c), as military service was performed in order to cause laws relating to Post Office to have force and to protect mail; therefore, employees are entitled because of such service to military leave prescribed by 5 U.S.C. 6323(c), and their pay should be adjusted to comply with 5 U.S.C. 5519 by crediting military pay against civilian compensation payable to employees_____ 154
POSTAL SERVICE, UNITED STATES
Appropriations
Transferred from Post Office Department
Status
Although utilization by Postal Service of obligated and unobligated appropriations available to Post Office Dept. on July 1, 1970, effective date of transition of its functions to Postal Service is permitted under 39 U.S.C. 2002(a)(2), unobligated balances for fiscal year 1970 and prior years that had reverted to Treasury pursuant to 31 U.S.C. 701 would require act of Congress to be made available to Postal Service for liquidation of valid obligations. However, 1971 appropriations need not be included in any reappropriation of funds since they had not expired for obligation or reverted to Treasury. Notwithstanding 39 U.S.C. 1005(e) requires Postal Service to assume obligation to pay for annual leave that accrued to employees before and after transition, since such leave is not chargeable to unexpended balances of prior year appropriations transferred to Service, Federal Govt. pursuant to 39 U.S.C. 2002(a)(2) is liable for payments_____ 863

POSTAL SERVICE, UNITED STATES—Continued Page

Authority

Relieve, compromise, or settle relief cases

The new sec. 39 U.S.C. 2601(b), which places responsibility to relieve, compromise, or otherwise settle relief cases concerning Postal matters in Postal Service and removes U.S. GAO from process does not have effect of setting aside decisions already made by GAO on relief matters under 31 U.S.C. 82a–1 or 39 U.S.C. 2401. Although procedural or remedial statutes such as 39 U.S.C. 2601(b) are not subject to general rule against retroactive application and they apply to all accrued, pending, and future actions, steps already taken, pleadings, and all things done under old law stand, unless contrary intent is manifested. Since change in procedural law does not operate retroactively, new authority of 39 U.S.C. 2601(b) does not extend to affect, change, or modify actions taken by GAO on postal relief matters prior to effective date of section---------- 731

Postal Reorganization Act

Employee salary increases

"Highest previous salary rule." (*See* **Compensation, postal service, rates, highest previous rate, Postal Reorganization Act increases**)

Rural mail carriers

Equipment maintenance allowance

"Scheduled" work requirement

Equipment maintenance allowance to rural mail carriers authorized under 39 U.S.C. 3543(f) would not be payable to carriers on five Monday national holidays established by Pub. L. 90–363, approved June 28, 1968, if carriers were not scheduled to work on those days and so notified in advance. Applying construction of act of Feb. 28, 1925, former similar authority for paying allowance, to effect allowance is payable "in the same manner as payment for regular compensation" and on basis of miles "scheduled," it follows U.S. Postal Service is not required to pay allowance if rural mail carriers are notified in advance that they will not be scheduled or required to deliver mail on their routes on particular day when they otherwise normally would do so---------- 735

PROPERTY

Public

Damage, loss, etc.

Freight charges

Delivery accomplishment

Freight charges claimed on overseas shipment that moved under GBL identifying shipment as frozen foods and which was refused at destination when it was discovered shipment contained meat as vessel had made several stops at ports considered to be infected areas for meat products, may not be allowed, even though part of shipment was returned to origin point in U.S., meat having been jettisoned at sea because its return was prohibited under Dept. of Agriculture regulation, as Consignee's Certificate of Delivery on GBL was not and could not have been accomplished without delivery of shipment—condition precedent to liability for freight charges---------- 164

Recovery disposition

Moneys received from carriers by National Credit Union Administration (NCUA) in settlement for goods lost or damaged in transit that were shipped in connection with operations of Administration should be

PROPERTY—Continued Page
Public—Continued
Damage, loss, etc.—Continued
Recovery disposition—Continued
deposited for credit to account of Administration and not general fund of Treasury since miscellaneous receipts rule (31 U.S.C. 484) is not for application, as operating funds of NCUA are not provided by annual appropriations but by fees and assessments upon credit unions pursuant to 12 U.S.C. 1755, which provides for deposit of collections from credit unions with Treasurer of U.S. for credit to account of Administration--- 545
Private use
Authority
Lease of land adjacent to Visitors' Information Center at John F. Kennedy Center, Fla., for construction of nondenominational chapel from funds raised by public subscription is pursuant to Art. IV, sec. 3, cl. 2 of Constitution of U.S., a congressional and not executive function, unless otherwise specifically provided by statute, and leasing authority in sec. 203(b)(3) National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(b)(3)), does not appear to be intended as specific authority for execution of proposed 30-year lease. Therefore, because of nature of its use, land within Federal enclave should not be leased without congressional approval of chapel construction, and payment of annual rental has no significance in considering lack of specific authority to lease land---------- 63
Services furnished by municipalities
Service charge levied on each ton of refuse deposited at county incinerator by Federal agencies or their contractors, which is not imposed on residents or non-Federal tax-exempt users including State agencies where cost of operation and maintenance of incinerator is borne by general tax revenues and county's authority to levy tax is doubtful, is in nature of tax to which U.S. is immune; and placement of U.S. in separate category from other property tax-exempt entities for purpose of imposing charge is unreasonable and discriminatory classification on the part of county and, therefore, payment of charge is unauthorized. However, payment of charge may continue to be made under contracts including charge and providing for refund upon resolution of matter---------- 343
Surplus
Disposition. (*See* Sales)
PUBLIC LANDS
Acquisition
Subway construction
In development of rail rapid transit system, Board of Directors of Washington Metropolitan Area Transit Authority—instrumentality created by Compact with consent of Congress—may acquire lands under administration of National Park Service of Dept. of Interior, and should cash be paid for appraised value of parklands, cash is for deposit into Treasury in accordance with 31 U.S.C. 484. However, if congressional approval is sought to use money to replace surface parklands, amount received by Dept. may be held in escrow for period not to exceed 2 years. Furthermore, under provisions of Compact, Board has authority to purchase land to replace surface parklands needed for transit purposes---- 159

QUARTERS ALLOWANCE Page
Dependents
Quarters occupancy prevented by "competent authority"
Although par. 30221 of the Dept. of Defense Pay and Allowances Entitlements Manual and 37 U.S.C. 403(d) provide for payment of basic allowance for quarters when because of orders by competent authority the dependents of member of uniformed services are prevented from occupying assigned quarters, where Govt. arranges for movement of household goods of Army officer to family type quarters designated adequate and move is not accomplished by effective date stated in assignment order, payment of basic allowance for quarters with dependents to officers may not be continued beyond effective date of quarters assignment as transportation contract does not constitute "competent authority" required to create entitlement to allowance after effective date of assignment---------- 174
REAL PROPERTY
Acquisition
Owners, etc., moving expenses
Statute of limitation for claiming
Requirement in Pub. L. 85–433, May 29, 1958, that claim for moving expenses incurred incident to conveying lands to U.S., supported by itemized statement of expenses, losses, and damage, must be "submitted to the Secretary within one year from date upon which the premises involved are vacated" is unambiguous and not subject to construction and, therefore, neither expenses incurred before expiration of year and not claimed, nor additional expenses incurred after expiration of statutory period may be reimbursed. However, persons displaced after Jan. 2, 1971, by acquisition of real property by U.S. should be compensated for moving and related expenses under Pub. L. 91–646, which replaces 1958 act and provides for head of each Federal agency to establish regulations and procedures to implement act---------- 822
When decision of Comptroller General contains instructions for corrective action in regard to departmental policy, Secretary concerned is required under sec. 236 of Legislative Reorganization Act of 1970, 84 Stat. 1140, 1171, to submit written statements as to action taken not later than 60 days after date of decision to Committees of Govt. Operations of both houses and to Committees on Appropriations in connection with request for appropriations made more than 60 days after date of decision, action that Dept. of Interior is required to take incident to recommendation that Bur. of Sport Fisheries and Wildlife correct its Realty Manual to reflect proper application of Statute of Limitation in Pub. L. 85–433 regarding submission of expenses incurred in moving from lands acquired by U.S.---------- 822
Surplus Government property
Sale
Price sufficiency
Withdrawal of opportunity afforded high bidder to increase its bid for purchase of Govt. real property which was submitted in amount less than estimated value of property and rejection of bid upon receipt of late higher bid in excess of appraised value of property where late delivery of bid sent by special delivery certified airmail was due solely to delay in

REAL PROPERTY—Continued Page
Surplus Government property—Continued
Sale—Continued
Price sufficiency—Continued
mails for which bidder was not responsible was in accord with procedure prescribed in sec. 101–47, 305–1 of Title 41, Code of Federal Regs. which governs disposal of surplus real property, and award made to highest bidder will not be disturbed, and it is immaterial that displaced high bidder had been advised to hand carry its bid to insure timely delivery and was not given advance notice of sale---------- 815

REGULATIONS
Implementing procedures
Monroney Amendment
Wage adjustments
In retroactive application of Monroney Amendment wage schedule, 5 U.S.C. 5341(c), pursuant to U.S. Civil Service Bulletin No. 532–9, dated Sept. 23, 1970, when comparison of individual wage payments evidences previous wage schedule payments were less than employee is entitled to under Monroney Amendment, employee should be paid difference; and if previous payment was greater than amount due under amendment, employee may retain difference. However, where comparison of individual payments shows that underpayments equal over payments, no payment is due employee---------- 495

RESERVE OFFICERS' TRAINING CORPS
(*See* Military Personnel, Reserve Officers' Training Corps)

RETIREMENT
Civilian
Service credits
Military service
Effect on social security benefits
When retired member of uniformed services employed as civilian becomes eligible for old age and survivor insurance benefits under Social Security Act, 42 U.S.C. 402, withdrawal of his waiver of military pay and exclusion of his military service from computation of his civil service annuity would not result in payment of double benefit if military service had not been used to establish civil service annuity eligibility but was used only in computation of annuity amount payable---------- 80
Waiver of retired pay
A retired member of uniformed services whose military service upon retirement from civilian employment is not used to establish civil service annuity eligibility but is only used in computation of annuity to increase amount payable, may withdraw his waiver of retired pay and have pay reinstated as no double benefit would result from same service by terminating use of military service to compute civil service annuity and reinstating retired pay, and 5 U.S.C. 8332(e) provides that civil service retirement does not affect right of employee to retired pay, pension, or compensation in addition to annuity payable upon retirement from Federal civilian service---------- 80

RIGHTS, VESTED *v.* DISCRETIONARY Page
Military matters
Retroactive orders
Treatment of Fort Stewart and Hunter Army Airfield, located 40 miles apart, as one installation with one staff which resulted in movement of military and civilian personnel freely between both installations without competent orders and directing permanent change-of-station or performance of temporary duty may not be corrected by issuance of retroactive orders to confirm assignments and authorize travel allowances for temporary duty or permanent change-of-station allowances incident to assignments, even though for purposes of Joint Travel Regs., installations are considered different stations since retroactive orders would be without effect to change vested rights of personnel involved---------- 803
Statutory amendments
Retroactive application
Rule
The 1970 amendment to Omnibus Crime Control Act of 1968, which makes clear that personnel compensation limitations only apply to restrict use of grant funds for payment of police and other regular law-enforcement personnel and not to support services, may be retroactively applied to unobligated and unspent block grants awarded for fiscal years 1969 and 1970 on matching basis by Law Enforcement Assistance Administration under 1968 act to States for subgranting, as well as to "discretionary" grants made to States or directly to cities and counties, as rule against retroactive application of Statutes—absent clear intent to the contrary—pertains to enactment that would prejudicially affect vested rights, or legal character of past transactions, whereas 1969 and 1970 fiscal year grant funds committed by Govt. are yet to be obligated by States---------- 750

ROADS AND TRAILS
(*See* Highways)

SALES
Bids
Identical
Awards made under sales invitation for bids on basis of lots drawn by three bidders who had submitted identical bids because there was no other evidence of collusive bidding, where Justice Dept. had taken no action on report of receipt of identical bids, and bid prices submitted were reasonable, were not proper, even though provisions of DOD Manual 4160.21–M were followed. Although awards will not be disturbed, steps should be taken to obtain in future surplus sales the full and unrestricted competition contemplated by competitive bidding system and to avoid acceptance of reasonable bid prices as substitute for adequate competition; and if circumstances do not permit reasonable determination that price competition was adequate, sales should be resolicited--- 382
Late
Bidder not responsible
Withdrawal of opportunity afforded high bidder to increase its bid for purchase of Govt. real property which was submitted in amount less than estimated value of property and rejection of bid upon receipt of late higher bid in excess of appraised value of property where late delivery of bid sent by special delivery certified airmail was due solely to

SALES—Continued Page
Bids—Continued
Late—Continued
Bidder not responsible—Continued
delay in mails for which bidder was not responsible was in accord with procedure prescribed in sec. 101–47, 305–1 of Title 41, Code of Federal Regs. which governs disposal of surplus real property, and award made to highest bidder will not be disturbed, and it is immaterial that displaced high bidder had been advised to hand carry its bid to insure timely delivery and was not given advance notice of sale---------- 815
Mistakes
"Apparent on face of bid" requirement
Bid on surplus steel bars offering unit and extended prices that were incompatible with footage shown in sales invitation, and which was verified as intending to buy steel at total bid price reflected in bid, thus making it highest bid received, may not be accepted. While both DSAM Disposal Manual and par. 2–406.2 of Armed Services Procurement Reg. authorize correction of clerical mistake "apparent on the face of the bid," since error could have occurred in either unit or bid price, mistake is not apparent, as intended bid cannot be ascertained from bid itself; and bid correction, even if pecuinarily advantageous to Govt., would be harmful to competitive system---------- 497
Disclaimer of warranty
Erroneous description
Relief generally
Under invitations for bids to dispose of surplus property on "as is" and "where is" basis, bidders advised that estimated weight of items offered were not guaranteed and urged to inspect property are not entitled to price adjustment for weight shortages if descriptive information used by holding activity was best available, or if not available, weight estimate was based on visual inspection of property because it would not have been feasible to weigh individual items. However, relief may be granted where contracting officer had actual or constructive notice of misdescription before award, or holding activity unexplainedly almost tripled weight which had been accurately shown in rough draft of sales writeup ---------- 28
Property descriptions
Rule
Rule to be derived from past decisions of Comptroller General relating to claims for alleged misdescription of surplus property where no guarantee provisions were incorporated in invitation is that holding authority, including property disposal officer, should be held to use of best information available, accuracy of which may be relied on if not internally inconsistent, but if information is contradictory or inconsistent, holding activity has duty to select on some reasonable basis descriptive information to be used. If no information is available, holding activity has duty to develop description of property on reasonable basis, taking into consideration circumstances and effort in relation to probable value. Errors in judgment or typographical errors by holding activity would not *per se* violate rule---------- 28
Real property. (*See* Real property, surplus Government property, sale)

SAVINGS DEPOSITS Page
Retroactive deposits
Military personnel
Administrative error adjustments
Missing, interned, etc., persons
Additional amounts due missing member of uniformed services not as result of correction of records pursuant to 10 U.S.C. 1552, but simply because amounts due were not credited through administrative oversight, may be retroactively deposited in Uniformed Services Savings Deposit Program (10 U.S.C. 1035(e)) commensurate with date deposit accrued, for it would be contrary to congressional intent in enacting Savings Deposit Program to prevent deposits from being made as they accrued merely because of administrative errors---------- 718
Record correction adjustments
Missing, interned, etc., persons
When as result of correction of records under 10 U.S.C. 1552 member of uniformed services in missing status becomes entitled to item of pay or allowance retroactively, amount due member may be deposited retroactively in Uniformed Services Savings Deposit Program established by Pub. L. 90–122 (10 U.S.C. 1035(e)), in same manner as if his original records had shown same information contained in corrected records, and record as corrected should show amounts and dates of all deposits made pursuant to corrected record---------- 718
SELECTIVE SERVICE SYSTEM
Boards
Employees
Status
Executive secretaries of local Selective Service boards who are given career or career-conditional appointments with 10-year time limitation, subject to reappointment for another 10-year term, separation, or reassignment to another position pursuant to 50 U.S. C. App. 460(b)(4), hold positions of permanent continuing nature and their appointments are considered to be in competitive service, making them eligible upon termination of their employment to severance pay provided under 5 U.S.C. 5595(a)(2) for temporary relief of employees separated from Federal service since exclusion of employees serving under appointment with "definite time limitation" from entitlement to severance pay does not apply to executive secretaries---------- 726
SOCIAL SECURITY
Coverage
Retired military personnel
Employment by Federal Government
When retired member of uniformed services employed as civilian becomes eligible for old age and survivor insurance benefits under Social Security Act, 42 U.S.C. 402, withdrawal of his waiver of military pay and exclusion of his military service from computation of his civil service annuity would not result in payment of double benefit if military service had not been used to establish civil service annuity eligibility but was used only in computation of annuity amount payable---------- 80

STATES Page

Federal aid, grants, etc.

Restrictions imposed by law

Removal

Retroactive application

The 1970 amendment to Omnibus Crime Control Act of 1968, which makes clear that personnel compensation limitations only apply to restrict use of grant funds for payment of police and other regular law-enforcement personnel and not to support services, may be retroactively applied to unobligated and unspent block grants awarded for fiscal years 1969 and 1970 on matching basis by Law Enforcement Assistance Administration under 1968 act to States for subgranting, as well as to "discretionary" grants made to States or directly to cities and counties, as rule against retroactive application of Statutes—absent clear intent to the contrary—pertains to enactment that would prejudicially affect vested rights, or legal character of past transactions, whereas 1969 and 1970 fiscal year grant funds committed by Govt. are yet to be obligated by States ---------- 750

Municipalities

Services to Federal Government

Payment based on *quantum* of services

Reasonable charge by political subdivision based on *quantum* of direct service furnished, and which is applied equally to all property tax-exempt entities, need not be considered tax against U.S., even though services are furnished to taxpayers without direct charge, provided political subdivision is not required by law to furnish service involved without direct charge to all located within its boundaries, such as fire and police protection.---------- 343

Service charge *v.* tax

Service charge levied on each ton of refuse deposited at county incinerator by Federal agencies or their contractors, which is not imposed on residents or nonfederal tax-exempt users including State agencies, where cost of operation and maintenance of incinerator is borne by general tax revenues and county's authority to levy tax is doubtful, is in nature of tax to which U.S. is immune; and placement of U.S. in separate category from other property tax-exempt entities for purpose of imposing charge is unreasonable and discriminatory classification on the part of county and, therefore, payment of charge is unauthorized. However, payment of charge may continue to be made under contracts including charge and providing for refund upon resolution of matter---------- 343

Taxes. (*See* Taxes, State)

STATION ALLOWANCES

Military personnel

Excess living costs outside United States, etc.

Dependents' absences

When member of uniformed services remains at permanent duty station outside U.S. while one or more of dependents returns to U.S. for visit, cost-of-living allowance adjustment required by par. M4301-3c (1), items 1, 2, and 3 of Joint Travel Regs. may be waived if absence is for 30 days or less, and paragraph amended accordingly. 37 U.S.C. 405, which authorizes consideration of cost-of-living element in prescribing payment of per diem, indicates no requirement to adjust cost-of-living

STATION ALLOWANCES—Continued Page
Military personnel—Continued
Excess living costs outside United States, etc.—Continued
Dependents' absences—Continued
allowances during absence of member's dependents for short periods; and waiver of adjustment would be in harmony with regulations implementing cost-of-living allowances provided by sec. 221 of Overseas Differential and Allowances Act, 5 U.S.C. 5924, for civilian employees of Govt ---------- 386
Temporary lodgings
Advance return of dependents from overseas
Temporary lodging allowance payable to member of uniformed services on basis he incurs more than normal expenses for use of hotel accommodations and public restaurants for prescribed period immediately preceding departure from overseas station on permanent change of station may not be authorized incident to advance return of member's dependents under 37 U.S.C. 406(e) and (h), as temporary lodging allowance is permanent station allowance that may not be used to supplement transportation allowances prescribed by subsecs. 406(e) and (h) for movement of dependents, baggage, and household effects in unusual or emergency circumstances, or when Secretary concerned determines movement is in best interest of member, his dependents, or U.S. without regard to issuance of change-of-station orders---------- 83
Delayed departure no fault of member or dependents
Additional temporary lodging allowance provided by par. M4303-2e(2), Joint Travel Regs., when departure of member with dependents from overseas duty station is delayed beyond 10-day period of entitlement through no fault of member or dependents, should not have been paid to member whose departure was delayed awaiting court-martial proceedings, since charges of misconduct against member established prima facie that he was not without fault for delay. Therefore, there was no entitlement to allowance for period during which charges were pending, and member would be eligible to receive allowance only if exonerated from blame. However, having been found guilty—and it is immaterial if charges were made in civil action or under Uniform Code of Military Justice—erroneous allowance payments would be for recoupment but for fact administrative regulations were not clear---------- 537
STATUTES OF LIMITATION
Claims
Date of accrual
Administrative determinations
Since claim which by statute is not payable until its validity is determined by designated agency does not accrue until determination of validity has been made, it is not barred until 10 years after administrative determination is made and, therefore, application of act of Oct. 9, 1940, 10-year statute of limitation, does not take effect until secretarial approval of advancement of members on retired list without regard to whether satisfactory active duty service was in permanent or temporary grade, or in service from which retired. Readjustment payments that had been disallowed may be paid administratively, as well as future claims, whether retirement was for disability or under 10 U.S.C. 8964, and notwithstanding member's higher grade was in service from

STATUTORY CONSTRUCTION—Continued Page

Claims—Continued

Date of accrual—Continued

Administrative determinations—Continued

which retired, and order effecting change to higher grade constitutes date of administrative determination of satisfactory service in higher grade when issued on same day as determination ---------- 607

Retired pay

Members of uniformed services advanced in grade on retired list without regard to whether their active duty service in higher grade was in temporary or permanent grade or whether satisfactory service was in same service from which retired may be paid adjustments in retired pay from date of retirement, even though required administrative approval of satisfactory service was made more than 10 years subsequent to retirement, for under rule that claim which by statute is not payable until its validity is determined by designated agency does not accrue until determination of validity has been made, members' claims for adjustment of their retired pay are not barred by act of Oct. 9, 1940, as 10-year statute of limitation began to run from date of administrative determination of entitlement to higher grade and not date of retirement ---------- 607

Expiration of statutory period of limitation

Claimants interests protected

Claims for 8 hours of additional compensation at overtime rates that are presented to Corps of Engineers by civilian wage board employees who performed 24-hour tours of duty on dredges and other floating plants, receiving compensation for only 8 hours of work on straight-time basis may be paid, if properly documented, by Corps on basis of two-thirds rule in *Detling* and *France* consolidated cases, 432 F. 2d 462 (1970). However, doubtful claims should be forwarded for settlement to Claims Division of U.S. GAO pursuant to 4 GAO 5.1, and when 10-year limitation act of Oct. 9, 1940 is involved and claims cannot be promptly approved and paid in full amount claimed, they should be forwarded to Claims Division for recording under 4 GAO 7.1, and after recording claims will be returned to Corps for payment, denial, or referral back to GAO for adjudication ---------- 767

STATUTORY CONSTRUCTION

Court interpretation

Effect

In sale for scrapping of vessels from national defense fleet, secs. 5 and 6 of Merchant Marine Act of 1920, affording preference to U.S. citizens, remain in effect and are applicable to sales for scrapping or otherwise, for notwithstanding secs. 508 and 510(j) of 1936 Merchant Marine Act authorizing sale of surplus vessels contain no preference provisions, Maritime Administration continued to accord preference to U.S. citizens, and addition of sec. 510(j) to 1936 act by amendment in 1965 did not repeal preference aspects of 1920 act by implication, an interpretation in accord with *Amell* v. *United States*, 384 U.S. 158. Furthermore, histories of 1936 act and 1965 amendment do not indicate intent to deprive domestic firms of preference obtained under 1920 act ---------- 167

"Ejusdem generis" rule

Authority in 49 U.S.C. 1375(h) to use air taxi mail service contracts in event of emergency caused by flood, fire, or other calamitous visitation

STATUTES OF LIMITATION—Continued Page
"Ejusdem generis" rule—Continued
may not be exercised upon occurrence of any unforseen event which which renders normal mail transportation facilities unavailable, such as sudden loss of RPO train schedule, or unexpected closing of airport runway causing certified air carriers to temporarily suspend service at airport; for under the "ejusdem generis" rule of construction, general words "calamitous visitation" are restricted by particular terms "flood or fire," and term "calamity" supposes continuous state produced by natural causes. Nonconforming existing contracts should be terminated as soon as practicable, and any temporary arrangements made under Postal Reorganization Act should be terminated when emergency ceases.. 255
Language of statute unambiguous
Requirement in Pub. L. 85–433, May 29, 1958, that claim for moving expenses incurred incident to conveying lands to U.S., supported by itemized statement of expenses, losses, and damage, must be "submitted to the Secretary within one year from date upon which the premises involved are vacated" is unambiguous and not subject to construction and, therefore, neither expenses incurred before expiration of year and not claimed, nor additional expenses incurred after expiration of statutory period may be reimbursed. However, persons displaced after Jan. 2, 1971, by acquisition of real property by U.S. should be compensated for moving and related expenses under Pub. L. 91–646, which replaces 1958 act and provides for head of each Federal agency to establish regulations and procedures to implement act..... 822
"Plain meaning" rule
When giving effect to plain meaning of words in statute leads to absurd or unreasonable result clearly at variance with policy of legislation as whole, purpose of statute rather than its literal words will be followed.. 604
STATUTORY PROHIBITIONS
Grants-in-aid funds
Retroactive removal of prohibitions
The 1970 amendment to Omnibus Crime Control Act of 1968, which makes clear that personnel compensation limitations only apply to restrict use of grant funds for payment of police and other regular law-enforcement personnel and not to support services, may be retroactively applied to unobligated and unspent block grants awarded for fiscal years 1969 and 1970 on matching basis by Law Enforcement Assistance Administration under 1968 act to States for subgranting, as well as to "discretionary" grants made to States or directly to cities and counties, as rule against retroactive application of Statutes—absent clear intent to the contrary—pertains to enactment that would prejudicially affect vested rights, or legal character of past transactions, whereas 1969 and 1970 fiscal year grant funds committed by Govt. are yet to be obligated by States..... 750

STORAGE Page

Household effects

Military personnel

Temporary storage

Release from active duty

Member of uniformed services who was retired at last duty station in Europe, and incident to selecting Australia as future home had household effects crated and temporarily stored at Govt. expense at old duty station to which he shortly returned from Australia and then had goods redelivered to quarters, is pursuant to par. M8100 of Joint Travel Regs. indebted for charges erroneously paid by Govt. However, since temporary storage costs are member's responsibility, he is entitled under par. M8260–1 of regulations incident to retirement orders to shipment of effects to U.S. within prescribed weight and 1-year period limitations, any excess cost over cost that would have been incurred in shipment of effects to home of selection in Australia to be paid by member..... 431

SUBSIDIES

Vessels. (*See* Maritime Matters, subsidies)

SUBSISTENCE

Per diem

In lieu of subsistence

Claim for per diem by postal employee in lieu of subsistence in connection with use of truck-camper instead of hotel or motel room while on field assignment may be paid pursuant to sec. 6.2(e) of Standardized Govt. Travel Regs. which provides for per diem allowance for travel by means of privately owned trailer, for although truck-camper is not trailer it is temporary living unit and may, therefore, be viewed as within regulations for purposes of approving per diem allowance, and allowance not having been approved in advance may under regulation be post approved..... 647

Military personnel

Temporary duty

At home port of submarine off-duty crew

Naval officer detached from duty aboard vessel who pending separation is placed on temporary duty with Commander, Submarine Flotilla Two, which although at home base has flagship, and assigned to ashore staff position at home port of off-crew of submarine may be paid per diem since temporary duty was not performed aboard Govt. vessel within meaning of par. M4250–8 of Joint Travel Regs. Assignment of flagship is of no consequence since temporary duty was performed ashore, and fact that temporary duty location was at home port of off-crew, or that no additional subsistence cost was incurred by member, does not affect entitlement as temporary duty was not in connection with training and rehabilitation of crew, and per diem is commutation of expenses payable regardless of expenses incurred..... 723

En route to new duty station

Marine officer detached from permanent duty station who before reporting to permanent overseas duty station is ordered to perform temporary duty at location approximately 6 miles from his residence located at old station where he continued to reside as no Govt. quarters were available at temporary duty station may be paid per diem for period of temporary duty since privately procured quarters at or in vicinity of

SUBSISTENCE—Continued Page
Per diem—Continued
Military personnel—Continued
Temporary duty—Continued
En route to new duty station—Continued
member's duty station are to be regarded as part of his station only by reason of assignment at that station. Therefore, officer detached from permanent duty station entered travel status when he proceeded to temporary duty station outside corporate limits of old station and is entitled to per diem for period of temporary duty performed en route to new permanent station, notwithstanding he traveled daily from old residence. 35 Comp. Gen. 547, modified---------- 729
Chief warrant officer who is detached from duty station at Hunter Army Airfield and assigned to duty overseas with temporary duty en route at Fort Stewart—both locations within 40-mile radius and considered two different duty stations under Joint Travel Regs. As they are established subdivisions with definite boundaries, even though administered as single post with single command and staff—is not entitled to travel allowance for commuting daily by privately owned automoble from residence to temporary duty station since there was no official necessity for return to old duty station and there is no evidence warrant officer could not obtain lodgings at temporary duty station, but he is entitled to per diem on basis he entered travel status day he reported for temporary duty, notwithstanding he continued to occupy his old residence---------- 803
Firefighting
As members of uniformed services ordered to proceed on temporary duty in Govt. vehicles to assist Forest Service in firefighting, whether they sleep in Govt. or personal sleeping bags, in vehicles, on ground without sleeping bags, on floors of warehouses and similar structures, or do not sleep on certain nights because of duty performance, are not performing type duty identified as maneuvers, joint field exercises, Reserve training encampments, and similar activities, payment of per diem to them is governed by par. M4205–6 of Joint Travel Regs., and members who were not charged for meals or sleeping facilities provided by Forest Service nor who did not occupy commercial facilities, are entitled for each day of temporary duty, to per diem of $2.50 and $3.10 for each meal not furnished, rates prescribed by regulation---------- 773
Temporary duty
Aboard submarines vessels, etc.
Civilian employees periodically assigned to perform temporary duty aboard Govt. vessels to conduct oceanographic and hydrographic surveys, who are at sea 25 to 28 days and in port 5 to 7 days and are paid per diem in accordance with par. C8101–2d of Vol. 2 of Joint Travel Regs., may not be required to occupy quarters aboard vessel during periods exceeding 3 days in port, nor may per diem be reduced because of availability of quarters aboard ship in absence of actual use of quarters, or determination by proper authority under par. C1057–3 that exigencies of service require that employees occupy quarters aboard vessel while in port---------- 388

SUBSISTENCE—Continued Page

Per diem—Continued

Travel by trailer, truck-camper, etc.

Claim for per diem by postal employee, in lieu of subsistence in connection with use of truck-camper instead of hotel or motel room while on field assignment may be paid pursuant to sec. 6.2(e) of Standardized Govt. Travel Regs. which provides for per diem allowance for travel by means of privately owned trailer, for although truck-camper is not trailer it is temporary living unit and may, therefore, be viewed as within regulations for purposes of approving per diem allowance, and allowance not having been approved in advance may under regulation be post approved ---------- 647

SUBSISTENCE ALLOWANCE

Military personnel

Reserve Officers' Training Corps

Rifle and pistol team competition

Since participation of members of Reserve Officers' Training Corps (ROTC) in rifle and pistol team competition matches is neither military training nor part of ROTC curriculum, but participation is performed on voluntary extracurricular activity basis, to provide allowances to members participating in National Matches, they may be considered to have same status as civilians within meaning of 10 U.S.C. 4313 so as to entitle them to travel allowance of $0.05 a mile and subsistence allowance of $1.50 a day, and authority in 10 U.S.C. 4308(a)(8) may be invoked to provide allowances for participation in regional and international matches if Secretary of Army upon recommendation of National Board for Promotion of Rifle Practice approves issuance of regulations to this effect ---------- 783

SUNDAYS

(*See* **Holidays, Sundays**)

TAXES

Federal

Joint returns

Status

Liability for proceeds of income tax refund check bearing only initials of husband and wife still married but separated at time of endorsement by husband and deposited in joint account with his mother, whose initials were similar to wife's, is for determination by Federal and not State law in interest of uniformity. Although use of initials did not facilitate forgery and ordinarily cashing bank would be required to refund one-half of check, as in "same name cases," reclamation proceedings against bank are not required since joint income tax is treated as return of single individual and payment to husband as one of joint obligees extinguished liability of Govt. for tax overpayment, and ownership rights of spouses are for determination by local law in appropriate proceedings ---------- 441

TAXES—Continued Page

State

Constitutionality

Assessment *v.* service charge

Service charge levied on each ton of refuse deposited at county incinerator by Federal agencies or their contractors, which is not imposed on residents or non-Federal tax-exempt users including State agencies, where cost of operation and maintenance of incinerator is borne by general tax revenues and county's authority to levy tax is doubtful, is in nature of tax to which U.S. is immune; and placement of U.S. in separate category from other property tax-exempt entities for purpose of imposing charge is unreasonable and discriminatory classification on the part of county and, therefore, payment of charge is unauthorized. However, payment of charge may continue to be made under contracts including charge and providing for refund upon resolution of matter-- 343

Reasonable charge by political subdivision based on *quantum* of direct service furnished, and which is applied equally to all property tax-exempt entities, need not be considered tax against U.S., even though services are furnished to taxpayers without direct charge, provided political subdivision is not required by law to furnish service involved without direct charge to all located within its boundaries, such as fire and police protection---------- 343

TRANSPORTATION

Air Carriers

Rates

Special

Use of reduced Category Z fares offered by commercial airlines to U.S. under Govt. Transportation Requests (GTRs) pursuant to tariffs filed with Civil Aeronautics Board is limited by agreement to transportation payable from public funds for official travel only, and special fares may not be made available to contractor employees or nonappropriated fund agencies in Europe or elsewhere, whether payment is made from nonappropriated funds, or appropriated funds on reimbursable basis. Restrictions on use of GTRs prescribed in GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 5, secs. 2020.10 and 2020.80 maintain integrity of travel appropriation obligations, and GTRs serve to identify that travel performed was on official business in accord with special arrangements for reduced fares and, therefore, Army regulations in conflict with purpose of Category Z fares should be amended---------- 748

Automobiles

Military personnel

Advance shipments

Shipment of privately owned vehicles prior to receipt of permanent change-of-station orders by members of uniformed services may be authorized on basis the phrase "ordered to make a change of permanent station" in 10 U.S.C. 2634(a), authority for transportation of motor vehicles, is identical to phrase used in 37 U.S.C. 406(a) to authorize transportation of member's dependents, pursuant to which par. M7000, item 8, of Joint Travel Regs. (JTR) provides for transportation of dependents in advance of orders when supported by certificate by appropriate authority stating that member was advised prior to issuance

TRANSPORTATION—Continued Page
Automobiles—Continued
Military personnel—Continued
Advance shipments—Continued
of change-of-station orders that such orders would issue. Accordingly, JTR may be amended to authorize advance shipment of motor vehicles under same circumstances as is provided by par. M7000, for advance transportation of dependents---------- 376
Authority
Scope
Where transportation services accorded privately owned vehicles of members of uniformed services transferred overseas under permanent change of duty station orders is a joint one by ocean and land carriers, movement cannot be characterized as "American shipping service" under 10 U.S.C. 2634, and service, therefore, is unauthorized, even though more economically than port-to-port water transportation. Also beyond scope of section is inland movement of vehicles to permit use of water-land transportation by U.S.-flag carriers and U.S. land carriers in order to obviate use of foreign flag, port-to-port water transportation. Authorization for shipment of privately owned vehicles at Govt. expense is limited to transportation by water and such inland movements as are necessarily incidental to water transportation and capable of being performed by ocean carriers as bona fide "shipping services"---------- 615
Containership ocean transportation
Cost of overland movement of privately owned motor vehicles of members of uniformed services incident to their shipment overseas pursuant to 10 U.S.C. 2634 when member is ordered to make permanent change of station may be paid from appropriated funds where vehicles are placed in containers some distance from shipside, as this kind of service is within scope of sec. 2634 relating to use of "American shipping services." Also there is no objection to ocean carrier accepting containerized cargo at port from which it does not operate containership and transporting vehicle for its own convenience and at its own expense to another port from which it operates containership, where overall cost to Govt. is as if vehicle moved by water from port to which delivered---------- 615
Land transportation
Authority in 10 U.S.C. 2634 for shipment at Govt. expense of privately owned vehicles of members of uniformed services ordered overseas on permanent change of station does not permit land movement of vehicles from one port to another in order to utilize U.S.-flag shipping—and although it is permissible to ship vehicles by water at Govt. expense from one port to alternate port for transhipment to U.S.-flag carriers, prudent management should require owners to deliver their vehicles to ports from which U.S.-flag shipping is available—nor is land movement of vehicles between two ports authorized under sec. 2634 where vehicle is delivered to port from which no ocean transportation is reasonably available---------- 615
Water-rail service
Where transportation services accorded privately owned vehicles of members of uniformed services transferred overseas under permanent change of duty station orders is a joint one by ocean and land carriers, movement cannot be characteristized as "American shipping service"

TRANSPORTATION—Continued Page

Automobiles—Continued

Military personnel—Continued

Water-rail service—Continued

under 10 U.S.C. 2634, and service, therefore, is unauthorized, even though more economically than port-to-port water transportation. Also beyond scope of section is inland movement of vehicles to permit use of water-land transportation by U.S.-flag carriers and U.S. land carriers in order to obviate use of foreign flag, port-to-port water transportation. Authorization for shipment of privately owned vehicles at Govt. expense is limited to transportation by water and such inland movements as are necessarily incidental to water transportation and capable of being performed by ocean carriers as bona fide "shipping services"---------- 615

Bills of lading

Commercial converted to Government

Ocean freight

The fact that commercial bill of lading covering shipment of radio equipment from Canada to California for export was required to be converted to Govt. bill of lading and second Govt. bill of lading was issued for California to Australia part of shipment does not preclude application of lowest available rate to determine charges from California to Australia and recovery from ocean carrier of overcharge that is difference between local and overland rates for ocean freight and which includes wharfage and hauling charges. Export nature of shipment was known to carriers, and but for requirement to use U.S. Govt. bills of lading, a through export bill of lading would have issued, and, furthermore, under Govt. bills of lading, shipment was made subject to terms and rates of commercial shipments---------- 601

Dependents

Military personnel

Debarment from station

Restriction removed prior to member's arrival

Air Force officer whose dependents incident to his permanent change of station from overseas to restricted area within U.S. are moved to selected home, upon learning when he arrived at restricted duty station that restriction had been removed prior to his transfer, is entitled under authority of par. M7005–4, item 4, of Joint Travel Regs. to monetary allowance in lieu of transportation for travel of dependents from home selected to new duty station on basis officer was on duty at new station when restriction on travel of dependents was removed. Similar claims made before or after this decision may be paid---------- 366

Dependency status

Child in *ventre sa mere*

Although child in *ventre sa mere* on effective date of permanent change-of-station orders of father, member of uniformed services, may not be considered dependent for purposes of 37 U.S.C. 406(a) authorizing transportation at Govt. expense of persons dependent upon member on effective date of change-of-station orders, in view of beneficial purposes of statute, regulations may be issued to authorize reimbursement for cost of travel to member's new station of child born after effective date of change-of-station orders if wife's travel to new station at Govt. expense prior to birth of child is precluded by departmental regulations due to advanced stage of her pregnancy---------- 220

TRANSPORTATION—Continued Page
Dependents—Continued
Military personnel—Continued
Dislocation allowance
First duty station
Place where member of uniformed services reenlisted after discharge from last duty station with no further assignment contemplated is place from which he was ordered to active duty within meaning of par. M9004–1, item 1, of Joint Travel Regs., which provides that dislocation allowance will not be payable in connection with permanent change-of-station travel performed from home or from place from which ordered to active duty to first permanent duty station upon reenlistment; and, therefore, member transferred on temporary duty for hospital treatment is not entitled to dislocation allowance to relocate his household incident to his transfer to the hospital since hospital was his first permanent assignment under reenlistment---------- 473
Hospital transfers
Since under par. M7004–5 of Joint Travel Regs. a member of uniformed services whose dependents had moved at Govt. expense "as for a permanent change of station" incident to his assignment to hospital for extended treatment would be entitled to further transportation of dependents upon his transfer from hospital to permanent duty station, he would also be entitled to dislocation allowance upon relocation of his household incident to transfer from hospital---------- 473
Navy officer detached from duty overseas and assigned to hospital "for study and treatment if indicated and appearance before a Medical Board and pre-retirement physical examination," who before moving his dependents home maintained them for short period in vicinity of hospital until he was placed on temporary disability retired list, is entitled to dislocation allowance, since par. M9003–3a, Joint Travel Regs., providing allowance incident to hospital transfer applies to officer and not par. M9004–1, item 2, which prohibits payment of allowance in connection with separation, release from active duty, placement on disability retired list, or retirement, since at time officer's orders were issued there was only possibility of retirement or transfer to temporary disability retired list---------- 579
Missing, interned, etc., members
Dependents of member of uniformed services in missing status as defined in 37 U.S.C. 551(2), who have been furnished transportation for themselves and their household and personal effects incident to member's entry into missing status, may not again be furnished transportation while member's status remains unchanged, 37 U.S.C. 554 requiring change of status for entitlement to transportation; and change from one classification to another within "missing status" category, defined as missing; missing in action; interned in foreign country; captured, beleaguered, or besieged by hostile force; or detained in foreign country against member's will, does not constitute change within meaning of sec. 554, and therefore regulations may not be promulgated to authorize additional transportation incident to missing status---------- 291

TRANSPORTATION—Continued Page
Dependents—Continued
Military personnel—Continued
More than one movement
When status of member of uniformed services is changed from one to other of three categories specified in 37 U.S.C. 554—dead, injured, or absent for period of more than 29 days in missing status—transportation of dependents and of household and personal effects may be furnished incident to each change in status of member in accordance with 35 Comp. Gen. 399 (1956)---------- 291
Freight
Charges
Delivery requirement
Freight charges claimed on overseas shipment that moved under GBL identifying shipment as frozen foods and which was refused at destination when it was discovered shipment contained meat as vessel had made several stops at ports considered to be infected areas for meat products, may not be allowed, even though part of shipment was returned to origin point in U.S., meat having been jettisoned at sea because its return was prohibited under Dept. of Agriculture regulation, as Consignee's Certificate of Delivery on GBL was not and could not have been accomplished without delivery of shipment—condition precedent to liability for freight charges---------- 164
Household effects
Commutation
Rate base for computation
Employee who incident to moving household goods and personal effects from Allegheny County, Pa., to Montgomery County, Md., in his privately owned vehicle and rental truck although entitled to reimbursement on commuted rate basis may not have included in commuted rate metropolitian area rate or surcharge allowance. Area rate is only provided on shipments by common carrier between two locations involved, and employee transported own property, and payment of surcharge allowance, which is no longer authorized, was intended to reimburse employee required to pay such charge to common carrier and was not intended to grant increased benefits to employee moving own goods---- 827
Military personnel
Missing, interned, etc., members
Dependents of member of uniformed services in missing status as defined in 37 U.S.C. 551(2), who have been furnished transportation for themselves and their household and personal effects incident to member's entry into missing status, may not again be furnished transportation while member's status remains unchanged, 37 U.S.C. 554 requiring change of status for entitlement to transportation; and change from one classification to another within "missing status" category, defined as missing; missing in action; interned in foreign country; captured, beleaguered, or besieged by hostile force; or detained in foreign country against member's will, does not constitute change within meaning of sec. 554, and therefore regulations may not be promulgated to authorize additional transportation incident to missing status---------- 291

TRANSPORTATION—Continued Page

Household effects—Continued

Military personnel—Continued

More than one movement

When status of member of uniformed services is changed from one to other of three categories specified in 37 U.S.C. 554—dead, injured, or absent for period of more than 29 days in missing status—transportation of dependents and of household and personal effects may be furnished incident to each change in status of member in accordance with 35 Comp. Gen. 399 (1956) ---------- 291

Release from active duty

To other than selected home

Member of uniformed services who was retired at last duty station in Europe, and incident to selecting Australia as future home had household effects crated and temporarily stored at Govt. expense at old duty station to which he shortly returned from Australia and then had goods redelivered to quarters, is pursuant to par. M8100 of Joint Travel Regs. indebted for charges erroneously paid by Govt. However, since temporary storage costs are member's responsibility, he is entitled under par. M8260–1 of regulations incident to retirement orders to shipment of effects to U.S. within prescribed weight and 1-year period limitations, any excess cost over cost that would have been incurred in shipment of effects to home of selection in Australia to be paid by member ---------- 431

Replacement for effects damaged or destroyed

Replacement items for household effects of members of uniformed services assigned in Europe, which were destroyed by fire before delivery was effected, may not be shipped at Govt. expense, authority in 37 U.S.C. 406(b) to ship household effects at Govt. expense incident to change of station relating to effects possessed by member on effective date of orders, or effects acquired shortly thereafter in exceptional circumstances, and before they are turned over to transportation officer or carrier for shipment, at which time member's shipping rights are exhausted, even though original shipment is damaged or destroyed in transit. Moreover, to authorize replacement shipments under 37 U.S.C. 406 would provide duplicate transportation benefits, since compensation paid pursuant to 31 U.S.C. 241 for destroyed property includes cost of transportation ---------- 556

Trailer shipment

Missing, interned, etc., persons

Transportation of housetrailer at Govt. expense for dependents of member of uniformed services in missing status, as defined in 37 U.S.C. 551(2), may not be provided in absence of specific authority. 37 U.S.C. 554, in authorizing transportation of dependents and household and personal effects of members in missing status, does not expressly provide for transportation of housetrailer or mobile home—and words "personal effects" as used in section may not be construed as including housetrailer—and 37 U.S.C. 409, in providing for trailer allowance in lieu of transportation of baggage and household goods, and payment of dislocation allowance, restricts entitlement to member, or in case of death to dependents, and makes no provision for payment in event member is in missing status ---------- 317

TRANSPORTATION—Continued Page
Household effects—Continued
Military personnel—Continued
Weight limitation
Minimum for audit purposes
Proposed procedure to establish minimum weight of 300 lbs. for examination of shipping documents of household goods shipments to determine if there are excess costs on account of members of uniformed services exceeding their authorized weight allowances would not satisfy audit requirements of U.S. GAO and may not be approved as there is no legal basis for disregarding shipments weighing less than 300 lbs. in determining whether excess costs are involved when to do so could serve to permit shipment at Govt. expense of weights in excess of those prescribed by Joint Travel Regs. implementing 37 U.S.C. 406 authorizing shipment. Moreover, departments have responsibility to maintain adequate controls in order to determine when shipments involving excess costs have been made and to take appropriate action to recover amount of any excess costs---------- 705
Rates
Metropolitan area rate
Employee who incident to moving household goods and personal effects from Allegheny County, Pa., to Montgomery County, Md., in his privately owned vehicle and rental truck although entitled to reimbursement on commuted rate basis may not have included in commuted rate metropolitan area rate or surcharge allowance. Area rate is only provided on shipments by common carrier between two locations involved, and employee transported own property, and payment of surcharge allowance, which is no longer authorized, was intended to reimburse employee required to pay such charge to common carrier and was not intended to grant increased benefits to employee moving own goods-------- 827
Housetrailers
Military personnel. (*See* Transportation, household effects, military personnel, trailer shipment)
Rates
Export
Through rate
Bills of lading status
The fact that commercial bill of lading covering shipment of radio equipment from Canada to California for export was required to be converted to Govt. bill of lading and second Govt. bill of lading was issued for California to Australia part of shipment does not preclude application of lowest available rate to determine charges from California to Australia and recovery from ocean carrier of overcharge that is difference between local and overland rates for ocean freight and which includes wharfage and hauling charges. Export nature of shipment was known to carriers, and but for requirement to use U.S. Govt. bills of lading, a through export bill of lading would have issued, and, furthermore, under Govt. bills of lading, shipment was made subject to terms and rates of commercial shipments---------- 601

TRANSPORTATION—Continued Page
Requests
Issuance, use, etc.
Official business requirement
Use of reduced Category Z fares offered by commercial airlines to U.S. under Govt. Transportation Requests (GTRs) pursuant to tariffs filed with Civil Aeronautics Board is limited by agreement to transportation payable from public funds for official travel only, and special fares may not be made available to contractor employees or nonappropriated fund agencies in Europe or elsewhere, whether payment is made from nonappropriated funds, or appropriated funds on reimbursable basis. Restrictions on use of GTRs prescribed in GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 5, secs. 2020.10 and 2020.80 maintain integrity of travel appropriation obligations, and GTRs serve to identify that travel performed was on official business in accord with special arrangements for reduced fares and, therefore, Army regulations in conflict with purpose of Category Z fares should be amended ---------- 748

TRAVEL ALLOWANCE
Military personnel
Reserve Officers' Training Corps
Rifle and pistol team competition
Since participation of members of Reserve Officers' Training Corps (ROTC) in rifle and pistol team competition matches is neither military training nor part of ROTC curriculum, but participation is performed on voluntary extracurricular activity basis, to provide allowances to members participating in National Matches, they may be considered to have same status as civilians within meaning of 10 U.S.C. 4313 so as to entitle them to travel allowance of $0.05 a mile and subsistence allowance of $1.50 a day, and authority in 10 U.S.C. 4308(a)(8) may be invoked to provide allowances for participation in regional and international matches if Secretary of Army upon recommendation of National Board for Promotion of Rifle Practice approves issuance of regulations to this effect---------- 783

TRAVEL EXPENSES
First duty station
Manpower shortage
Service agreement
Agreements which appointees to manpower shortage positions execute pursuant to 5 U.S.C. 5723(b), to remain in service of agency to which appointed or assigned for 12 months unless separated for reasons beyond their control which are acceptable to agency, should be revised to require only that employee remain in Govt. service, as language of sec. 5723(b) is substantially same as sec. 5724(i), which has been construed in *Finn* v. *U.S.*, Ct. Cl. No. 396–69, decided July 15, 1970, to require only that employee agree to remain "in the Government service" for period of 12 months rather than in service of particular agency---------- 374
Headquarters
Return to on workdays
Employee ordered to temporary duty at point 100 miles from his residence which is located near his permanent headquarters who, although his orders do not so provide, voluntarily returns to residence

TRAVEL EXPENSES—Continued Page
Headquarters—Continued
Return to on workdays—Continued
on workdays after close of business, as well as on nonworkdays, may be reimbursed travel expenses for days he returns to home in amount not to exceed expenses allowable had he remained at his temporary duty station, even though sec. 6.4 of Standardized Govt. Travel Regs. makes no reference to return to headquarters on workdays while on temporary duty, as there is no reason why rule applicable to nonworkdays may not be extended to voluntary returns on workdays after close of business if not specifically prohibited ---------- 44
Military personnel
Authorization
Retroactive
Treatment of Fort Stewart and Hunter Army Airfield, located 40 miles apart, as one installation with one staff which resulted in movement of military and civilian personnel freely between both installations without competent orders directing permanent change-of-station or performance of temporary duty may not be corrected by issuance of retroactive orders to confirm assignments and authorize travel allowances for temporary duty or permanent change-of-station allowances incident to assignments, even though for purposes of Joint Travel Regs., installations are considered different stations since retroactive orders would be without effect to change vested rights of personnel involved --- 803
Leaves of absence
Reenlistment leave
Since under 10 U.S.C. 703(b) members of uniformed services are only authorized transportation at expense of U.S. to and from place of leave selected for 30 days' special leave provided for voluntary extension of tour of duty in hostile area, reimbursement for travel to and from place of leave in addition to actual round-trip transportation costs is restricted to taxicab or other public carrier fares for transportation to and from carrier terminals utilized in performing authorized travel, as such fares constitute part of actual transportation costs, as well as those tips that are within limitations of par. M4402–4 of Joint Travel Regs., and members may not be reimbursed for miscellaneous expenses that are not related to transportation costs, such as cost of checking and transferring baggage, or passport and visa fees ---------- 764
Local travel
Home or lodgings and place of duty
Chief warrant officer who is detached from duty station at Hunter Army Airfield and assigned to duty overseas with temporary duty en route at Fort Stewart—both locations within 40-mile radius and considered two different duty stations under Joint Travel Regs. as they are established subdivisions with definite boundaries, even though administered as single post with single command and staff—is not entitled to travel allowance for commuting daily by privately owned automobile from residence to temporary duty station since there was no official necessity for return to old duty station and there is no evidence warrant officer could not obtain lodgings at temporary duty station, but he is entitled to per diem on basis he entered travel status day he reported for temporary duty, notwithstanding he continued to occupy his old residence ---------- 803

TRAVEL EXPENSES—Continued Page
Military personnel—Continued
Ship assignments
Ship overhaul *v.* inactivation away from home port
Transportation benefits prescribed by Pub. L. 91–210, approved Mar. 13, 1970, 37 U.S.C. 406b, for members of uniformed services permanently attached to ships being overhauled away from home port, whose dependents reside at home port, may not be extended to personnel of ships being inactivated away from home port to authorize reimbursement for round trip travel to visit dependents residing at home port. Although act does not define "overhaul," and its meaning is not reflected in legislative history of act, since Navy's definition of "overhaul" does not include inactivation of ship, benefits of act may not be extended to personnel of ships being inactivated away from home port. However, no exception will be taken to payments already made---------- 320
Overseas employees
Hired overseas
Residence in United States, etc.
Travel and transportation expenses of newly appointed employee from foreign country may be paid by Canal Zone agencies if employee at time of appointment has place of actual residence in U.S., its territories or possessions. However, as 5 U.S.C. 5722 authorizes payment of such expenses only from employee's place of actual residence at time of appointment, reimbursement may not exceed that which would have allowed employee for travel and transportation from place of actual residence in U.S., its territories or possessions---------- 644
Former employee of Canal Zone Govt. whose place of actual residence was in California, but who at time of appointment was temporarily residing in Costa Rica, and who had transported his household goods to Costa Rica in his own truck prior to signing employment agreement, which he signed in Costa Rica prior to travel to Canal Zone, may be reimbursed travel and transportation expenses from Costa Rica to Canal Zone in accordance with provisions of Office of Management and Budget Cir. No. A–56, but he may not be reimbursed expenses of moving from California to Costa Rica since these expenses were not incurred in anticipation of his appointment in Canal Zone---------- 644
Temporary duty
Return of official station on workdays
Employee ordered to temporary duty at point 100 miles from his residence which is located near his permanent headquarters who, although his orders do not so provide, voluntarily returns to residence on workdays after close of business, as well as on nonworkdays, may be reimbursed travel expenses for days he returns to home in amount not to exceed expenses allowable had he remained at his temporary duty station, even though sec. 6.4 of Standarized Govt. Travel Regs. makes no reference to return to headquarters on workdays while on temporary duty, as there is no reason why rule applicable to nonworkdays may not be extended to voluntary returns on workdays after close of business if not specifically prohibited---------- 44

TRAVEL EXPENSES—Continued Page
Witnesses
Courts-martial proceedings
Issuance of invitational travel orders and payment of commuted travel allowances under 5 U.S.C. 5703 to civilian persons other than Federal Govt. employees who are requested to testify at pretrial investigations pursuant to Art. 32 of Uniform Code of Military Justice, 10 U.S.C. 832, which is implemented by Manual for Courts-Martial prescribed by E.O. No. 11476, June 19, 1969, may be authorized, even though manual makes no provision for subpoena of witnesses and payment of witness fees, since investigations are integral part of courts-martial proceedings. However, as approval authority is discretionary, it should be exercised within framework of Military Code, which in Art. 49 provides for depositions, and Manual, which in par. 34d prescribes guidelines and Joint Travel Regs. revised accordingly---------- 810

UNEMPLOYMENT COMPENSATION
Military personnel restored to duty
Deduction from pay adjustment
Payment for period of active duty incident to correction of military records of member of uniformed services is not subject to deduction for unemployment compensation received by member during period between premature discharge from duty and retirement, as rule in 35 Comp. Gen. 241 to effect unemployment compensation is not deductible from back pay of civilian employee restored to duty because of direct refund by employee is for application. Therefore, since unemployment compensation received by member does not come within purview of "interim civilian earnings" for purpose of administrative directive that such earnings are deductible in Correction Board cases, amount of unemployment compensation deducted from pay adjustment made to member is for refund to him---------- 180

UNIONS
Federal service
Arbitration services
Effect on administrative determinations
Establishment of first 40 hours of duty as basic workweek of Govt. quality control inspectors due to release from work of contractor employees when unpredictable interruptions and delays occur in checkout of missiles prior to launch—countdown—was in accord with 5 U.S.C. 6101 and Civil Service Reg. 610.111, which authorize uncommon tours of duty to maintain efficient operations and prevent cost increases. Therefore, determination of arbitration board under E.O. No. 10988 procedures that new work schedule was in violation of collective bargaining contract, requires no compensation and leave adjustments. Moreover, Executive order provides that arbitration "shall be advisory in nature with any decision or recommendation subject to approval of the agency head"---------- 708
Following upgrading of entrance grades for attorneys to GS-9 and GS-11 from GS-7 and GS-9, and adjusting of grades as consequence, National Labor Relations Board (NLRB) negotiated agreement with NLRB Professional Assn. to consider shorter time periods for promotions and requested waiver of Whitten Amendment requirement of 1-year in-grade except when only 5 weeks or less remained to complete

UNIONS—Continued Page
Federal service—Continued
Arbitration services—Continued
Effect on administrative determinations—Continued
required year of service, and as agreement entered into pursuant to E.O. No. 10988, which reserved to Govt. authority to promote efficiency of personnel operations, does not guarantee promotions, exercise of 5-week rule is administrative and its validity is not matter for arbitration. Therefore, attorney whose promotion was delayed by reason of 5-week rule is not entitled to retroactive promotion for in absence of administrative error general rule against retroactive promotions applies_____ 850
Dues
Deduction discontinuance
Timely mailed revocation of dues allotment to employee organization made pursuant to 5 U.S.C. 5525, which was received in payroll office on Monday, Mar. 2, first workday after Mar. 1 deadline set by Civil Service Commission, 5 CFR 550,308, constitutes compliance with regulation under rule that when act is to be performed by certain date and last day of period falls on Sunday, requirement is complied with if act is performed on following day. Therefore, discontinuance of allotment having become effective at beginning of first full pay period following Mar. 1 deadline, dues deducted subsequent to revocation are for collection from employee organization and repayment to employee_____ 108
VESSELS
Construction
Subsides. (*See* Maritime Matters, subsidies, construction-differential)
Crews
Compensation
Increases
Retroactive
Where new labor-management agreement is not reached prior to expiration of old agreement, retroactive compensation adjustment under new agreement is considered "practice" in maritime industry within contemplation of 5 U.S.C. 5342(a), which establishes compensation of crewmembers employed aboard research vessels. However, in addition to this criteria, sec. 5342(a) requires as basis for retroactive payment of compensation that administrative determination be made that adjustment would be in public interest, and as union agreement providing for wage adjustments within 30 days of MSTS announcement is based on determination that retroactive adjustment would not be in public interest, retroactive effect may not be given to wage increases granted by 5 U.S.C. 5342(a) while provision remains in force_____ 93
Overtime
A Corps of Engineers civilian wage board employee who performed 24-hour port watch duty aboard seagoing hopper dredge and received only 8 straight-time hours of compensation is entitled to payment for additional 8 hours claimed, and properly documented, at overtime rates on basis of consolidated cases of *Detling et al.* v. *U.S.*, and *France et al.* v. *U.S.*, 432 F. 2d 462 (1970), in which court held plaintiffs were in standby duty for time in excess of 8 hours and applied two-thirds rule, allowing 8 hours for sleeping and eating time, and awarded plaintiffs 8 hours of additional compensation at overtime rates pursuant to 5

VESSELS—Continued Page
Crews—Continued
Compensation—Continued
Overtime—Continued
U.S.C. 5544, rule that has been followed in decisions of Comptroller General ---------- 767

Claims for 8 hours of additional compensation at overtime rates that are presented to Corps of Engineers by civilian wage board employees who performed 24-hour tours of duty on dredges and other floating plants, receiving compensation for only 8 hours of work on straight-time basis may be paid, if properly documented, by Corps on basis of two-thirds rule in *Detling* and *France* consolidated cases, 432 F. 2d 462 (1970). However, doubtful claims should be forwarded for settlement to Claims Division of U.S. GAO pursuant to 4 GAO 5.1, and when 10-year limitation act of Oct. 9, 1940 is involved and claims cannot be promptly approved and paid in full amount claimed, they should be forwarded to Claims Division for recording under 4 GAO 7.1, and after recording claims will be returned to Corps for payment, denial, or referral back to GAO for adjudication---------- 767

Where claims of civilian wage board employees of Corps of Engineers for 8 hours overtime compensation, which are presented on basis of consolidated cases of *Detling* and *France*, 432 F. 2d 462, incident to 24-hour port watch aboard hopper dredges or other floating plants and receipt of only 8 hours straight-time compensation, cannot be adequately documented, payment may be made by Corps on basis of most accurate estimate after considering all available records. For example, if time and attendance records are missing for some part of period claimed but available pay and leave records support reasonably accurate estimates of standby duty, estimates will be considered sufficiently documented, or where no signed logs can be found for standby duty claimed, next best evidence—duty rosters—may be used to substantiate payment of overtime---------- 767

Sales
American *v.* foreign purchasers

In sale for scrapping of vessels from national defense fleet, secs. 5 and 6 of Merchant Marine Act of 1920, affording preference to U.S. citizens, remain in effect and are applicable to sales for scrapping or otherwise, for notwithstanding secs. 508 and 510(j) of 1936 Merchant Marine Act authorizing sale of surplus vessels contain no preference provisions, Maritime Administration continued to accord preference to U.S. citizens, and addition of sec. 510(j) to 1936 act by amendment in 1965 did not repeal preference aspects of 1920 act by implication, an interpretation in accord with *Amell* v. *United States*, 384 U.S. 158. Furthermore, histories of 1936 act and 1965 amendment do not indicate intent to deprive domestic firms of preference obtained under 1920 act--- 167

VOUCHERS AND INVOICES
Past due invoices
Interest payment

Rejection of bid under solicitation issued for Federal Supply Schedule contract to furnish wood office furniture because of inclusion of qualifying provision "1½% interest per month on past due invoices," which contracting officer refused to delete, was proper under sec. 1-2.404-

VOUCHERS AND INVOICES—Continued Page
Past due invoices—Continued
Interest payment—Continued
2(b)(5) of Federal Procurement Regs. Regulation provides for rejection of bid if bidder imposes conditions which would modify requirements of invitation, or limit his liability or rights of Govt. to his advantage, and although objectionable conditions may be deleted if they do not go to substance of bid—that is, that they only have trivial or negligible effect on price, quantity, quality, or delivery—condition imposed affected price and could not be deleted. Furthermore, contracting officer is without authority to obligate Govt. to pay interest on unpaid invoices. 5 Comp. Gen. 649, modified ---- 733

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
Land acquisition
Subway construction
In development of rail rapid transit system, Board of Directors of Washington Metropolitan Area Transit Authority—instrumentality created by Compact with consent of Congress—may acquire lands under administration of National Park Service of Dept. of Interior, and should cash be paid for appraised value of parklands, cash is for deposit into Treasury in accordance with 31 U.S.C. 484. However, if congressional approval is sought to use money to replace surface parklands, amount received by Dept. may be held in escrow for period not to exceed 2 years. Furthermore, under provisions of Compact, Board has authority to purchase land to replace surface parklands needed for transit purposes -- 159

WITNESSES
Courts-martial proceedings
Travel expenses
Issuance of invitational travel orders and payment of commuted travel allowances under 5 U.S.C. 5703 to civilian persons other than Federal Govt. employees who are requested to testify at pretrial investigations pursuant to Art. 32 of Uniform Code of Military Justice, 10 U.S.C. 832, which is implemented by Manual for Courts-Martial prescribed by E.O. No. 11476, June 19, 1969, may be authorized, even though manual makes no provision for subpoena of witnesses and payment of witness fees, since investigations are integral part of courts-martial proceedings. However, as approval authority is discretionary, it should be exercised within framework of Military Code, which in Art. 49 provides for depositions, and Manual, which in par. 34d prescribes guidelines and Joint Travel Regs. revised accordingly ---- 810

WORDS AND PHRASES
"Actual residence"
The term "actual residence" is not defined in 5 U.S.C. 5722 or implementing regulations, which authorize travel and transportation expenses for new appointees to posts of duty outside continental U.S., and is for determination from facts of each case. Although term as used in sec. 5722 generally would be understood to mean place at which appointee physically resides at time of appointment, term may include "legal residence" or "domicile" of employee ---- 644

WORDS AND PHRASES—Continued Page

"Containers"

Low alternate bid offering to use polyethylene bags with Kraft paper overwrap in lieu of cartons to ship fuel-resistant baffle material satisfying packaging and packing requirements set forth in applicable military specifications and included in invitation for bids, neither of which spelled out type of material or construction of container, was responsive bid, acceptance of which was proper. Invitation for bids did not require use of fiberboard cartons and military specifications require only that materials be packed in manner to insure acceptance by common carrier and provide protection against damage during shipment. Furthermore, overwrapped polyethylene bags constitute "containers" within meaning of "Glossary of Packaging Terms" and par. 1–1204 of Armed Services Procurement Reg ---------- 140

"Ejusdem generis"

Authority in 49 U.S.C. 1375(h) to use air taxi mail service contracts in event of emergency caused by flood, fire, or other calamitous visitation may not be exercised upon occurrence of any unforeseen event which renders normal mail transportation facilities unavailable, such as sudden loss of RPO train schedule, or unexpected closing of airport runway causing certified air carriers to temporarily suspend service at airport; for under the "ejusdem generis" rule of construction, general words "calamitous visitation" are restricted by particular terms "flood or fire," and term "calamity" supposes continuous state produced by natural causes. Nonconforming existing contracts should be terminated as soon as practicable, and any temporary arrangements made under Postal Reorganization Act should be terminated when emergency ceases. 255

"Employee"

Authority in 5 U.S.C. 5584 to waive erroneous payments of compensation made to employees of executive agencies is applicable to non-U.S. citizens employed by U.S. in foreign areas, as term "employee" as used in sec. 5584 means employee as defined in 5 U.S.C. 2105; that is, individual appointed in "civil service," which constitutes all appointive positions in executive, judicial, and legislative branches of Govt., except positions in uniformed services (5 U.S.C. 2101(1)). Therefore, Philippine citizen, properly appointed to position in executive branch to perform Federal function supervised by Federal employee, is employee under 5 U.S.C. 5584 and entitled to waiver of erroneous compensation payments without regard to fact employment is under labor agreement with Philippine Govt ---------- 329

"No gain technique"

Where in evaluation of management, financial, and technical factors offered under request for quotations for operation overseas of communication system, offerors are found equally qualified technically on basis of normalizing results of numerical scoring system used by Source Selection Evaluation Board and analysis of Board's evaluation by Source Selection Advisory Council using its independent scoring and weighting—referred to as "no gain technique"—and on basis of reevaluating manpower proposals, award of cost-plus-award fee contract to lowest offeror was proper, and award is unaffected by Advisory Council's deviation, with permission, from evaluation guidelines in Army Command Pamphlet 715–3, and by changes in scoring made between evaluations, since relative weights of evaluation criteria were preserved ---------- 390

WORDS AND PHRASES—Continued Page

"Orangeburg"

Classification of workmen who installed "Orangeburg" fiber ducts as conduit for underground electrical wiring as laborers under contract including wage determination for electricians and laborers, and disputes clause was violation of Davis-Bacon Act, 40 U.S.C. 276a, and referral of erroneous classification to Secretary of Labor under disputes clause when contractor disagreed with contracting officer's determination based on prevailing area practice but refused to submit contrary evidence did not violate contract or prejudice contractor because it had not been advised of referral, and Secretary's confirmation, even though based on record only, that classification was erroneous—determination that is not subject to review—entitles laborers who were not supervised by journeyman electrician to wage adjustment as electricians and not electrician apprentices ---------- 103

"Public works"

Contracts for repainting mailboxes at their stationary positions, work that is regular, continuous and recurring, and is performed in accordance with Post Office Dept.'s Letter Box Maintenance Handbook approximately every 36 months, are subject to Davis-Bacon Act, 40 U.S.C. 276a, an act that is applicable to contracts in excess of $2,000 for painting and decorating of public buildings and works, whether performed in conjunction with original construction or as regular maintenance, and mailboxes are within contemplation of term "public works," which term encompasses any Govt-owned facility necessary for carrying on community life and to cover any article or structure that is placed, either permanently or temporarily, at particular location to serve public purpose--- 720

U.S. GOVERNMENT PRINTING OFFICE:1972 O—452-993