

22 May 1998

MEMORANDUM FOR AMC ATTORNEYS

SUBJECT: Recent GAO Appropriations Case Summaries

1. The GAO issued the following three appropriations law decisions this quarter:

a. B-257823, January 22, 1998

Facts: The Federal Mediation and Conciliation Service (FMCS) questioned certain overhead costs charged by Department of Treasury in a series of reimbursable Economy Act agreements. FMCS contended that the overhead costs were unreasonably high, and that, as a result, Department of Treasury's hourly rates were in excess of actual costs as required by 31 USC § 1535(b).

Relevant Conclusion(s): Department of Treasury's method for computing its hourly rates, including relevant costs for non-billable administrative labor-hours, was reasonable and consistent with the Economy Act. Agencies possess some flexibility in applying the Act's actual cost standard to specific situations, so long as there is reasonable assurance that the performing agency is reimbursed for its costs without the ordering or the performing agency augmenting its appropriation. Here, the Department of Treasury reasonably relied on historical data, as well as OPM guidance, and OMB Cir. A-76 to compute the rates, including the costs for non-billable administrative labor-hours.

b. B-277905, March 17, 1998:

Facts: Fort Sam Houston asked whether it could use appropriated funds to install a water pipeline for its golf course, notwithstanding 10 USC § 2246(a) prohibiting the use of appropriated funds to equip, operate, or maintain a golf course. Fort Sam Houston contended that the water pipeline would conserve significant amounts of water in furtherance of 10 USC § 2866 allowing and encouraging the DoD to participate in water conservation efforts.

Relevant Conclusion(s): GAO held that Fort Sam Houston may not use appropriated funds for the golf course water pipeline. The specific prohibition in 10 USC § 2246(a) takes precedence over the more general language in 10 USC § 2866. Rules of statutory construction presume that Congress amends or repeals a statute directly and explicitly.

c. : complying

**2. These cases can be found at the GAO s web site: HYPERLINK
http://www.gao.gov http://www.gao.gov. I can be reached at (703)
617-3117 if you have any questions about this memorandum.**

LISA R. SIMON
Associate CounselAMCCC-

PA