United States General Accounting Office

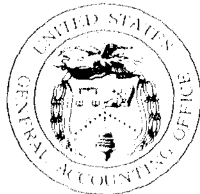
GAO

Report to Congressional Committees

August 1989

DEPARTMENT OF JUSTICE

Status of Implementing Private Attorney Debt Collection Pilot Program



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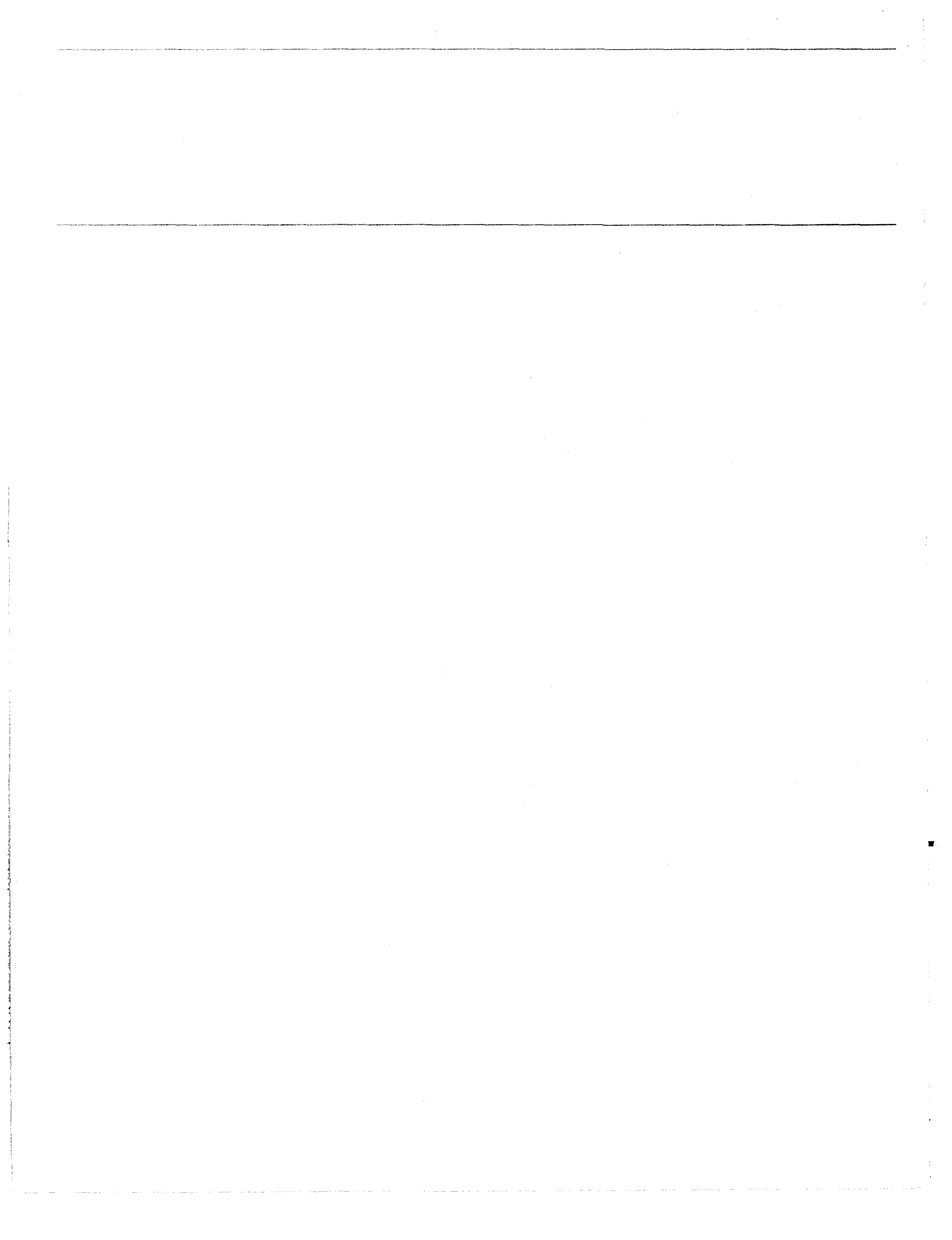

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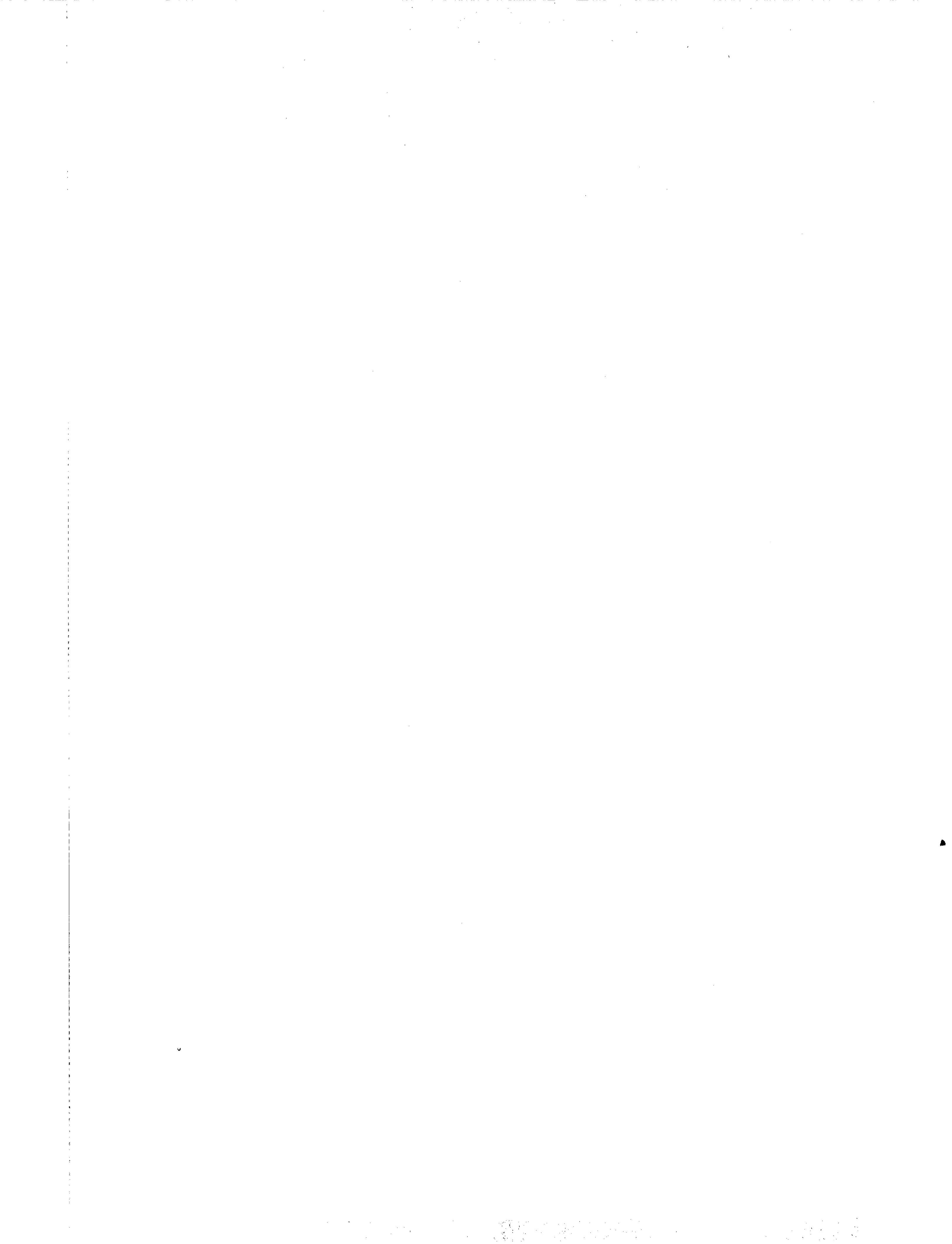

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-232885

August 15, 1989

The Honorable Joseph Biden
Chairman, Committee on the
Judiciary
United States Senate

The Honorable Jack Brooks
Chairman, Committee on the
Judiciary
House of Representatives

This report is in response to Public Law 99-578, which requires that we report on the Department of Justice's private attorney pilot program to collect delinquent debts owed to the federal government.

We are sending copies of this report to the Attorney General, the Office of Management and Budget, and other interested parties.

The major contributors to this report are listed in the appendix. If you have any questions on this report, please call me on 275-8389.

Arnold P. Jones
Director, Administration of
Justice Issues

Executive Summary

Purpose

To enhance the government's ability to collect billions of dollars in non-tax delinquent debts, Congress passed the Debt Collection Amendments Act of 1986. The law authorizes a pilot program whereby the Attorney General can contract with private attorneys in 5 to 10 judicial districts to determine whether they can reduce case backlogs and cost-effectively collect delinquent debts. The law requires GAO to report to Congress on Justice's contracting efforts and the results of the pilot program. This report addresses Justice's efforts to comply with the law's provisions to (1) follow federal competition requirements and obtain reasonable prices in five districts, and (2) encourage minority law firms to compete. This report also examines Justice's plans to gather information to assess program results. GAO plans to review the collection results of the pilot program in a later report. (See p. 8.)

Background

According to the Office of Management and Budget, as of September 30, 1988, federal agencies had about $32 billion in nontax delinquent debts of which about $7.6 billion involving over 84,000 accounts had been referred to Justice for legal action. U.S. attorney offices in 94 judicial districts are responsible for litigating most of the nontax delinquent debts but have not always been able to effectively handle the large volume of cases due to higher law enforcement priorities and inadequate resources. Under the pilot program, agencies will no longer refer their delinquent debts directly to pilot district U.S. attorney offices. Instead, the debts will be referred to Justice headquarters, which will then allocate the referrals among private and U.S. attorney offices. (See pp. 15 and 26.)

As of May 1989, Justice had 18 contracts in five pilot districts and was in the process of awarding 20 additional contracts for five more districts. The program was operating in three districts. Full scale operation in all 10 districts is expected by March 1990. Because the full pilot program will be operational only a short time before it is scheduled to end on September 1, 1990, Justice is developing proposed legislation to extend the program 2 years to September 1, 1992. (See pp. 10 and 11.)

Results in Brief

Justice generally followed federal competition requirements in awarding the contracts for the first five districts and took actions, as required by law, to encourage minority firms to compete. However, GAO identified problems in Justice's evaluation of proposals that might have hampered

competition among some firms. Also, GAO found that the contracting process could have been better documented. Justice officials agreed to correct these problems in awarding the second set of contracts. GAO believes that the prices Justice obtained for the first set of contracts were reasonable.

GAO also found that under present plans, Justice and Congress will be unable to determine whether U.S. attorneys are more efficient debt collectors than private attorneys. This situation exists because U.S. attorneys do not currently gather comparable cost information necessary to evaluate the program.

Principal Findings

Competition and Minority Participation

As stipulated by the act, Justice followed federal competition requirements to identify potential contractors. The act also contains provisions requiring that "best efforts" be undertaken to (1) encourage minority firms to compete and (2) ensure that at least 10 percent of each agency's delinquent debt amounts referred to private attorneys are handled by minority law firms. Justice sought the help of professional journals and hundreds of bar associations, including associations representing minority firms, to publicize the program. For the first five pilot districts, over 1,100 law firms expressed interest in obtaining contracts. Eighty-three firms submitted proposals, of which at least 17 (20 percent) were minority-owned and controlled. Three of the first 18 contracts (17 percent) were awarded to minority firms. (See pp. 14 and 15.)

For the second five districts, over 400 law firms expressed interest in the program. Thirty-two firms have submitted proposals, none of which are minority firms. However, Justice plans to replace one of the five districts because of an expected court decision that would eliminate the need for private attorney litigation services in that district. Conceivably, minority firms could be awarded contracts for the replacement district. Referring 10 percent of each agency's delinquent debts to minority firms may not be possible because some agencies may have no minority firms handling their cases. (See pp. 16 and 17.)

Contract Selection

Justice's contract selection process generally followed federal acquisition regulations and the requirements called for in the act. However,

Justice officials made some mistakes that eliminated two potentially qualified firms from competition. Justice also provided its reviewers with limited guidance for evaluating technical proposals and reviewers might have given some firms more credit for their automated capability than Justice originally intended. In addition, GAO found that Justice did not follow federal acquisition regulations that require full documentation of the contract process. Without adequate documentation, contracting decisions cannot be fully supported. Justice officials agreed to correct these problems during the contracting process for the second five districts. (See p. 18.)

Fees

Section 1 of the act contains two provisions intended to ensure that the government pays reasonable prices for private attorneys' efforts to collect delinquent debts. The first provision states that for debts with similar characteristics, the fees charged should not exceed the fees charged to private sector clients in the same district. The second provision requires Justice to follow federal acquisition regulations in awarding contracts. (See p. 14.)

Justice followed federal acquisition regulations to award contracts for the first five pilot districts. The regulations require that a minimum of two competitive offers be received to provide assurance that prices are reasonable. In fact, Justice received at least eight offers in each of the five districts. Justice program officials also said that they did some informal price checks on private sector prices and believed contract prices were reasonable. GAO did a limited market survey for the five districts, which showed that the contract prices Justice obtained were less than, or within the range of, prices for similar services. (See p. 22.)

Management Information

In authorizing the private attorney pilot program, Congress wanted to reduce U.S. attorney office debt case backlogs and to cost-effectively collect delinquent nontax debts. To assess program effectiveness, Justice and Congress need cost and results information for both private and U.S. attorneys that is complete and comparable. (See p. 26.)

Justice will collect costs of private attorney debt collection efforts but does not currently collect comparable cost information for the U.S. attorney offices participating in the program. U.S. attorney offices routinely report to Justice headquarters estimates of their personnel costs devoted to debt collection operations. However, these estimates cover all types of debt cases, including criminal fines and tax debts, which will

not be referred to private attorneys. The estimates do not separately identify those U.S. attorney personnel that work on the same type of debt cases that private attorneys will handle. (See p. 27.)

GAO believes that for the U.S. attorney offices participating in the pilot program, Justice could modify its reporting system to separately estimate the costs of U.S. attorney office personnel devoted to cases like those being referred to private attorneys. Justice officials said there was merit in collecting U.S. attorney office cost information for the pilot program. However, they told GAO that because of the autonomy of U.S. attorneys, they decided not to collect this information. (See p. 28.)

GAO also found that Justice's planned management reports were (1) giving U.S. attorney offices credit for collections on cases where they did no work, and (2) lumping collections from different types of cases into reports that compare the results achieved by private versus U.S. attorney offices. Justice officials agreed to correct these reporting problems. (See p. 29.)

Recommendations

Recommendations to the Attorney General

GAO is making several recommendations to improve the contracting process and to enhance Justice's and Congress' ability to decide whether using private attorneys is an effective solution to litigating and collecting delinquent debts. (See pp. 25 and 30.)

Agency Comments

GAO discussed the contents of the report with Justice officials. They concurred with the report, and their comments have been included where appropriate.

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Abbreviations

CIF	Central Intake Facility
FAR	Federal Acquisition Regulation
FmHA	Farmers Home Administration
OMB	The Office of Management and Budget
RFP	Request for Proposal

Introduction

Over the last several years, the nonpayment of nontax debts owed the federal government has been a problem. Most of these debts involve loans approved for farm, housing, education, disaster, and small business programs. The Office of Management and Budget (OMB) reported that as of September 30, 1988, federal agencies were owed about $252 billion in nontax debts; about $32 billion (13 percent) of this debt was delinquent. Many debtors will not pay until they are threatened with legal action or sued. As of September 30, 1988, about $7.6 billion in delinquent debts involving over 84,000 accounts had been referred to the Department of Justice for collection.

Within the Department of Justice, the 94 U.S. attorney offices are responsible for handling the majority of delinquent debt cases. Each office has a debt collection unit headed by an assistant U.S. attorney and may be staffed with a paralegal and several collection clerks. For the most part, the units handle small dollar delinquent debt cases such as student loans; they also collect taxes, fines, penalties, and forfeitures. Other attorneys within the U.S. attorney offices handle high dollar cases dealing with, among other things, foreclosures and bankruptcies.

To assist the Department of Justice in litigating and collecting the high volume of delinquent debt cases, the Debt Collection Amendments Act of 1986 (Public Law 99-578) was enacted on October 28, 1986. The act authorizes the Attorney General, under a pilot program, to contract with private attorneys to collect nontax delinquent debts. The goals of the pilot program are to (1) reduce the backlog of debt collection cases at U.S. attorney offices and (2) cost-effectively collect delinquent nontax debts owed to the federal government.

For the pilot program, Justice is to award contracts to private law firms in 5 to 10 federal judicial districts. The pilot program is to end on September 1, 1990. The law requires that we (1) review the Attorney General's action to comply with the law's contracting provisions and (2) evaluate collection results. This report focuses on Justice's compliance with the law's contracting provisions and its plans to collect information needed to evaluate program results. We plan to evaluate collection results in a later report.

Pilot Program Description

A Deputy Assistant Attorney General for Debt Collection Management, located in the Justice Management Division at Justice headquarters, is responsible for managing the pilot program and overseeing program

results. In addition, the Director of Procurement Services and his contracting staff, also located in the Justice Management Division, provide technical support for awarding contracts.

One of the first steps Justice took in establishing the pilot program was to award a contract for a central intake facility (CIF). The CIF is designed to provide automated management information and administrative support to the program manager and the participating U.S. attorney offices and private attorneys. From about October 1986 through September 1987, Justice officials reviewed various automated systems to identify whether any systems existed that would meet their needs. In October 1987, Justice requested proposals from five small minority business firms to compete for the CIF contract and in November 1987, they selected a firm. However, an ultimately unsuccessful bid protest delayed the contract award until April 19, 1988.

For the pilot program, Justice will be using private attorneys to help collect debts for several departments and agencies including the Departments of Education, Veterans Affairs, Agriculture, and Housing and Urban Development, and the Small Business Administration. These agencies account for most of the nontax debts referred to Justice. OMB reported that as of September 30, 1988, these agencies had about $5.8 billion in debts at Justice. This represents 76 percent of all agency-referred debts at Justice.

Justice does not plan to include certain debts in the pilot program and the U.S. attorneys are retaining sole responsibility for them. These include agency-referred debts over $25,000, criminal fines, tax, social security, and tariff debts. According to the program manager, debtors are more likely to contest large dollar debts. Therefore, before sending cases over $25,000 to private attorneys, he said that they want to monitor private attorney collection activities to ensure that fair practices are followed. He also said that criminal fines will not be sent to private attorneys until Justice decides how to protect sensitive case information. The Department of Justice interpreted the act as excluding tax, social security, and tariff debts from referral to private attorneys. However, in May 1989, Justice asked GAO for an opinion regarding this matter. We will issue our opinion shortly.

Status of Private Attorney Contracts

Justice decided to implement the pilot program in two phases with five pilot districts in each phase. From April to July 1988, Justice awarded 20 contracts to 18 private law firms for the first five pilot districts (four

contracts in each district).[1] The first five pilot districts selected were eastern New York, southern Florida, southern Texas, eastern Michigan, and central California. As of April 1989, Justice was in the process of awarding 20 additional contracts in five more districts to complete the program authorized by the act. The second five districts selected were middle Georgia, middle Florida, western Louisiana, New Jersey, and the District of Columbia. According to Justice officials, the first five districts and the District of Columbia were chosen because of their backlogs of delinquent debt cases, and the others were chosen because of their backlogs of foreclosure cases from the Department of Agriculture's Farmers Home Administration (FmHA).

Justice plans to award contracts in four of the second five districts by August 1989. Program officials said on May 19, 1989, that they dropped middle Georgia from the pilot program because FmHA advised them that there was a federal court ruling expected that would allow the government to foreclose in the state of Georgia without going through the courts. As a result, there would be no need to contract with private attorneys for litigation services in that district. Officials said that they were working with FmHA to select a replacement district and they expected to award contracts for the replacement district by November 1989.

Program Behind Schedule

Implementation of the pilot program has been delayed 7 months. Implementation plans for the pilot program called for full operation in the first five districts by February 1989. According to Justice officials, as of May 1989, eastern Michigan, eastern New York, and southern Texas were operational. These three districts began operations in October 1988, March 1989, and May 1989, respectively. Justice plans to have the other two districts operational by September 1989. Officials also said that full operation in the second five districts was originally scheduled for September 1989. However, because of the 7-month delay in implementing the first five districts, the schedule has moved to March 1990.

Since the full program will be operational only a short time before the legislation expires on September 1, 1990, the program manager said that

[1] One firm won three contracts (one contract in each of three districts). In November 1988, this firm notified Justice that they were closing their central California office and reorganizing operations in their southern Florida office. Because of these changes, the firm told Justice they could not do the contract work in these two locations. As of May 1989, Justice had cancelled these two contracts. Thus for the first five districts Justice will only have 18 contracts.

Justice is developing proposed legislation to extend the program to September 1, 1992. He said that a 2-year extension was needed to give Justice sufficient experience to evaluate collection results.

One reason the program has fallen behind schedule is that the CIF contractor had to develop software, including automated data bases for each of the pilot districts. The data bases contain information needed to produce documents for collecting debts. Justice officials said that they and the CIF contractor underestimated the time needed to accomplish these tasks when estimates were made about program implementation. Officials estimated that completing all the software and the data bases resulted in about a 5-month delay in the implementation schedule. Another reason the program has fallen behind is the bid protest regarding the CIF contract. According to department officials, the protest delayed the start of the CIF operations by about 2 months, from June to August 1988.

Objectives, Scope, and Methodology

Section 6 of the act requires that we evaluate the (1) extent of competition in contracting with privateattorneys, (2) the Attorney General's efforts to contract with firms owned and controlled by socially and economically disadvantaged individuals (minority firms),[2] (3) reasonableness of contract prices, and (4) results of the debt collection pilot program. For this report, we concentrated our work on the first three objectives. We plan to issue another report on the collection results later when more data become available. However, we did evaluate Justice's efforts to collect management information needed to assess collection results. Our work was done from August 1988 through May 1989 and was done in accordance with generally accepted government auditing standards.

In the Washington, D.C., metropolitan area, we visited the Justice Management Division, the Executive Office for U.S. Attorneys, and the CIF contractor. We also visited the U.S. attorney office and 4 private law firms that were awarded contracts in eastern Michigan. We visited this district because it was the first pilot district to become operational.

[2] The act defines socially and economically disadvantaged businesses as firms which are at least 51-percent owned and controlled by individuals from minority groups such as Black, Hispanic, Native, and Asian Pacific Americans.

To evaluate the extent of competition in contracting with private attorneys, we interviewed Justice officials and analyzed information on Justice's efforts to publicize the program. We also reviewed contract files to evaluate the selection process used for the contracts awarded for the first five districts. Finally, we reviewed documentation showing changes made to the contract selection process for the second five pilot districts. We did not review contracts for the second five pilot districts because they had not been awarded. We used the Federal Acquisition Regulation (FAR) as a basis for evaluating the extent of competition because the FAR contains standards agencies are generally required to follow for assuring maximum competition.

In assessing the Attorney General's efforts to contract with minority firms, we reviewed minority outreach information supplied by Justice and contacted nearly all the firms that submitted offers to identify their minority status.

To assess the reasonableness of contract prices, we interviewed Justice contracting officials and reviewed price evaluations for the contracts that were awarded. We also reviewed changes made for evaluating contract pricing for the second five pilot districts and used the FAR standards to review Justice's price evaluations.

In addition to requiring the Department of Justice to follow the FAR, which requires competition to assure fair and reasonable prices, section 1 of the act requires that contract prices should not exceed prices charged to private sector clients for similar types of debts. To get an indication of whether contract prices were reasonable, we judgmentally selected 10 bar associations from the list of associations that Justice used to publicize the program. These bar associations assisted in referring us to a total of 15 private attorneys in the five pilot districts. We also contacted the Commercial Law League of America, an association representing private attorneys and companies involved in debt collection. From the bar associations and/or private attorneys, we obtained information on prices charged private sector clients in each of the first five districts. The Commercial Law League provided us information on prices charged nationwide. From the information obtained, we established a range of fees and compared pilot program contract prices to them.

To evaluate Justice's efforts to collect information needed to assess program results, we interviewed Justice officials and reviewed planned reports on collection results and methods for sending cases to private

and U.S. attorneys. We interviewed officials and reviewed system documentation on the internal controls available for limiting access to collection data. Also, during our visit to eastern Michigan, we observed access controls over collection data.

We used GAO's guidance to executive branch agencies in evaluating the management information being developed. This guidance is contained in a GAO publication entitled Standards for Internal Controls in the Federal Government, 1983.

Competition, Minority Participation, and Reasonableness of Attorneys' Fees

Section 1 of Public Law 99-578 directs Justice to follow the FAR in awarding contracts for the pilot program. These regulations help ensure that competition is not restricted and that prices are fair and reasonable. Also, Section 1 of the law requires that the fees paid to collect debts with similar characteristics should not exceed fees paid by private sector clients in the same district. The act also requires the Attorney General to use his best efforts to contract with minority law firms. The act contains another provision requiring that best efforts be undertaken to ensure that at least 10 percent of each agency's delinquent debt amounts referred to private attorneys are handled by minority law firms.

Justice used its best efforts to encourage minority law firms to submit contract proposals. However, we do not know whether Justice will be able to refer at least 10 percent of each agency's delinquent debts to minority law firms. Only a few contracts may be awarded to minority firms, and some agencies may have no minority firms handling their cases.

In awarding contracts for the first five districts, Justice generally followed the FAR. However, in implementing the contracting process, Justice made mistakes that eliminated two potentially qualified firms from competition. We also found that better procedures for evaluating offers, and better documentation could enhance the contracting process. Justice officials agreed to improve the contracting process for the second five districts. We also did a limited price survey for the five districts that showed that the contract prices Justice obtained were cheaper than, or within the range of, prices for similar services.

Justice Advertised the Procurement and Solicited Minority Firms

The FAR includes a number of requirements to increase competition and broaden industry participation. These requirements include publicizing proposed contract actions in the Commerce Business Daily or doing market surveys. The Commerce Business Daily, a government publication, provides industry with notice of, and information concerning, government contracting opportunities. A market survey is an attempt to identify firms capable of meeting the government's requirements. A survey may include contacting knowledgeable sources about qualified firms or publishing announcements in pertinent publications.

Section 1 of the act (31 U.S.C. 3718 (b) (1) (B)) states that

"The Attorney General shall use his best efforts to enter into contracts... with law firms owned and controlled by socially and economically disadvantaged individuals, [minority firms]..."

The act does not require the Attorney General to award contracts to minority firms, but just to use his "best efforts" to enter into contracts with them. The act's legislative history states that Justice should widely advertise its intention to retain private law firms, including notification to state, local, and minority bar associations. The legislative history also indicates that a minority bar association had proposed that the act include a provision requiring that at least 10 percent of the amounts authorized to be collected be set aside for minority firms. However, according to the former General Counsel for the House Committee on the Judiciary, Congress did not adopt the proposed language because of uncertainties associated with identifying minority firms.

In addition, Section 1 of the act (31 U.S.C. 3718 (b)(3)) states that

"Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency ... are referred to [minority] law firms..."

The legislative history indicated that Congress linked this minority provision to agency referrals because agencies routinely referred their delinquent debts directly to U.S. attorney offices. However, for the pilot program, Justice will have the agencies refer their debt cases directly to the CIF, which will then distribute the cases among the private and U.S. attorney offices. Therefore, Justice's CIF, rather than the agencies, will control cases that are sent to private attorneys.

First Five Pilot Districts

From February to October 1987, Justice took several actions to advertise the pilot program for the first five districts and seek minority participation. Justice not only advertised the solicitation in the Commerce Business Daily, but also asked publishers of legal journals to inform their readers about the program. In addition, records showed that Justice sent letters to 171 state and local bar associations, including at least 33 bar associations representing minorities. Justice asked these associations to inform their members about the program to encourage the broadest possible participation. Finally, Justice officials said that they contacted the Department's Office of Small and Disadvantaged Business

Utilization.[1] The director of this office said that he contacted 10 national organizations that represent minority interests such as the National Association for the Advancement of Colored People and the United States Hispanic Chamber of Commerce to help identify minority firms.

As a result of Justice's outreach efforts, over 1,100 law firms asked Justice to provide them with the request for proposal (RFP), which sets out the government's contracting requirements. Subsequently, 83 law firms submitted proposals. We reviewed contract files to determine why firms that originally expressed an interest did not submit proposals. Thirty-two law firms notified Justice of their reasons for declining to compete. Among the reasons they gave were (1) lack of an office in the pilot district, (2) lack of profitability, and (3) burdensome contract requirements.

When Justice solicited proposals for the first five pilot districts, the firms were not asked to identify their minority status. Justice officials said that they were primarily concerned with the minority status of firms who won contracts and did not collect information on the minority status of firms submitting proposals. Regarding minority participation, Justice required the 18 law firms that won contracts to identify their minority status. Ultimately, 3 of the 18 contracts (17 percent) were awarded to minority law firms, and 15 (83 percent) were awarded to nonminority firms.

We attempted to contact officials from the 65 firms that were not selected, to identify the firms' minority status. Of the 57 firms we were able to contact, we found that 14 (25 percent) were minority, and 43 (75 percent) were nonminority. We were unable to contact 8 firms because the firms either did not return our calls or could not be located. The 14 minority firms were not selected because (1) their proposals were technically unacceptable (8 firms), (2) their prices were higher than other technically qualified firms (5 firms), or (3) their technical score was low compared to other qualified firms (1 firm).

Second Five Pilot Districts

From September 1988 to January 1989, Justice officials again took several actions to advertise the program and seek minority participation.

[1] Section 221(k) of Public Law 95-507 amended the Small Business Act to establish an office advocating small and disadvantaged business utilization in federal agencies having procurement authority. The primary mission of this office is to increase small business participation on federal contracts.

They advertised the solicitation in the Commerce Business Daily, notified publishers of legal journals, and contacted about 210 state and local bar associations including nine bar associations representing minorities. Justice's Office of Small and Disadvantaged Business Utilization also contacted seven of the national organizations that were contacted for the first five districts. According to a Justice official, bar associations were identified from lists of state and local bar associations where the second five pilot districts are located. The information contained few organizations representing minorities. This official also said that fewer national organizations were contacted because they believed the bar associations were the best way to gain minority participation.

As a result of these outreach efforts, 431 law firms asked for Justice's RFP and 32 law firms submitted offers. Officials were not sure why Justice received fewer offers than in the first five districts. According to the program manager, one reason might be that three of the second five districts represented rural areas compared to the first five districts, which involved metropolitan areas. He believed that fewer law firms are located in these rural areas.

Justice officials said that all firms submitting offers for the second five pilot districts had to certify whether they were minority-owned and controlled. None of the 32 law firms certified that they were minority-owned and controlled.

Ten Percent Minority Referral May Not Be Possible

The act's minority referral provision requires that best efforts be undertaken to ensure that at least 10 percent of each agency's delinquent debt amounts referred to private attorneys should be referred to minority law firms. However, referring 10 percent of each agency's delinquent debts to minority firms may not be possible. Thus far, Justice has awarded three contracts to minority firms. Some agencies whose debts will be referred to private attorneys may have no minority firms handling their cases. For example, FmHA foreclosure cases will be referred to private attorneys in four districts; however, as of May 19, 1989, no minority law firms had submitted offers for these districts. As mentioned in chapter 1, Justice was in the process of selecting a district to replace one of these four districts. Conceivably, in awarding contracts for the replacement district, minority firms may receive contracts and handle FmHA foreclosure cases.

We do not know whether Justice will be able to refer at least 10 percent of each agency's delinquent debts to minority law firms. Justice may be

able to, if an agency's delinquent debt cases are in districts where minority firms are awarded contracts. The program manager said that he believes Justice used its best efforts to obtain minority participation in the program and thus, met the act's intent. We agree that Justice used its best efforts to encourage minority firms to submit contract proposals. Presently, not enough information is available to determine the extent to which minority firms will handle agency debts. We will determine this in our later report.

Contract Selection Process Problems

The FAR includes a number of requirements intended to prevent and detect restrictive procurement practices during the contract selection process. We reviewed the process Justice used to award private attorney contracts in the first five pilot districts and found that overall, the process Justice used followed the FAR and the requirements called for in the act. However, we identified several problems with how Justice implemented the process. The following sections describe the contract selection process and the problems we identified.

Contract Selection Process

At the beginning of the procurement process, Justice issued the RFP that outlined the selection requirements for winning a contract. First, private attorneys had to have, or be willing to open, an office in one of the five districts. Second, private attorneys interested in the procurement were required to submit proposals responding to questions about technical factors that would be used to identify qualified firms. The proposals could receive a maximum score of 100 points on the basis of the following technical factors:

- experience of the firm (25 points),
- qualifications of attorneys and support staff (25 points),
- collection strategy (20 points),
- automation (10 points),
- capacity to handle varying caseloads (5 points),
- management (10 points), and
- government collection experience (5 points).

Proposals from private attorneys were evaluated in two phases. In the first phase, Justice formed evaluation panels that typically consisted of one Justice Management Division representative and two U.S. attorney office representatives. Individual members reviewed and scored the proposals against the evaluation factors. The contracting officer totaled and then averaged panel members' scores to arrive at a cutoff score for each

district (typically 50 points). Of the 83 firms who submitted offers, 54 received technical scores above the cutoff score and advanced to the second evaluation phase. In the second phase of the evaluation, the 54 firms were asked to respond to questions concerning their proposals and, on the basis of the firms' responses to the questions, their technical scores could be changed. The firms presented their responses during face-to-face meetings with program management and contracting officials from the Justice Management Division and the participating U.S. attorney offices. The number of Justice and U.S. attorney staff meeting with private attorneys ranged from three to six officials.

Seven law firms in two districts were eliminated from further competition as a result of these face-to-face meetings. Justice officials concluded that these firms were deficient in such areas as experience, attorney qualifications, collection strategy, and management. The remaining 47 firms were judged technically qualified. Upon completion of these discussions, the contracting officer told these 47 firms to submit their best and final prices. Justice considered the best and final prices and technical scores to award the contracts.

Mistakes Eliminated Two Potentially Qualified Firms From Competition

The RFP required private attorneys to be located, or have plans to locate, in the particular district for which they were submitting an offer. We found that mistakes in applying this requirement to two bids eliminated potentially qualified firms from the competition. We do not know whether or not these firms would have received a contract award because their proposals were never fully evaluated.

The first case involved a private attorney who submitted a proposal for central California. This attorney was licensed to practice law in California and told Justice in the proposal that, if awarded a contract in California, she would open an office in that district. However, because this proposal contained an office address in southern Texas, Justice officials mistakenly included her proposal with other proposals from Texas, where she did not intend to apply. Justice records showed that this attorney's proposal was not fully evaluated and she was eliminated from competition in Texas because she was not licensed to practice in that state.

The contract file showed that Justice followed the FAR (part 15.1001) and notified the attorney that the proposal was technically unacceptable. Had the attorney requested reasons for being eliminated, Justice

would have been required by the FAR (part 15.1003) to explain specifically why the proposal was unacceptable. There was no record in the contract file that the attorney requested an explanation.

The second case involved a proposal from a private attorney with a return address in Virginia. The contract file showed that this attorney's proposal was not opened. Justice officials determined that the attorney was not eligible for a contract because the return address was not located in one of the five pilot districts. This attorney could have been applying for one of the locations where Justice intended to award a contract. The contract file showed that Justice informed this attorney that the office location did not meet Justice's requirement. There was no record in the contract file that the attorney raised any question regarding the Justice decision. We do not know in which district the attorney was proposing to do business because Justice officials could not locate the proposal.

We discussed these two cases with Justice officials who attributed these problems to mistakes and confusion among contracting and selecting officials regarding interpretations of the location requirement. Regarding the second five pilot districts, officials agreed to more carefully review proposals so that firms would not be mistakenly eliminated from competition. Justice officials also said that for the second five pilot districts, the location requirement has been redefined so that to be eligible to compete, private attorneys must do at least 20 percent of their business in one of the second five districts. Officials explained that selecting officials will have to closely review proposals to determine whether private attorneys meet this location requirement before eliminating attorneys from competition.

Guidance on Evaluating Offers Needed Improvement

Justice notified potential contractors of the technical selection requirements for winning a contract and the importance of each factor. Officials said, however, that the selection panels were given little guidance on how to evaluate the proposals against the technical selection criteria. Our review showed that the selection panels might have given greater weight to some technical factors than was contained in the selection requirements.

For instance, the automation factor totaled 10 points out of a possible total technical score of 100 points. Thus, the automation capabilities of the competing private attorneys were supposed to account for a maximum 10 percent of the total technical evaluation score. Our review of

contract files in southern Florida showed that selection panel members considered automation again in scoring other technical areas. These areas included management (10 points) and caseload capacity (5 points). This condition occurred in 4 of the 19 firms whose responses were initially evaluated by the selection panel for southern Florida.

After reviewing these files, we discussed this issue with Justice officials and explained to them that firms with extensive automation may have a competitive advantage greater than intended by the technical requirements. The program manager agreed with our observation and for the second five pilot districts, selection panels were given specific guidance on how to score technical proposals.

Better Documentation Needed

Part 4 of the FAR requires that each step of the contracting process be fully documented. As mentioned previously, Justice could not locate documentation supporting its decision to eliminate a private attorney from Virginia from competing for a contract. In addition, our review of the contract files showed that, when the panel of Justice and U.S. attorney officials held face-to-face meetings with potential contractors, there was a lack of documentation supporting adjustments to technical scores. In some cases during these face-to-face meetings, scores were changed substantially. The 47 firms judged technically qualified submitted a total of 49 offers. Scores for 32 offers were increased 1 to 10 points, and scores for 9 offers were increased 11 to 23 points. Scores for the remaining 8 offers were not changed.

The contract files did not contain the revised scores for each of the Justice officials on the panel. The program manager said that the documentation we reviewed showing the increased scores was a summary of individual responses. He said that all Justice representatives holding the face-to-face meetings did individually score firms' responses but the individual scores were not maintained. Justice officials agreed that better documentation was needed to show that any technical score revisions resulted from the panel process rather than just one individual revising the score. They said that during the selection process for the second five pilot districts, they would completely document any changes to scores.

Most Contracts Awarded to Lowest Bidders

With few exceptions, most contracts for the first five pilot districts were awarded to qualified firms who submitted the lowest prices. The Justice RFP asked firms to submit prices expressed as a contingent fee percent of the delinquent debt amount collected. Firms were asked to submit proposed contingency fees for debts that businesses and individuals owed the government. Firms were told that the evaluation of prices would include prices submitted on all individual debts and business debts over $2,000. According to Justice officials, contingency fees for business debts below $2,000 were not evaluated because they believed the number and amount of debts owed in this category were minimal.

Justice also asked firms to submit prices for foreclosure and bankruptcy cases but told them that their prices for these services would not be considered for contract awards. The program manager said that Justice does not plan to have the contractors for the first five pilot districts do any foreclosure work because these cases are not backlogged in these districts. He said that bankruptcy cases will not be handled by contractors in the first five districts because the CIF contractor has not yet developed the automated system to monitor and support bankruptcy cases.

Our review of contingency fees that were evaluated, showed that 16 of the 20 contracts were awarded to qualified firms who submitted the lowest prices from their respective districts. Four contracts (three in eastern Michigan and one in eastern New York) were awarded to firms that did not submit the lowest price. In these cases, the contracting officer determined that these four offers were technically superior to the offers of the lowest bidders in their respective districts. The three Michigan firms received technical scores ranging from 84 to 89 points, compared to the three low price bidders whose technical scores ranged from 62 to 69 points. The New York firm scored 94 points compared to a lower priced offer that scored 79 points. The three Michigan firms that were awarded contracts submitted prices that were fifth, sixth, and seventh highest of the nine qualified firms. The New York firm's price was fifth highest of the 14 qualified firms.

The FAR allows agencies to award contracts to other than the lowest bidder when a firm provides a greater value in terms of performance. Justice officials believed that these four firms' higher technical scores justified the award. Officials believed those selected would provide the most effective service because of their greater debt collection experience.

GAO's Limited Price Check Showed Contract Prices Obtained Were Lower or Within Market Range

Department officials said that contract prices for the first five districts were reasonable and they did not do a market survey because many qualified firms competed. Justice program officials also believed that contract prices were reasonable because they said they did some informal price checks by consulting with officials from the Commercial Law League on prices charged in the private sector.

In total, Justice identified 49 offers as being technically qualified. The following number of offers were received for each district: 14 for eastern New York, 9 for southern Florida, 9 for eastern Michigan, 8 for southern Texas, and 9 for central California. The FAR states that when there are at least two or more qualified parties competing, competition provides assurance that reasonable prices were offered. Thus, according to the FAR, no additional price evaluations are required.

To see whether contract prices seemed reasonable, we surveyed 10 state or local bar associations, 2 to 5 private attorneys in each of the first pilot districts, and the Commercial Law League. From the information obtained, we established a range of fees and compared pilot program contract prices to them. We found that the contract fees Justice obtained did not exceed the range of fees furnished to us. For example, the contract fee percentages for delinquent debts owed by individuals were less than, or within the range of, fees we were furnished. Table 3.1 shows this comparison.

Table 3.1: Comparison of Contract Fees to Fees Furnished to GAO

District	Range of contract fees	Range of fees furnished to GAO
Eastern Michigan	28 to 33%	25 to 50%
Eastern New York	20 to 25%	25 to 33%
Southern Florida	19 to 25%	25 to 40%
Southern Texas	25 to 30%	25 to 50%
Central California	15 to 25%	25 to 40%

Changes to Price Evaluations for the Second Five Pilot Districts

Justice officials said that they have changed the way price proposals will be evaluated for the second five pilot districts. Justice told the firms to submit (1) contingency fee percentages for delinquent debts and (2) bankruptcy hourly rates to be paid in the event persons owing delinquent debts later file for bankruptcy. In addition, in four districts, Justice asked firms to submit foreclosure case prices. Justice told the firms

to quote prices on estimated workload for each case type. The contracting officer said that the total package price will be evaluated in awarding contracts to qualified firms.

In addition, Justice has revised its procedure for awarding contracts for the second five pilot districts so that awards have to go to technically qualified firms that submit the lowest overall bids. In awarding contracts for the first five districts, Justice had a procedure that would give greater weight to superior technical proposals. That is, firms that submitted superior technical proposals but did not submit the lowest overall price, could receive a contract. The procedure was revised because the Justice Management Division's Office of General Counsel was concerned that application of the prior procedure could be potentially confusing and generate bid protests.

Justice received 32 offers from private attorneys for the second five pilot districts. The following number of offers were received for each district: 5 for New Jersey, 5 for middle Florida, 4 for middle Georgia, 12 for western Louisiana, and 6 for the District of Columbia. As of May 3, 1989, the contracting officer said that six firms (one from New Jersey, one from Georgia, two from Louisiana, and two from the District of Columbia) were not technically qualified to compete for the contracts because their technical scores were 60 points or lower. Because Justice received fewer offers compared to the first five pilot districts, the contracting officer also said that Justice plans to do a market survey to ensure that reasonable contract prices are obtained.

Conclusions

Justice's efforts to publicize its contracting efforts was done in accordance with federal acquisition requirements designed to ensure competition. In addition, Justice took actions, as required by the act, to encourage minority participation. However, because only a small number of contracts may be awarded to minority firms, referring 10 percent of each agency's delinquent debt amounts, to these firms may not be possible.

Justice's contract selection process was generally done in accordance with federal regulations. However, Justice mistakenly eliminated two potentially qualified firms from competition. Justice officials provided limited guidance for panels in assessing the technical qualifications of firms and some firms may have been given higher scores for their automated capabilities than intended. We have no way of knowing whether or not this affected the contract awards because the technical scores

were based on the panel members' judgments about the firms' technical capabilities. Justice officials also did not document the contracting process as well as they could have. Justice officials said they plan to address these contracting problems for the second five pilot districts.

Based on the extent of competition and our limited market survey, the contract prices Justice obtained for the first five pilot districts seem reasonable. Because Justice has received fewer qualified offers for each of the second five districts, the contracting officer said that she also plans to do a market survey to ensure reasonable prices.

Recommendations

To ensure that Justice complies with the FAR for the second set of pilot districts, we recommend that the Attorney General direct the head of the Procurement Services Staff to (1) fully evaluate all proposals before eliminating them from competition and (2) fully document the contracting process.

Agency Comments

Justice officials agreed with our recommendations.

Better Information Needed for Program Evaluation

In authorizing the pilot program, Congress wanted to achieve two objectives. First, Congress wanted to reduce debt case backlogs caused by U.S. attorney offices devoting their resources to higher enforcement priorities. Second, by using private attorneys, Congress wanted to improve the government's ability to cost effectively collect delinquent debts. In order to assess whether these two objectives are achieved, Justice and Congress need complete and comparable results information for private and U.S. attorneys.

Justice has established a system for centrally managing the program. However, we found that Justice needs to improve its management information so a more informed decision can be made about program continuation or expansion. Specifically, Justice needs to develop

- information on debt collection costs at participating U.S. attorney offices, and
- reports showing collection results on comparable types of cases.

Justice Has Established a Central Management System for the Pilot Program

Justice officials recognized that to effectively manage and evaluate the pilot program, they needed a more uniform and accurate process for tracking debts referred to private attorneys and the U.S. attorney offices in the pilot districts, and for compiling statistics necessary to evaluate program results. As a result, Justice established the CIF.

Justice officials believe that the CIF concept will be more effective than the way cases are normally referred to U.S. attorney offices. Normally, agencies refer debts for legal action directly to the U.S. attorney office in the district where the debtor resides. Justice officials explained that the practice of referring cases from agencies directly to U.S. attorney offices contributed to a lack of uniformity in screening and accepting cases for litigation and collection. Also, because there was no control over the referral process, Justice never had accurate and current data on the number or value of debts sent to it. Justice officials said that many agencies do not know the number and value of debts their own individual units refer to Justice and the CIF would provide agency headquarters overall information on their referrals. Justice officials believe that if the CIF concept proves successful in the pilot program, it could be expanded to the other districts.

The CIF supports the pilot program from the time cases are referred by agencies through the generation of collection results information. The CIF screens agency-referred debts to determine whether the information

is complete. For example, incomplete information includes lack of documentation on the debt or missing debtor name, address, or financial information. The CIF allows the referring agency time to provide the missing data before returning the debt to the agency.

After accepting agency debts, the CIF bills debtors and gives them time to pay. The CIF notifies the debtor that if the debt is not paid it will be referred to private or U.S. attorneys for legal action. If payment is not made, the CIF is supposed to send debts, on a rotating basis, to each of the private attorneys and the U.S. attorney office in each pilot district. In addition to referring delinquent debts on a rotating basis, the CIF will also initially refer to private attorneys those cases that were backlogged at the U.S. attorney office. According to Justice officials, the backlogs occurred because of large caseloads and higher priority work.

Once the private attorneys and the U.S. attorneys receive a case, they can send a demand letter telling the debtor that they will sue unless paid. After allowing debtors time to respond, the private attorneys and U.S. attorneys are to begin legal action in accordance with state laws to collect the debt. This legal action includes obtaining court judgments, garnishing wages and bank accounts, and seizing assets. The CIF provides an automated capability to produce all the legal documents necessary to recover the debts in federal court.

Debtors may either agree to pay in full or enter into an installment payment plan. The CIF provides private attorneys and U.S. attorney offices with follow-up reports if debtors fail to make payments. Also, the CIF receives and deposits all payments and forwards financial information to the Justice Management Division, which notifies the referring agencies of collections on their cases. Finally, the CIF prepares payment vouchers that the Justice Management Division approves for payment to private attorneys, and generates management reports that are supposed to compare the effectiveness of private and U.S. attorneys.

U.S. Attorney Costs Not Being Collected

Justice will collect costs of private attorney debt collection efforts but does not currently gather comparable cost information for the participating U.S. attorney offices. Without comparable cost information from U.S. attorney offices, Justice will not be able to determine whether U.S. attorneys are more efficient debt collectors than private attorneys. Moreover, Congress will not be able to determine whether private attorneys are a cost-effective solution to collecting government debts.

U.S. attorneys do not account for the personnel costs of delinquent debt cases. However, they do estimate the number of personnel used for debt collection activities. The Executive Office for U.S. Attorneys collects this information on a "Monthly Resource Summary Report" (USA-5). The form asks U.S. attorneys to estimate the number of personnel used in certain work categories. These categories include management and administration, criminal and civil litigation, and debt collection.

While the USA-5 system captures estimated U.S. attorney resources used for all debt collection efforts, it does not segregate resources for such different types of debt collection efforts as delinquent debts, criminal fines, or tax debts. As a result, for the pilot districts, information is not being captured to separately identify those U.S. attorney personnel that work on the same types of debt cases as the private attorneys. The USA-5 form could be changed to ask U.S. attorneys in the pilot districts to estimate the time personnel spend on comparable delinquent debt cases handled by private firms. Alternatively, Justice could develop a special form to collect this information from the pilot districts. Justice officials said there was merit in collecting U.S. attorney costs for the pilot program. They said that U.S. attorneys operate with a great deal of independence from Justice headquarters. In order to maintain the needed U.S. attorney cooperation for the pilot program, Justice officials said they decided against asking them to capture this information.

Other indirect costs such as materials, office space, and equipment should be considered in evaluating whether U.S. attorneys are as efficient as private attorneys in collecting debts. U.S. attorneys also do not account for these costs by the various types of debt collection efforts such as delinquent debts, criminal fines, or tax debts. According to an official from the Executive Office for U.S. Attorneys, the office has established for budgeting purposes factors that could be used to calculate indirect costs. These factors, which are expressed as percentages of personnel costs, were developed from analyses of historical data on indirect costs. The official explained that in preparing budgets, the percentages are applied to personnel costs in program areas such as civil litigation to arrive at an estimate of indirect costs. This method could also be used to estimate the indirect U.S. attorney office pilot program costs if U.S. attorney offices segregate the personnel costs for the cases like those on which private attorneys will work.

Management Reports Do Not Show Comparable Performance Results

We also found that the Justice was planning to generate several management reports to compare collection results of private and U.S. attorneys. While these reports will help compare private and U.S. attorney performance, we found Justice was going to lump collection results from different types of cases and results from CIF collections into these performance reports, which could result in misleading information.

For example, Justice planned to include collection results on backlogged cases in reports comparing private attorney versus U.S. attorney office collection results. Generally, these cases will be handled by private attorneys. According to Justice officials, backlogged cases may not be comparable to new cases because some of the backlogged cases may be more difficult to collect. For example, backlogged cases include debts where past U.S. attorney collection attempts were unsuccessful. Justice was also crediting U.S. attorney collection results with partial or full payments received from CIF collection activities. In addition, U.S. attorneys will handle all cases where the CIF receives partial payments. Justice officials were going to combine collection results from these cases with U.S. attorney office results and compare them to private attorney collections.

Officials explained that they had not fully developed all their management information report needs at the time we identified these problems. They agreed to correct the problems we identified. They said they would segregate cases that are not comparable from the performance reports of the private attorneys and the U.S. attorney offices. Also, U.S. attorney office performance reports would not include collections made by the CIF.

Conclusions

The Department of Justice and Congress could better decide on program continuation or expansion if Justice were to develop complete and comparable information about program costs and results. Justice's planned management reports comparing collections among private attorneys and U.S. attorneys could be misleading because the reports would compare collections on cases which are not comparable. Justice agreed to revise the management reports to show results which are comparable. However, Justice is not currently capturing comparable U.S. attorney debt collection cost information. This information is needed to decide whether private attorneys are an effective solution to litigating and collecting delinquent debts.

Recommendations

We recommend that the Attorney General direct the

- U.S. attorney offices participating in the pilot program to modify their reporting system to separately estimate the number of personnel that work on the same types of debt cases that the private attorneys will be handling;
- Executive Office for the U.S. Attorneys to use the refined information to estimate the U.S. attorney office debt collection indirect costs; and
- Program manager to revise program results reports to show results on cases that are comparable.

Agency Comments

Justice officials concurred with our recommendations.

Major Contributors to This Report

General Government Division, Washington, D.C.

John H. Anderson, Jr., Assistant Director, Administration of Justice Issues
John Noto, Project Manager
Charlesetta Graham, Deputy Project Manager
Scott Derrick, Evaluator
Anna T. LittleJohn, Secretary

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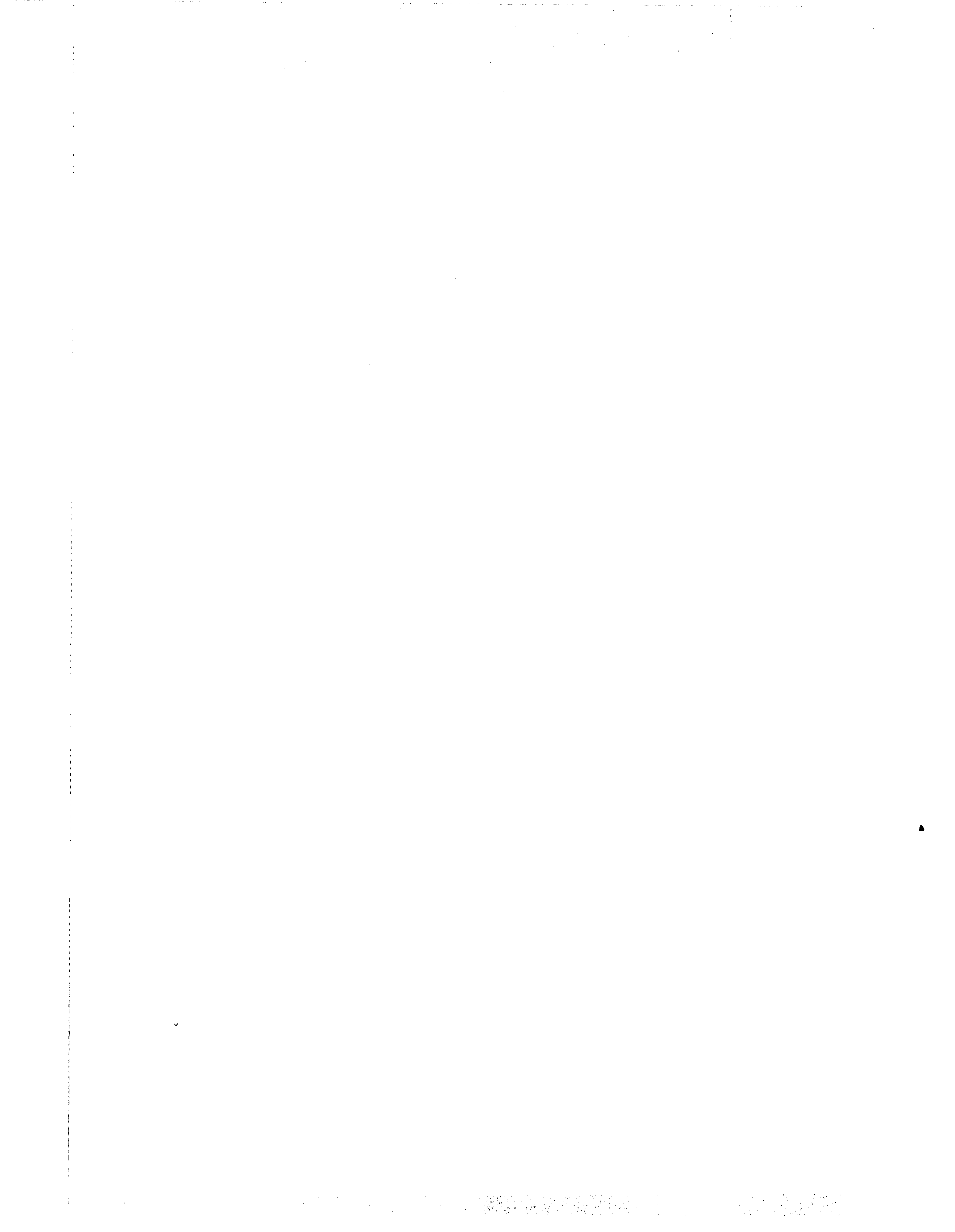

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