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HOUSEHOLD GOODS: PACKING AND CONTAINERIZATION CONTRACT
AT FORT GEORGE G MEADE MARYLAND(U) GENERAL ACCOUNTING
OFFICE WASHINGTON DC NATIONAL SECURITY AND
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United States General Accounting Office

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Report to the Honorable
Helen Delich Bentley, House of
Representatives

August 1993

HOUSEHOLD GOODS

Packing and Containerization Contract at Fort George G. Meade, Md.



93-20532



GAO/NSIAD-93-224

National Security and
International Affairs Division

B-250887

August 23, 1993

The Honorable Helen Delich Bentley
House of Representatives

Dear Ms. Bentley:

In response to your request, we reviewed the award of a packing and containerization contract at Fort George G. Meade, Maryland. Questions were raised by an unsuccessful bidder about the Fort Meade Directorate of Contracting awarding this contract to a particular contractor and then continuing to use the contractor after learning that the contractor may have lacked necessary Interstate Commerce Commission (ICC) operating authorization.

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Background

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Contracting officials at military bases and Department of Defense (DOD) installations throughout the country award contracts to moving companies to pack, crate, ship, store, and unpack personal property belonging to military and DOD personnel. These contracts, called packing and containerization or Direct Procurement Method (DPM) contracts, are governed by the provisions of the Federal Acquisition Regulation, the Defense Federal Acquisition Regulation Supplement, and DOD's Personal Property Traffic Management Regulation (DOD 4500.34-R).

Three contracts were awarded by the Fort Meade contracting officer in December 1990. One contract was for outbound service, which was for the packing, crating, and local transportation of household goods and unaccompanied baggage moving from the Fort Meade area. The second contract was for inbound service, which was for the transportation, uncrating, and unpacking of shipments coming into the Fort Meade area. The third contract was for local move service (i.e., the packing, unpacking, crating, uncrating, and transportation of shipments both originating and terminating in the Fort Meade area). Each contract was for a 1-year period, beginning January 1, 1991, with options for two 1-year extensions. Prior to the bid opening, prospective bidders asked the Directorate of Contracting a number of questions about the need to have authorization from ICC, which regulates carriers moving shipments in interstate commerce, to be considered responsive contractors for these contracts. The solicitation stipulated that prospective contractors engaged in interstate commerce would have to be approved and hold authorization granted by ICC, or if engaged in intrastate transportation, a certificate issued by the appropriate

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state regulatory body. In response to the questions from the prospective bidders, the contracting officer at first stated that ICC authorization was not required for outbound and inbound service but might be required for local moves. Later, the officer responded that any interstate shipment would require authorization from ICC or another regulatory body and that certification that the bidder did not have ICC authorization for local moves would render the bid for that service nonresponsive. Although DPM contracts require contractors to move shipments only in local areas, such as the Fort Meade area, the shipments come from or go to areas beyond the local areas as part of a continuous move under a series of contracts with individual DPM contractors and freight carriers. Thus, such shipments often move across state lines.

The Fort Meade solicitation, which was issued on November 16, 1990, described the planned outbound, inbound, and local move shipment requirements. Although the prospective bidders for the outbound and inbound contracts were not expected to provide any transportation outside the immediate Fort Meade area, they were aware that shipments could or might eventually be moved as part of a continuous move to other states or overseas. Moreover, under the local move contract, where there would be no other prior or subsequent transportation, bidders were advised that shipments could move both within the Fort Meade area and to and from areas not exceeding 50 miles from the specified area. Thus, local move contractors would be expected to move shipments not only within Maryland but also to and from nearby places in Virginia, West Virginia, Pennsylvania, Delaware, and the District of Columbia.

An unsuccessful bidder complained to the contracting officer that the winning bidder for the local move contract did not have adequate ICC authorization to perform all the services requested, specifically, the ability to transport shipments to and from West Virginia. Moreover, it said that ICC had granted authority to the winning bidder to serve other areas called for under the solicitation on the basis of a misleading certificate of support provided by the Fort Meade transportation officer.

Although this protest was denied by the contracting officer, the unsuccessful bidder asked a federal court to vacate the winning bidder's ICC authorization used to support its bid and win the Fort Meade contract. In January 1992, the court issued a ruling vacating the emergency temporary and temporary authorities given the winning bidder earlier. However, by this time, the winning bidder had been granted other

authorization from ICC that brought its transportation operations fully in compliance with ICC operating regulations.

With this court ruling, the unsuccessful bidder wrote the contracting officer demanding that the winning bidder be put in default for failure to maintain its ICC operating authority. The contracting officer decided not to terminate the entire contract but did terminate that portion covering interstate moves. In December 1992, he exercised the second option to extend the contract through 1993.

Results in Brief

Although the winning bidder's operating authorization was later vacated by a court order, the Fort Meade contracting officer's award was neither wrong nor otherwise improper. The solicitation directed that the winning bidder have ICC authorization to the extent it engaged in interstate commerce, and the contracting officer confirmed the contractor's authorization with ICC at that time. Our procurement decisions have held that contracting officers are not required to question the validity of a required license or permit that is valid on its face, absent some appropriate indication that it may not be valid.

The court's decision did raise questions about the procedure by which the winning bidder was awarded the contract. Although the decision did not suggest that there was fraudulent activity, it did suggest that the transportation officer's certificate of support accompanying the winner's application for ICC authorization was misleading since it implied that DOD had an immediate need for the winner's services. Also, contract files showed that by not obtaining DOD's approval or concurrence for the certificate of support, the transportation officer failed to comply with DOD's transportation regulations requiring such approval and/or concurrence.

The solicitation language regarding the need for ICC authorization for all three DPM contracts was unclear and confusing to the prospective bidders, the contracting officer, and the Fort Meade legal office. The solicitation did not state that shipments would, in fact, move in interstate commerce, only that if they did, ICC authorization would be required.

Information provided to us by ICC, however, indicates that any company required to provide DPM service across state lines, or even within a single state where the shipments are an integral part of an interstate move, must have ICC authorization unless the transportation is within a commercial

zone. The Fort Meade contracting officer should have stipulated that to avoid the confusion.

In continuing the contract with the winning bidder after a court vacated the earlier ICC authorization, the contracting officer acted within his discretion. When the court made its determination, the winning bidder was responsibly performing the contract with proper ICC authorization. Accordingly, there was no necessity for the contracting officer to terminate the contract and not exercise the option for 1993.

Our analysis is described in more detail in appendix I.

Scope and Methodology

To review the award of the packing and containerization contract, we reviewed the official contract files and met with and discussed pertinent matters with officials of the Fort Meade contracting office (including the present and past contracting officers), its transportation office, and its Staff Judge Advocate General office. We also discussed the case with the ICC Office of General Counsel and the ICC regional office in Philadelphia, Pennsylvania, and requested clarification in writing from ICC concerning the necessity for ICC operating authority on the subject and in similar situations.

We also met with officials from the Military Traffic Management Command—DOD's worldwide personal property traffic manager—and officials in contracting and transportation offices from other military installations that have awarded and are using contracts similar to the ones at Fort Meade. These officials were at Aberdeen Proving Ground, Maryland; Fort Detrick, Maryland; Naval Air Station, Patuxent River, Maryland; U.S. Naval Academy, Annapolis, Maryland; and Dover Air Force Base, Delaware. We also discussed this contract and ICC operating authority matters with the principal complainant in this case.

We conducted our review from August 1992 through March 1993 in accordance with generally accepted government auditing standards.

We are providing copies of this report to the Secretaries of Defense, the Army, the Navy, and the Air Force, and the Commander of the Military Traffic Management Command. Copies will also be made available to other interested parties upon request.

During our review, we found that other contracting officers in the Washington/Baltimore area were awarding DPM contracts to contractors that did not appear to have proper ICC operating authorization. Because this situation locally may be indicative of a far greater problem DOD-wide, we are today, in a separate letter, calling this matter to the attention of the Secretary of Defense for action deemed appropriate.

Please contact me on (202) 512-5140 if you or your staff have any questions concerning this report. Major contributors to this report are listed in appendix II.

Sincerely yours,

A handwritten signature in black ink, reading "Mark E. Gebicke". The signature is written in a cursive style with a large, stylized "M" and "G".

Mark E. Gebicke
Director,
Military Operations and Capabilities Issues

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Abbreviations

DOD	Department of Defense
DPM	Direct Procurement Method
ICC	Interstate Commerce Commission
MTMC	Military Traffic Management Command

Actions of the Fort Meade Contracting Officer Appear Proper and Reasonable

The Fort George G. Meade, Maryland, Directorate of Contracting issued a solicitation (sealed bid, number DAKF27-90-B-0110) on November 16, 1990, for Direct Procurement Method (DPM) handling of household goods and unaccompanied baggage shipments moving in the Fort Meade area. It requested bids on various types of service, including outbound service, inbound service, and intra-area (or local move service) in the Fort Meade area. The procurement was a 100 percent set-aside for small business. Each contract was for a 1-year period, beginning January 1, 1991, with options for two 1-year extensions.

Prospective bidders were allowed to bid for any or all three types of service. The solicitation indicated that award for the base year for each type of service would be made to the lowest responsive, responsible bidder based on an evaluation of base and option year bids. It further indicated that a Fort Meade contracting officer would evaluate the bids without discussions and make the award to the responsible bidder whose bid would be the most advantageous to the government considering only price and price-related factors as specified in the solicitation.

The contracting officer evaluated the bids and awarded

- contract no. DAKF27-91-D-0004 to Guardian Moving & Storage Co., Inc., of Baltimore, Maryland, for outbound service;
- contract no. DAKF27-91-D-0005 to Eastern Moving & Storage Co., Inc., of Baltimore, Maryland, for inbound service; and
- contract no. DAKF27-91-D-0006 to Eastern for local move service.

Necessity for Authorization From Interstate Commerce Commission Questioned

One of the prospective bidders had previously advised the contracting officer that contractors had to have Interstate Commerce Commission (ICC) authorization to serve the Fort Meade area. Later, it asked whether the contracting officer was going to require the bidders to produce their authorizations for validation and whether a bid from a prospective contractor that did not have the authorization would be considered nonresponsive.

The solicitation described the Fort Meade area as the Maryland counties of Anne Arundel, Baltimore, Carroll, Howard, Montgomery, and Prince George's; and the city of Baltimore. Although the prospective bidders for the outbound and inbound contracts were not expected to provide any transportation outside this area, they were aware that shipments could or might eventually be moved as part of a continuous move to other states or

overseas. Moreover, under the local move contract, where there would be no other prior or subsequent transportation, bidders were advised that shipments could move both within the Fort Meade area and to and from areas not exceeding 50 miles from the specified area. Thus, contractors under this contract would be expected to move shipments not only within Maryland but also to and from nearby places in Virginia, West Virginia, Pennsylvania, Delaware, and the District of Columbia.

The solicitation contained standard Department of Defense (DOD) provisions stipulating that contractors engaged in interstate transportation must have ICC authorization and that they certify whether they have ICC or other authorization from a state regulatory body. For example, paragraphs 1.4 and K.29, respectively, of the solicitation, provided the following.

Operating Authority Requirements for Contractors. The provisions of the FAR [Federal Acquisition Regulation], 52.247-2, Permits, Authorities, or Franchises, are applicable for qualification to perform services under this regulation. A prospective contractor engaged in interstate transportation will be approved and hold authorization by the interstate Commerce commission, or if engaged in intrastate transportation, a certificate issued by the appropriate state regulatory body will be required. In those instances where certain states recognize leasing and/or agency agreements to perform drayage service as an alternative to intrastate operating authority, the prospective contractor will be responsible for furnishing such evidence of compliance with state law.

[Text omitted.]

PERMITS, AUTHORITIES, OR FRANCHISES

(a) The offeror certifies that the offeror does , does not , hold authorization from the Interstate Commerce Commission or other cognizant regulatory body. If authorization is held, it is as follows:

(Name of regulatory body)

(Authorization No.)

(b) The offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded. In addition, the offeror shall, at the offeror's expense, obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments.

The contracting officer formally responded to the matter of ICC authorization in an amendment to the solicitation, indicating that ICC authorization was not required for the outbound or inbound contracts but might be required for the local move service. A week later, he added that to be considered qualified to perform services for interstate transportation, a contractor had to be authorized by ICC or other cognizant regulatory body. If the bidder for the local move contract indicated it did not hold authorization for interstate transportation, its bid would be rendered nonresponsive.¹

Transportation Officer's Support Given for ICC Operating Authority

At least two of the prospective bidders—including Eastern Moving & Storage—obtained a certificate of support from the Fort Meade transportation officer for a grant of “emergency temporary authority” from ICC to operate in interstate commerce. ICC can grant three types of authorities—“emergency temporary, temporary, and permanent.” According to ICC, only emergency temporary and temporary authorities can be issued within a matter of days, provided the applications are accompanied by certificates of support designed to establish an immediate need for service that cannot be met by existing carriers.

Emergency temporary authority is defined by ICC as a limited-term emergency motor carrier operating authority, good for a period of not more than 30 days, issued to authorize transportation service for which there is an immediate need for service that cannot be met by existing carrier service and in which there is not sufficient time to process an application for temporary authority. Temporary authority is defined by ICC as a limited-term motor carrier operating authority, good for a period of not more than 270 days, issued to authorize transportation service for which there is an immediate need for service that cannot be met by existing carrier service. To have obtained any authority within a month, bidders on the Fort Meade contracts needed the support of someone planning to use its services, such as the Fort Meade transportation officer. The transportation officer provided that support in the form of a signed December 4, 1990, certificate of support that the bidder filed with ICC. In the document, the transportation officer stated:

Geographic movement originates in and includes destination points in Maryland, Virginia, Delaware, District of Columbia and Pennsylvania.

¹Notwithstanding the contracting officer's response, we have indicated that these kinds of instructions about operating authority are to be treated as matters of responsibility rather than responsiveness.

[Text omitted.]

If service is not made available the Department of the Army would be unable to meet its daily need for the movement of Military Personal [sic] resulting from retirement, relocation, new recruits and availability of new housing.

A similar certificate of support was given to another prospective bidder. According to Fort Meade transportation officials, such support was not unusual in a situation where it was important to increase bidding competition.

Eastern received emergency temporary authority from ICC in December 1990, just prior to the bid opening. Eastern used that authority to submit bids on the Fort Meade contracts, and the contracting officer found the bids responsive to the solicitation.

On December 27, 1990, just a few days before the contracts were to begin, ICC advised Eastern that it had decided to give it temporary authority. The authority was made effective January 15, 1991, and authorized the transportation of household goods between points in Maryland, Pennsylvania, Virginia, Delaware, West Virginia, and the District of Columbia, under continuing contract with Fort Meade.

Protest Made to Contracting Officer

Upon learning that Eastern had submitted the low bid on both the inbound and local move contracts, another bidder, Guardian Moving & Storage, made a protest to the contracting officer. Guardian argued that it believed that Eastern did not have adequate ICC authorization to perform all the services Fort Meade was asking for, specifically, the ability to transport shipments to and from West Virginia. Moreover, it said that ICC had granted authority to Eastern to serve other areas called for under the solicitation on the basis of a misleading certificate of support provided by the transportation officer. Guardian interpreted the transportation officer as saying that if Eastern did not get authorization, Fort Meade would be unable to move its personnel. This certificate, Guardian argued, was untrue because Guardian already had the necessary authorization and could fully service Fort Meade's immediate needs. Finally, it said, there was no assurance that ICC would grant Eastern permanent authority to fulfil the duration of the contract term.

The contracting officer denied the protest. He concluded that while Eastern may not have been authorized to serve West Virginia initially, by

the time the contract was to have begun, ICC had granted Eastern temporary authority that included West Virginia. The contracting officer concluded that, in any event, the transportation officer had indicated that authority to serve West Virginia was not necessary because he did not believe any shipments would move to or from West Virginia. The contracting officer indicated that he had been advised by the transportation officer that the statement that if Eastern did not get ICC authorization Fort Meade would be unable to move its personnel was taken out of context. Moreover, the contracting officer indicated that he had learned from ICC that it had not granted the authority on the basis of the transportation officer's statement about "immediate need" and that ICC did not believe that Eastern would have a problem receiving permanent authority in time to fulfil the yearlong contract.

**Winning Bidder's ICC
Authorization Vacated by
Court Order**

Failing to convince the contracting officer of the merits of its protest, Guardian protested to ICC, appealing its grant of operating authority to Eastern. It argued that there was no immediate need for Eastern's services. It said that it could already carry out the Fort Meade contract. ICC was not persuaded by Guardian's arguments and refused to overturn its grant of authority to Eastern.

Guardian then asked the U.S. Court of Appeals for the District of Columbia Circuit to review ICC's orders giving Eastern its emergency temporary and temporary authorities. On January 14, 1992, the court granted the petition and vacated ICC's grants of emergency temporary and temporary authorities (Guardian Moving & Storage Co. v. ICC, 952 F.2d 1428 (D.C. Cir. 1992)). The court found that ICC lacked evidence of immediate need to support the grants. The certificate of support accompanying Eastern's application indicated that DOD needed some carrier for the Fort Meade contract, but it did not demonstrate that DOD needed Eastern. Although the court found that the emergency temporary and temporary authorities had been issued improperly, the court did not order termination of the contract. It decided that in all future applications of emergency temporary and temporary authorities, it is ICC's obligation to conform to the specific requirements of the law (49 U.S.C. § 10928).

Contracting Officer's Actions Were Proper at Time of Original Contract Award

The award to Eastern was proper because at the time it submitted a bid, Eastern indicated that it had the necessary authorization. In that regard, we have generally held in our contracting decisions that contracting officers are not required to question the validity of a required license or permit submitted by a bidder before award that is valid on its face, absent some appropriate indication that the license may not be valid. Furthermore, prior to award, the contracting officer investigated the matter and found that Eastern had recently received emergency temporary authority from ICC and had applied for temporary authority. The contracting officer also was told by an ICC transportation specialist that Eastern's temporary authority could be extended for 120 days while Eastern's application for permanent authority was pending and that she saw no reason why Eastern would not be allowed permanent authority. She indicated that Eastern would have been granted emergency temporary authority even if the transportation officer had not completed the portion of the certificate of support that was questioned in court. In this regard, we understand that the contracting officer contacted the transportation officer who said that his certification referred only to the consequence that would ensue if the contract in question was not awarded, not that Eastern was the only carrier available to provide the transportation.

Contracting Officer's Actions Were Reasonable After the Court Vacated the Original ICC Authorization

Although the court found ICC's grants of emergency temporary and temporary authorities to Eastern had been improperly issued, the court neither found that they were fraudulently obtained nor indicated that its ruling should result in termination of the contract or have any other retroactive effect. Furthermore, when the decision was rendered, Eastern had appropriate permanent authority and was properly performing under its contract. Therefore, the contracting officer was not required to terminate the contract.

The contract files showed that when the court granted Guardian's petition and vacated ICC's grants of emergency temporary and temporary authorities to Eastern, Guardian brought the decision to the contracting officer's attention demanding that Eastern be found in default of its contract. The contracting officer and the Fort Meade legal advisers reviewed the situation and decided that there was some concern about the adequacy of Eastern's ICC operating authority. The contracting officer made a proposal to the contractor to "terminate for convenience" that portion of the contract covering interstate moves. The proposal was accepted and the amendment to the contract calling for a "no-cost

settlement agreement - partial termination" was signed by the contractor on April 1, 1992.

The court's decision did raise some questions about the procedure by which Eastern was awarded the contract. Although the decision did not suggest there was fraudulent activity, it did indicate that the certificate of support provided Eastern was misleading because it implied that DOD had an immediate need for Eastern's services.

The transportation officer's providing this certificate of support on behalf of Eastern and at least one other prospective bidder did not comply with a provision of the Personal Property Traffic Management Regulation, which requires coordination with the Commander, Military Traffic Management Command (MTMC), before a certificate of support, such as was involved here, can be issued. Chapter 10, paragraph 10005.c of the regulation stipulates that transportation officers will continually evaluate the adequacy of available service by all commercial modes of transportation. If they determine the existing carrier service is inadequate or if they are requested by a carrier to support an application for new or additional operating authority, they are required to forward the information requested and their recommendation through the serving MTMC area command to the Commander, MTMC, for assessment and action. When a need exists to support a carrier applying for one of these authorities, transportation officers are required to ensure that each disadvantaged carrier is fully considered for the service requested. In this case, there is no record showing that the required coordination ever took place.

Not Unreasonable for Contracting Officer to Exercise the 1993 Option Year

In December 1992, the contracting officer exercised the second 1-year option of the local move contract, extending it through 1993. The Federal Acquisition Regulation (para. 17.207(c)) provides that a contracting officer may exercise options only after determining that (1) funds are available; (2) the requirement covered by the option fulfills an existing government need; and (3) exercise of the option is the most advantageous method of fulfilling the government's need, price, and certain other factors considered. The contracting officer made the findings as required by the Federal Acquisition Regulation.

The contract files showed that before the option was exercised, the Fort Meade legal office deliberated over the status of the contract. The legal office was aware that Guardian had won a court decision concerning ICC's 1990 grant of operating authorization. In a February 20, 1992,

memorandum, one of the attorneys in the legal office recommended that a limited stop work order, as authorized by the Federal Acquisition Regulation, be issued to prevent Eastern from transporting Fort Meade household goods shipments in interstate commerce. The attorney stated that Eastern was technically in default of the contract since it did not have clear authorization from ICC and that it may have been subcontracting its work to some other carrier without first getting authorization, as was required, from the contracting officer. The contract files showed that there was some question in the attorney's mind about the validity of Eastern's March 20, 1991, permanent authority. The attorney, nevertheless, concluded that a "termination for default" was not advisable since the reason for Eastern's inability to perform to some extent was caused by the government. The attorney recommended negotiating a no-cost "termination for convenience," but only to that portion of the contract requiring moves across state lines. This was done. Subsequently, the contracting officer exercised the final 1-year option to extend the contract through the end of 1993.

Since the contracting officer did make the required Federal Acquisition Regulation findings and Eastern was performing responsibly, we think that the contracting officer did properly exercise the final 1-year option.

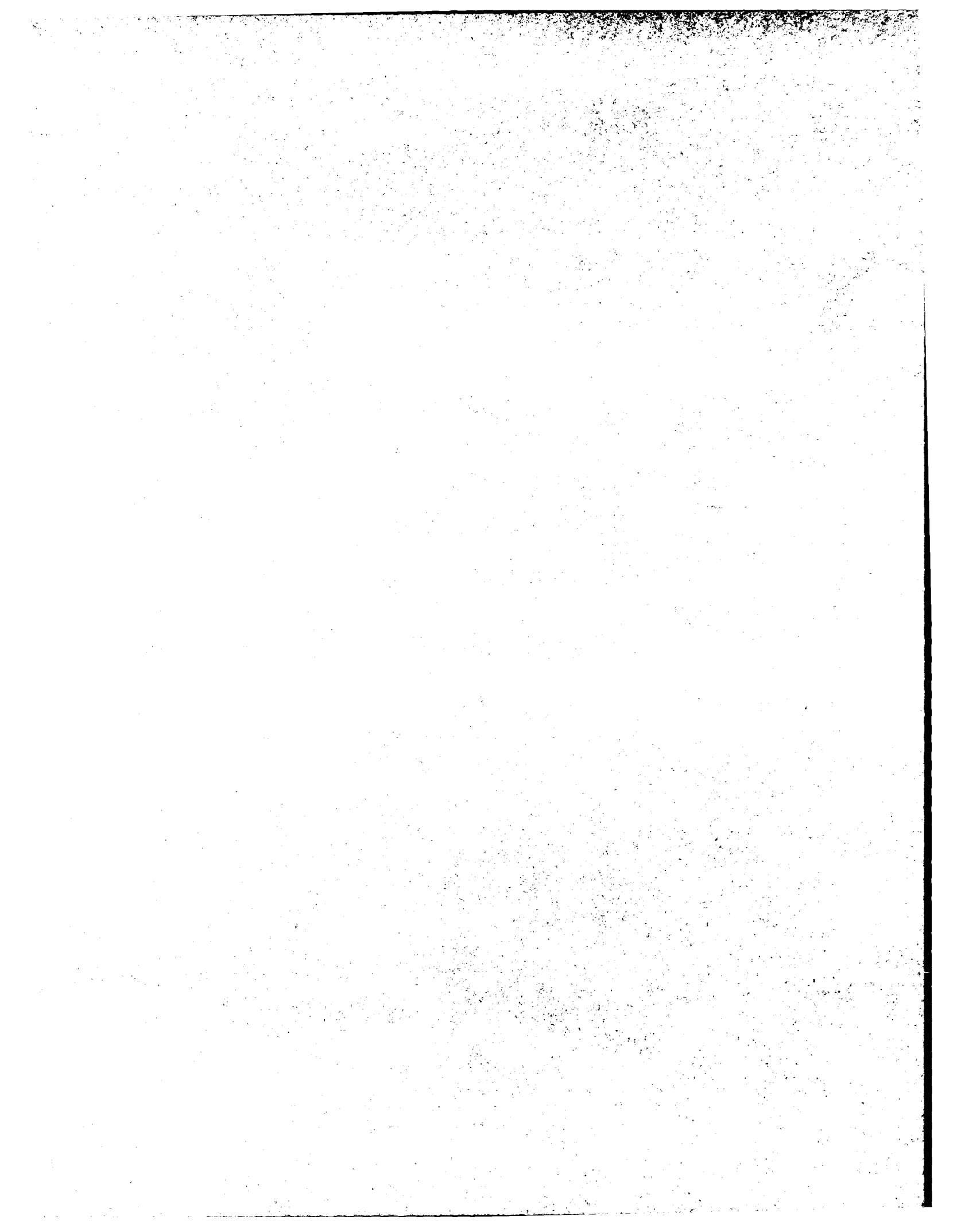
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