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SMALL BUSINESS ACT AMENDMENTS OF 1961

GOVERNMENT
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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 836

A BILL TO AMEND THE SMALL BUSINESS ACT, AND FOR OTHER PURPOSES

MARCH 15, 16, 17, AND APRIL 24, 1961

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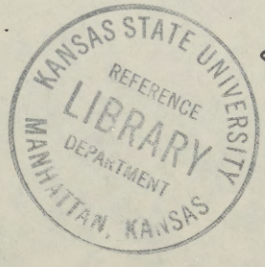

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SMALL BUSINESS ACT AMENDMENTS OF 1961

WEDNESDAY, MARCH 15, 1961

U.S. SENATE,
SUBCOMMITTEE ON SMALL BUSINESS,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The subcommittee met, pursuant to notice, in room 5302, New Senate Office Building, at 10:32 a.m., Senator William Proxmire, chairman of the subcommittee, presiding.

Present: Senators Proxmire, Sparkman, Neuberger, and Javits.

Senator PROXMIRE. The Small Business Subcommittee of the Banking and Currency Committee will come to order.

Before witnesses are called on S. 836, a bill to amend the Small Business Act, since it is my bill, I am going to read a brief statement into the record.

Last year a bill similar to this one passed the Senate unanimously. That bill was amended in conference but failed to be voted out of conference because of a tie vote on the part of the House conferees. This bill is identical with the conference bill.

I am going to show at the end of my statement that this bill makes a series of very substantial concessions to the objections which were posed to the bill as it passed the Senate unanimously last year.

Last year the Defense Department and the Budget Bureau, among other agencies, opposed this bill, particularly section 8, the provision that empowers the Small Business Administration to take the lead in establishing a small business subcontracting program.

Since that time, we have had a change in administrations. The Democratic platform pledged that a more equitable share of Government contracts to small and independent businesses should be obtained. During the campaign last fall President Kennedy stated time and time again that something must be done to aid small business. I, and many others, made the same point. When the President made those statements I believe he meant them. I know I did.

Something must be done to permit small business, on its own merits, to participate in our vast procurement effort. Something must be done to stop the growing trend to concentrating our Federal contracting programs in a few large enterprises to the exclusion of many competent smaller firms whose existence is not only vital to our economy but to our system of open competition.

It is evident from the statistics furnished by the Department of Defense that small business is getting less and less of the procurement dollar spent on prime contracts for each year. For example, in 1954 small business received 25.3 percent of the amount of military prime contracts awarded. In the first quarter of fiscal 1961 small business

received only 14.8 percent. It is also interesting to note that in fiscal 1960 73.4 percent of the value of military prime contracts were awarded to 100 companies and even more startling is the fact that 20 companies received 49 percent of the net value of the contracts.

Let me repeat—20 companies received 49 percent.

I am prepared to accept the statement by the Department of Defense that some of the new weapons can't be produced by small business; they require facilities far beyond its plant capabilities. However, I am not prepared to accept the statement, from whatever source, that all is being done to secure for small business its fair share of subcontracts, or prime contracts for that matter.

President Kennedy is aware of the continuing congressional criticism regarding the failure of small business to share equitably in the procurement dollar. He voiced some of that criticism himself when he was a Member of Congress. Since becoming President he has noted the criticism. He recently directed Secretary McNamara to take a look at what the Defense Department was doing and why they could not do better.

Secretary McNamara in a letter to the Senator from Alabama, Mr. Sparkman, promised more diligence in the execution of their already existing program.

I am convinced, however, that the present program needs revitalizing. I think people handling procurement need the stimulus of new ideas and new viewpoints. I believe that congressional action is needed. In the Congress small business legislation has always been bipartisan.

One of the sponsors and a driving force behind this bill is the ranking minority member of our committee, Mr. Capehart. This bipartisan effort has acted to strengthen the Small Business Act in the past. The feeling by the Senate that legislative action is needed now is shown by the fact that a bill similar to this passed the Senate unanimously last year.

There has been the complaint that some sections of this bill are unnecessary; and that the bill will permit SBA to unduly inject itself into the affairs of the Department of Defense; and that one agency should not promulgate regulations for another agency to administer. As a matter of fact GSA promulgates regulations which affect the procurement of other departments. So this is not unusual.

Regarding SBA's increased role in defense procurement, let us look at some of the things that Congress has already done to help the Small Business Administration help small business in the field of procurement.

1. The Congress has granted to the Small Business Administration broad powers with regard to prime contracts. As a matter of fact the Small Business Act authorizes $25 million for SBA's revolving fund to empower the Administrator of SBA to enter into contracts with the United States—I'll just read that portion of the act, it is relatively short:

(1) To enter into contracts with the U.S. Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, or materials to the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract

to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer; and

(2) To arrangement for the performance of such contracts by negotiating or otherwise letting subcontracts to small-business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

This power has not been used. It has been reserved for use in emergencies.

2. The act provides for a joint determination by SBA and the procuring agencies for contracts to be set aside solely or in part for small business.

3. It provides for the issuance by SBA of certificates of competency. These certificates may be issued by the SBA to a small-business concern which has been low bidder on a Government contract and has been denied that contract for an alleged lack of competency and credit. Once the certificate of competency is issued by the SBA the procurement agency is bound. This, then, has the effect of the granting of a contract by SBA. Statistics show that this program has been very successful and has saved the Government millions of dollars.

SUMMARY OF SBA CERTIFICATE OF COMPETENCY ACTIONS

A summary analysis of the actions which resulted in the issuance of a certificate of competency to Government contracting officers from August 1, 1953, through December 31, 1960, shows that 1,685 applications were received by SBA amounting to approximately $334 million. Of this number—

(*a*) 770 COC's were issued for over $116 million in potential contracts.

(*b*) 596 applications were declined, amounting to approximately $139 million.

(*c*) 305 applications for approximately $72 million were withdrawn, due in many cases to a favorable SBA survey influencing award without requiring formal COC action, or to a decision by the applicant that further effort was not in his best interest.

(*d*) 14 applications amounting to some $5 million were pending as of December 31, 1960.

An analysis of the actions resulting from the 770 certificates of competency issued shows that—

(*a*) 680 resulted in contract awards.

(*b*) 65 were nullified by procurement withdrawal, cancellation by SBA, or for such reasons as subsequent administrative determination by procuring agency that the bid had actually been rejected for reasons other than capacity and credit.

(*c*) 25 COC's were pending contract award as of December 31, 1960.

An analysis of performance in connection with the 680 cases on which contract awards were made indicates that—

(*a*) 526 resulted in completed contracts.

(*b*) 112 contracts covered by COC's were still active on December 31, 1960.

(*c*) 22 contracts were terminated for default.

(*d*) 11 contracts were terminated for the convenience of the Government.

(*e*) 9 cases were closed for such reasons as the certified concern being absorbed by large business, or the contract being sublet to a contractor approved by the procuring agency without reference to SBA.

Of the 526 completed contracts, 61 percent were finished on or ahead of schedule and 39 percent behind schedule (169 ahead of schedule, 153 on schedule, and 204 behind schedule). Of the contracts completed behind schedule, delays in many instances are attributable to circumstances beyond the control of the contractor such as delay in the approval of models or samples; changes or delays in the issuance of shipping instructions; adverse weather conditions; the steel strike; and delays in the receipt of, and defective Government-furnished property.

This program since its inception has resulted in an estimated saving to the Government through issuance of COC's of almost $11 million. This estimate is based on actual tabulated savings as determined from case records where precise data were available, extended as an average percentage to the total amount of all COC's issued where specific savings data were not available.

The very existence of this program has resulted in procuring agencies resolving questions of competency in favor of a small business concern whose competency might otherwise be left in doubt, and require formal SBA action through COC procedures. At least 116 contracts were awarded without COC action, as a result of the preliminary investigations made by SBA technical staff.

COC's recommended by the field to Washington for final action (does not include declinations made by field or COC referrals on which firm declined to file)

Negative FCR	Number	Percent
Capacity only	271	49
Credit only	186	34
Both credit and capacity	96	17
Total	553	100

Senator PROXMIRE. Thus, Congress has in the past interjected the Small Business Administration into the awarding of contracts by the procurement agencies. These programs have not slowed our defense effort; they have not diluted the procuring agency's control over the prime contractors; they have not placed unreasonable power in the hands of the Administrator of SBA. They have simply aided the SBA in performing the role assigned to it by Congress that—and I quote:

* * * the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction), be placed with small business enterprises.

I know that there will be cooperation among all the procuring agencies in the administration of this program.

I know that the announced interest of the President in small business will be remembered. Also I hope they will keep in mind the continuing bipartisan interest in small business that has been shown by the Congress in the past. I believe we can count on their help.

With the indulgence of the committee I want to take another couple of minutes to read into the record right now, at the beginning of these hearings, the concessions that have been made in this bill, drafted this year, to satisfy the complaints of some people in the business community, and the complaints of the Defense Department and the Budget Bureau to the bill of last year which passed this subcommittee unanimously, passed the full committee unanimously, passed the Senate unanimously, and would have been enacted into law, in my judgment, except for a tie vote of the House conferees.

Without objection, I will insert in the record my remarks in the Congressional Record in August of last year, while the conference on H.R. 11207 was in progress.

(The excerpt referred to follows:)

[From the Congressional Record, Aug. 27, 1960]

AID TO SMALL BUSINESS

Mr. PROXMIRE. Mr. President, yesterday the Senate and House conferees made progress on H.R. 11207, a major small business bill. Its only really controversial feature is a proposal that would attempt to help small business throughout the Nation compete on a fairer basis for Government procurement. It would do this by authorizing the Small Business Administration to promulgate a two-pronged program. First, the SBA would be enabled to secure full information on contracts from procurement agencies. Second, the SBA would have a chance to sell the agencies and the contractors on the advantages of utilizing qualified small businesses.

This bill passed the Senate without objection a few days before we recessed last month. It has run into a whirlwind of opposition, particularly from the Defense Department, in the form in which it passed the Senate. The House felt concern over the implications of some of the language of the bill, disagreed to the Senate amendments and requested a conference.

Mr. President, as author of the substitute bill, which the Senate passed, I want to say that I think some of the objections of the House were well taken and sound. I think the objections they made have given us an opportunity to improve the bill.

For this reason we proposed substantial changes in the conference to meet these objections.

These changes in no way reduce the capacity of the SBA either to procure the pertinent information it needs or to try to persuade procurement officials and successful Government contractors to use small business firms qualified to do the job. It is still true that this bill, for the first time, gives the Nation's small business a firm and friendly voice through SBA in this huge sector of our economic life, the Government's more than $20 billion procurement program. And, of course, this was our prime objective in this controversial section of the bill.

The big and fundamental concern of those who hesitated to support the bill as amended by the Senate was over the possibility that the bill might weaken the authority of procurement agencies over the contractor, and the SBA might dictate that small business or even specific firms should receive a contract, or that the award should be based on a specific criterion. Of course, at no time was this the intention of the Senate authors of the amendment, and we had so stated in our committee report. In order to make this crystal clear, however, the bill as modified in conference meets that basic objection by specifying that "no program promulgated hereunder shall prescribe the extent to which any contractor shall enter into subcontracts, or specify the business concerns to which the subcontracts shall be granted."

Mr. President, in order to permit all Members of Congress to see how very far this new language has gone to allay the concern any might feel that the bill as now being considered in conference constitutes any improper interference with procurement, I introduce the bill as modified yesterday in conference and ask that it be printed.

The distinguished Senator from Alabama (Mr. Sparkman), certainly one of the Senate's and the Nation's foremost authorities on small business, cosponsors this amendment with me, as does the ranking Republican member of the Banking and Currency Committee, also a stanch champion of small business, the senior Senator from Indiana (Mr. Capehart).

The PRESIDING OFFICER (Mr. Hart in the chair). The bill will be received and appropriately referred.

The bill (S. 3903) to amend the Small Business Act, and for other purposes, introduced by Mr. Proxmire (for himself, Mr. Sparkman, and Mr. Capehart), was received, read twice by its title, and referred to the Committee on Banking and Currency.

Senator PROXMIRE. It was very close to passage at that time. We feel we have made still more concessions and I do not see how we can go much farther.

I am going to read them.

In the first place, 90 days were provided for the establishment of the program instead of 30 days; to meet the objections of the Defense Department and others;

Second, the Chairman of the Atomic Energy Commission is included in the group to establish the program;

Third, the words "enabling small business to participate equitably as subcontractors" have been changed to "enable small business concerns to be considered fairly as subcontractors." This was to meet Defense objections;

Fourth, the provision that prime contractors and subcontractors will "utilize the facilities and services of the Small Business Administration" has been eliminated. There was a great deal of criticism about that specific provision in the bill last year by the Defense Department and their various spokesmen;

Fifth, under S. 836 the SBA may obtain records only from any Government procurement agency with regard to subcontracting rather than from the prime contractors themselves as provided in H.R. 11207; and

Sixth, the provisions in H.R. 11207 which provided that the subcontracting program should contain such other provisions and requirements as the Administrator may determine may be necessary to carry out the policy set forth in section 2 of the Small Business Act, is eliminated in S. 836, another concession to Defense.

And finally, we modified the amendment contained in H.R. 11207, offered by the Senator from Michigan, Senator Hart, which required publishing in the Department of Commerce's daily synopsis of all defense procurement actions above $10,000, and all civilian procurement actions of $1,000 and above except those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids were permitted to be made more than 10 days after the issuance of the invitation for bids.

The Defense Department objected to this and stated that the section is not necessary and in view of the limited exceptions provided is too broad in application.

Section 9 of S. 836 retains the four exceptions provided in H.R. 11207 and adds five more as follows: (i) contracts made by an order placed under an existing contract; (ii) contracts made from another Government department or agency, or a mandatory source of supply; (iii) contracts for personal or professional services; (iv) contracts for services from educational institutions; and (v) contracts on which only foreign sources are to be solicited.

Just one more word before we call the first witness.

I want to say, speaking as the author of this bill, that I am really in a fighting mood on it. I think we have gone just about as far as we possibly can go. We have made very great concessions. If we are going to have any kind of an effective program I just don't see how we can water it down any further.

Senator JAVITS. Mr. Chairman.

Senator PROXMIRE. I yield to the distinguished Senator from New York.

Senator JAVITS. I must go to the floor because mine is the first amendment on the distressed areas bill to come up. Before I leave I want to express support for the chairman's position and assure him of every cooperation I can give as a member of the subcommittee and full committee. I like his fighting spirit. It is the only spirit that will get anything done. I would also like to point out that what the chairman is trying to do ties in very directly with the distressed area bill, because what are going to be established in the redeveloped areas are small business concerns. If small business does not have a real opportunity in Government procurement, we are with the one hand putting forward an effort, and with the other hand, we are not facilitating that effort.

So I think that those who testify before us, Mr. Chairman, and the Chair itself should envisage the structure which we are creating here. We are trying to help distressed areas and we are trying to help small business, because that is the kind of business which, if it has any kind of a chance, is likely to be attracted to the distressed areas.

I make this observation only by way of implementing my assurance to the Chair that everything that is in my power, to do will be at his disposal. I like his fighting mood.

Senator PROXMIRE. I thank my good friend from New York for that statement. I appreciate it very much.

Senator SPARKMAN. Mr. Chairman, I must say I am going to have to leave at 11:30, if not before. I appreciate the very fine, strong statement you have made and I agree with you—we ought to push this legislation to final enactment very early. We have played around with it for entirely too long a time. I am glad that you gave it the strong attention that you did.

Senator PROXMIRE. Before we call our first witness, I want to place in the record the bill we are considering, S. 836, together with all the reports we have received from agencies concerned with this legislation.

In addition, we will insert the Small Business Act of 1953; section 708 of the Defense Production Act of 1950; and sections 501 and 502 and 602(c) of the Small Business Investment Act of 1958.

87TH CONGRESS
1ST SESSION

S. 836

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 1961

Mr. PROXMIRE (for himself, Mr. SPARKMAN, and Mr. CAPEHART) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

A BILL

To amend the Small Business Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Act Amendments of 1961".

SEC. 2. As used in this Act, unless otherwise indicated, references to "the Act" are to the Small Business Act, approved July 18, 1958 (72 Stat. 384), as amended by the Small Business Investment Act of 1958, approved August 21, 1958 (72 Stat. 689), and Public Law 86-367 (73 Stat. 647).

SEC. 3. Subsection 4(c) of the Act is amended—

(1) by striking out "$975,000,000" each place it appears and inserting in lieu thereof "$1,050,000,000"; and

(2) by striking out "$575,000,000" where it appears in the fifth sentence and inserting in lieu thereof "$650,000,000".

SEC. 4. Section 5 of the Act is amended by adding at the end thereof a new subsection as follows:

"(d) Section 3648 of the Revised Statutes (31 U.S.C. 529) shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents."

SEC. 5. (a) Section 10 of the Act is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) The Administration shall make a report on December 31 of each year of operations under this Act to the President, the President of the Senate, and the Speaker of the House of Representatives. Such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved, and such report shall include information on the progress of the Administration in liquidating the assets and winding up the affairs

of the Reconstruction Finance Corporation, and such other information and such comments and recommendations as the Administration may deem appropriate. The requirement contained in this subsection with respect to the inclusion of information respecting the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation in such report shall be in lieu of any requirement, pursuant to section 106(b) of the Reconstruction Finance Corporation Liquidation Act, and Reorganization Plan Numbered 1 of 1957, that progress reports with respect to such liquidation of winding up of affairs by the Administration be made to the Congress on a quarterly basis.";

(2) by striking out "June 30 and" from subsection (b); and

(3) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) (1) The Attorney General is directed to make, or direct the Federal Trade Commission to make for him, surveys of any activity of the Government which may affect small business, for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, promote undue concentration of economic power, or otherwise injure small business.

"(2) The Attorney General shall submit to the Con-

gress and the President, at such times as he deems desirable, but not less than once every year, reports setting forth the results of such surveys and including such recommendations as he may deem desirable. The Administrator may also request the Attorney General to make supplemental surveys and reports on any particular activities of the Government which may affect small business;

"(b) The second and third sentences of subsection (e) of section 708 of the Defense Production Act of 1950 are amended to read as follows: 'Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President at least once every three months reports setting forth the results of such studies of voluntary agreements and programs authorized by this section.'"

SEC. 6. The fifth sentence of section 2(a) of the Act is amended by inserting after "contracts", each place the term appears, the following: "or subcontracts".

SEC. 7. Section 8(b) of the Act is amended—

(1) by inserting in paragraph (8) after "concerning" the following: ", and for the purpose of review to have access to records involving,"; and

(2) by amending paragraph (11) by adding after the word "contracts" wherever it appears the words "(including subcontracts made pursuant thereto)".

SEC. 8. Section 8 of the Act is amended by adding at the end thereof a new subsection as follows:

"(d) (1) Within ninety days after the effective date of this subsection, the Administrator, after consultation with the Administrator of General Services, the Assistant Secretary of Defense (Supply and Logistics), and the Chairman of the Atomic Energy Commission, shall promulgate a small business subcontracting program containing such provisions as may be appropriate (A) to enable small business concerns to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, (B) to insure that such prime contractors and subcontractors will consult with the Administration when requested by the Administration, and (C) to enable the Administration to obtain from any Government procurement agency such information and records concerning subcontracting by its prime contractors and their subcontractors as the Administration may deem necessary; except that no program promulgated hereunder shall prescribe the extent to which any contractor shall enter into subcontracts or specify the business concerns to which subcontractors shall be granted.

"(2) Every contract for property or services, including

but not limited to contracts for research and development, but excluding contracts to be performed entirely outside of the United States or its territories, in excess of $1,000,000 made by a Government department or agency shall require the contractor to conform to the small business subcontracting program promulgated by the Administrator under this subsection (d), and to insert in all subcontracts and purchase orders in excess of $500,000 a provision requiring the subcontractor or supplier to conform to such small business subcontracting program.

"(3) The Administration shall include in any report filed under section 10(b) of this Act information, and such recommendations as it may deem appropriate, with respect to the administration of the small business subcontracting program promulgated under this subsection (d)."

SEC. 9. Section 8 of the Act is further amended by inserting after subsection "(d)" (as added by section 8 of this Act) a new subsection as follows:

"(e) It shall be the duty of the Secretary of Commerce, and he is hereby empowered, to obtain notice of all proposed defense procurement actions of $10,000 and above, and all civilian procurement actions of $5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily

publication 'United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards', immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited."

SEC. 10. Section 7(d) of the Act is amended to read as follows:

"(d) The Administration also is empowered to make grants to any State government, or any agency thereof, State

chartered development credit or finance corporations, land-grant colleges and universities, colleges and schools of business, engineering, commerce, or agriculture, and corporations formed by two or more of the entities hereinabove described which are eligible to receive such grants, for studies, research, and counseling concerning the managing, financing, and operation of small business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of sections 8 (b) (1) by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. Only one such grant shall be made within any one State in any one year and no such grant shall exceed an aggregate amount of $40,000. The Administration may require, as a condition to any grant under this section, that an additional amount not exceeding the amount of such grant be provided from sources other than the Administration to assist in carrying out the purposes for which such grant is made: *Provided,* That if such grant or any part thereof is to be utilized for the purpose of providing counseling services to individual small business enterprises the Administration shall require that such additional

amount be provided and in an amount which is equal to the amount of such grant."

SEC. 11. Section 502 of the Small Business Investment Act of 1958 is amended by deleting paragraph (6).

SMALL BUSINESS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., March 14, 1961.

Re S. 836, to amend the Small Business Act, and for other purposes.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR SENATOR ROBERTSON: Further reference is made to your letter of February 13, 1961, requesting my views on the captioned bill.

Section 3

Section 3 of the bill amends subsection 4(c) of the Small Business Act in two respects. First, it increases from $975 million to $1,050 million the total amount in which funds are authorized to be appropriated to a revolving fund in the Treasury for the use of the Small Business Administration. Second, it increases from $575 million to $650 million the amount of the revolving fund which may be outstanding at any one time for the purpose of making business loans pursuant to section 7(a) of the Small Business Act.

According to our projection of probable business loan activities, the existing authorization of $575 million appears adequate to meet the needs of the program through the 1962 fiscal year. However, in view of the imponderables involved, such projections are not reliable. As you are doubtless aware, similar estimates made by SBA in the past were not borne out by experience. Accordingly, I would welcome the proposed increase of $75 million as a reserve against unforeseeable variations in the factors (such as the volume and size of loan applications) considered in making our computations.

Nevertheless, the difficulties involved in predicting future activities in the business loan and disaster loan programs suggest the desirability of a more extensive revision of subsection 4(c) than that effected by section 3 of the bill. The subsection provides, in effect, that no more than $725 million of the total authorization of $975 million may be used for the business loan program, the disaster loan program, and the prime contract program conducted by SBA under the Small Business Act and that no more than $250 million of such total authorization may be used for the exercise of the functions of SBA under the Small Business Investment Act of 1958. With respect to the latter act, the subsection imposes no further restrictions. Thus the $250 million authorization may be apportioned as needed to furnish financial assistance to small business investment companies, to make loans to State and local development companies or to carry out any of the other duties imposed upon SBA by that act.

Subsection 4(c) does not permit such flexibility in the utilization of the $725 million authorized for the exercise of the three described functions of SBA under the Small Business Act. Instead, the subsection establishes an individual dollar maximum for each. Thus, in addition to the $575 million ceiling governing the business loan program, there is a limitation of $125 million on the disaster loan program and a limitation of $25 million on the prime contract program.

These three dollar ceilings have a limited usefulness; and, in contrast, since we have no reliable means of predicting future lending activity, they present unnecessary administrative difficulties. For example, if the demands of the disaster loan program should at any time exceed the dollar ceiling established for it, no recourse could be had in such emergency to the unused prime contract authorization or to any surplus which might be available in the business loan authorization. Additional capital could not be obtained for the disaster loan program unless and until the dollar ceiling governing it were increased by amendment to subsection 4(c).

Accordingly, I recommend that the three individual dollar maximums be eliminated, thereby giving SBA flexibility under the Small Business Act similar to that which it presently enjoys under the Small Business Investment Act of 1958. At the same time, the total amount of money authorized for the exercise of the three described functions of SBA under the Small Business Act should be increased from $725 million to $800 million. This increase of $75 million would constitute a flexible reserve. It could be drawn upon not only for the business loan program, as proposed in section 3 of the bill, but also for the disaster loan program or for the prime contract program.

To accomplish these ends I suggest that, in lieu of its present provisions, section 3 of the bill amend subsection 4(c) of the act to read as follows:

"The Administration is authorized to obtain money from the Treasury of the United States for use in the performance of the powers and duties granted to or imposed upon it by law, not to exceed a total of $1,050,000,000 outstanding at any one time. For this purpose appropriations not to exceed $1,050,000,000 are hereby authorized to be made to a revolving fund in the Treasury. Advances shall be made to the Administration from the revolving fund when requested by the Administration. This revolving fund shall be used for the purposes enumerated subsequently in sections 7(a), 7(b), and 8(a) of this Act and in the exercise of the functions of the Administration under the Small Business Investment Act of 1958. Not to exceed an aggregate of $800,000,000 shall be outstanding at any one time for the purposes subsequently enumerated in sections 7(a), 7(b), and 8(a) of this Act. Not to exceed and aggregate of $250,000,000 shall be outstanding at any one time for the exercise of the functions of the Administration under the Small Business Investment Act of 1958. The Administration shall pay into miscellaneous receipts of the Treasury, at the close of each fiscal year, interest on the net amount of the cash disbursements from such advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities."

Section 4

Section 4 of the bill adds a new subsection to section 5 of the Small Business Act, hereinafter referred to as the act. In substance this new subsection authorizes the Administration to make prepayments of rentals on safety deposit boxes used by it for the safeguarding of instruments and other documents held as security for loans made to small business concerns and others.

SBA commonly accepts bearer bonds, stock certificates endorsed in blank and other kinds of readily negotiable instruments as collateral on loans made pursuant to section 7 of the act. Ordinary care requires that field offices of the agency should, on receipt of such documents from borrowers, retain them in safety deposit boxes. Such boxes are usually rented on an annual basis and, with few exceptions, banks demand payment in advance.

By letter of June 3, 1955, SBA was notified by Mr. Frank H. Weitzel, Assistant Comptroller General of the United States, that section 3648 of the Revised Statutes prohibits such prepayments. The statute cited by him provides, in part, that "no advance of public money shall be made in any case unless authorized by the appropriation concerned or other law." Consequently field offices have been able to use safety deposit boxes only by obtaining the necessary funds from employees who, at the end of the rental period, claim reimbursement from SBA.

Section 4 of the bill remedies this situation by providing that section 3648 of the Revised Statutes shall not apply to prepayments of rentals made by SBA on safety deposit boxes.

Section 5

Subsections 5(a)(1) and 5(a)(2) of the bill place the reports which the Administration is required to file, pursuant to subsections 10(a) and 10 (b) of the act, on an annual basis instead of a semiannual basis. Subsection 10(a) of the act provides that the Administration shall make a report every 6 months of operations under the act to the President, the President of the Senate, and the Speaker of the House of Representatives, containing the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved, and containing such other information, comments, and recommendations as the Administration may deem appropriate.

Subsection 10(b) of the act provides that, on June 30 and December 31 of each year, the Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business, and the House Select Committee To Conduct a Study and Investigation of the Problems of Small Business, showing as accurately as possible for each such period the amount of the funds appropriated to the Administration that it has expended in the conduct of each of its principal activities such as lending, procurements, contracting, and providing technical and managerial aids.

Under existing law, therefore, SBA must submit two reports every 6 months concerning its operations. These requirements were laid down when SBA was initiated as a temporary agency of the Government to conduct programs, for the assistance of small business, which were considered to be experimental and which were generally expected to be of limited duration. The principal reason for requiring reports at such short intervals was to furnish the President and Congress with information essential to a determination of the recurring question whether the programs should be continued.

With the establishment of SBA as a permanent agency of the Government, the need for such frequent reports has been substantially lessened. In view of this, as well as the unnecessary expense involved in preparing and issuing two reports every 6 months, it is believed that SBA should, like virtually all other permanent agencies, report on an annual basis. Under the provisions of subsections 5(a)(1) and 5(a)(2) of the bill, both reports are to be made as of December 31 of each year.

Subsection 5(a)(1) of the bill has the further effect of eliminating the provisions of existing law (sec. 106(b) of the Reconstruction Finance Corporation Liquidation Act and Reorganization Plan No. 1 of 1957) requiring SBA to make quarterly reports to the Congress respecting the progress of SBA in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation. This subsection of the bill provides that such information, instead of being submitted in separate reports on a quarterly basis, shall be included in the annual report to be filed by SBA pursuant to the amended subsection 10(a) of the act. The quarterly reports appear to serve no useful purpose and their continuance would entail unnecessary expense to the Government. Accordingly, I am pleased with this provision of the bill.

Subsection 5(a)(3) of the bill deals with subsection 10(c) of the act. Under the provisions of the latter, the Attorney General is directed to make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strentghen monopolies, injure small business, or otherwise promote undue concentration of economic power "in the course of the administration of this act." The quoted phrase suggests that the Attorney General must exercise special vigilance over the operations of SBA to detect and prevent violations of the law. Such, of course, was not the intent. The misleading phrase is eliminated by subsection 5(a)(3) of the bill, which revises the language of subsection 10(c) to make it clear that the surveys of the Attorney General are to cover the activities of all agencies of the Government. Apart from this improvement, however, subsection 5(a)(3) effects slight change in the survey and reporting requirements of subsection 10(c). I should prefer that these requirements be entirely eliminated from the act because they add little to the responsibilities presently vested in the Attorney General by the antitrust laws and other statutes.

Subsection 5(b) of the bill directs the Attorney General to make certain studies and reports concerning the effects on small business, and upon the economy generally, of voluntary agreements adopted by business concerns in furtherance of the purposes of the Defense Production Act of 1950. These directions have no practical significance, it seems to me, in view of the surveys and reports presently required of the Attorney General by section 708 of that act. Nevertheless, I would defer to his opinion as to the merits of this proposal.

Section 6

Section 6 of the bill amends the declaration of policy laid down by Congress in subsection 2(a) of the act to state, in substance, that small business is entitled to a fair proportion of subcontracts as well as prime contracts made for the procurement of property and services for the Government. I favor this amendment as a reaffirmation of the desires of the Congress.

Section 7

Taken together, the amendments to sections 8(b)(8) and 8(b)(11) embodied in section 7 of the bill authorize SBA to obtain procurement records for review and to make studies of the procurement process at all stages thereof to insure implementation of congressional policies respecting small business. The procurement agencies have been entirely cooperative in these matters. SBA has encountered no difficulty in obtaining information concerning specific contracts or the procurement process generally. However, I see no objection to the establishment of a broadened statutory base for such interchange.

Section 8

Section 8 of the bill directs the SBA Administrator after consultation with the Administrator of General Services, Assistant Secretary of Defense (Supply and Logistics) and the Chairman of the Atomic Energy Commission, to promulgate a small business subcontracting program. The program is to have three objectives: (1) To enable small concerns to be considered fairly as subcontractors and suppliers to Government prime and subcontractors; (2) to insure that the latter concerns will consult with SBA when so requested; and (3) to enable SBA to obtain from Government procurement agencies data concerning subcontracting.

All Government procurement contracts in excess of $1 million and subcontracts thereunder in excess of $500,000, exclusive of contracts and subcontracts to be performed entirely outside the United States and its territories, are to require the contractor or subcontractor concerned to conform to this small business subcontracting program. In addition, SBA is to include in its reports to the President and to the Congress information and recommendations concerning this subcontracting program.

The small business share of Government contracts has continued to erode. Procurement agencies have advised on numerous occasions that the increasing complexity of Government requirements preclude significant reversal of this trend; that small concerns must look increasingly to the role of subcontractor.

However, the small business share of subcontracts has not been commensurate with their capabilities. Despite the expressions of congressional interest in the welfare of small business concerns, hearings conducted during the 85th Congress, 1st session, by your committee on S. 2032 and other bills, and the hearings conducted by the Select Committees on Small Business of both the Senate and the House of Representatives during the 86th Congress reveal that the larger prime contractors and higher tier subcontractors do not always deal fairly with small concerns. It appears advisable, therefore, to enact legislation to provide a legislative basis for a fair and effective subcontracting program.

The statutory requirement should not be inflexible. It should permit adaptability to varying circumstances and conditions. For this reason, in a letter of May 31, 1959, to you commenting on a committee print of a proposed bill, this agency recommended that in lieu of extending the joint determination set-aside program to subcontracts, the subcontracting legislation should prescribe the minimum standards for the program to be followed by the larger prime and subcontractors.

The aims of section 8 of S. 3689, 86th Congress, 2d session, were consistent with these recommendations and you were so advised by this agency's letter of June 24, 1960. By amendment, the Senate substituted the provisions of S. 3689 for H.R. 11207, 86th Congress, 2d session. However, H.R. 11207 was not enacted.

Certain members of industry have raised objections to section 8 of S. 3689. Many of these objections, in our opinion, were predicated either on a misinterpretation of the provisions of section 8 or a misconception of the authority SBA would exercise if the section was enacted. Section 8 of S. 836 is a revised version of section 8 of S. 3689, modified to meet certain of these objections.

As we have indicated in the past, SBA is in accord with the aims of section 8 of S. 836. I am aware, however, that a variety of objections to this revised legislation still persist. The Department of Defense and the General Services Administration have indicated that, in their view, placing the promulgation authority in SBA is an objectionable diminution of their authority (without any commensurate curtailment of their responsibility) and will inject unforeseeable complexities in their procurement mission. They urge therefore that the subcontracting program be a product of a joint cooperative effort on the part of the Small Business Administration, the Department of Defense, and the General Services Administration; that the program be promulgated as part of the Armed Services Procurement Regulation and the Federal Procurement Regulations; and that in the event of disagreement between the respective agencies, the Defense Department and the General Services Administration should have authority to determine the content of the regulations to be issued. They also suggest that the legislative standards contained in proposed section 8 would preclude necessary flexibility in the establishment of subcontracting programs.

SBA and the procurement agencies have engaged in an intensive cooperative effort to develop a legislative proposal which would carry out the aim of the Congress and at the same time meet the needs of both SBA and the procure-

ment agencies. To this end SBA recommends that section 8 be amended to read as follows:

"(d)(1) The Administrator of General Services, the Secretary of Defense, and the Administrator of Small Business shall cooperatively develop and thereafter the Administrator of General Services shall publish in the Federal Procurement Regulations and the Secretary of Defense shall publish in the Armed Services Procurement Regulation small business subcontracting programs containing such provisions as may be appropriate to enable small business concerns to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Govenment procurement contracts. In the event of disagreement on the provisions of these programs, the Secretary of Defense and the Administrator of General Services will determine the content of their regulations on these programs."

"(2) Contracts for property or services in excess of $1 million, offering substantial subcontracting possibilities, including but not limited to contracts for research and development, but excluding contracts to be performed entirely outside of the United States or its territories, shall require the contractor to conform to the small business subcontracting programs promulgated under this subsection (d) and to insert in similar subcontracts and purchase orders in excess of $1 million a provision requiring the subcontractor or supplier to conform to such small business subcontracting programs."

In my opinion, the revised section 8 will be a sound legislative foundation for future subcontracting programs. As this agency previously has informed your committee, we view the consultation requirement of present section 8 as a requirement for a complete exchange of views, a genuine effort to reconcile differences and the evolution of a subcontracting program which the participating agencies could, in the main, endorse. The proposal for the cooperative development of a subcontracting program contained in the suggested revision to section 8 is equivalent, as a practical matter, to the requirement of consultation presently embodied in the language of the bill. Moreover, I do not visualize any irreconcilable disagreement between the participating agencies in the development of small business subcontracting programs.

Accordingly, I strongly recommend the adoption of the revised section 8 embodied in the foregoing language.

Section 9

Section 9 of the bill requires the Secretary of Commerce to publicize, in the "U.S. Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales and Contract Awards," all defense procurement actions of $10,000 or more and all civilian procurement actions of $5,000 or more. Certain appropriate exceptions are made.

I am informed that the Department of Defense and the General Services Administration propose to adopt regulations which will accomplish the objectives of section 9. I am also informed that, in the view of these agencies, enactment of section 9 will preclude the flexibility that is frequently desirable in procurement matters. Because the purposes of section 9 will be effectuated by administrative action the need for adoption of this section has been obviated. Accordingly, in order to avoid the legislative inflexibility to which the procuring agencies object, I do not favor enactment of section 9.

Section 10

Section 10 of the bill effects four changes in the grant program embodied in subsection 7(d) of the act:

1. SBA is authorized to make grants to corporations formed for the purpose by two or more of the State governments, colleges, schools, etc., listed in subsection 7(d).

2. SBA is authorized to require as a condition to any particular grant that an additional amount, not exceeding the amount of such grant, be provided from sources other than SBA to assist in carrying out the purposes for which such grant is made.

3. SBA is authorized to make grants which are to be utilized by the grantees for the purpose of providing counseling services to individual small business enterprises.

Whenever SBA makes a grant to be utilized for the purpose of providing counseling services to individual small business enterprises, it must require that an additional amount, equal to the amount of such grant, be provided from sources other than SBA to assist the grantee in providing such counseling services.

Funds to carry out the grant program authorized by section 7(d) of the act were made available by the Congress for fiscal years 1959 and 1960. No funds were appropriated for this purpose during 1961. SBA currently is engaged in an evaluation of the grant program to determine if funds for fiscal 1962 should be requested of the Congress. It is anticipated that this review will be completed in the very near future. Notwithstanding the pendency of this review and recognizing that there may be differences in opinion as to the utility of section 7(d) of the act, I recommend that the Congress consider amending section 7(d) to improve the basic legislation authorizing the grant program. I also recommend changes No. 1 and 2 listed above and incorporated in section 10 of the bill.

Certain other changes to section 7(d) are recommended. The present limitation of one grant within any one State in any one year not to exceed an aggregate amount of $40,000, should be modified to authorize any number of grants within any one State so long as the total SBA contribution does not exceed $40,000 during any one year. SBA should be authorized, subject to the availability of funds, to increase the amount of any grant for good cause, so long as the total amount does not exceed the $40,000 limitation set out above.

It also should be made clear that SBA is authorized to recommend topics for study to grant applicants, when appropriate, so that the grant funds can be used with maximum efficiency to provide small business with needed information.

Finally, it is recommended that the present authority, if any, to finance through the grant program management counseling for small business, be deleted from section 7(d). This program is dissimilar to the bulk of the research work contemplated by section 7(d) and should be dealt with as a separate and distinct problem. SBA presently is studying means of providing an augmented management counseling program for smaller enterprises on a national basis.

To accomplish these aims I suggest that in lieu of its present provision, section 10 of the bill amend subsection 7(d) of the act to read as follows:

Section 7(d) of the act is amended to read as follows:

"(d) The Administration also is empowered to make grants to any State government, or any agency thereof, State-chartered development credit or finance corporations, land-grant colleges and universities, colleges and schools of business, engineering, commerce, or agriculture, or corporations formed by two or more of the entities hereinabove described which are eligible to receive such grants, for studies and research concerning the managing, financing, and operation of small business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of section 8(b)(1) by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. The Administrator may recommend to grant applicants particular studies or research which are to be financed by such grants. The total of all grants (including amendments and modifications thereof) made under this subsection within any one State and for any one year shall not exceed $40,000. The Administration may require, as a condition to any grant (or amendment or modification thereof) made under this subsection, that an additional amount not exceeding the amount of such grant be provided from sources other than the Administration to assist in carrying out the purposes for which such grant is made."

Section 11

Section 11 of the bill effects an indefinite extension of the authority of SBA to make loans to State and local development companies for the construction, conversion, or expansion of plants to be occupied by identifiable small business concerns. This authority, embodied in section 502 of the Small Business Investment Act of 1958, presently is due to expire on June 30, 1961. I fully concur that the program should be continued to meet the needs of small businesses for production and distribution facilities.

It is believed that the loan program authorized by section 502 can be of material assistance not only to strengthen numerous small business concerns but, equally important, to strengthen the economy of the communities in which they are located. Loans to local development companies for the described purposes

can be expected to play a significant role in the efforts of the Federal Government to rehabilitate the depressed areas of the country.

Because the program established by section 502 is still in a developmental phase and because the proper functions and responsibilities of State development companies financed under title V of this act still are under study, I do not recommend an indefinite extension of the section 502 authority. Instead, I suggest that the present expiration date be extended to June 30, 1965.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report.

Sincerely yours,

JOHN E. HORNE, *Administrator.*

ATOMIC ENERGY COMMISSION,
Washington, D.C., April 4, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency, U.S. Senate.

DEAR SENATOR ROBERTSON: This is in response to your request of February 13, 1961, for a report on S. 836, a bill to amend the Small Business Act, and for other purposes.

As we understand it, the bill would amend the Small Business Act, approved July 18, 1958, as subsequently amended by the Small Business Investment Act of 1958 and Public Law 86–367 to provide for, among other things, an increase in the Small Business Administration loan fund; submission of an annual report by the Small Business Administration; submission of reports by the Attorney General covering the results of surveys made by the Attorney General or the Federal Trade Commission on any activity of the Government which may affect small business in order to determine any factors which may tend to eliminate competition, create or strengthen monopolies, promote undue concentration of economic power, or otherwise injure small business; promulgation of a small business subcontracting program by the Small Business Administration after consultation with the General Services Administration, Department of Defense, and the Atomic Energy Commission; authorization of the Secretary of Commerce to obtain, with certain exceptions, notice of all proposed defense procurement actions of $10,000 and above and all civilian procurement actions of $5,000 and above from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States and to publicize such notices.

In general, we are in accord with the purposes and intent of the proposed legislation. However, we have the following specific comments on the bill.

Section 7(1) of this bill amending section 8(b)(8) of the Small Business Act provides that the Small Business Administration shall have access to records of Government agencies involving the letting of contracts and subcontracts.

As far as the AEC is concerned, we do not feel that this portion of the bill is necessary in view of our existing agreement with the Small Business Administration which provides, among other things, for our furnishing to the Small Business Administration all requested information and reports on AEC cost-type contractors and their subcontractors.

Section 8 of this bill proposes to amend section 8 of the Small Business Act by adding a new subsection (d). This subsection (d) provides that the Administrator of Small Business, after consultation with the Department of Defense, the General Services Administration and the Atomic Energy Commission, will promulgate a small business subcontracting program. We do not see the need for such a provision since the issuance of such regulations by the Small Business Administration would appear to duplicate small business contracting and subcontracting regulations already developed by the Department of Defense and promulgated in the armed services procurement regulations as well as similar regulations which will be applicable to other Federal agencies including the Atomic Energy Commission now being developed by the General Services Administration for publication in the Federal procurement regulations. We understand that the aforementioned Department of Defense and General Services Administration regulations were developed in consultation with the Small Business Administration. The direct issuance of small business subcontracting regulations by the Small Business Administration as provided for in this portion of the bill would appear to unnecessarily complicate and confuse the administration of Government contracts. It is our opinion that the inclusion of this proposed pro-

vision could result in the creation of serious problems with respect to the Atomic Energy Commission's procurement activities.

In proposed section 8(d)(1)(B), there is included a provision requiring Government prime contractors and subcontractors to consult with the Small Business Administration when requested by the Administration. We object to this provision on the basis that such contact by the Small Business Administration with Government prime contractors and subcontractors would interfere with the proper supervision of such contractors or subcontractors activities by the responsible contracting officer or contract administrator. Further, we feel that this proposed provision would unnecessarily complicate the relationship between the prime contractors and their subcontractors.

Section 9 of the proposed bill adds to section 8 of the act a new subsection (e) which, among other things, empowers the Secretary of Commerce to obtain notice of certain defense procurement actions from any Federal department, establishment, or agency engaged in the procurement of supplies and services in the United States. In view of the inclusion in the Federal procurement regulations of a regulation accomplishing essentially the same objective, it appears unnecessary to include this proposed provision particularly when incorporating such a provision in the Small Business Act may well result in a loss of flexibility in the future adjustment of reporting requirements to meet changing conditions.

The Bureau of the Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

R. E. HOLLINGSWORTH,
Acting General Manager.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., March 15, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency, U.S. Senate.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to S. 836, 87th Congress, a bill to amend the Small Business Act and for other purposes.

The bill S. 836 in many respects is similar to H.R. 11207, as amended and passed by the Senate, and S. 3689—both of the 86th Congress. In rather extensive reports to both Houses of the Congress on these bills this Department voiced strong objection to certain provisions. Considered as a whole, S. 836 is less objectionable than S. 3689 and H.R. 11207, but this Department must, nevertheless, report opposition to certain provisions of S. 836 in its present form.

The Department of Defense is concerned only with those provisions of the bill which would affect its procurement practices and procedures. It is particularly anxious that its prerogatives and responsibilities regarding procurement are not significantly disturbed or displaced. In view of the dollar volume of Defense procurement, its broad scope, and its close relationship to national security, it is essential that this procurement program be conducted on a sound administrative basis. One of the most crucial factors of sound administration is that there be clearly established responsibility, and responsibility necessarily requires the prerogatives of control and authority. Any significant dilution of these prerogatives will adversely affect the ability of this Department to administer its procurement program.

The procurement aspects of the Small Business Act impose responsibilities on contracting agencies and the Small Business Administration. The contracting agencies are responsible for the success of individual procurement actions and the technique found in the Small Business Act to achieve a balance between the interests of the contracting agencies and the Administration with respect to procurement actions is the technique of cooperation. This Department endorses the wisdom of this technique and is desirous of preserving it. Certain provisions of S. 836 constitute a departure from this technique and would curtail the authority of the Department of Defense with respect to its highly important procurement programs. In addition, we do not consider these provisions necessary or feasible in view of existing provisions of the act and practices thereunder. This is the basis for our objection to the bill.

Sections 1 through 5 of the bill deal with matters of official interest only to the Small Business Administration or other agencies of the executive branch; hence, this Department does not offer comment on these provisions.

Paragraph (1) of section 7 of the bill would amend section 8(b)(8) of the act (15 U.S.C. 637(b)(8)), which presently authorizes and empowers the Small Business Administrator to obtain reports, as the Administrator may deem pertinent, concerning the letting of contracts and subcontracts. Section 7 of the bill, if enacted, would provide that, in addition to reports, the Administrator would be empowered to have "access to agency procurement records for the purpose of review."

We have previously objected to a similar proposal which would have empowered the Administrator to "obtain * * * records for review" on the ground that the exact meaning of the language was not clear and it appeared to be very broad. Despite the slight change in language, this section is still objectionable on the ground that its exact meaning is not clear and that it is not necessary since, under existing provisions of the act, the Administrator is empowered to obtain reports concerning procurement actions.

Furthermore, it is noted that on a cooperative basis the Administrator, through his representatives, has been permitted access to procurement records on individual procurement actions whenever such access has been determined necessary to the discharge of the Administrator's responsibilities. To a great degree, access by Administration representatives to procurement records contemporaneously with procurement actions is a matter of routine practice at the procurement office level. The establishment of a statutory right of one agency of the executive branch to have access, for the purpose of review, to records of another agency, does not have any apparent necessity.

We have no objection to paragraph (2) of section 7 of the bill.

Section 8 of the bill would further amend section 8 of the act (15 U.S.C. 637) by adding a new subsection which would provide for the promulgation by the Administrator of a program, mandatory on certain prime contractors as subcontractors, concerning the participation of small businesses as subcontractors under such contracts. A similar provision in H.R. 11207 and S. 3689 met with the very strong opposition of this Department. The S. 836 provision is an alteration of the language contained in the other bills and contains, in addition, two limitations on the program which would be promulgated by the Administrator. Despite the changes in language and the inclusion of limitations, this Department must again object to this provision.

An explanation of existing practices of this Department with respect to subcontracting would appear to be appropriate. Detailed analysis of and comment on section 8 of the bill will follow.

As has been noted herein, the Department of Defense recognizes the need for and has established programs and procedures to insure that small business receives an equitable share in Defense subcontracts. These programs and procedures were established over the past several years and were developed after extensive study and consideration, including review of the subcontracting procedures of various large Defense contractors. There has been consultation with the Administration under existing provisions of the act concerning the procedures which were ultimately included in these programs. A great deal of effort has been expended by the Department of Defense in taking the lead in this area and in establishing programs which, we believe, will insure an equitable distribution of subcontracts to small business.

The Armed Services Procurement Regulation (ASPR) requires the inclusion of a clause in all contracts exceeding $5,000, with certain minor exceptions, by which the contractor agrees to accomplish the maximum amount of subcontracting with small businesses consistent with efficient performance of the contract. ASPR also provides for the inclusion of a contract clause obliging contractors to establish a Defense subcontracting small business program in most contracts in excess of $1 million which, in the judgment of the contracting officer, offer substantial opportunities for subcontracting. This clause provides for its reinclusion in subcontracts for $1 million or more which offer substantial opportunities for subcontracting. In addition, in contracts of less than $1 million, but which offer substantial opportunities for subcontracting, Defense policy requires that such contractors be urged to establish a similar subcontracting program.

The clause requiring the contractor to establish a Defense subcontracting small business program provides that such a program will include:

(1) Designation of a small business liaison officer to maintain liaison with Government small busines representatives, supervise compliance with the clause, and administer the contractor's program.

(2) Assurance that small businesses will be afforded equitable opportunity to compete for subcontracts by arranging solicitations, quantities, specifications, and delivery, etc., so as to facilitate small business bidding.

(3) Maintenance of records concerning the small business status of prospective subcontractors and procedures adopted to comply with the clause.

(4) Provision for inclusion in subcontracts, which offer substantial opportunities for subcontracting, of a clause requiring the subcontractor to utilize small business to the maximum extent consistent with efficient performance.

(5) Submission of reports to the Government regarding small business subcontractors.

In addition to the features of the Defense subcontracting program, discussed in the foregoing paragraphs, we have recognized the need to review our prime contractors' plans for producing items "in house" as opposed to subcontracting. We have, in the past year, included a "make or buy" policy in section 3 of the ASPR. In general, it has been provided that, where make-or-buy decisions will have a substantial impact on, among other things, "carrying out Government policies regarding small business, * * *" the make-or-buy program of the contractor should, to the extent practicable, be evaluated and agreed upon during negotiations. Also, there has been included in part 7 of section 1 of ASPR, dealing specifically with a prime contractor's own small business program, a requirement that such programs shall "provide adequate and timely consideration of the potentialities of small business concerns in all 'make or buy' decisions."

The scope of our review of a contractor's subcontracting program is quite extensive. This review is conducted for the purpose of protecting the manifold interests of the Government and is carried out by contractually providing for the opportunity for Government representatives to review and consent to major subcontracts, either individually or through approval of the contractor's purchasing system. This procedure for consent to individual subcontracts affords this Department an opportunity to insure that small business concerns are being afforded with an equitable opportunity to compete in the subcontract area.

Finally, in our policies dealing with price negotiations we have provided that "consideration should be given to the contractor's past and present effectiveness in offering to qualified small business concerns * * * an opportunity to compete for subcontracts * * *" in determining the amount of the fee or profit to be allowed.

As is readily apparent, this is a rather extensive program. Much of it is relatively new, having been first placed into full effect in the early part of 1960. It contains certain of the features found in the S. 836. Accordingly, it should be noted that this Department is not and has not been opposed in principle to the establishment of a subcontracting program. This Department is opposed to the manner in which such a program would be established under S. 836 and to certain features required by S. 836 to be included in the program.

Section 8 of S. 836 provides that the Administrator will promulgate a program, after consultation with the Administrator of General Services, the Assistant Secretary of Defense (Supply and Logistics) (sic), and the Chairman of the Atomic Energy Commission. This would give the Small Business Administrator the ultimate prerogative of prescribing procurement practices to be followed by this Department and by certain of its contractors. The Administrator would thus have the power of revising, amending, modifying, or revoking procurement practices and procedures which have been adopted by this Department. The practices and procedures affected by such a program would not necessarily be limited to practices and procedures concerning the small business program but could, and probably would, affect other procurement practices and procedures. The contractors affected would include almost all of those contractors involved in the performance of the most critically important contracts of this Department. As has been stated previously, we object to any proposal which would give control over procurement actions to an agency which does not have overall responsibility for such procurement actions. This Department would not object to a statutory provision requiring the establishment of a subcontracting program by each contracting agency in cooperation with the Small Business Administrator.

Section 8 of the bill further provides that the program to be established should contain provisions as may be appropriate—

(1) To enable small business concerns to be considered fairly as subcontractors;

(2) To insure that contractors will consult with the administration when requested by the administration; and

(3) To enable the administration to secure records from any procurement agency concerning subcontracting by its contractors as may be deemed necessary by the administration.

This Department has strong objections to certain of the foregoing features and to the inclusion of such features in a statute. The subcontracting program in effect is relatively new. There has not yet been sufficient experience with it to enable us to fully evaluate its effectiveness. Amendment and revision may be necessary from time to time. If a statute fixes the requirements, flexible control over development of the program will be impaired and hampered.

With regard to the three specific features of the paragraph set out above, we note that there are limitations contained in S. 836 which did not appear in S. 3689 or H.R. 11207. While we are heartily in favor of the provision that small business concerns shall be considered fairly as subcontractors, the limitations do not remove all of the grounds upon which this Department relied in objecting to a previous similar provision, since wide discretion on general procurement policy would still be vested in an agency other than the Defense Department. While we note that the Administrator may not prescribe the extent to which contractors shall enter subcontracts, or specify the business firms to which such contracts shall be granted, the fact that only these limitations are specifically provided might be construed as an indication that the program is otherwise not limited. We object to such a result. The right and obligation of prime contractors to select subcontractors should be preserved to the extent possible, and any limitation on contractors in this regard should be within the control of this Department.

The second specific feature, mentioned above, would have the effect of requiring the contractor to satisfy the demands of another Government agency regarding performance of the contract, and that agency would not be responsible for the successful execution of the procurement involved. Such a requirement can only contribute to confusion and inefficiency of contract performance. We therefore object to this provision.

The third specific feature of the S. 836 subcontracting program is objectionable, again, on the ground that control is vested in the administration, which has no responsibility for the successful execution of procurement, and also for the reason that the authority is too broad. The bill provides that such information and records concerning subcontracting, as are deemed necessary by the administration, may be obtained by the administration. There are no specific limitations in the bill on the type of record that might be requested or the additional cost or burden which might be involved. A request under such a provision might constitute a significant burden on this Department and the contractor, adversely affecting the ability to perform the contract. This Department would have little control over such requests. In addition, it is noted that the recordkeeping and reporting requirements now imposed on major contractors is quite large. An increase in such requirements should be carefully considered by the agency having knowledge of the overall responsibility of contractors.

For the foregoing reasons, this Department is strongly opposed to enactment of S. 836. However, we would have no objection to the enactment of legislation in this area if the features to which this Department objects are revised. To this end, there is attached tab A, a substitute provision which, if adopted, would eliminate the grounds on which this Department bases its objection to the present provisions of section 8.

Section 9 of S. 836 would further amend the act by adding a new subsection requiring the publication of proposed procurements in the "U.S. Department of Commerce Synopsis of the U.S. Government Proposed Procurements, Sales, and Contract Awards." This Department was very much opposed to similar provisions in H.R. 11207 and S. 3689. It is recognized that the exceptions to the publication requirement contained in S. 836 are a significant improvement over the number and type of exceptions contained in H.R. 11207 and S. 3689.

This Department has reexamined its position on this section of the bill, in the light of these changes in the exceptions, and has determined, notwithstanding problems which may well arise, to adopt in its procurement regulations the features contained in section 9. Action to implement this determination has been initiated and publication of appropriate changes in this Department's regulations regarding publication will be issued as soon as the editorial changes can be composed.

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In view of the foregoing, we urge that this section be eliminated from the bill. As we have noted previously, a statute in this area creates inflexibility which is objectionable. Furthermore, in view of our present determination to incorporate these features of the bill into our regulations, this section appears to be unnecessary.

While the subject matter of the bill—aid to small business—has the enthusiastic support of this Department, the adverse effect which enactment of the bill, in its present form, would have on military procurement is such that we are unable to submit a more favorable report.

This Department would be pleased to participate and offer testimony in any hearings held on the bill.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE

AMENDMENT

SEC. 8. Section 8 of the Act is amended by adding at the end thereof a new subsection as follows:

"(d) (1) The Administrator of General Services, the Secretary of Defense and the Administrator of Small Business shall cooperatively develop and thereafter the Administrator of General Services shall publish in the Federal Procurement Regulations and the Secretary of Defense shall publish in the Armed Services Procurement Regulation, small business subcontracting programs containing such provisions as may be appropriate to enable small business concerns to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts. In the event of disagreement on the provisions of these programs, the Secretary of Defense and the Administrator of General Services will determine the content of their regulations on these programs.

"(2) Contracts for property or services in excess of $1,000,000, offering substantial subcontracting possibilities, including but not limited to contracts for research and development, but excluding contracts to be performed entirely outside of the United States or its territories, shall require the contractor to conform to the small business subcontracting program promulgated under this subsection (d) and to insert in similar subcontracts and purchase orders in excess of $1,000,000 a provision requiring the subcontractor or supplier to conform to such small business subcontracting programs."

DEPARTMENT OF JUSTICE,
March 23, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice concerning the bill (S. 836) to amend the Small Business Act, and for other purposes.

This bill would amend a number of provisions of the Small Business Act which are not matters for which the Department of Justice has primary responsibility, and accordingly we make no recommendation as to their enactment.

However, the Department is directly concerned with section 5 of the bill. This section would amend section 10(c) of the Small Business Act (15 U.S.C. 639(c)) and section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158).

Section 10(c) of the Small Business Act now directs the Attorney General to make, or request the Federal Trade Commission to make for him, surveys to determine the extent of "any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act," and to submit reports at such times as he deems desirable, of the results of such surveys, including such recommendations as he deems warranted. If the amendment to section 10(c) is enacted, the Attorney General would be required to make such reports not less than once every year. Also, the Small Business Administrator could request the Attorney General to make supplemental surveys and reports on any particular activity of the Government which may affect small business. The bill would, therefore, in this respect, increase the reporting requirements applicable to the Attorney General.

Section 708 of the Defense Production Act directs the Attorney General to make surveys of possible anticompetitive tendencies in Defense Production Act programs, including specifically voluntary agreements which are continued in force under the act subject to his approval. A report as to such surveys must be made each 3 months to the Congress and the President. The proposed amendment would substantially eliminate the present burden of quarterly reports on anticompetitive factors in the Defense Production Act programs by limiting those reports to section 708 voluntary agreements and programs.

The Department of Justice favors the enactment of the proposed amendment of section 708 of the Defense Production Act.

The Department objects, however, to the proposed amendment of section 10(c) of the Small Business Act which would provide that the Administrator may request the Attorney General to make supplemental surveys and reports on any particular activities of the Government which may affect small business. This provision of the bill seems both unnecessary and inadvisable. Under existing relationships between Government agencies and the Department of Justice, the agencies can and do request the Department to look into Government acts or practices that may have anticompetitive effects. These requests come not only from agencies of the executive branch but from the Congress as well. The requests are accommodated to the extent possible consistent with available manpower, availability of funds, and the Attorney General's own primary duties and obligations. The proposal in the bill, therefore, is unnecessary. Also, it might seriously prejudice the law enforcement functions of the Antitrust Division of the Department.

The Bureau of the Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

JOSEPH F. DOLAN,
Assistant Deputy Attorney General.

THE SECRETARY OF COMMERCE,
Washington, D.C., March 15, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request of February 13, 1961, for the views of the Department of Commerce with respect to S. 836, a bill to amend the Small Business Act, and for other purposes.

Firsthand knowledge of certain aspects of this proposal is found outside the Department of Commerce. Section 3 of the bill would increase the amount of funds authorized to be appropriated to the revolving fund for use by the Small Business Administration in loans and purchase of debentures of small business investment companies. We are anxious that limitations on funds available for these purposes not cause a cessation of these programs but would defer to the views of the Administrator with respect to precise amounts necessary to assure their continuance. The Administrator's views on the wisdom of section 11 repealing a limitation on loans to State development companies after June 30, 1961, would be persuasive to us. Similarly, comments on provisions of section 5 relating to reporting activities of the Attorney General would more appropriately be made by that official.

Reports of the Administrator on an annual instead of semiannual basis would also be provided for by section 5. Now that the life of the organization is no longer on a year-to-year basis, it appears that an annual report will serve to inform the public and the Congress adequately of its activities, supplemented as it would be with other information at the request of, or volunteered to, appropriate congressional committees.

Sections 6 through 8 would provide assurances that small businesses participate broadly as subcontractors in the field of Federal contracts. It is important that small businesses share in this field. The ultimate responsibility for performance, however, lies on the prime contractor, and unwarrantedly rigid direction as to how he carries out his job may jeopardize performance. It is clear that the intention of S. 836 is that both these factors be considered in development of the program proposed by these sections. The Department interposes no objection to the purposes of these sections but urges caution to prevent undue rigidity in requirements imposed on the prime contractor.

Section 9 would provide for publication of proposed Federal procurement subject to certain exceptions. The attention of the committee invited to present procedures which follow very closely the proposal and under which the Department of Commerce, in accordance with agreements with the Department of Defense and the General Services Administration, issues a daily publication entitled "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards." You attention is further invited to the detailed provisions of regulations in this field (Armed Services Procurement Regulations, subchapter A, for the defense agencies, and the Federal Procurement Regulations, subpart 1–1.10 for the civilian branches). In our opinion, existing procedures provide an effective technique for publicizing this information, and we do not consider the proposed direction of section 9 to be needed.

Section 10 would enlarge the class of beneficiaries entitled to grants under existing law for studies, research, and counseling operations, and authorize a requirement of matching funds in such instances (matching funds would be obligatory in the case of counseling services). The Department of Commerce favors enactment of this section and believes that matching provisions under appropriate circumstances provide assurances of sustained local interests in the project which is the subject of the Federal grant.

Finally, enactment is favored of the administrative amendment to allow the Administrator to prepay safety deposit box rentals in conformance to usual business practices.

Bureau of the Budget advised that no objection would be taken to the transmission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., March 14, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of February 13, 1961, requesting a report on S. 836, a bill to amend the Small Business Act, and for other purposes.

We have no comments with respect to sections 1 through 6, section 7(2), and sections 10 and 11 of the bill.

Section 7(1) of the bill

This portion of the bill would amend section 8(b)(8) of the Small Business Act by providing that SBA be given access to records involving the letting of contracts and subcontracts.

In view of existing cooperation in providing the Small Business Administration with information, reports, and access to records, we believe this portion of the bill is unnecessary.

Section 8 of the bill

This portion of the bill would add a new subsection to the Small Business Act authorizing the Administrator of the Small Business Administration, after consultation with the Administrator of General Services, the Assistant Secretary of Defense (Supply and Logistics), and the Chairman of the Atomic Energy Commission, to promulgate a small business subcontracting program which would be mandatory on procurement agencies and contractors when entering into contracts in excess of $1 million (other than contracts to be performed entirely outside of the United States), and mandatory on subcontractors for any subcontracts and purchase orders in excess of $500,000 issued thereunder.

The Department of Defense has recently developed and promulgated in the Armed Services Procurement Regulation (ASPR) a mandatory small business subcontracting program which has objectives substantially similar to those proposed by this amendment. We understand that the Department of Defense regulation was developed in cooperation with the Small Business Administration. Similarly, GSA has under development, for early publication in the Federal Procurement Regulations (FPR), an expanded regulation on small business participation in Government contracting, including a section on small business subcontracting.

Small business subcontracting regulations are, of course, an integral part of the procurement process and should be prescribed by the Administrator of General Services and the Secretary of Defense in the Federal Procurement Regulations and the Armed Services Procurement Regulation, respectively. The authorization in proposed section (d)(1)(B) for consultation by the Small Business Administration with prime contractors and subcontractors would multiply relationships between Government agencies and firms doing business with the Government, to the detriment of procurement programs.

In the light of these facts and circumstances, and in order to enhance by statute the Small Business Administration's role in the development of subcontracting policies, it is recommended that the following provisions be substituted for the quoted provisions proposed in section 8 of the bill:

"(d)(1) The Administrator of General Services, the Secretary of Defense, and the Administrator shall cooperatively develop, and thereafter the Administrator of General Services shall publish in the Federal Procurement Regulations and the Secretary of Defense shall publish in the Armed Services Procurement Regulation, small business subcontracting programs containing such provisions as may be appropriate to enable small business concerns to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts. In the event of disagreement on the provisions of these programs, the Secretary of Defense and the Administrator of General Services will determine the content of their regulations on these programs.

"(2) Contracts for property or services in excess of $1 million, offering substantial subcontracting possibilities; including but not limited to contracts for research and development, but excluding contracts to be performed entirely outside of the United States or its territories, shall require the contractor to conform to the small business subcontracting programs promulgated under this subsection (d) and to insert in similar subcontracts and purchase orders in excess of $1 million a provision requiring the subcontractor or supplier to conform to such small business subcontracting programs."

Section 9 of the bill

This portion of the bill would add a new subsection 8(e) to the Small Business Act which would empower the Secretary of Commerce to obtain notice from Federal agencies of all proposed defense procurement actions of $10,000 and above, and of all civilian procurement actions of $5,000 and above, and to publicize such notices in the Department of Commerce "Synopsis of U.S. Government Proposed Procurements, Sales, and Contract Awards," with certain exceptions enumerated herein.

We do not believe that this portion of the bill is necessary or appropriate in view of section 201 of the Federal Property and Administrative Services Act of 1949, which authorizes the Administrator of General Services to regulate the policies and methods of executive agencies with respect to the procurement of personal property and nonpersonal services. We believe that requirements and methods for publicizing proposed procurements are appropriate for regulation under this authority. In addition, the handling of this subject by regulations readily permits flexibility in future adjustment of reporting requirements in the event experience indicates that such action is desirable.

In this regard, after coordination and consultation with the Small Business Administration, the Department of Commerce, and other procurement agencies, a regulation to achieve the same objectives as are sought by this portion of the bill was prescribed for inclusion in the Federal Procurement Regulations on June 3, 1960, and was published in the Federal Register of June 11, 1960, on pages 5223, 5224. A copy of FPR Circular No. 9, dated June 3, 1960, promulgating this regulation, is enclosed for your information. The nine types of procurements which need not be publicized under section 9, however, seem suitable for application and, accordingly, the exceptions contained in the cited Federal Procurement Regulations will be adjusted to conform.

GSA would appreciate an opportunity to offer testimony on this bill at any hearing your committee may hold.

The Bureau of the Budget has advised that, from the standpoint of the administration's program, there is no objection to the submission of this report to the committee.

Sincerely yours,

JOHN L. MOORE, *Administrator.*

GENERAL SERVICES ADMINISTRATION | FPR CIRCULAR NO. 9

Washington 25, D. C. | June 3, 1960

FEDERAL PROCUREMENT REGULATIONS

1. Material Transmitted. Attached are the following portions of FPR material: New Subpart 1-1.10; new section 1-2.409; and revised sections 1-2.203-4 and 1-3.103.

2. Summary of Additions or Revisions. New Subpart 1-1.10 prescribes policies and procedures for publicizing procurement actions in the "Synopsis of U. S. Government Proposed Procurement, Sales, and Contract Awards." The other changes are minor, editorial or technical in nature.

3. Effective Date. These regulations are effective September 1, 1960, but may be observed earlier.

Franklin Floete

FRANKLIN FLOETE
Administrator of General Services

FILING INSTRUCTIONS AND NOTES

Remove Pages	Insert Pages
Contents of Part 1-1 (vii-viii)	Contents of Part 1-1 (vii-viii)
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Contents of Part 1-2 (i)	Contents of Part 1-2 (i)
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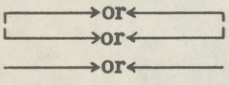
223	223
301-302	301-302

(a) On each page appears the number and date (month and year) of the FPR Circular which transmitted it.

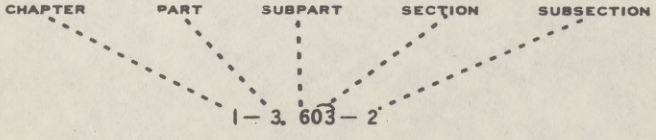
(b) Retention of FPR Circulars and removed pages will provide a history of FPR issuances and facilitate determining which regulations and contract clauses were in effect at particular times.

(c) Arrows printed in the margin of a page indicate material changed or added by the FPR Circular cited at the bottom of that page. Where insertion of new material results in shifting of unchanged material on following pages, no arrows will appear on such pages but the FPR Circular transmitting such new pages will be cited at the bottom of each page.



- Line on which change begins.
- Line on which change ends.
- Line on which change both begins and ends.

(d) In the numbering system, all FPR material is preceded by digit 1-. This simply means that it is the first chapter in Title 41 of the Code of Federal Regulations. It has no other significance. The digit(s) before the decimal point indicates the part; the digits after the decimal point indicate, without separation, the subpart and section, respectively, the latter always in two digits; and the digit(s) after the dash indicates the subsection. For example:



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SUBPART 1-1.10 PUBLICIZING PROCUREMENT ACTIONS

Subpart 1-1.10—Publicizing Procurement Actions

1-1.1001 General policy.

Proposed procurements which offer competitive opportunities for prospective prime contractors or subcontractors shall be publicized as prescribed in this Subpart 1-1.10, to increase competition, thus assisting small business and labor surplus area concerns and broadening industry participation in Government procurement programs.

1-1.1002 Availability of invitations for bids and requests for proposals.

A reasonable number of copies of each invitation for bids and requests for proposals publicized in the Department of Commerce Synopsis, including specifications and other pertinent information, shall be maintained by the issuing office. To the extent such unclassified invitations for bids and requests for proposals are available, they shall be provided to manufacturers, construction contractors, and regular dealers and to others having a legitimate interest therein, such as publishers, trade associations, procurement information services and others who disseminate information concerning invitiations for bids and requests for proposals; otherwise the procuring activity may limit the availability of invitations for bids and requests for proposals to perusal at the issuing office.

1-1.1003 Synopses of proposed procurements.

1-1.1003-1 Department of Commerce Synopsis.

(a) The publication "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards" is published daily, except Saturdays, Sundays, and holidays, by the U.S. Department of Commerce, Chicago, Illinois. The primary purpose of the Synopsis is to provide industry with information concerning current Government contracting and subcontracting opportunities, including information as to the identity and location of Government contracting offices and prime contractors having current or potential need for certain types of products or services. This publication is available on an annual subscription basis, and subscriptions can be entered at the publishing office or at any Department of Commerce office. Complimentary subscriptions are available to participating Government activities upon request.

(b) Each executive agency shall participate, to the maximum practicable extent, in providing current information concerning proposed procurements to the Department of Commerce for publication in the Synopsis. Procurement agencies shall develop procedures for assuring that proposed procurements are publicized in the Synopsis as required by this section 1-1.1003.

1-1.1003-2 General requirements.

(a) Every proposed advertised or negotiated procurement made in the United States, except Hawaii and Alaska, which may result in an award or awards in excess of $10,000 shall be publicized promptly in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards," except that the following need not be publicized in the Synopsis.

(1) Procurements where there is an absence of potential competition or where it has been predetermined that the procurement will be awarded to a specific concern (e.g., procurements of utility services and procurements for which specific background knowledge or unusual scientific and technical equipment is a prerequisite to performance)

(2) Procurements where circumstances necessitate establishing less than 15 calendar days for submission of bids, proposals, or quotations.

(3) Procurements of a classified nature.

(4) Procurements of perishable subsistence.

(5) Procurements where only foreign sources are to be solicited.

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(b) The dollar amount specified in section 1-1.1003-2(a) shall not be construed as a prohibition against publicizing procurements below that amount in any case where the procuring activity determines that such publication would be advantageous to industry or to the Government.

(c) The requirements in section 1-1.1003-2(a) shall not be construed to mean publicizing delivery orders issued under existing contracts (such as Federal Supply Schedules) or orders from mandatory sources of supply (such as National Industries for the Blind).

1-1.1003-3 Research and development.

In order that potential sources may learn of research and development programs, advance notices of the Government's interest in a specific research and development field shall be published in the Department of Commerce Synopsis in accordance with section 1-1.1003-7 (b)(9) so as to give such sources adequate opportunity to submit information for evaluation of their research and development capabilities, except where security considerations prohibit such publication.

1-1.1003-4 Synopses of subcontract opportunities.

Prime contractors and subcontractors should be encouraged to use the Department of Commerce Synopsis to publicize opportunities in the field of subcontracting stemming from Government business. Prime contractors and their subcontractors should be advised to mail subcontract information directly to the Department of Commerce.

1-1.1003-5 Pre-invitation notices.

Where pre-invitation notices (see section 1-2.205-4) are used, the pre-invitation information shall be included in the Synopsis. The information need not be re-published in the Synopsis when the invitation for bids concerned is subsequently issued.

1-1.1003-6 Time of publicizing.

To allow concerns which are not on current bidders lists ample time to prepare bids, proposals or quotations, procuring activities should, when feasible, publicize proposed procurements before issuance of invitations for bids and requests for proposals. Prompt reporting is particularly important where a short time for submitting bids or proposals is involved.

1-1.1003-7 Preparation and transmittal.

(a) Procuring activities shall transmit a synopsis of proposed procurements as follows:

(1) When use of teletypewriter service is feasible, information shall be transmitted via teletypewriter at the end of each day to the following address: Synopsis, Commerce Department, Field Services, Chicago, Illinois.

(2) When use of teletypewriter service is not feasible, information shall be sent by airmail or ordinary mail, whichever is considered most expeditious, addressed as follows: Administrative Service Office, U.S. Department of Commerce, 433 West Van Buren Street, Chicago 7, Illinois.

(b) Each Synopsis message shall be prepared as described below:

(1) *Spacing.* Lines of the text shall be double spaced, not exceeding 69 typewritten spaces in length.

(2) *Numbering.* The first line of the message text should include a message number for ready identification and reference purposes. Messages normally will be numbered consecutively by the reporting activity, beginning a new series each calendar year.

(3) *Contracting office address.* Beginning with the second line of the text, state the name and location of the contracting office. Abbreviations should not be used except for the name of the State. The address may include an attention phrase directed to an official by name or title.

SUBPART 1-1.10 PUBLICIZING PROCUREMENT ACTIONS

(4) *Description of supplies or services being procured.* Item descriptions will begin in narrative paragraph form, double spaced, with each line commencing at the left-hand margin. The description should be concise, but sufficiently detailed to permit understanding by interested parties. Commonly used names of the procurement items, basic materials from which fabricated, general sizes or dimensions, citations of specification or drawing numbers, Federal stock numbers, quantities, units of measure, invitation for bid or request for proposal numbers, opening dates, place of delivery, and other pertinent data shall be included. Only standard, commonly understood, abbreviations may be used. For purposes of clarity, two hyphens should be used instead of commas to separate quantities, purchase reference numbers, opening dates, etc.

(5) *Several items on one invitation for bids or request for proposals.* Where several items having the same procurement reference number and the same time for receipt of bids or proposals are reported, the description should be preceded by a blanket statement such as "The following described items are to be procured under Invitation for Bids (or Request for Proposals) No. ____, Opening Date _____."

(6) *Qualified products.* If the procurement item is covered by one or more specifications requiring qualification testing and approval, and such requirement has not been waived, the notation "QPL" shall be inserted immediately following the specification number.

(7) *Term contracts or indefinite quantities.* If the quantity is indefinite, the description should so state and, where applicable, include information as to the duration of the contract period.

(8) *Procurements involving set-asides.* If the proposed procurement involves a small business set-aside, or labor surplus area set-aside, the Synopsis message should—

(i) Where there is a 100 percent small business set-aside, state that "The proposed procurement(s) listed herein is (are) totally set aside for small business." Separate messages should be sent covering those proposed procurements which involve 100 percent small business set-asides to facilitate publication in the Notice to Small Firms Section of the Synopsis.

(ii) Where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of _____
(Insert number of units and description)
is being reserved for _____
_____ under
(Insert "small business" or "labor surplus area" as appropriate)
a partial set-aside determination."

(9) *Research and development item.* Notices which invite the submission of information as to research and development capabilities in specific fields of interest shall be headed "RESEARCH AND DEVELOPMENT SOURCES SOUGHT." This shall be followed by a statement similar to the following: "Firms having research and development capabilities in the field of _____ and
(be specific)
whose facilities and personnel include
_____
(Describe in substantial detail minimum facilities and personnel required)
are invited to submit complete information to the procuring office listed above. Information furnished should include the total number of employees and professional qualifications of scientists, engineers, and technical personnel; a description of general and special facilities; an outline of previous projects; a statement regarding industrial security clearance, if previously granted; and other available descriptive literature. This is not a request for a proposal."

1-1.1004 Synopses of contract awards.

Awards of all unclassified contracts to be performed in whole or in part within the United States, exceeding $25,000 in

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amount, shall be published in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards." This dollar amount shall not be construed as a prohibition against publicizing smaller awards where the procuring activity determines that such publication would be advantageous to industry or to the Government.

1-1.1004-1 Preparation and transmittal.

(a) Procuring activities shall prepare information concerning contract awards in the same format, and forward single copies thereof to the same mailing address, as prescribed in section 1-1.1003-7(a) for synopses of proposed procurements. The information shall be sent by airmail or ordinary mail, whichever is considered most expeditious, before the close of business at the end of each week.

(b) The synopsis of contract awards shall contain the following information:

(1) Name and address of the procuring office.

(2) A clear and concise description of the property or services being procured, such description to be followed by the contract number and, in parentheses, by the applicable number of the invitation for bids or request for proposals.

(3) Quantity and dollar amount of each item.

(4) Name and full address of the contractor.

(5) When requested by the prime contractor, a statement of the industries, crafts, processes, or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

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SUBPART 1-2.2 SOLICITATION OF BIDS

(i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to permit prospective bidders to prepare and submit bids. This will facilitate competition on reasonable and equal terms. Undue limitation of bidding time tends to restrict competition. Also, when prospective bidders do not have adequate time for computing prices and obtaining needed information on which to base their bids, higher prices to the Government may result from inclusion of unnecessary contingency allowances or the unwillingness of some to submit bids.

(b) *Factors to be considered.* The urgency of the Government's need for the items or services, the complexity of the invitation, the extent of subcontracting anticipated, the use of pre-invitation notices, the geographic distribution of bidders, the normal time for mail transmission of both invitations and bids, and other related factors, must be considered in establishing bidding time. For example, a bidding time of 30 days may be inadequate when bidders are required to prepare special drawings, designs, and samples, or to obtan quotations from several suppliers and subcontractors, as frequently is the case in construction and production contracts. Conversely, a bidding time of 15 days may be adequate when bids would reasonably be expected to be based on stocks-on-hand, or current regular production, or service personnel and facilities regularly available (as in the case of maintenance and repair of structures, and similar work.)

(c) *Minimum bidding time.* As a general rule, bidding time shall be not less than 15 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services. This rule need not be observed in special circumstances, or where the urgency for the supplies or services does not permit such delay. Procurement activities shall develop procedures for assuring that these bidding time requirements are observed.

1–2.202–2 Telegraphic bids.

As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer the date set for opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms, or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized the invitation for bids shall require the bidder to include in the telegraphic bid specific reference to the invitation, the items or sub-items, quantities, and unit prices for which the bid is submitted, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the invitation. In order that the contract may be executed on the proper forms, the invitation for bids will also provide that telegraphic bids should be confirmed on the prescribed form and submitted promptly to the contracting officer.

1–2.202–3 Place and method of delivery of supplies.

(a) Invitations for bids solicited f.o.b. origin shall state that bids will be evaluated on the basis of bid price plus transportation cost to the Government from point of origin to one or more designated destinations.

(b) Invitations for bids solicited f.o.b. origin or destination shall include as much of the following information as is pertinent to the particular procurement and shall require bidders to furnish the Government such of the following information as may be appropriate:

(1) Method of shipment, such as rail, water, air, or truck.

(2) Minimum quantities or lots, such as less than carload, less than truck load, carload, or truck load. (Where appropriate, the invitation should elicit information of the minimum size of shipments which the prospective supplier will make, so that freight evaluation may be on a realistic basis. The supplier should be cautioned that, if it ships in lesser quantities, it may be charged with any excess costs resulting.)

PART 1–2 PROCUREMENT BY FORMAL ADVERTISING

1–2.202–3 (b) (3)

(3) Guaranteed shipping weight. Bidders should be required to furnish information regarding shipping weight and cube of items to be procured so that proper transportation costs can be computed. (The bidder should be cautioned that, if actual shipping weights or cubes vary from the guarantees, it may be charged with any excess costs resulting.)

(4) Packing, crating, and other preparations.

(5) Transit privileges. (Traffic management personnel can furnish necessary information and analysis of situations where transit privileges may be beneficial.)

(6) Any other shipping information required for evaluation.

(c) When the exact destination of the supplies being purchased is not known at the time bids are solicited, but the general geographical section in which delivery will be made is known, such as East Coast, Middle West, or West Coast, for purposes of evaluation of bids only, a definite place(s) or zone(s) shall be designated in the known geographical sector of delivery as the place to which transportation costs will be computed in determining the low bidder. The invitation should specify that bids will be submitted f.o.b. origin and that shipment will be made on Government bill of lading. So that prospective bidders may understand the method of evaluation to be used, the invitation shall contain a provision substantially as follows:

For the purpose of evaluating bids (and for no other purpose), the final destinations for the supplies will be considered to be as follows: [insert destination(s)].

1–2.203 Methods of soliciting bids.

1–2.203–1 Mailing or delivering to prospective bidders.

Invitations for bids or pre-invitation notices (see section 1–2.205–4(c)) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition. Invitations for bids may be mailed for informational purposes to Government agencies, including procurement information offices, or to such other organizations as may be authorized by agency procedures.

1–2.203–2 Displaying in public places.

Copies of unclassified invitations for bids shall be displayed at the procuring office and/or at other appropriate public places.

1–2.203–3 Publicity in newspapers and trade journals.

(a) *Free publicity.* A brief announcement of the proposed procurement, or copies of unclassified invitations for bids, may be made available for free publication to newspapers and to trade journals and magazines.

(b) *Paid advertisements.* Paid advertisements in newspapers and trade journals shall be contracted for in accordance with agency procedures pursuant to 5 U.S.C. 22a; 44 U.S.C. 321, 322, and 324; and Title 7, Chapter 5200, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

1–2.203–4 Synopses of invitations for bids.

Synopses of invitations for bids shall be prepared and publicized in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards," in accordance with section 1–1.1003.

1–2.204 Records of invitations for bids and records of bids.

Each agency shall retain a record of every invitation for bids issued and distributed by it and of each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

1–2.205 Bidders mailing lists.

1–2.205–1 Establishment of lists.

(a) Bidders mailing lists shall be established by procuring activities to assure access to adequate sources of supply and service except where the requirements of the procuring activity can be

SUBPART 1-2.4 OPENING OF BIDS AND AWARD OF CONTRACT

of Award) shall be used for this purpose. Where the preparation of Standard Form 1036 is not required, information of a similar nature (hereinafter referred to as the certificate) shall be filed with the General Accounting Office copy of the contract.

(b) The certificate shall either state that the accepted bid was the lowest bid received, or list all lower bids and set forth reasons for their rejection. These reasons shall be set forth in such detail as is necessary to justify the award. For the purpose of this certificate, the lowest bid received is considered to be that bid which is lowest after a consideration of price factors only. The cost of transportation to the destination indicated in the invitation for bids, any acceptable discount offered by a bidder, and if the invitation so specifies, any other Government cost factor, shall be considered price factors in determining the lowest bidder for purposes of this certificate. In each case where an award is made after receipt of equal low bids, the certificate shall set forth the manner in which the tie was broken. Where an award involves a mistake in bid and the matter has been resolved by administrative action, a copy of the bidder's verification in the case of an apparent mistake, or the written administrative determination concerned, shall be attached to the certificate. Where an award involves a mistake in bid on which the Comptroller General has rendered a decision, the certificate shall contain a citation by number and date of the decision and a copy thereof shall be attached to the certificate.

1-2.408 Information to bidders.

Where feasible, procuring activities should (a) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (b) extend the appreciation of the procuring activity for the interest the unsuccesful bidder has shown in submitting a bid. Notification to unsuccessful bidders may be accomplished either orally or in writing through the use of a form postal card or other appropriate means. Should additional information be requested, the procuring activity shall either provide the unsuccessful bidders with the name and address of the successful bidder, together with the contract price, or when workload does not permit, inform the inquirers as to the location where a copy of the abstract of bids is available for inspection. In addition, when an inquiry is made by an unsuccessful bidder whose price bid was lower than the successful bidder, sufficient information shall be furnished in the reply to the unsuccessful bidder to fully explain the basis for award. If a request is received from an inquirer who is not a bidder or a representative of a bidder, the procuring activity may furnish the name of the successful bidder(s) and, if requested, the price(s) at which award(s) were made. However, where such requests require so large an amount of work as to interfere with the normal operations of the procuring activity, the inquirer will be advised where a copy of the abstract of bids may be seen.

1-2.409 Synopses of contract awards.

See section 1-1.1004.

(END OF PART)

PART 1-3 PROCUREMENT BY NEGOTIATION

1-3.000 Scope of part.

(a) This part prescribes policies and procedures which shall be observed by executive agencies in connection with procurement by negotiation. While references are made in this part to authorizing sections of the Federal Property and Administrative Services Act of 1949, to further the objectives of consistency and uniformity in Government procurement practices, such references shall be deemed likewise as references to comparable requirements under applicable laws.

(b) This part sets forth the following policies and procedures:

(1) The basic requirements for the procurement of property and services by means of negotiation;

(2) The different circumstances under which negotiation is permitted;

(3) Determinations and findings that may be required before a contract is entered into by negotiation;

(4) Types of negotiated contracts and their use;

(5) Price negotiation policies and techniques;

(6) Negotiation of surplus labor area set-asides;

(7) Negotiation of small business set-asides; and

(8) Reporting of possible anti-trust violations.

Subpart 1-3.1—Use of Negotiation

1-3.100 Scope of subpart.

This subpart deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

1-3.101 General requirements for negotiation.

No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(a) The contemplated procurement comes within one of the circumstances permitting negotiation;

(b) Any necessary determinations and findings have been made;

(c) Such clearance or approval as is prescribed by applicable agency procedures has been obtained; and

(d) The prospective contractor has been determined to be responsible.

1-3.102 Factors to be considered in negotiated contracts.

Whenever property or services are to be procured by negotiation, offers shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure full and free competition, consistent with the procurement of the required property or services, in accordance with the basic policies set forth in this Part 1-3, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Such offers shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and other matters deemed necessary by the contracting officer. Negotiation shall thereupon be conducted with due attention being given to the following, and any other appropriate factors:

(a) Comparison of prices quoted and consideration of other prices for the same or similar property or services, with due regard to production costs, including extra pay shift, multi-shift and overtime costs, and any other factor relating to the price, such as profits, cost of transportation, and cash discounts.

(b) Comparison of the business reputation, capacity, and responsibility of the respective persons or firms who submit offers.

(c) Consideration of the quality of the property or services offered, including the same or similar property or services previously furnished, with due regard to conformance with specification requirements.

(d) Consideration of delivery requirements.

(e) Discriminating use of price and cost analyses.

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(f) Investigation of price aspects of any important subcontract.
(g) Individual bargaining, by mail or by conference.
(h) Consideration of cost sharing.
(i) Effective utilization in general of the most desirable type of contract.
(j) Consideration of the size of the business concern.
(k) Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities.
(l) Consideration as to whether the prospective supplier is located in a surplus or scarce labor area.
(m) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor.
(n) Consideration of the extent of subcontracting.
(o) Consideration of the existing and potential workload of the prospective supplier.
(p) Consideration of broadening the industrial base by the development of additional suppliers.
(q) Consideration of whether the contractor requires Government furnished property, machine tools, or facilities.

1-3.103 Dissemination of procurement information.

(a) Synopses of proposed procurements and contract awards shall be prepared and publicized in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards," in accordance with the requirements of sections 1-1.1003 and 1-1.1004.
(b) Promptly after making awards in any procurement in excess of $10,000, the contracting officer normally shall give written notice to the unsuccessful offerors that their proposals were not accepted. Upon request, unsuccessful offerors whose offered prices were lower than those of the contractor which received the award shall be furnished the reasons why their proposals were not accepted; but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, or other confidential business information be disclosed to any other offeror.
(c) Classified information shall be furnished only in accordance with agency regulations governing the handling of classified information.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, March 6, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U. S. Senate.

DEAR MR. CHAIRMAN: Further reference is made to your communication of February 13, 1961, enclosing a copy of S. 836, 87th Congress, 1st session, entitled "A bill to amend the Small Business Act, and for other purposes," and requesting a report on such proposed legislation.

Section 4 of the bill would add a new subsection "(d)" to section 5 of the Small Business Act, as amended, 15 U.S.C. 634, which would have the effect of exempting from the prohibition against advance payments contained in section 3648, Revised Statutes, 31 U.S.C. 529, prepayments of rentals made by the Small Business Administration for safety deposit boxes used by the Administration in the safeguarding of instruments held as security for loans or for the safeguarding of other documents. This new subsection would overcome the effect of our decision of June 3, 1955, B–123397, copy enclosed, to an authorized certifying officer of the Administration, wherein we held that the prepayment of rental on safety deposit boxes was unauthorized in the absence of a provision of law authorizing the Administration to make advance payments without regard to the provisions of section 3648, Revised Statutes. Since the question as to whether such authority should be granted is a matter of policy for the Congress to decide, we offer no comment regarding the merits of section 4 of the bill.

Section 5 of S. 836 would amend section 10 of the act, 15 U.S.C. 639, to simplify the reporting requirements of the Small Business Administration to the President and the Congress and restates, with some changes and additions, the cooperation to be extended by other agencies in assisting small business enterprises. However, we wish to point out that the Administration's report to the Congress which is now made semiannually would be changed to an annual report and a separate report on the Administration's progress in liquidating certain RFC assets which is now made quarterly would be made part of the once-a-year report. The primary purpose of the changes, to eliminate unnecessary reports, is consistent with the aim of the General Accounting Office. The Administration now prepares financial statements and reports on its operations as of June 30 for the regular closing of the Government's fiscal year, e.g., for inclusion in the budget document. By requiring a December 31 report, the Administration will be required to duplicate much of this work. In effect, the advantage of preparing an annual report would, to a large extent, be lost. Also, the advantage of having an annual report prepared on the same basis as the budget presentation and in agreement with central reports prepared as of the end of the Government's fiscal year would be sacrificed. Whether the benefits for congressional purposes of a report as of December 31 outweigh these considerations is, of course, for determination by the Congress.

Section 6 of the bill would amend section 2(a) of the act, 15 U.S.C. 631(a), to include subcontracts in the declaration of congressional policy that a fair proportion of total Government procurement be placed with small business enterprises. The extension of the Small Business Act to the subcontract level is, of course, a matter of policy for the determination of the Congress. However, it is deemed appropriate to point out that section 1–707 of the Armed Services Procurement Regulation (ASPR) and 13 C.F.R. 124.8–13 and 124.8–14 provide procedures to assist small business concerns in obtaining subcontracts under prime Government contracts. Also, in the case of Department of Defense prime contracts exceeding $1 million which contain the standard clause entitled "Utilization of Small Business Concerns," prime contractors are required to establish and conduct a defense subcontracting small business program as outlined in section 1–707.3 of the ASPR. We have no independent knowledge, however, as to the effectiveness of this subcontracting program.

Section 7(1) of the proposed legislation would amend section 8(b)(8) of the act, 15 U.S.C. 637(b)(8), so as to permit the Administration, for the purpose of review, to have access to the records of procurement agencies involving procurement of the financing of procurement. It is not clear, however, whether the review contemplated would be for the purpose of accumulating data for reporting pursuant to section 10 of the act or for the purpose of monitoring the procurement and business loan activities of the purchasing agencies. While we have some reservations as to the practicability of this amendment, we have no specific comments to offer other than to suggest that the primary purpose of the review authority be specifically set out in the amendment.

Section 7(2) of S. 836 would amend section 8(b)(11) of the act, 15 U.S.C. 637(b)(11), to carry forward the contemplated congressional policy to include subcontracts within the purposes of the act. We have no comments to offer with respect thereto other than those set out above in connection with section 6 of the proposed legislation.

Section 8 of S. 836 would amend section 8 of the act by adding a new subsection "(d)(1)" to require the Administrator, after consultation with officials of GSA, DOD, and AEC, to promulgate a small-business subcontracting program. We believe that our comments offered with respect to section 6, above, are applicable here also. However, we have no comments to offer as to whether such a program would result in improvements over the DOD program set out in section 1–707 of the ASPR. The proposed new subsection 8(d)(2) would provide that every contract in excess of $1 million to be performed within the United States should require the contractor to conform to the proposed subcontracting program and to insert in all subcontracts and purchase orders over $500,000 a provision requiring the subcontractor or supplier to conform to such program. While we express no opinion as to the need for this amendment, it would appear to present some serious practical problems. For example, the administration of this program by the procurement agencies would necessitate, in our view, a considerably increased staff. Also, there would arise the problem of securing compliance with the contract or subcontract provisions. Moreover, we have some doubts whether noncompliance with such provision would constitute a default under the particular contract or subcontract. We would suggest that the amendment specifically spell out the legal effect of such provision and the penalties or damages which might accrue in the event of noncompliances. Also, we suggest that the word "subcontractors" in line 22 on page 5 be changed to "subcontracts."

Section 9 would further amend section 8 of the act by adding a further new subsection "(e)" to authorize the Secretary of Commerce to publicize notices of all proposed defense procurement actions in excess of $10,000 and all civilian procurement actions in excess of $5,000 in the daily publication U.S. Department of Commerce Synopsis of the U.S. Government Proposed Procurements, Sales and Contract Awards, subject to certain exclusions. Since we have no independent knowledge as to the need or desirability of the proposed new subsection, we have no comments to offer with regard thereto.

Section 10 of the bill would amend section 7(d) of the act, 15 U.S.C. 636(d), to read as follows:

"(d) The Administration also is empowered to make grants to any State government, or any agency thereof, State chartered development credit or finance corporations, land-grant colleges and universities, colleges and schools of business, engineering, commerce, or agriculture, and corporations formed by two or more of the entities hereinabove described which are eligible to receive such grants, for studies, research, and counseling concerning the managing, financing, and operation of small-business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of section 8(b)(1) by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. Only one such grant shall be made within any one State in any one year and no such grant shall exceed an aggregate amount of $40,000. The Administration may require, as a condition to any grant under this section, that an additional amount not exceeding the amount of such grant be provided from sources other than the Administration to assist in carrying out the purposes for which such grant is made: *Provided*, That if such grant or any part thereof is to be utilized for the purpose of providing counseling services to individual small-business enterprises the Administration shall require such additional amount be provided and in an amount which is equal to the amount of such grant."

It is noted that in the existing section 7(d), and as proposed to be amended by section 10 of the bill, there is no provision requiring the audit or review of such grants. In the interests of sound management and business practices, we believe that the Government should have the right to audit and review expenditures made under grants provided for in section 7(d) or as proposed to be amended by section 10 of the bill for a period of 3 years after the last payment under the grant. We, therefore, recommend that section 10 be appropriately amended to provide for such audit and review authority.

Section 11 of S. 836 would amend section 502 of the Small Business Investment Act of 1958, 15 U.S.C. 696, to delete paragraph (6) which prohibits loans to any local development company after June 30, 1961. Whether such loan restriction should be removed appears to be a matter solely for consideration by the Congress. Hence, and in the absence of any information respecting the need for such restrictions, we have no comments to offer with respect thereto.

Five additional copies of this report are furnished as requested.

Sincerely yours,

FRANK H. WEITZEL,
Assistant Comptroller General of the United States.

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DEPARTMENT
MANHATTAN, KANSAS

THE SMALL BUSINESS ACT OF 1953, AS AMENDED

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title II of the Act of July 30, 1953 (Public Law 163, Eighty-third Congress), as amended, is hereby withdrawn as a part of that Act and is made a separate Act to be known as the "Small Business Act".

SEC. 2. The Small Business Act is amended to read as follows:

"SEC. 1. This Act may be cited as the 'Small Business Act'.

"SEC. 2. (a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts for property and services for the Government (including but not limited to contracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

"(b) Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes.

"SEC. 3. For the purposes of this Act, a small-business concern shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

"SEC. 4. (a) In order to carry out the policies of this Act there is hereby created an agency under the name 'Small Business Administration' (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this Act, the term 'United States' includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

"(b) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. The

Administrator is authorized to appoint three Deputy Administrators to assist in the execution of the functions vested in the Administration.

"(c) The Administration is authorized to obtain money from the Treasury of the United States for use in the performance of the powers and duties granted to or imposed upon it by law, not to exceed a total of $650,000,000 [1] outstanding at any one time. For this purpose appropriations not to exceed $650,000,000 [1] are hereby authorized to be made to a revolving fund in the Treasury. Advances shall be made to the Administration from the revolving fund when requested by the Administration. This revolving fund shall be used for the purposes enumerated subsequently in sections 7 (a), 7 (b), and 8 (a). Not to exceed an aggregate of $500,000,000 [2] shall be outstanding at any one time for the purposes enumerated in section 7 (a). Not to exceed an aggregate of $125,000,000 shall be outstanding at any one time for the purposes enumerated in section 7 (b). Not to exceed an aggregate of $25,000,000 shall be outstanding at any one time for the purposes enumerated in section 8 (a). The Administration shall pay into miscellaneous receipts of the Treasury, at the close of each fiscal year, interest on the net amount of the cash disbursements from such advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities.

"(d) There is hereby created the Loan Policy Board of the Small Business Administration, which shall consist of the following members, all ex officio: The Administrator, as Chairman, the Secretary of the Treasury, and the Secretary of Commerce. Either of the said Secretaries may designate an officer of his Department, who has been appointed by the President by and with the advice and consent of the Senate, to act in his stead as a member of the Loan Policy Board with respect to any matter or matters. The Loan Policy Board shall establish general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administration.

"SEC. 5. (a) The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil-service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this Act; to define their authority and duties; to provide bonds for them in such amounts as the Administrator shall determine; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this Act. Subject to the standards and procedures under section 505 of the Classification Act of 1949, as amended, not to exceed fifteen positions in the Administration may be placed in grades 16, 17, and 18 of the General Schedule established by that Act, and any such positions shall be additional to the number authorized by such section.

[1] This fund has been increased by $250 million by the Small Business Investment Act of 1958, Public Law 85-699, and by $75 million by Public Law 86-367.

[2] This fund was increased by Public Law 86-367 mentioned above.

"(b) In the performance of, and with respect to, the functions, powers, and duties vested in him by this Act the Administrator may—

"(1) sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property;

"(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this Act, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection;

"(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this Act;

"(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 3709 of the Revised Statutes, as amended (41 U. S. C., sec. 5), shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this Act if the premium therefor or the amount thereof does not exceed $1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this Act may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

"(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 7 (a) and 7 (b);

"(6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this Act;

"(7) in addition to any powers, functions, privileges, and immunities otherwise vested in him, take any and all actions, including the procurement of the services of attorneys by contract, determined by him to be necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this Act;

but no attorneys' services shall be procured by contract in any office where an attorney or attorneys are or can be economically employed full time to render such services;

"(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with the Travel Expense Act of 1949, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 7 (b) from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment; and

"(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 7 (b).

"(c) To such extent as he finds necessary to carry out the provisions of this Act, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 3709 of the Revised Statutes, as amended (41 U. S. C., sec. 5). Any individual so employed may be compensated at a rate not in excess of $50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed $15 per diem in lieu of subsistence and other expenses.

"SEC. 6. (a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by this Act. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

"(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 4 (c) of this Act. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

"SEC. 7. (a) The Administration is empowered to make loans to enable small-business concerns to finance plant construction, conversion, or expansion, including the acquisition of land; or to finance the acquisition of equipment, facilities, machinery, supplies, or materials; or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy; and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or

deferred basis. The foregoing powers shall be subject, however, to the following restrictions and limitations:

"(1) No financial assistance shall be extended pursuant to this subsection unless the financial assistance applied for is not otherwise available on reasonable terms.

"(2) No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no loan may be made unless it is shown that a participation is not available.

"(3) In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

"(4) Except as provided in paragraph (5), (A) no loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the revolving fund established by this Act would exceed $350,000; (B) the rate of interest for the Administration's share of any such loan shall be no more than 5½ per centum per annum; and (C) no such loan, including renewals or extensions thereof, may be made for a period or periods exceeding ten years except that a loan made for the purpose of constructing facilities may have a maturity of ten years plus such additional period as is estimated may be required to complete such construction.

"(5) In the case of any loan made under this subsection to a corporation formed and capitalized by a group of small-business concerns with resources provided by them for the purpose of obtaining for the use of such concerns raw materials, equipment, inventories, supplies or the benefits of research and development, or for establishing facilities for such purpose, (A) the limitation of $350,000 prescribed in paragraph (4) shall not apply, but the limit of such loan shall be $250,000 multiplied by the number of separate small businesses which formed and capitalized such corporation; (B) the rate of interest for the Administration's share of such loan shall be no less than 3 nor more than 5 per centum per annum; and (C) such loan, including renewals and extensions thereof, may not be made for a period or periods exceeding ten years except that if such loan is made for the purpose of constructing facilities it may have a maturity of twenty years plus such additional time as is required to complete such construction.

"(6) The Administrator is authorized to consult with representatives of small-business concerns with a view to encouraging the formation by such concerns of the corporation referred to in paragraph (5). No act or omission to act, if requested by the Administrator pursuant to this paragraph, and if found and approved by the Administration as contributing to the needs of small business, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act of the United States. A copy of the statement of any such finding and approval intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register. The authority granted in this paragraph shall be exercised only (A) by the Administrator, (B) upon the condition that the Administrator consult with the Attorney General and with the Chairman of the Federal Trade Commission, and (C) upon the condition that the Administrator obtain the approval of the Attorney General before exercising such authority. Upon withdrawal of any request or finding hereunder or upon withdrawal

by the Attorney General of his approval granted under the preceding sentence, the provisions of this paragraph shall not apply to any subsequent act or omission to act by reason of such finding or request.

"(7) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment.

"(b) The Administration also is empowered—

"(1) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate because of floods or other catastrophes; and

"(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to any small-business concern located in an area affected by a drought or excessive rainfall, if the Administration determines that the small-business concern has suffered a substantial economic injury as a result of such drought or excessive rainfall and the President has determined under the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes', approved September 30, 1950, as amended (42 U. S. C., secs. 1855–1855g), that such drought or excessive rainfall is a major disaster, or the Secretary of Agriculture has found under the Act entitled 'An Act to abolish the Regional Agricultural Credit Corporation of Washington, District of Columbia, and transfer its functions to the Secretary of Agriculture, to authorize the Secretary of Agriculture to make disaster loans, and for other purposes', approved April 6, 1949, as amended (12 U. S. C., secs. 1148a–1–1148a–3), that such drought or excessive rainfall constitutes a production or economic disaster in such area.

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding twenty years. The interest rate on the Administration's share of any loan made under this subsection shall not exceed 3 per centum per annum. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

"(c) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

"SEC. 8. (a) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

"(1) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, or materials to the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Adminis-

tration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer; and

"(2) to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to small-business concerns or others for the manufacture, supply, or assembly of such articles, equipment, supplies, or materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts.

"(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

"(1) to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, by disseminating such information, and by such other activities as are deemed appropriate by the Administration;

"(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

"(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

"(4) to consult and cooperate with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

"(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

"(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated 'small-business concerns' for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a 'small-business concern' in accordance with the criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a 'small-business concern'. Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to

be designated 'small-business concerns', as authorized and directed under this paragraph;

"(7) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract. In any case in which a small-business concern or group of such concerns has been certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and are authorized to let such Government contract to such concern or group of concerns without requiring it to meet any other requirement with respect to capacity and credit;

"(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act;

"(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act;

"(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

"(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

"(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies; and

"(13) to establish such small business advisory boards and committees truly representative of small business as may be necessary to achieve the purposes of this Act.

"(c) The Administration shall from time to time make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and shall make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.

"SEC. 9. (a) Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business

concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

"(b) It shall be the duty of the Administration, and it is hereby empowered—

"(1) to assist small-business concerns to obtain Government contracts for research and development;

"(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense; and

"(3) to provide technical assistance to small-business concerns to accomplish the purposes of this section.

"(c) The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.

"(d) (1) The Administrator is authorized to consult with representatives of small-business concerns with a view to assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:

"(A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;

"(B) to undertake and utilize applied research;

"(C) to collect research information related to a particular industry and disseminate it to participating members;

"(D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;

"(E) to prosecute applications for patents and render patent services for participating members; and

"(F) to negotiate and grant licenses under patents held under the joint program, and to establish corporations designed to exploit particular patents obtained by it.

"(2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.

"(3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agree-

ment approved by the Administrator under this subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

"SEC. 10. (a) The Administration shall make a report every six months of operations under this Act to the President, the President of the Senate, and the Speaker of the House of Representatives. Such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved, and such report shall include such other information and such comments and recommendations as the Administration may deem appropriate.

"(b) The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business, and to the House Select Committee To Conduct a Study and Investigation of the Problems of Small Business, on June 30 and December 31 of each year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids.

"(c) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. The Attorney General shall submit to the Congress and the President, at such times as he deems desirable, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

"(d) For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make a monthly report to the President, the President of the Senate, and the Speaker of the House of Representatives not less than forty-five days after the close of the month, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small-business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such monthly reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

"(e) The Administration shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the House Select Committee To Conduct a Study and Investigation of the Problems of Small Business, or their duly authorized representatives.

"(f) To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall

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consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

"SEC. 11. (a) The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this Act.

"(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

"(c) The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

"(d) Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

"SEC. 12. The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

"SEC. 13. No loan shall be made or equipment, facilities, or services furnished by the Administration under this Act to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is

rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this Act; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

"SEC. 14. To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.

"SEC. 15. To effectuate the purposes of this Act, small-business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small-business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this Act shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator.

"SEC. 16. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this Act, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

"(b) Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the

Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

"SEC. 17. Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

"SEC. 18. The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government and nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act.

"SEC. 19. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

"SEC. 20. There are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes of this Act.

"SEC. 21. All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency."

SEC. 3. The fourth paragraph of section 24 of the Federal Reserve Act is amended (1) by striking out "or the Small Business Administration" and "or of the Small Business Act of 1953,", and (2) by adding at the end thereof the following new sentence: "Loans in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred basis under the Small Business Act shall not be subject to the restrictions or limitations of this section imposed upon loans secured by real estate."

SEC. 4. The Secretary of the Treasury is hereby authorized to further extend the maturity of or renew any loan transferred to the Secretary of the Treasury pursuant to Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan.

Approved July 18, 1958.

THE DEFENSE PRODUCTION ACT OF 1950

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SEC. 708. (a) The President is authorized to consult with representatives of industry, business, financing, agriculture, labor, and other interests, with a view to encouraging the making by such persons with the approval by the President of voluntary agreements and programs to further the objectives of this Act.

(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and found by the President to be in the public interest as contributing to the national defense shall be construed to be within the prohibition of the antitrust laws or the Federal Trade Commission Act of the United States: *Provided, however,* That after the enactment of the Defense Production Act Amendments of 1955, the exemption from the prohibitions of the antitrust laws and the Federal Trade Commission Act of the United States shall apply only (1) to acts and omissions to act requested by the President or his duly authorized delegate pursuant to duly approved voluntary agreements or programs relating solely to the exchange between actual or prospective contractors of technical or other information, production techniques, and patents or patent rights, relating to equipment used primarily by or for the military which is being procured by the Department of Defense or any department thereof, and the exchange of materials, equipment, and personnel to be used in the production of such equipment; and (2) to act and omissions to act requested by the President or his duly authorized delegate pursuant to voluntary agreements or programs which were duly approved under this section before the enactment of the Defense Production Act Amendments of 1955. The Attorney General shall review each of the voluntary agreements and programs covered by this section, and the activities being carried on thereunder, and, if he finds after such review and after consultation with the Director of the Office of Defense Mobilization and other interested agencies, that the adverse effects of any such agreement or program on the competitive free-enterprise system outweigh the benefits of the agreement or program to the national defense, he shall withdraw his approval in accordance with subsection (d) of this section. This review and determination shall be made within ninety days after the enactment of the Defense Production Act Amendments of 1955.

A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

(c) The authority granted in subsection (b) shall be delegated only (1) to officials who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, unless otherwise required to be so appointed, and (2) upon the condition that such officials consult with the Attorney General and with the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such officials obtain the approval of the Attorney General to any request thereunder before making the request. For the purpose of carrying out the objectives of title I of this Act, the authority granted in subsection (b) of this section shall not be delegated except to a single official of the Government.

(d) Upon withdrawal of any request or finding made hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act or omission to act by reason of such finding or request.

(e) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this Act. Such surveys, and the reports hereafter required, shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President within ninety days after the approval of this Act, and at least once every three months, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

(f) After the date of enactment of the Defense Production Act Amendments of 1952, no voluntary program or agreement for the control of credits shall be approved or carried out under this section.

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THE SMALL BUSINESS INVESTMENT ACT OF 1958

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TITLE V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

SEC. 501. (a) The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this Act. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(b) The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after the date of the enactment of this Act, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

SEC. 502. The Administration may, in addition to its authority under section 501, make loans for plant construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however,* That the foregoing powers shall be subject to the following restrictions and limitations:

(1) All loans made shall be so secured as reasonably to assure repayment. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

(2) The proceeds of any such loan shall be used solely by such borrower to assist an identifiable small-business concern and for a sound business purpose approved by the Administration.

(3) Loans made by the Administration under this section shall be limited to $250,000 for each such identifiable small-business concern.

(4) Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital to be used in each instance as is determined to be reasonable by the Administration.

(5) No loans, including extensions or renewals thereof, shall be made by the Administration for a period or periods exceeding ten years plus such additional period as is estimated may be required to complete construction, conversion, or expansion, but the Administration may extend the maturity of or renew any loan made pursuant to this section beyond the period stated for additional periods, not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan. Any such loan shall bear interest at a rate fixed by the Administration.

(6) No loan shall be made under this section to any local development company after June 30, 1961.

TITLE VI—CHANGES IN FEDERAL RESERVE AUTHORITY

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SEC. 602. * * *

(c) Section 7 of the Small Business Act is amended by adding at the end thereof a new subsection as follows:

"(d) The Administration also is empowered to make grants to any State government, or any agency thereof, State chartered development credit or finance corporations, land-grant colleges and universities, and colleges and schools of business, engineering, commerce, or agriculture for studies, research, and counseling concerning the managing, financing, and operation of small-business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of section 8(b)(1) by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. Only one such grant shall be made within

any one State in any one year, and no such grant shall exceed an aggregate amount of $40,000.

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Senator PROXMIRE. The first witness is the Honorable John Horne, Administrator of the Small Business Administration. Mr. Horne, we are delighted to have you here.

You are an old friend of the members of the committee. Will you come forward and bring anybody you wish with you?

I would like, with the permission of the members of the subcommittee, to set some rules for this hearing. I would request that witnesses confine their formal testimony to about 15 minutes. Any additional detail can be put into the record, of course. I think if witnesses can confine their initial statements to 15 minutes, followed by questions, we can move along quickly. This morning we have four witnesses and tomorrow we have seven, I believe. We are trying to get this accomplished by the end of the week.

Go right ahead.

STATEMENT OF JOHN E. HORNE, ADMINISTRATOR; ACCOMPANIED BY IRVING MANESS, DEPUTY ADMINISTRATOR FOR PROCUREMENT AND TECHNICAL ASSISTANCE; AND ROSS DAVIS, OFFICE OF GENERAL COUNSEL, SMALL BUSINESS ADMINISTRATION

Mr. HORNE. Thank you very much, Mr. Chairman.

With your permission, I brought Mr. Maness to the table with me, who is Deputy Administrator for Procurement and Technical Assistance, and Mr. Ross Davis, who is from the General Counsel's office, and who has been with the agency for a long time.

I appreciate very much being here, Mr. Chairman.

Although this is my first appearance before the Senate Committee on Banking and Currency as Administrator of the Small Business Administration, I am happy to say that I am not a stranger here, as you have indicated. During my service as administrative assistant to Senator Sparkman, my work often brought me to this committee room. It is my privilege to know the members of the committee and its staff. I look forward to the continuation of a pleasant relationship.

Before discussing the bill, S. 836, I would like to take this opportunity to offer some general observations about the responsibilities which I have undertaken as Administrator of the Small Business Administration.

It is the duty of this agency to promote the economic welfare of at least 95 percent of the Nation's business establishments. Our smaller enterprises, numbering approximately 4,500,000, provide a livelihood for some 29 million people or almost half the number of persons presently engaged or employed in American business enterprises.

Clearly, small business concerns are making a vital contribution to the wealth and strength of the Nation. More important, their existence provides our greatest hope for the continuance of the free-enterprise system, a system which generated our industrial strength and which, many competent observers believe, is seriously endangered by the spread of monopolistic practices and restraints on trade.

Nevertheless, small business, this vast segment of our production, distribution and service facilities, cannot prosper and grow in our highly complex economy unless the Federal Government vigilantly preserves an economic climate which will offer the ambitious entrepreneur an opportunity to go into business and, if he has the necessary abilities, for his business to prosper and grow.

And if our smaller enterprises do not prosper and grow, our total economy will move ahead slowly, if at all. It was in recognition of this fact that the Congress created first the Small Defense Plants Administration in 1951, and then in 1953, its successor, the Small Business Administration. Five years later the Congress established the latter agency on a permanent basis.

Since its inception, SBA has been conducting programs formulated by the Congress to assist small business concerns in financing their operations, in obtaining a fair share of the Government procurement dollar and in improving their technical and managerial skills.

The small business community has, of course, benefited from these activities. However, the criticism has been made that more efficiency, determination and vigor must be brought to bear on the administration of these programs if their full potential is to be developed. The accomplishment of such improvements is one of my primary objectives.

As a first move in this direction I issued an order calling for an immediate step-up of all SBA programs, particularly those which can function in depressed areas.

In order to increase our activities in these areas, I modified the size standards used in determining whether a business is eligible for SBA assistance. Firms located in areas of substantial labor surplus, as designated by the Secretary of Labor, are now allowed an increase of 25 percent over the standards normally applicable.

These directives were issued in conformity with instructions of the President that, in carrying out programs during the present period of economic slack, agencies of the Government should seek every means consistent with efficiency to accelerate their activities and, further, that a particularly high priority be given to actions which could have an immediate effect on unemployment or upon areas of labor surplus. I am presently reviewing the Small Business Administration's organization and operation with a view to accelerating further the agency's programs.

And now, Mr. Chairman, with your permission, I would like to turn to S. 836, a bill to amend the Small Business Act and for other purposes.

The Small Business Administration has forwarded to this committee rather extensive and detailed comments on this proposed legislation.

Senator PROXMIRE. I would interrupt you at this point to say that your report to the chairman of the full committee, Chairman Robertson, has been placed in the record earlier. It is more detailed and specific on the bill than your presentation here this morning.

Mr. HORNE. Thank you, sir.

In the interest of brevity, I will not repeat these comments now. I would, however, like to discuss three matters of importance which are presented by S. 836.

First, section 11 of the bill would effect an indefinite extension of the present authority of SBA to make loans to State and local development companies for the construction, conversion, or expansion of plants to be occupied by small business concerns.

This authority, found in section 502 of the Small Business Investment Act of 1958 is presently due to expire on June 30 of this year. This loan program should be continued beyond this date.

On February 23, 1961, I notified all regional directors of my determination that, in furtherance of the President's objective of seeking to invigorate the entire economy and to provide prompt assistance to economically depressed areas, there was an urgent need for sharply increased emphasis on our State and local development company lending programs.

Just to ad lib for a moment, Mr. Chairman, I have taken other steps to expand this program to make it more effective if at all possible, in addition to instructions to regional directors to step up their efforts in behalf of this program. We are developing and soon will be sending out brochures—just a brief brochure—I brought a copy with me—telling more about this program, how it can be more effectively utilized at the local level.

And we will send out, with a covering letter, about 5,000 copies of this brochure. They will go primarily to local development companies already in being, in municipalities and counties but which have not yet been really activated.

They will also go to such organizations as chambers of commerce, to State deevlopment corporations, and to other sources which we think would be interested in this program, and which we think would want to utilize, more than has been utilized in the past, this program.

We believe that the loan program authorized by section 502 can be of material assistance, not only to strengthen numerous small business concerns but, equally important, to strengthen the economy of the communities in which they are located.

However, because the programs established by section 502 are still in a developmental phase and because the proper functions and responsibilities of State development companies financed under title V of this act still are under study, I suggest that the present expiration date be extended to June 30, 1965.

Section 10 of S. 836 makes certain changes to the legislation authorizing the grant program embodied in section 7(d) of the Small Business Act. As we have indicated in our report to this committee, SBA currently is engaged in an evaluation of the past results of the grant program to determine if funds should be requested of the Congress.

It is anticipated that this review will be complete in the very near future. Notwithstanding the pendency of this review and recognizing that there may be differences in opinion as to the utility of section 7(d) of the act, I recommend that the Congress amend this section to improve the basic legislation authorizing the grant program.

To accomplish this aim, as we have indicated in our report, I suggest that (1) SBA be authorized to recommend topics for study to grant applicants when appropriate, (2) the present limitation of one grant per year per State be deleted (but that the limitation of $40,000 per year per State be retained), and (3) the present language pertaining to management counseling be deleted.

The first two changes will substantially increase the utility and efficiency of the grant program. Insofar as management counseling is concerned, this activity clearly is dissimilar to the research contemplated by section 7(d) and should be dealt with as a separate and distinct problem. SBA presently is studying means of providing an augmented management counseling program. I have been informed, Mr. Chairman, that you, too, are considering this problem as a separate program.

Finally, Mr. Chairman, I wish to turn to section 8 of S. 836. When I appeared before this committee in January in connection with my nomination to be Administrator of SBA, in response to questions put to me by you, Mr. Chairman, I suggested that SBA must play a more aggressive role if the smaller enterprises were to be accorded a fair opportunity to contribute to our national defense programs and, equally important, to share in the benefits which accrue to the firms which participate in these programs.

I am well aware of the awesome responsibilities which are borne by our Defense Establishment. Insofar as national defense is concerned, this country must be second to none. I am of the opinion, however, that too little emphasis has been placed upon the effect on our national strength of excess concentration of defense spending in a relatively few and larger business enterprises.

This present trend must be reversed. The responsibilities and benefits of defense procurement must be spread more widely to include the hundreds of competent smaller firms whose potential contribution to this program presently is being overlooked.

This urgent need has received widespread recognition. Recognition, however, has not in the past resulted in satisfactory small business programs.

The reasons for this may be many; but whatever these reasons may be, in my opinion they do not preclude the establishment and operation of effective small business programs if there exists the will to establish and operate such programs.

In recent years the small business share of Government contracts has continued to diminish, as you indicated in your statement a few moments ago.

Procurement agencies have advised on numerous occasions that the increasing complexities of Government requirements preclude significant reversal of this trend, and that small concerns must look increasingly to the role of subcontractor.

However, the small business share of subcontracts has not either been commensurate with their capabilities or sufficient to compensate for their decreasing share of the prime contract dollar.

Despite expressions of congressional interest in the welfare of small business concerns, hearings conducted during the 85th Congress, 1st session, by your committee on S. 2032 and other bills, and hearings conducted by the Select Committees on Small Business of both the Senate and the House of Representatives during the 86th Congress suggest that the larger prime contractors and higher tier subcontractors do not always deal equitably with small concerns. It appears advisable, therefore, to enact legislation to provide a basis for a fair and effective subcontracting program.

The statutory requirements should not be inflexible. They should permit adaptability to varying circumstances and conditions. For

this reason, in a letter of May 31, 1959, to you commenting on a committee print of a proposed bill, this agency recommended that in lieu of extending the joint determination set-aside program to subcontracts, legislation establishing subcontracting programs should prescribe minimum standards for the program to be followed by the larger prime and subcontractors.

The aims of section 8 of S. 3689, 86th Congress, 2d session, were consistent with these recommendations and you were so advised by this agency's letter of June 24, 1960.

By amendment, the Senate substituted the provisions of S. 3689 for H.R. 11207, 86th Congress, 2d session. However, as you have also pointed out, H.R. 11207 was not enacted.

Certain members of industry have raised objections to section 8 of S. 3689. Many of these objections, in our opinion, were predicated either on a misinterpretation of the provisions of section 8 or a misconception of the authority SBA would exercise if the section was enacted.

Section 8 of S. 836 is a revised version of section 8 of S. 3689, modified to meet certain of these objections.

As we have indicated in the past, SBA is in accord with the aims of section 8 of S. 836. I am aware, however, that a variety of objections to this revised legislation still persist. The Department of Defense and the General Services Administration have indicated that, in their view, placing the promulgation authority in SBA is an objectionable diminution of their authority without any commensurate curtailment of their responsibility.

This approach, they think, would inject unforeseeable complexities into their procurement mission. They urge, therefore, that the subcontracting program be a product of a joint cooperative effort on the part of the Small Business Administration, the Department of Defense, and the General Services Administration.

The procurement agencies suggest that the program be promulgated as part of the Armed Services Procurement Regulation and the Federal Procurement Regulations.

In the event of disagreement between the respective agencies, the Defense Department and the General Services Administration should have authority to determine the content of the regulations to be issued.

They also suggest that the legislative standards contained in proposed section 8 would preclude necessary flexibility in the establishment of subcontracting programs.

SBA and the procurement agencies have engaged in an intensive joint effort to develop a legislative proposal which would carry out the aim of the Congress and at the same time meet the needs of both SBA and the procurement agencies.

To this end, SBA recommends that section 8 be revised to provide that the Administrator of General Services, the Secretary of Defense and the Administrator of Small Business shall "cooperatively develop * * * small business subcontracting programs containing such provisions as may be appropriate to enable small business concerns to be considered fairly as subcontractors * * *." Subcontracting programs "cooperatively developed" by these agencies are to be embodied in the Federal Procurement Regulations and the Armed Services Procurement Regulation through presently established procedures. In the event that the agencies cannot come to agreement, then the Secretary of Defense and the Administrator of General Services will

determine the content of their respective regulations on these programs. In my report to this committee I have included legislative language to carry out this proposal.

In my opinion, the revised section 8 would be a sound legislative foundation for future subcontracting programs. As this agency has informed your committee previously, we view the consultation requirement of present section 8 as a requirement for a complete exchange of views, a genuine effort to reconcile differences, and the evolution of a subcontracting program which the participating agencies could, in the main, endorse.

The proposal for the cooperative development of a subcontracting program contained in the suggested revision to section 8 is equivalent as a practical matter, to the requirement of consultation presently embodied in the language of the bill.

Accordingly, I recommend the adoption of the revised section 8 described in our report.

This, Mr. Chairman, concludes the formal part of my statement. I have members of my staff with me. We would be happy to make available any further information which you may require.

Senator PROXMIRE. Mr. Horne, I want to thank you and compliment you for staying within your 15 minutes. It is a good beginning and helps to set the standard, I hope we can continue at this hearing.

Senator Sparkman?

Senator SPARKMAN. I am not sure I fully understand that last recommendation on section 8:

> The Administrator of General Services, the Secretary of Defense, and the Administrator of Small Business shall cooperatively develop * * * small business subcontracting programs containing such provisions as may be appropriate to enable small business concerns to be considered fairly as subcontractors * * *

Then you go on and say:

> In the event that the agencies cannot come to agreement, then the Secretary of Defense and the Administrator of General Services will determine the content of their respective regulations on these programs.

What happens to the Small Business Administration? Maybe I read it wrong, but the way I read it, if you are not able to settle, why then SBA just goes out the window. The Small Business Administration drops out and the other two are allowed to carry on.

Mr. HORNE. Senator, if no agreement should be reached among the three of us, then somebody has to have a final say-so as to what is to be done.

Senator SPARKMAN. That is the object of this proposed legislation. We have been trying to get this year in and year out. We have had 10 different reports from the Select Committee on Small Business. Every year we have been drumming on this one thing, "Do something about it."

Nothing has been done and that is the reason this bill was introduced, to try to legislate a requirement for something to be done.

I do not want to seem too critical of that suggestion, but I just want to find out what the answer is.

Mr. HORNE. I would like to point out this: This is a procedure that is followed in trying to effect joint determinations. If there is disagreement, final authority has to be vested somewhere and the procedure suggested here is in keeping with the procedure that is followed

in that particular program. Also, there would be a record of SBA's efforts, of the full discussion, if agreement is not reached. That could possibly have a salutary effect.

This also, Senator, I think, goes much farther than just consultation. It is a step forward. It does not go as far as the committee is recommending, but it is a step forward from what we presently have. This, as we view it—and I think the other agencies view it the same way—would be a real sincere, conscientious effort to cooperatively develop the program, and not just from the standpoint of someone else developing it and saying "Here it is, if you like it, all right. If you do not, it is just too bad."

In this for the first time we are helping in cooperatively developing a subcontracting program.

Senator SPARKMAN. If they agree with you. But if they do not agree with you, then you are out.

I am certainly in favor of the consultative part of it, but I would hope it might be something that would insure something being done.

In other words, are we going to lose another year?

Mr. HORNE. Of course, the administration of the program, whatever it may be, is in their hands. It gets back to one point I made earlier in my statement, in which I indicated or intimated that good will and good faith are actually the key to whatever we may do in the long run.

That is, on the part of the procuring agencies.

Senator SPARKMAN. I will say that I have some hope in the friendly attitude that I think we will find prevailing at the White House. After all, the President was at one time a member of the Select Committee on Small Business. He made promises during the campaign to small business. I would like to include them in these hearings, because I think it is well to have them repeated quite often. It was a very reassuring promise that he made, that small business was going to have closer attention during this administration.

(The statement referred to follows:)

Senator John F. Kennedy, President-elect, pledged aid for small business in his final election eve television program. Senator Kennedy, who formerly was a member of the Select Committee on Small Business, in reply to a question about what he would do for small business, stated: "Well, we have the highest bankruptcy rate in small business in the last year that we have had since World War II. * * * There are very few contracts from the Pentagon. Most of them go to the 10 largest companies in the United States. The tax policies favor the larger companies. The small businessmen can't get credit. His interest rates are so high, his taxes are burdensome, and he is in competition with big business which is able to get Government contracts and which is able to get credit and advertising and all the rest. We have to get additionally identified with small business, and I think in 1961 we are going to have to protect the right of small businessmen to compete."

Senator SPARKMAN. I hope that it will go to the extent that the President will lend his support toward working out an agreement among these different agencies.

As I say, I do not want to be critical of the Defense Department, but at the same time I have seen this fail so often before when we used every effort we could to get something going that I was glad to hear the chairman use the strong language that he did in his opening statement. And I earnestly hope that something will really come out of this year's effort, both through legislation and through the support that we have every reason to believe that we shall receive from the President.

Mr. HORNE. I would like to add just a word, if I may, Senator.

I have certainly been encouraged, and we at SBA have been encouraged, by the President's show of interest, and by a letter which he wrote you and also a suggestion that he sent to Secretary of Defense McNamara.

Senator SPARKMAN. As the chairman stated I had a very fine and reassuring letter from Secretary of Defense McNamara that he was going to cooperate. I think in all fairness we can say that we have at the head of Defense Department now someone who has given us a very definite pledge that he is going to try to work this thing out. So perhaps I ought not to be as cynical as I sound.

Mr. HORNE. Certainly I am hopeful. And so far I have been somewhat encouraged by the show of willingness to cooperate and to work with us from officials of the Department of Defense.

Senator SPARKMAN. Thank you, Mr. Chairman.

Senator PROXMIRE. We will insert the letter at this point, if there is no objection.

(The letter referred to follows:)

THE SECRETARY OF DEFENSE,
Washington, February 11, 1961.

Hon. JOHN J. SPARKMAN,
Chairman, Select Committee on Small Business,
U.S. Senate.

DEAR SENATOR SPARKMAN: I am writing you a brief note at this time to assure you of my personal interest in small business problems. President Kennedy attaches considerable importance to this matter, and has asked me to place additional emphasis on assuring participation by small business in defense procurement programs.

I have looked into our policies covering small business matters. These policies appear generally satisfactory, but it is my view that we can do a better job of implementing them. To this end, we are taking the following steps:

1. Responsibility for oversight of this program has been assigned to the Deputy Assistant Secretary of Defense who is responsible for procurement policy matters. To assist this official on small business programs, we have selected two men, widely experienced in Defense procurement, who will devote their full time to this effort.

2. I am asking the departmental Secretaries to give renewed attention and emphasis throughout their organizations to small business procurement. In this connection, I have asked that steps be taken (a) to find greater opportunities for procurement set-asides for small business, as permitted by law, and (b) to encourage prime contractors to make greater efforts to increase the competitive opportunities for small businesses.

I can assure you that it is my objective, through steps such as those outlined above, to make sure that we apply every effort to obtaining sound utilization of small business in Defense procurement, both at the prime and subcontractor levels. It is our desire to work closely with your committee in this effort. We will welcome your advice at any time.

Sincerely yours,

ROBERT S. MCNAMARA, *Secretary of Defense*

Senator PROXMIRE. The Senator from Oregon?

Senator NEUBERGER. No questions.

Senator PROXMIRE. I would like to congratulate you, Mr. Horne, on a good start. You have indicated in your statement some of the things you have done administratively already in your department.

I think it is fine. I say that because I think there is no Government agency which is so vehemently criticized in the State of Wisconsin as the SBA.

The Governor of the State has just finished a tour of the northern part of our State, of the depressed area where we have very heavy

unemployment. He has run into this criticism of SBA over and over again; the excessive requirements for collateral, for example, and the feeling that the SBA is often extremely unreasonable on these loans.

You are conferring with the Governor tomorrow, and I think that might be very helpful. I say that because I know that in no way can you be held responsible for any of this. These criticisms were mostly from denials of loans or requirements for loans that were exacted long before you were Administrator. But I wanted to acquaint you with the fact that as chairman of this subcommittee I am very conscious of the serious criticism in my own State which I think is a reflection of the attitude in many States. I am concerned about something you did not have in your statement but which you did have in your letter to Senator Robertson. That is your feeling that there was apparently no urgency for the additional $75 million, because of the way that you expected to program the money it would not be needed until June of 1962.

How does that compare with the views of the agency a year ago?

Did they expect to need more money than you do?

Do you recall that?

Mr. HORNE. May I ask Mr. Keith Hanna, who is controller and is in charge of the budget operations?

Mr. HANNA. The estimate a year ago, Mr. Chairman, was based on a projected volume of 1,100 business loan applications per month for the fiscal year 1961. That estimate was made following the fiscal year 1959 when the loan volume, as you may recall, was climbing steadily.

In 1960, however, it started tapering off. The estimate for the current year was brought down to an average of 800 applications per month.

Consequently, the anticipated needs for the revolving fund were moderated, and it indicated that the authorization would be adequate for this year and next year if the estimate of 900 applications per month for 1962 is accurate.

Senator PROXMIRE. I am wondering if one of the reasons for this moderation might be the attitude that was taken, at least in the Wisconsin SBA office and perhaps in many SBA offices, of discouragement, of requiring, as I say, collateral—I have instances—fantastically in excess of the amount required. Duplicating and triplicating and quadruplicating the amount needed for assurance.

I am sure many Senators have been critical, and I know the Wall Street Journal, the Milwaukee Journal and other papers around the country have attacked your agency for too free and easy a loan policy. This is not an easy job, as you know. But at the same time I think there should be as great an effort as possible on the part of the SBA to grant every worthy loan that can be granted. And the fact that you seem to have less of a demand now suggests to me that there are many people who are becoming discouraged with the SBA, perhaps, and feel they can't get anywhere with that agency, when in some cases their applications might have merit.

I would not expect you to grant a single loan that is not sound, that you could not grant in good conscience. I am certainly not asking for a step-up in loans in Wisconsin. But I am asking for an examination of the basis for refusals in the past and an examination of the require-

ments for collateral that you have had. I have seen some very unreasonable requirements.

I am deliberately doing this in a general way because I do not want to give you a loan that has been turned down in my State and say "Why didn't you grant it?" I think that sort of thing is just self-serving. But I would ask you to review what has happened in the past and determine if you cannot come up with a more generous and more effective program than you have had before.

Mr. HORNE. Mr. Chairman, I am looking forward to my meeting with the Governor of Wisconsin. I plan to have my deputy administrator for financial assistance with me at the meeting.

I might say, if I may, that I believe I am fortunate in having gotten the man that is going to work in this capacity for me. I have already discussed with him the specific point that you have raised. We agreed that particularly as regards small loans—and most of our loans are small loans—that perhaps too much attention has been given to collateral in the past.

That specific point is presently under close study and we expect to reach some conclusion on that within the next few days.

A bit of news that one of the staff handed me that might be of interest to you, is that the Wisconsin State Development Corp. has an application in now. This is a little bit at variance with the point you raised but I thought it would be of interest to you.

It has an application in now for $330,000. From all present indications, this will be approved as soon as details can be worked out.

I realize, too, Mr. Chairman, that you are as anxious as all of us are that loans be made on a reasonably sound basis. As a matter of fact, our legislation requires that we reasonably expect to be repaid. But I am of the opinion, based on what I have run into so far, that we can make some changes that will be in keeping with what you have suggested.

Of course—and I am sure you will understand this—we do not get praised very frequently for the loans we make, but we do hear frequently about those we cannot make. But it is my intention, Mr. Chairman, to make as many loans as we can. After all this agency was brought into being to make sound loans which would not or could not be made by commercial lending agencies. It is my intention to expand this program and I am of the opinion that if we do and if we need additional help from Congress to make these loans, we will get that help.

Senator PROXMIRE. The history is the Eisenhower administration asked for $200 million and we chopped it down to $75 million. And now your statement does indicate that $75 million is welcome, can be used, is helpful for reserve, and gives you greater flexibility if other changes are made in the law. But the pace has slackened and there does not seem to be very great need. This does not seem to fit in with the note of urgency in President Kennedy's statements on the situation. This is a hard statistic. It is not a matter of an eloquent speech. When this comes before the committee, the need is not indicated for the amount of additional funds which President Kennedy's statements seem to indicate the small business community does need.

Mr. HORNE. Of course, if we are granted the flexibility recommended in our report, the $75 million would go farther toward filling our needs than if not granted.

But I see your point and it is a very good point. I want to reiterate that I do not look on this as a limit. If we begin to hit the top of this additional authorization and if we need additional authority, then we expect to come to Congress.

In other words, I do not look at this $75 million as any indication we would not push the program vigorously.

Senator PROXMIRE. Let us go to the most controversial section of the bill, section 8. In your statement you discuss this concentration of procurement in big business and you say "This trend must be reversed."

You indicate that all kinds of reasons have been given for this trend.

Perhaps you share with me the feeling that some of these reasons have been alibis and some have been very legitimate.

Why do you think we have this trend and what aspects or what causes of this trend that we have had in the past are subject to reversal?

What I am trying to get at is why you believe that is a very mild kind of proposal that you have agreed to with the Defense Department and GSA is going to do this job when it has been so discouraging in the past?

Mr. HORNE. I guess, Senator, that can be answered in this manner.

It gets back to a point I suggested to Senator Sparkman a few moments ago, and that is the importance of having the determination and desire to make a program work. Legislation, as you, of course, realize better than I, does not necessarily guarantee a successful program. The determination and the will and the help and the interest must be shown on the part of the people administering these programs.

I am hoping that we will have more of that. And I see evidence so far from my association with the Department of Defense officials that we will.

That is about as good an answer as I can give.

Senator PROXMIRE. Let me now go into what I think is a very watered down, mild, meek, and perhaps worthless proposal. Maybe I am too harsh.

These are the concessions. Instead of having SBA originate the program, a committee originates it.

I was happy to see one of the fine things President Kennedy has done is to abolish some 15 or 17 interdepartmental committees. I think it is awfully hard to get a committee to act with force and vigor and to accomplish things that can be done by a single responsible administrator.

SBA gives up its initiative. That is my first objection. SBA had the initiative in the past and the sole initiative.

In the second place, as Senator Sparkman has brought out so well, SBA would not be in it. It might be in on the conception but would not be in on the birth and bringing up of this child.

Defense and GSA make the final decision.

In the third place, I do not see anything here in the bill to provide assurance that the prime contractors will confer with SBA when they are requested to do so.

This is in the bill that we have, but you stipulated to a compromise which does not include that at all.

In the fourth place, there is no provision for enabling SBA to obtain from Government procurement agencies the data concerning subcontracting. There is no way you can initiate the program or oversee it. You cannot make a final decision on it, and you cannot procure the data which the present bill provides that you can.

And then, finally, the section that I think is a very good one, which Senator Hart has proposed, requiring publishing of contracts and subcontracts above a certain small minimum, is tossed out completely on the grounds that this can be done more flexibly by the administration. It seems to me these are great concessions to make. They are concessions that give up everything, except a consulting position for the SBA, to a committee of three people where the other two make the final decision. And then you do not have the followup that this bill gave you. Our bill was modified considerably and moderated a lot last year.

Mr. HORNE. Mr. Chairman, of course, if SBA took the initiative originally, it would still to a great extent have to be on a cooperative basis in that we would consult with the other agencies. Under this they are still required to consult with us and to cooperate. It goes further than just consultation as I said a few moments ago.

It goes further than saying "Here is what we want to do. Let us know if you agree." We are all in from the very beginning in helping to develop what this program is going to be.

Senator PROXMIRE. I do not want to interrupt but it seems to me you are in as kind of an ex officio member. You can sit in on this intellectual discussion of how you are going to run it, but do not have any final vote. If you vote differently they can veto you. Then you do not have any followup where you can go down and say how about this subcontract; how about this one and this one and this one?

And you cannot come to Congress with the information you are getting from the prime contractors and your knowledge of the situation to tell us about it.

Mr. HORNE. Of course, if we initiate it and take the lead, it would still be administered by the Department of Defense and other concerned agencies.

Senator PROXMIRE. I agree.

Mr. HORNE. It gets back again to good faith.

Senator PROXMIRE. Yes, but my point is that good faith is fine, but I do not see much difference, in this kind of program, between Democrats and Republicans. I think we can argue in a partisan way in campaigns about this kind of thing, but I think Mr. McNamara has the same kind of background that previous Secretaries of Defense have had, and the other people who are going to determine this have similar backgrounds.

If you are going to have a program, you have to do two things.

First, the Small Business Administration, which has the responsibility and the familiarity with the needs of small business, should formulate it, and second, the Small Business Administration should be able to follow it up and get specific information so they know whether it is being done.

It seems to me both of these are kicked away in the compromise we have here.

Mr. HORNE. I will say in all frankness, Mr. Chairman, that this is simply an effort on our part to compromise and to reach something which all of us could agree on and work together in good faith.

Senator SPARKMAN. Mr. Chairman, will you yield to me a minute?

Senator PROXMIRE. Yes.

Senator SPARKMAN. Of course, talking about the Defense Department having the administration of contracts—that is done now on the set-aside contracts, is it not?

Mr. HORNE. Yes, sir.

Senator SPARKMAN. And certainly we have had no difficulty in having a set-aside program developed with SBA playing the leading part.

Senator PROXMIRE. Would you say it is a success and has saved the taxpayers millions of dollars?

Senator SPARKMAN. Mr. Chairman, I have to leave because I am due to go to another committee. I had a series of seven questions here that I wanted to propound, and I do it on this basis.

The chairman will remember that in past sessions of Congress, we have had all kinds of objections raised to every piece of legislation that we have proposed pertaining to this. I thought it might be well to ask the Administrator of the Small Business Administration some of these questions, and anticipate these same objections or similar objections being made.

I should like to leave those, Mr. Chairman, and request that you ask this series of questions in order that we may have a record on them.

Senator PROXMIRE. I will be glad to.

Senator SPARKMAN. And I would like to make just this suggestion. I have formed more or less a habit of turning to the last page of the statements of Government witnesses and looking to see what the Bureau of the Budget had to say.

I have said this before. It always irritates me a little bit to find our Government agencies controlled so much by the Budget Bureau. I do not see a word in this instance. I was encouraged when I picked this up and did not see anything from the Bureau of the Budget.

But let me say in all frankness—and I do not ask you to answer this question—I am rather of the opinion that we have a statement that was prepared by the same people that have been running the Budget Bureau during the last 8 years. And of course, as I have often said, the difficulty in all of these programs relating to small business is that to help small business requires work, requires effort.

It is much harder than it is to do business with some of the multi-billion-dollar contractors. And we have the same people that are running in the same groove they have in the past. I want to say in all frankness I feel very strongly that we may require legislation to get anything done.

I just do not see how we can get very far with this kind of proposal unless we can get help directly from the President and the Secretary of Defense, Mr. McNamara.

We are not going to get it from the people who do the spadework in the Budget Bureau, I think.

Senator PROXMIRE. Would the Senator from Alabama be satisfied if, rather than ask these questions at the present time, since we have three more witnesses and the hour is late and these witnesses have to be

heard, that I give this to the Administrator and ask him if he will prepare answers for the record?

Senator SPARKMAN. I think that will be very good. It will save time. Any way the chairman handles it, will be satisfactory with me, but I do think it ought to be on the record.

May I say they are questions based upon section 8 remaining as it is rather than as proposed in this statement. That is the reason I felt we ought to get it on the record.

(The information referred to follows:)

SENATOR SPARKMAN'S QUESTIONS AND REPLIES OF SBA

In the interest of more clearly defining the intent and in order that we may predetermine the probable impact of this proposed legislation upon Government contractors, it is respectfully requested that the following questions pertaining to S. 836 be asked of Mr. John Horne, Administrator of the Small Business Administration.

Question 1. What is meant by consultation with the Administrator of General Services, the Assistant Secretary of Defense (Supply and Logistics), and the Chairman of the Atomic Energy Commission?

Answer. The consultation requirement of section 8 of S. 836, in my opinion, is a requirement for a complete exchange of views with the heads of the named agencies, a genuine effort to reconcile differences and the evolution of a subcontracting program which the participating agencies could, in the main, endorse. This was also the interpretation by my predecessor of a similar consultation requirement contained in S. 3689, 86th Congress, and H.R. 11207, 86th Congress, as passed by the Senate.

Question 2. What part, if any, will they play in formulating the Small Business subcontracting program?

Answer. I would consult fully with the heads of the named agencies. They would participate fully and without restriction in the development of the subcontracting program. I anticipate that working together we would build the new program on the foundation of existing subcontracting programs but add new features or modify existing features where experience has indicated such addition or improvement is necessary or desirable to achieve the congressional aims.

Question 3. Will there be general agreement among the foregoing as to the appropriateness of the provisions?

Answer. In my letter to the chairman of this committee commenting on S. 836, I stated that I do not visualize any irreconcilable disagreement between the participating agencies. My staff informs me that in the past substantial agreement has been achieved and constructive results effected whenever SBA participated completely and on an equal basis with the Department of Defense and the General Services Administration in the adoption of procurement regulations. An example of this cooperative operation is the achievements of the now dissolved Interagency Procurement Task Force.

Question 4. Would the SBA have unlimited authority to designate methods by which subcontracting would be accomplished?

Answer. SBA would not have unlimited authority to designate methods by which subcontracting would be accomplished. Section 8 expressly states that "no program promulgated * * * shall prescribe the extent to which any contractor shall enter into subcontracts or specify the business concerns to which * * * [subcontracts] shall be granted." This would preclude the possibility of construing section 8 as authorizing SBA unlimited authority to designate the methods by which subcontracting would be accomplished.

Question 5. The prime contractor is responsible to the Government procuring agency for the quality, reliability, and performance of the end item contracted for. If the prime contractor is responsible to the SBA for its subcontracting program as proposed in S. 836, would it not place the prime contractor in the position of dual responsibility and give the SBA broad authority over Government procurements with no responsibility for final delivery or performance of end item?

Answer. It has been suggested that section 8 would make the prime contractor responsible to both the procuring agency and SBA and give SBA broad authority over Government procurements without commensurate responsisbility. I am

unable to understand the basis for this allegation. Section 8 would not effect any change in the relationships in specific procurements between contractors and the contracting agency. As SBA previously informed Senator Proxmire and other Members of the Congress in connection with section 8 of H.R. 11207 as passed by the Senate:

"As heretofore they [the procurement agencies] and not SBA would continue to administer their contracts * * *.

"The bill does not create a divided responsibility and contractors do not have to answer to SBA. Contract administration is not SBA's function, but remains that of the procurement agency * * *.

"As SBA would have no authority to intervene in contract administration or in awarding of subcontracts, there is no basis for contending that the bill would superimpose SBA authority over military contracting, give SBA an additional right of audit over and above the military audit and GAO audit, or give SBA a blank check on the services with which contractors and subcontractors would be forced to comply."

Question 6. The SBA policy is advertising bidding where the determining factor is price alone among qualified bidders. In the missile field many factors such as relative quality, experience, reliability, past performances, and state-of-the-art must be considered in awarding subcontracts. Is SBA prepared to recognize this or will the incentive to get business by quality and performance be replaced by the incentive to cut corners in order to quote lowest price?

Answer. SBA does not and will not recommend or participate in any program whereby the Government will sacrifice required quality, reliability, or similar considerations in exchange for a lower price. Proof that we consider important such matters as quality and reliability is found in SBA's administration of the certificate of competency program wherein we are called upon to evaluate the ability of the lowest bidder to perform. Our successful record gives evidence of our awareness of the importance in procurement evaluation of quality, reliability, and so forth.

Question 7. Section 8 of the bill proposes that prime contractors and subcontractors will consult with the Administration when requested by the Administration. Will this place needless administrative demands on already overburdened suppliers or additional reporting and statistical information?

Answer. I recognize that many contractors are concerned with the possibility that consulting with SBA will place burdensome demands on them. This assumption, I believe, is not well founded. I am fully familiar with the possible consequences of unbridled demands for "consultation" by executive agencies. The Federal Reports Act, the Bureau of the Budget directives, and the legislative history of section 8 and its predecessor bills will deter SBA from making unreasonable demands. In any event, I can assure the committee that the consultation authority, if enacted into law, will be exercised by SBA with restraint and discrimination.

Mr. HORNE. Mr. Chairman, I want to express personal appreciation for the very friendly attitude, the very great desire on the part of this committee to be helpful to small business. Of course, my basic position is that I will gladly try to administer to the best of my ability any legislation I get from Congress.

Senator PROXMIRE. I am sure of that, and I want to assure the Administrator that there is no statement of mine, or I am sure, no statement of any other member of the committee, that indicates any personal criticism whatever.

It is a fact, however, that the SBA under the previous administration supported a far stronger bill than this bill we have here, which puts us in a kind of delicate and difficult and unhappy position.

Senator NEUBERGER. Will the chairman let me have a few words. Since you asked me if I had any questions, something has been injected about calling the statistician about the demand for loans.

When you were talking about putting these types of loans together, direct loans and participation loans——

Mr. HANNA. Yes, ma'am, that is all for business loans.

Senator NEUBERGER. You realize I do not have the background for this that both the Administrator and the other members of the committee have, so I enjoyed hearing the discussion.

I was interested in comparing some statistics from your State, Mr. Chairman, and my State, with regard to participation loans, as to interest rates. You say there is a great deal of criticism of SBA and yet in your State I find that the highest interest rate on a loan is 6 percent. In my State, it is 8 percent, and many are 7 percent. I would think there would be more loaning in Wisconsin, at a cheaper rate of interest, than in Oregon.

Who can give me the answer to this discrepancy?

Senator PROXMIRE. I think we have some pretty stable and conscientious Norwegian-German stock in Wisconsin, you know, that is awfully reliable.

But I am sure there is a statistical answer to this.

Senator NEUBERGER. Can you explain to me the difference?

Mr. HANNA. I will try.

The maximum interest rate on business loans as set forth in our legislation is 5½ percent, which applies to the SBA's share, its investments in any loan.

On the other hand, on deferred participation loans, or on the banks' share of immediate participation loans, the bank may charge whatever its normal rate is for that type of loan.

Senator NEUBERGER. Whatever the rate normally is?

Mr. HANNA. And the customary rate in the area for that type of loan would determine the rate being charged.

Senator NEUBERGER. Whatever its normal rate is or the most it can get, it appears to be, does it not?

Maybe I should address this question to Mr. Horne:

Would you think that it would be advantageous somehow to participation in this program to have some kind of an investigation of the interest rates charged these people? I just think that is gouging to charge anybody 8 percent. If the Government is going to back the loan, I mean.

Mr. HORNE. Senator, I think I might try to make one or two comments regarding that.

Basically, let me say I believe in low interest rates. I make no bones about that.

In the early days of SBA, there was no maximum interest rate specified in the legislation. On a participating loan, the bank would, as it does now, charge whatever is the going rate in its particular area. In some parts of the country the going rate is higher than in other parts of the country, depending on the availability of funds. After the bank sets its rate on its part of the participation, SBA would automatically charge the same rate on its part of the participation. That was corrected by Congress because many of the Members shared the same concern that you are expressing. Today SBA can only charge 5½ percent on its part.

This is another area of operation that I shall be glad to look into. But I also want to keep in mind that as long as the interest rates charged by the banks are not too excessive or not too greatly out of line with our 5½ percent. We want as much bank participation as we can get, provided, I repeat, it is not extremely unfair to the borrower as

far as the interest rate he pays on the part the bank takes. Also I have in mind that if we can build up a good relationship between the customer and his local bank it might provide for him a source of credit in the years ahead.

Those are the two things we are keeping in mind.

The bank's share of the participating loan is usually not great. I do not have the figures on that, but I think it runs most of them probably run 10 to 25 percent, with most of them I think being 10 percent. So if the borrower should pay 6½ or 7 or even 8 percent, he is only paying 5½ on the balance, on the 90 percent.

Senator NEUBERGER. Yes, but as I say, my background is not that of the other members of the committee. Your language indicates you have all talked about this many times before.

But I am interested in the FHA program to encourage more housing, and the veterans program, and I thought there was some sort of relationship between interest rates and whether small business could survive.

And when I see listed here interest rates of 8 percent on loans backed by the Government, it seems to me on the surface that it defeats the purpose.

Maybe I do not know all about it and maybe nobody pays that except in Oregon, but it just looks funny to me.

Mr. HORNE. Let me get further into that area.

Senator NEUBERGER. Because I would be inclined to say that I could not support increasing the fund if it is going to go to help banks get 8½ percent interest.

Mr. HORNE. The part of the fund that is given to us by Congress is 5½.

Senator NEUBERGER. But you are backing the loan. You are guaranteeing it, are you not?

I do not know. There must be some link here that is missing in my mind. It does not make good sense to me.

Mr. HORNE. If you would like for us to, I would be very glad to come myself or have someone handling this program come to your office at your convenience and go into it with you in whatever detail you want.

Senator NEUBERGER. Yes. I do not want to take up any more time of the other witnesses.

Mr. HORNE. Mr. Chairman, may I make one more comment about section 8, please. There is one difference in the situation this year than in the previous year, last year. On this particular occasion, if I understand it correctly—and I am reasonably sure that I do—there is agreement among all the agencies concerned that at least support would be given to our suggested modification of your bill.

That has not existed in the past. In the past we have at least not had other agencies go with us this far. At least they will go with us this far now.

Mr. PROXMIRE. Of course, in the past you had the Senate unanimously approving a bill that went a great deal further, and the House coming within an ace of going along with it. Now we come along with something that gives away about 95 percent of what we had and it does not look like very much progress to me.

Thank you very much, Mr. Horne.

Mr. HORNE. Thank you, Mr. Chairman.

(The following letter was received for the record:)

COMMITTEE ON FOREIGN RELATIONS, U.S. SENATE,
March 20, 1961.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Small Business,
Committee on Banking and Currency, U.S. Senate.

DEAR SENATOR PROXMIRE: My attention has been called to the testimony of Mr. John E. Horne, Administrator, Small Business Administration, before your subcommittee, on S. 836, a bill to amend the Small Business Act. I have also been furnished a copy of the letter of the Small Business Administration dated March 14, 1961, and addressed to Chairman Robertson, reporting on this bill.

You will recall my interest in section 7(d) of the Small Business Act, which provides for a program of grants for studies, research, and counseling concerning the managing, financing, and operation of small business enterprises.

Section 7(d) of the act was adopted, at my initiative, as an amendment to the Small Business Investment Act of 1958, and was incorporated in that act as section 602, entitled "Fund for Management *Counseling*." [Italics supplied.] Notwithstanding the fact that the legislative history clearly contemplates that grants may be made for "counseling" as well as studies and research, the Small Business Administration consistently has tried to read the word "counseling" out of the law, over my strong objections.

You, yourself, presided over the hearings of the Subcommittee on Small Business in 1959 at which this question of interpretation was thoroughly discussed. The report which you filed with the Senate (Rept. No. 834, 86th Cong., 1st sess., August 27, 1959) on S. 2612 provided authority for appropriations to continue this program beyond 1960. I enclose a copy of this report to refresh your recollection of the interpretation placed by the Committee on Banking and Currency on this program. The second section of this report, adopted by the committee after considerable discussion, makes it quite clear, although this should not have been necessary, that the program did, and does, in fact, include "counseling."

Apparently the Small Business Administration continues to ignore both the plain language of the law and the interpretation of it by the Committee on Banking and Currency in the report I have cited. The above-mentioned letter dated March 14, 1961, at page 11, states: "Finally, it is recommended that the present authority, *if any*, to finance through the grant program management counseling for small business, be deleted from section 7(d). This program is dissimilar to the bulk of the research work contemplated by section 7(d) and should be dealt with as a separate and distinct program." [Italic supplied.]

I am aware of the fact that you are working on legislation providing for a new and augmented management counseling program, and Mr. Horne's testimony indicates SBA's interest in the problem. I favor this approach and shall be glad to cooperate with you in this effort. However, until such legislation is enacted, I hope the authority under section 7(d) to make grants for "counseling," as well as "studies" and "research," will not be deleted from section 7(d). I respectfully request that this letter and a copy of your report to which I have referred, be made a part of the record of your hearings on S. 836.

With a copy of this letter I am calling this matter to the attention of Mr. John E. Horne, Administrator of the Small Business Administration. I am confident Mr. Horne could not have been familiar with either the legislative history of section 7(d) or with Senate Report No. 834 of the 86th Congress at the time of the submission of his letter of March 14 and his testimony on March 15.

Sincerely yours,

J. W. FULBRIGHT.

(An excerpt from the report referred to in the letter above follows:)

* * * * * * *

ADMINISTRATION OF THE PROGRAM OF GRANTS FOR STUDIES, RESEARCH AND COUNSELING

As indicated above, section 7(d) of the Small Business Act provides for a program of "grants to any State government, or any agency thereof, State-chartered development credit or finance corporations, land-grant colleges and universities, and colleges and schools of business, engineering, commerce, or agriculture for

studies, research, and counseling concerning the managing, financing, and operation of small-business enterprises * * *."

In recommending the enactment of this program in an amendment to the Small Business Act in 1958, the committee was impressed by testimony describing a program for assisting small businesses in a direct and timely manner by providing case studies and on-the-spot counseling concerning particular and sometimes local problems of a business or group of businesses. The language of the law is sufficiently broad to cover this type of activity. However, the Small Business Administration in its regulations under the section has interpreted the word "counseling" so as virtually to exclude direct contact between the grantee and small-business concerns.

The Small Business Administration's interpretation generally confines the program to one of grants for research into the problems of small business. While the committee does not deprecate the importance of research, it was favorably impressed at the hearings on this matter, held on July 28, 1959, with description of a variety of programs which could be developed by State and local agencies and institutions for utilizing the grant funds. The committee believes that the program can be most useful if it encompasses different types of programs developed locally to meet different needs in the various States.

Some of these programs may involve one or more of the concepts of "research," "case studies," and "counseling." Some of them may involve associations of two or more eligible grantees, in order that combinations of "studies," "research," and "counseling" may be undertaken. They may be developed in such a way that opportunities for study and counseling may arise when small businessmen seek financial assistance from private lenders, the Small Business Administration, small-business investment companies, and State and local development credit or finance companies.

The committee understands that this approach may create administrative difficulties for the Small Business Administration in allocating the grants and in supervising the programs. Nevertheless, the committee feels that the State programs should be allowed to develop with a maximum of flexibility and local ingenuity and control. The committee also believes that in the development of programs for counseling, particularly, continuity of a program is desirable so long as it is consistent with proper safeguards to protect the interests of the Federal Government.

The committee also considers that the SBA should use its discretionary authority to require matching funds to the extent that the State programs provide for counseling, in order that the funds for this type of program may be increased.

As indicated in its testimony, SBA believes undue emphasis on counseling may tend to replace research and, in general, it believes research projects at this time are more desirable than counseling projects. However, it has stated a willingness to make grants to finance counseling on a limited bases as an experimental program to determine what types of counseling are most productive and valuable to small business, how counseling best can be fostered without destroying the research aspects of the program, and how it can be done efficiently and economically.

This program is not inconsistent with the views of the committee as stated above. The committee agrees with this approach to the problem; that is, in the initial stages, pending further evaluation, the programs of counseling grants are to be considered experimental, and confined to a relatively few States, to determine what types of counseling are most helpful to small business. When these programs have been evaluated by SBA and the Congress, further legislative changes may be considered.

* * * * * * *

Senator PROXMIRE. The next witness is Mr. Charles W. Gasque, Jr. Is Mr. Silverstein here?

Mr. GASQUE. Apparently there are three of us. This is Mr. Silverstein and Mr. Robert T. Davis.

Mr. DAVIS. Mr. Chairman, I am Director of Legislation, Office of the Special Assistant to the Administrator, Congressional and Public Affairs.

STATEMENT OF CHARLES W. GASQUE, JR., ASSISTANT COMMISSIONER FOR PROCUREMENT POLICY; ACCOMPANIED BY JULIUS SILVERSTEIN, ASSISTANT GENERAL COUNSEL; AND ROBERT T. DAVIS, DIRECTOR OF LEGISLATION, OFFICE OF THE SPECIAL ASSISTANT TO THE ADMINISTRATOR, CONGRESSIONAL AND PUBLIC AFFAIRS, GENERAL SERVICES ADMINISTRATION

Senator PROXMIRE. I would like to again say I would very much appreciate if you would make your direct presentation less than 15 minutes if possible, as Mr. Horne did his.

Mr. GASQUE. I will certainly do my best.

Senator PROXMIRE. Whatever is not included in your statement will be put into the record.

Mr. GASQUE. At the outset, Mr. Chairman, I would like to express the appreciation of the Administrator of General Services for the opportunity to appear here today before your committee.

The Administrator, Mr. John T. Moore, asked me to convey his regrets at his inability to be here personally. He has asked me to appear for him.

We in the General Services Administration are very mindful of the great role that small businesses play in our national economy, and certainly in the aid and assistance that they give to all Government procurement agencies. We are also, every day, mindful of the mandate which Congress has imposed on the General Services Administration, as well as other procurement agencies, that we must do all in our power to insure that small businesses receive their fair share of Government procurement.

At the same time, being primarily a procurement agency, we have to merge our interest in small business with realistic consideration and appraisals of the end results which we are required to achieve in the way of procurement, of acquiring supplies and materials and at the right time, in necessary quantities and of acceptable quality.

We are also very mindful of the changes which have been made in the present bill, as distinguished from the similar bill of last year, and, as a matter of fact, we are very much in favor of them. However, in our effort to marry our interest in small business to our overall responsibility of attempting to provide efficient and sound procurement policies and procedures for the entire executive branch of the Government, particularly, the civilian agencies, we wanted to express to you today several thoughts that we had in mind in the spirit of furthering efficient procurement operations, but certainly not in the sense of opposition to the aims of the bill, which we heartily endorse.

Most of the bill does not directly affect the operations of the General Services Administration, either in our role as a procurement agency or in our role as the writer and promulgator of governmentwide procurement regulations.

My remarks, therefore, will be addressed to three sections only of the bill; section 7, section 8, which you have already discussed, and section 9.

With respect to section 7(1) of the bill, we are not opposed to the adding of additional language to section 8(b)(8) of the basic Small Business Act which would provide that SBA be given access to records

involving the letting of contracts and subcontracts. We are certainly in favor of such information being readily available to SBA.

However, our thought is that we do not see the need for the additional language inasmuch as under the existing statute, we are required to furnish to the Small Business Administration information as they request it, and as far as we know in GSA, this has been carried out on a very cooperative basis. We have SBA representatives working with our procurement officials, and we have SBA officials working with our procurement policy people.

Therefore, with respect to section 7 of the bill we do not see the necessity for the change in the existing statute but we will not oppose it should Congress desire, nevertheless, that such change be made.

We believe that we are working very cooperatively with SBA, and as far as we know, we have always given SBA all records that that agency desires. We will certainly continue to operate in the manner.

With respect to section 8——

Senator PROXMIRE. That is the problem. We are not sure that they really have access. At the present time they request records and you decide what to send. That is quite different from having access and records.

After all, these are Government officials who have been appointed by the Government of the United States; top officials. At least they are under the Administrator of SBA, a man who is devoted to the Nation and national defense also.

Mr. GASQUE. We do not oppose section 7 of the bill. We merely wanted to express to you our belief that we presently make everything available to SBA that is desired in this regard. We have done so, and certainly we intend to continue to do so. As I have said, we are very mindful of the President's interest in small business, to say nothing of our responsibility which the Congress has placed on us to insure their participation in Government procurement.

With respect to section 8, we endorse the proposed amendment that the Administrator of the Small Business Administration set before your committee earlier this morning.

You are certainly aware, sir, that by provisions of the Federal Property and Administrative Services Act—as a matter of fact, you referred to it earlier this morning—the Administrator of General Services prescribes regulations in the procurement field which are applicable to the entire executive branch of the Government. We feel that a subcontracting program is an essential part of the procurement process, and that such a program is a very necessary part of our procurement regulations in order to insure that small business subcontractors participate freely and readily in Government business.

Several years ago, the President's Cabinet Committee on Small Business directed the Administrator of General Services to make a review of all Government procurement policies and procedures, having in mind particularly the needs of small business, and to take such action, if possible, as he found necessary to make it easier for small businesses in particular to do business with the Government on the same basis throughout the land.

This task was undertaken by an interagency task force which the Administrator of General Services set up, and which was composed of the Administrator of General Services, the Secretary of Defense, and

the Administrator of the Small Business Administration working with their respective staffs.

One of the studies which this task force undertook was the feasibility, from the standpoint of good, efficient procurement operations, of providing a mandatory subcontracting program.

The task force concluded, as a result of this study, that in their opinion it was not feasible to endorse a mandatory subcontracting program. Nevertheless, because of the interest of Congress in this particular subject, the Department of Defense undertook about a year ago to install in their Department a mandatory subcontracting program designed to carry out the basic purposes of what we believe the bill which is before us today has as its main objective.

Several months ago, as a result of the further interest of Congress in subcontracting for small business, the General Services Administration also determined to provide, on a mandatory basis throughout the civilian agencies of the executive branch of the Government, a small business subcontracting program, and to publish that program in the Federal Procurement Regulations. These regulations are, as you know, sir, published under the direction of the Administrator of General Services.

We have adopted the basic concepts of the Defense Department's small business subcontracting program. We believe that it carries out the purpose and intent of the bill which we are considering today.

We have drafted such a regulation and have only last week sent it out to all of the major procurement agencies for their review and consideration, including particularly the Small Business Administration, with whom we work very closely on all matters affecting small business.

The suggested amendment which the Administrator of the Small Business Administration has given you this morning changes section 8 of the bill so as to provide that the three agencies named in the bill will cooperatively develop a small business program, and thereafter the program as developed will be published in the Federal Procurement Regulations and in the Armed Services Procurement Regulation by the Administrator of General Services and by the Secretary of Defense, respectively.

The last sentence of the revised section which has been proposed provides that in the event of disagreement—and frankly, we see no reason for any real or ultimate disagreement—the Administrator of General Services and the Secretary of Defense would determine the content of these respective regulations on a small business subcontracting program which, in their opinion, would be most appropriate in the public interest. This does not mean, Mr. Chairman, that we envision any substantial disagreement, or that there will be any situation in which small business will be completely ignored or merely politely listened to and then pushed aside.

In connection with our responsibility of providing governmentwide regulations on procurement, the Federal Property and Administrative Services Act requires us first to give due regard to the programs of all agencies, and thereafter to prescribe regulations which will be efficient, sound, and economical. In other words, after coordination with all interested agencies, the Administrator of General Services has the authority to decide the question and issue the regulation accordingly.

Experience has shown that where you have a committee or a group

of people with a mandate to produce something, but without a clear-cut procedure as to who makes the final decision after every reasonable effort has been exhausted and there is no unanimous agreement, progress has been slow.

Senator PROXMIRE. Presuming you agree on that, the only question is, Who makes the final decision? We say SBA. You say GSA and Defense. Certainly somebody has to make it. As a matter of fact, you do not make it alone. You say it is between GSA and Defense. What happens if you disagree as to the result?

Mr. GASQUE. I can only answer that, Senator, by saying that in the 1 year of operations of my office, the Office of Procurement Policy, we have not yet failed to agree with the Department of Defense on any new regulation which we wished to issue in the Federal Procurement Regulations or with any they wished to issue in the Armed Services Procurement Regulation.

Senator PROXMIRE. You see what a juggernaut you are putting before SBA. You fellows never disagree. You are always together. You all go into this situation and what happens to SBA? Especially when you have the final decision?

Mr. GASQUE. I meant that we have not disagreed in the final version. We have disagreed in the first instance, reached an amicable, solution, and then agreed on the final regulation.

As for SBA, we see no reason to have this sort of situation created. As the Administrator of the Small Business Administration pointed out, this type of procedure is consistent with the present arrangement provided in the Small Business Act, that in connection with joint determinations to make a set-aside, should the SBA and the contracting agency not be able to agree on the feasibility of such a set-aside, the matter has to be or is referred to the head of the procurement agency concerned for final decision.

The idea behind that, sir, is that the primary responsibility of the procurement agency is, of course, to effect the procurement. And we feel that in the case of a subcontracting program, we will consult on an equal basis with SBA, and we will do everything possible to agree with SBA. But the final decision has to be, in our opinion, decided by the head of the procurement agency, as to whether or not the particular recommendation or the particular regulation will enhance procurement to the best interest of the Government, or will, in the eyes of the procurement agency, be a deterrent to it.

Turning to section 9 of the bill, the requirement for publication in the Department of Commerce's daily synopsis, we have no objection to the concept of that section.

Again, as in the case of section 7 of the bill, we merely suggest that we do not see the need for legislation on this point at this time. We are mindful that this section was in the bill considered by your committee last year. However, the bill of last year was drafted before the Office of Procurement Policy in GSA had completed its work and published in the Federal Procurement Regulations a mandatory program for the publishing in the Department of Commerce's synopsis of most all proposed procurements.

As a matter of fact, sir, the Federal Procurement Regulations on this subject are very, very similar to the provision of section 9 of the bill. The exceptions which are written into the bill which is before

us today are in some instances identical, and in most all instances, very close to the language of the Federal Procurement Regulations.

Inasmuch as we have administratively accomplished the purpose for which we believe section 9 of the bill was written, we feel that to now make it a matter of legislation would prevent procurement agencies from having needed flexibility in case the exceptions are too broad, or in case other circumstances come up which have to be taken care of by additional exceptions.

However, we have in mind amending the existing Federal Procurement Regulations to embody the exact exceptions to the requirement for synopsis which are in the bill.

Senator PROXMIRE. All right.

The Senator from Oregon?

Senator NEUBERGER. I am afraid I do not have any questions. I just have one comment. I get lost in the language. I just wrote down "the Federal procurement" and "the mandatory provision of the administrative provision" and "the requirement of a synopsis."

Now I am lost. I wish this could somehow be put down to my language.

Mr. GASQUE. Senator, not to be outdone by the Administrator of the Small Business Administration, we in GSA would be most happy to discuss this matter with you and to give you any assistance or further information.

Senator PROXMIRE. You are saying pretty much that what you have been doing is all right and you do not need much of a change. That it will go along, that you will bring the Small Business Administration in on a conference with you fellows, but the program today seems to be satisfactory and works out.

Mr. GASQUE. Senator, I believe that since the establishment of the Office of Procurement Policy in GSA, which has only been about a year ago, we have developed a very cooperative working arrangement with SBA and with the Department of Defense and with all agencies, so that while I will not say that in the past everything was done which may or may not have been done for small business, I will say that we believe that there exists the framework of administrative action to carry out the purposes of this bill. Nevertheless we endorse the change in section 8 of the bill which gives the Small Business Administration a statutory recognition to actively have an equal part in the development of the small business subcontracting program.

Senator PROXMIRE. You see the trouble is the facts and figures indicate this is not true. The facts and figures indicate that small business has gotten less and less and less and less.

I do not know how you can argue with the decline since World War II, which was very sharp up until 1954, and which has continued. A constant decline since then. Or how you can argue with the dissatisfaction—and well-documented dissatisfaction—of small businessmen who feel they are excluded.

There are some specific questions, but it seems to me in general it is very hard for members of this committee—and we had unanimity last year, Democrats, Republicans, Conservatives, and Liberals; everybody agreed that action was necessary.

Mr. GASQUE. Senator, that is probably true in the overall picture of the Government with respect to prime contracts. As far as GSA

procurement alone goes, our procurement has been more than 50 percent going to small business. As a matter of fact, our procurement for fiscal year 1960 was 55-plus percent for small business, whereas in fiscal year 1958 it was down to 48 percent. It has varied during the past 10 years up and down, but GSA's procurement from small business has been on an average above 50 percent.

Senator PROXMIRE. You are talking not about the Defense Department but about GSA?

Mr. GASQUE. GSA.

Senator PROXMIRE. What does your procurement amount to? What is the dollar figure?

Mr. GASQUE. I would have to supply that, sir.

(The information referred to follows:)

Procurement by civilian executive agencies (excluding AEC, NASA, and Coast Guard), fiscal years 1951–60

[Dollars in millions]

	Fiscal year 1951	Fiscal year 1952	Fiscal year 1953	Fiscal year 1954	Fiscal year 1955	Fiscal year 1956	Fiscal year 1957	Fiscal year 1958	Fiscal year 1959	Fiscal year 1960
All agencies:										
Total	$2,402	$2,376	$1,512	$1,062	$1,039	$1,159	$1,379	$1,598	$1,632	$2,038
Small business	$1,137	$1,604	$806	$490	$554	$568	$731	$768	$840	$848
Percent	47.4	67.5	53.3	46.2	53.4	49.0	53.0	48.1	51.5	41.6
GSA:										
Total	$1,300	$1,429	$672	$456	$451	$455	$510	$561	$597	$514
Small business	$756	$1,102	$450	$194	$258	$244	$268	$280	$347	$286
Percent	58.1	77.1	67.0	42.5	57.3	53.7	52.4	49.9	58.1	55.6
Other agencies:										
Total	$1,102	$947	$840	$606	$588	$704	$869	$1,037	$1,035	$1,524
Small business	$381	$502	$356	$296	$296	$324	$463	$488	$493	$562
Percent	34.6	53.0	42.3	49.0	50.4	46.0	53.4	47.1	47.7	36.9

Source: Reports received from agencies pursuant to GSA regulation.

Procurement data, fiscal years 1951–1960

[Dollars in millions]

	Fiscal year											
	1951		1952		1953		1954		1955		1956	
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent
Total	$33,225	100.0	$43,858	100.0	$29,334	100.0	$12,510	100.0	$15,969	100.0	$18,909	100.0
Department of Defense	30,823	92.8	41,482	94.6	27,822	94.8	11,448	91.5	14,930	93.5	17,750	93.9
Civilian executive agencies [1]	2,402	7.2	2,376	5.4	1,512	5.2	1,062	8.5	1,039	6.5	1,159	6.1
GSA	1,300	3.9	1,429	3.3	672	2.3	456	3.7	451	2.8	455	2.4
Other	1,102	3.3	947	2.1	840	2.9	606	4.8	588	3.7	704	3.7

[Dollars in millions]

	Fiscal year—Continued								10-year total	
	1957		1958		1959		1960		Amount	Percent
	Amount	Percent	Amount	Percent	Amount	Percent	Amount	Percent		
Total	$20,512	100.0	$23,425	100.0	$24,376	100.0	$23,340	100.0	$245,458	100.0
Department of Defense	19,133	93.3	21,827	93.2	22,744	93.3	21,302	91.3	229,261	93.4
Civilian executive agencies [1]	1,379	6.7	1,598	6.8	1,632	6.7	2,038	8.7	16,197	6.6
GSA	510	2.5	561	2.4	597	2.5	514	2.2	6,945	2.8
Other	869	4.2	1,037	4.4	1,035	4.2	1,524	6.5	9,252	3.8

[1] Excludes AEC, NASA, and Coast Guard.

Source: DOD—Military Prime Contract Awards, July to September 1960, Office of Secretary of Defense. Civilian Executive Agencies—Reports received from agencies pursuant to GSA regulation.

Senator PROXMIRE. How does it compare with the Defense Department?

Mr. GASQUE. Oh, it is much less than the Defense Department, much less.

Senator PROXMIRE. Is it significant, really?

Mr. GASQUE. It is very significant from the viewpoint of total dollars spent. But it does not match the Defense Department.

Senator PROXMIRE. Would you want to venture a guess to the percentage as compared to the Defense Department?

Ten percent, 15 percent, 20 percent?

Mr. GASQUE. I would say our overall procurement percentage is roughly within 20 to 25 percent of the total dollar value of the Defense Department.

However, again we are saying, sir, that we believe that under the impetus of the President's determination to assist small business, together with the expressions of Congress to further small business participation in Government procurement, particularly in the field of subcontracting, that we have the mechanism administratively to carry out such a program. While I cannot speak for the past, sir, I can speak for the existing situation between GSA and the Small Business Administration, and all other procurement agencies.

Senator PROXMIRE. We have the record over the years of procurement agencies, particularly the Defense Department, which show small business getting less and less and less. I have not seen any startling overall figures. There may be a department here and there like GSA that has done better in 1960 and 1958, but certainly the overall figure has been discouraging. The fact that you have done better certainly indicates others could if they had a driving forceful administration, a Small Business Administration, in a position really to offer a program, and in a position to follow it up to see that it is being complied with.

I would like to ask you particularly this: You spoke about what was done, I think in February of 1960, a new subcontracting program that you say is going to be more effective. The language as I understand it is as follows:

> The contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the contractor finds to be consistent with the efficient performance of this contract.

What does this really mean?

After all, every prime contractor can say that. He can always defend any subcontractor he gets on the basis that he is efficient. He has to do it with his stockholders if no other place.

And we know at the same time that in spite of the profit motive that should see that it goes to the most efficient subcontractor, the fact is that it goes to other people who are affiliated in other ways and big business gets a very big share of this.

Why do you think there are any real teeth in this kind of proposal? Can you give us any example, not of this agreement and cooperation that you have referred to so frequently this morning with the Defense Department, but an example of some disagreement which a small business representative has had with somebody within the Defense Department, where the small business spokesman has indicated they are doing a feeble job on subcontracting to small business and has made a fight for it and made some improvement?

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Mr. GASQUE. Senator, on March 2 of 1961, we sent out to all procurement agencies for final review and comment our new proposed Federal procurement regulations on the subject of small business, including a part on small business subcontracting.

Senator PROXMIRE. It is pretty hard to argue with what the consequences of that have been. It is only a week old.

Mr. GASQUE. But I would like to read to you the wording of part of this new regulation so you will see the present thinking on this subject:

> Each contractor having a prime contract which contains the clause set forth hereafter shall be required to establish and conduct a small business subcontracting program.

We are making it mandatory that each contractor set up a small business subcontracting program.

Senator PROXMIRE. What does that mean? They say, "We set it up and give a contract to small business here and there." Where does it mean anything? Where are the teeth?

Mr. GASQUE. We propose to put the teeth in the regulation by the reports which the contractor will have to furnish to the contracting agency of his progress in this line.

And we believe that by imposing this responsibility on him as a contractual provision, he will be further charged with the responsibility of carrying it out.

We believe that it will work successfully.

Now, sir, this is our proposed draft of our new small business regulation. We undoubtedly will receive comments from all agencies on it before we actually promulgate it, and we are looking to the comments which we will receive from the Small Business Administration to see if, in their opinion, this does not have enough teeth in it. To the extent that it does not, we will certainly attempt to revise it and develop it so that it will carry out the scope and intent of the program which is envisioned by this bill, and which I am sure that the Small Business Administration is very much in favor of.

As a matter of fact, Senator, we have established an interagency procurement policy committee, of which SBA is a full-fledged member, to advise the Administrator of General Services on all matters of procurement affecting small business. Our review, or rather our revision of the existing FPR regulation on small business was undertaken at the suggestion of the Small Business Administration representative on this committee, and because of that suggestion, we have been attempting to provide a new regulation, as you say, sir, with teeth in it, which will carry out this policy. This regulation has just been drafted and sent out for final review and comment by all interested agencies.

Senator PROXMIRE. We would certainly like to examine those teeth very carefully.

Mr. GASQUE. We will be very happy to supply you with a copy.

(The regulations referred to will be found in the files of the committee.)

Senator PROXMIRE. And a justification of why you think they might do something that has not been done before. The fact is that the real muscle and strength and power in the administration is almost bound to be in the Defense Department, in any conflict with SBA, for many, many reasons.

I think this is one of the reasons Congress feels so strongly also that SBA should be given some legislative authority, not to administer all the program, but legislative authority at least over the small business subcontracting program itself.

I want to ask you one brief question. I do not want to hold you too long.

You said as far as section 9 is concerned, the Hart amendment which provides for publishing contracts and subcontracts so small business will know what is going on, and is available, you have accomplished this pretty much administratively anyway?

You say there would not be as much flexibility if we passed the law, although you indicate that most of the exceptions we have, you have, and there is no specific complaint about the exceptions we have.

Mr. GASQUE. That is right.

Senator PROXMIRE. My feeling is the feeling that Finley Peter Dunne expressed when he said, "Trust everybody, but cut the cards."

What we would like to do here is cut the cards. If you agree this regulation is all right, let us write it into the law. I am not so sure I like this flexibility. Flexibility means that you will be able to vary the regulations without the knowledge of Congress and under pressure from the Defense Department; adversely to small business and the relatively moderate strength that small business has.

Once again, I am very sorry to have to ask a question that might require a long answer at this time. I might ask that if possible you make your reply brief because we have other witnesses coming.

Mr. GASQUE. Senator, if you pass section 9 and make it law, you bring into the procurement field another department. Again we feel that requiring publication of proposed awards is a part of the procurement process.

Secondly, as you know, sir, we have been making great progress in the past year particularly in bringing about uniformity in Government procurement procedures. The existing section 9 distinguishes between Defense Department contracts and civilian agency contracts in the dollar value which need be publicized.

Our existing regulation and the existing ASPR regulation or synopsizing are the same insofar as the dollar value goes.

Senator PROXMIRE. Our bill does not provide any new agency as far as section 9 is concerned.

Mr. GASQUE. It brings in the Secretary of Commerce.

Senator PROXMIRE. He is in there anyway, the Secretary of Commerce does this now. He publishes this now.

Mr. GASQUE. He publishes the synopsis now, but as we read section 9 of the bill, sir, it will be the duty of the Secretary of Commerce to require that the information be furnished him for publication. We believe that the secretary should continue to be the publisher of the synopsis and the procurement responsibility of requiring publication of proposed awards is that of the Administrator.

Senator PROXMIRE. Thank you very much, Mr. Gasque.

Once again, although we feel strongly on this, I want you to know there is nothing personal at all in our questioning.

Mr. GASQUE. Of course not, sir. As I said, in the spirit of good procurement policy and practices we wanted to give you our views on this bill. We appreciate very much the opportunity of having been here.

Senator PROXMIRE. Thank you very much.

Next is Mr. Joseph Noonan? Is Mr. Noonan here?

Mr. Noonan, I understand you are executive secretary of the Smaller Business Association of New England.

Mr. NOONAN. That is correct.

Senator PROXMIRE. I am delighted to have you here. You have been a guest of the committee before and we are glad to have you back. I see you have a very brief statement which we also appreciate.

Go ahead.

STATEMENT OF JOSEPH D. NOONAN, EXECUTIVE SECRETARY, NEW ENGLAND SMALLER BUSINESS ASSOCIATION

Mr. NOONAN. I have been executive secretary of the New England Smaller Business Association for 12 years. I lead a dedicated group of directors, who at their own expense have appeared many times before congressional committees of the Senate and House to testify in behalf of assisting small business.

When we look at a bill proposed in Congress, the first thing we look at is: Who are the people who are bringing this bill up?

And when we look at Senator Proxmire and when we look at Senator Sparkman, we know right away that there are not any niggers in the woodpile, and that they really are strongly for something which will increase the share of small business in defense procurement.

And with that confidence, I read this bill, and so did our directors, and my statement which I am going to read is very brief.

Senator PROXMIRE. Mr. Noonan, in all fairness to other witnesses, too, you say you and your directors read the bill and are familiar with the bill and you appear with their approval?

Mr. NOONAN. Absolutely.

Senator PROXMIRE. The approval of the directors of the New England Smaller Business Association?

Mr. NOONAN. That is right, and they reapproved it last night just before I left on the train.

Senator PROXMIRE. Thank you.

Mr. NOONAN. This bill, S. 836, is a carefully prepared piece of legislation aimed at improving the position of small business in our economy. I would like to say at the beginning, however, that I have had to deal with the small business specialists of the Army and the Air Force and the other services, and I have gotten tremendous assistance from such men as Ken Widdell, Jack Askins, and people of the Navy, and the Appeals Board of the Navy, and I have a tremendous respect for them. But this bill goes way beyond all of that, because those men after all are small business specialists of their own services and can, of course, be quickly and easily overruled by somebody who has more weight or more rank to throw around.

However, they have done a magnificent job, and I don't want them to think that what I have to say here is any criticism of them.

The increase by $75 million of the authorization for the revolving fund for the Small Business Administration's loan program will give a real lift to that financial aid mission, which during the last year, has had a discouraging decrease in amount and effectiveness.

In the middle of last year I had a few people down at the SBA for loans and I could see a tremendous change in the attitude. I sus-

pected, and found out, that they had been told to go slow on loans, or the first thing you know we would have a lot of inflation. So they went slow on the loans all right; you can see it in the record.

Gradually this program has built up a seeming reluctance to giving adequate assistance to worthy small business.

The Senate sponsors of this bill deserve high appreciation for recognition of the handicaps facing SBA in satisfying legitimate demands for such aid. This will help immeasurably.

Small business in World War II actually produced 38 percent of the materiel of war, which did a great deal toward winning it.

Our country desperately needs to keep these patriotic, dedicated men from disappearing from our economy forever.

The current figures on small business participation in procurement are profoundly disturbing. Since World War II, the figure of 38 percent had gradually decreased until in 1954 it was 25 percent of prime contracts awarded. In the first quarter of fiscal 1961, small business received only 14.8 percent of military prime contracts awarded.

The requirement in section 8, new subsection (d)(1) that the Administrator of SBA, "after consultation with the Administrator of General Services, the Assistant Secretary of Defense (Supply and Logistics) and the Chairman of the Atomic Energy Commission shall promulgate a small business subcontracting program" is certainly long past due.

The exception that "no program shall prescribe the extent to which any contractor shall enter into subcontracts, or specify the business concerns to which subcontracts shall be granted" will, of course, prevent any obstructing roadblocks to the freedom of action of the procurement officers of the various services. I was surprised to hear some men advocate that they go on still on the theory that you can sell all these services by being nice to them; that by using a sales argument you can sell them on carrying out the real intention of Congress.

Gentlemen, we have had that for a long time, and your figures show that it does not happen and it will not happen. Therefore, I think you should not decrease a single pressure in this bill. This is an essential thing. We have studied this. I call on 15 to 18 businessmen a week, on an average, in their plants, and I will tell you they are pretty sore, they are pretty frustrated, and mighty disgusted with this whole business and the way they get pushed around.

We recognize that the ultimate decisionmaking power must rest with the procurement agency. We also very strongly feel that the Small Business Administration needs some positive persuasive authority backed up by its ability to get the facts. In our opinion, it is not the intent of this bill to give SBA any usurpation of the power of the procuring agency, but to give it a voice.

We hope definitely that this bill will not be further changed. You have changed it and I think it is strong enough now, and I think it will work. Once the services know that you mean that you want the intent of Congress to prevail, to give the right amount of sharing in the defense dollar—once they see that you mean business—and this bill means business—I think there will be a whale of a job done.

On the research grants, we feel strongly.

Section 10 of the bill lists the types of organizations, colleges, State agencies, and schools which are eligible to receive upon their selection by the Administrator a sum of $40,000 in each State for research in finance, management, and operation of small business.

This money, this $40,000, came out of the original discovery that there was $27½ million in the reserve of the Federal Reserve bank, and they wanted to dispose of that for the benefit of small business. That was the reason for the original promulgation of this provision that each State would be able to get $40,000. Some of the research work done by those States is just terrific.

This is a continuation of that program.

Research by Solomon Fabricant, economic expert of the National Bureau of Research, Robert Solow of MIT, and Benton F. Messell of Rand Research brings out, in Business Week, August 2, on page 61, one of the finest articles I ever read, that technology, consisting of new technological knowledge, new skills, and new techniques of management, has actually contributed 85–90 percent to the growth factor of the United States over the last 40 years.

As W. Arnold Hosmer, professor of business administration, specializing in small manufacturing enterprises at the Harvard Business School, states so well:

> The 10 percent of small businesses with the best management are a tremendously valuable national resource. In operating results they match or surpass our largest corporations. They have worked out, in the fire of competition, management methods vitally need among other small firms.
>
> It has been my opinion from the beginning—

says Hosmer—

> that this expenditure is probably the most fruitful, in terms of the advantage received by all citizens per dollar spent, among all the activities of the Small Business Administration, and one of the most fruitful for Federal expenditures as a whole.

This section we believe must be retained in the bill. Compared with the relatively little research work done for small business by many government agencies, we feel that this program has a big potential from which we can develop definite patterns to reduce the too-large number of business failures.

Senator PROXMIRE. Thank you very, very much.

Any questions?

Senator Neuberger?

Senator NEUBERGER. No questions.

Senator PROXMIRE. I want to thank you for your testimony, and tell you that I am especially appreciative of your remarks on research grants. I agree with you wholeheartedly. I think this article in Business Week magazine is one which should persuade many people that we can enormously benefit our country, improve the growth of our economy, by the kind of research techniques, advice, and so forth, that this bill would provide.

I am so glad to get that reinforcement. We concentrated a lot of attention on section 8, and I am glad that you dealt with that. I am sure it is no secret, I approve heartily of your position on this, but I am glad also for your comments on this other part of the bill.

Thank you so much, Mr. Noonan. We appreciate your coming down from New England to testify.

Mr. Marschalk.

Mr. Marschalk, I understand you are assistant to the president of Anadite, Inc., Los Angeles, Calif.?

STATEMENT OF JOHN MARSCHALK, ASSISTANT TO THE PRESIDENT, ANADITE, INC., LOS ANGELES, CALIF.

Mr. MARSCHALK. That is correct, Senator.

Senator PROXMIRE. Are you speaking for yourself, your company, or some other group?

Mr. MARSCHALK. I am speaking for Anadite, Inc., and the Task Corp.

Senator PROXMIRE. I see you have a reasonably concise statement. As I told other witnesses, I would appreciate it if you could keep your remarks under 15 minutes, and then we will put anything you do not have time for in the record.

Mr. MARSCHALK. I will try to cover it, Senator. I am very grateful to be here. I know the committee is aware that I have opposed personally, and my companies and the other firms that I have talked to, have opposed section 8 in its present form.

As I said, my appearance today is specifically in behalf of Anadite, Inc., and the Task Corp., which is a design and manufacturing company specializing in advanced developments of electric motors, airborne refrigeration systems, precision hydraulic pumps, and force measurement devices for supersonic wind tunnels. Task and Anadite, which both began with a handful of people when I first met their principals, several years back, now employ approximately 100 and 200 people, respectively.

Both companies are very strongly opposed to the enactment of section 8 of S. 836 in its present form. They also believe that section 9, if enacted, will be more wasteful than fruitful, but they regard this as an internal administrative problem at Government level, and wish me to devote my time primarily to section 8.

The first basis of their objection is the same as indicated in my Industrial News column of February 27, 1961, and with the permission of the Chair, I would like to submit that column as a part of my testimony.

It is attached. You might wish to question me on it.

Senator PROXMIRE. Without objection, that will be included.

(The document referred to follows:)

[Reprinted from Industrial News, Feb. 27, 1961]

Government business

S. 836—PRETEXT OF PROTECTION

(By John Marschalk)

S. 836 is the number of Senator William Proxmire's renewed effort to put the Small Business Administration into control of military subcontracting.

The Senator's introductory remarks of February 9 give away more about the true purpose of the measure than does the language of the bill, itself.

The bill is a warmed-over version of the Small Business Act amendments contained in Mr. Proxmire's modification of H.R. 11207, so narrowly defeated last year.

Again, the most worrisome part is section 8. This instructs the Small Business Administrator to "promulgate a small business subcontracting program."

And again, the bill gives no idea of what this program is to be.

It hints at laudable aims—"to enable small business concerns to be considered fairly as subcontractors and suppliers" and "to insure that * * * prime and subcontractors will consult with the Administration."

There is little warning that broad regulatory power is both possible and intended.

Within the bill itself, the only clue is a peculiar line of disclaimer: "except that no program promulgated hereunder shall * * * specify the business concerns to which subcontracts shall be granted."

Why, you might ask, does the bill go out of its way to deny the SBA so extravagant a power as the right to specify—to name—a business concern to which a subcontract shall be granted? The bill must intend other regulatory powers almost as serious, or why deny this particular power?

Put another way—if regulatory control is not intended—why is section 8 needed at all?

This is a question Senator Proxmire never did seem to answer clearly last year. He indicated his main purpose was to have the SBA study defense subcontracting and make recommendations. This didn't jell for some observers who checked the power already given in the Small Business Act:

"Section 8(a)(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small business concerns at prices and on conditions and terms which are fair and equitable."

Here is ample authority—already in the law—both to study, and act.

But Senator Proxmire wants something more.

Senator Proxmire thinks things are not right with subcontractors and he presents his bill, S. 836, as the answer. Here are some excerpts from his introductory remarks:

"The Department of Defense continues to award an overwhelming proportion of its procurement dollar by negotiation rather than formal advertising.

"The explanation given for this trend away from competitive advertising is the complexities of the new weapons and the exigencies of time. I cannot believe that the lessening of effective competition, which the negotiated method of procurement brings about, is desirable, or that in most cases competition would lengthen the time of delivery of needed weapons.

"I believe that competition would stimulate delivery, and history shows also that it adds incentive to competing companies to provide better products.

"There is a small business subcontracting program in effect now in the Department of Defense, but it has not been successful in obtaining for small business a fair and decent share of subcontracting awards."

The trend of the Senator's thinking is plain. He disapproves of Department of Defense methods of purchase. He believes they should be changed. He indicates the subcontracting with small business program of DOD is not effective.

He presents his bill, S. 836, as the cure.

Considering the powers already granted to SBA, it is evident—whatever may be said to the contrary—that the Senator wants the SBA to interfere in behalf of his ideas as to how subcontracting should be done.

The concept involved is frightening.

The Department of Defense has the responsibility of defending the country, of closing the missile gap, of securing the weapons we need to assure defense.

The prime contractors to the DOD are responsible, by the terms of their contracts, for delivering the best possible weapons, with maximum reliability, in the most efficient manner.

Neither the DOD, nor prime industry, is perfect in all decisions or actions. But theirs is the responsibility.

Now, superimposed on this chain of responsibility, Senator Proxmire would give the SBA authority, without responsibility.

He says, in effect, he cannot believe that the methods of competing which he favors—as against the methods of competition used by DOD and industry—would lengthen the time of delivery of needed weapons.

It is one thing for the Senator to hold such beliefs. But who pays the check if he happens to have believed in error? Who apologizes for our not having enough when the moment of truth arrives?

The Senator cannot have his cake and eat it too. He cannot ask that the SBA be given this authority to interfere, without acknowledging the hazards of such interference. Nor can he claim that S. 836 intends no such authority and

still insist it is a cure for the ills he describes. If the bill is toothless, why suggest it as a means to chew at the problem?

Finally, what of the supposed benefits to small business?

Is small business to be helped by the introduction of new rules and regulations on the conduct of its business with its customers?

Is there a lack of competition now among small business? Or is present competition already too heavily influenced by Government overemphasis on low price at the sacrifice of consideration for better quality and performance?

Can the interference of a third party—without responsibility for performance—be tolerated when national safety is at stake?

Small businessmen know the answers to these questions. They are best able to tell their Senators and Representatives the truth.

But small business is generally not heard from. The complaints which bring forth proposed cures such as S. 836 come from a pitifully small minority of all small business. While the majority, with experience and knowledge, keeps silent.

When the voice of only the minority is heard—and when this fits and supports a philosophy of interference—there is small wonder over the trend of legislation.

Here, then, is a new moment of truth for small business, itself. Either it will keep silent—and become subservient through S. 836 or another measure like it. Or it will make itself heard.

If it speaks up, it will be respected. Senators and Representatives—including Senator Proxmire—will not vote against small business if small business makes clear its views.

It is well to remember: every step ever made to inflate the regulatory powers of Government has always had the same foundation—the promise of protection. Promise or pretext?

Mr. MARSCHALK. It is their belief that section 8 of S. 836 is motivated by a sincere desire to assist small business toward fair treatment both as to the volume and manner of subcontracting. Their opposition is to the means and not to the objective.

They believe that the extent of potential SBA authority is not sufficiently delineated and that if this authority can in any way supersede the authority of the Department of Defense and its weapons contractors, the results can be dangerous both to the defense effort and the free enterprise system.

They submit to you gentlemen the fact that they experience many and serious problems in their role of defense subcontractors, but that in the past 8 years the SBA:

(1) has never truly surveyed the small business community serving defense as subcontractors.

If I may interpolate, there are hundreds and hundreds of such subcontractors in the California area from which I come, and they have never been surveyed by SBA to determine ther capabilities.

They have never been surveyed as to what part they represent of the total community of defense subcontractors.

(2) SBA has not surveyed the Nation's total small manufacturing community to determine what portion serves defense, what portion does not.

(3) SBA has not surveyed prime contractor purchasing to determine what the purchase package consists of, what the prime contractors are buying today that represent the buying dollars.

(4) SBA has never established comparative criteria by which the share of defense business going to small firms could be checked against the share of civilian business which small firms enjoy.

(5) SBA has never made a statistical study of small business to determine the methods of purchase and sale which small business itself prefers.

(6) SBA has not staffed its regional offices with people equipped to answer the contract administration questions which arise from the mandatory obligations imposed by such things as the Renegotiation Act, the Armed Services Procurement Regulations, the Air Force Procurement Instructions, Navy Procurement Directives, Army Procurement Procedures, the Space Act, the Walsh-Healey Act, and many more. And may I say again, to interpolate, Senator, the reason that I make a living is that these small companies generally come to me for help in this area. This is my primary field of activity, with Anadite and everybody else.

(7) SBA has never made more than spotchecks of the specific serious problems which small businesses regularly participating in defense encounter as a matter of daily practice.

Now, some of us in other positions—on the staffs of committees, or in small business, itself—would have to own up that we have not done very much about collecting this type of factual information on a statistically accurate basis, either.

We know about complaints. But we do know whether the complaints come from typical small firms, or are we merely telling ourselves that we know what a typical small firm is?

Anadite and Task think they are typical. But there are those here in Washington who do not think so. They think these two companies are too successful to be typical. We do not think we are nearly successful enough.

All I wish to suggest, Mr. Chairman, is that there is a big room for difference of opinion.

The chairman, in introducing S. 836, indicated his feeling that the 18.8 percent of prime contractor funds going to small business under the DOD program is not satisfactory. At the prime level, we understand small business presently gets about 16 percent over a year's average. Thus, the overall percent going to small business is 16 percent prime plus (18.8 times 84) 15.7 sub, or a total of 31.7 percent of all Defense Department procurement dollars going to small business, that is.

Senator PROXMIRE. I hesitate to interrupt you but I violently disagree. You assume that not a nickel of what small business gets on a prime contract is to be subcontracted to big business. Either that or you are operating on a 200-percent basis and should divide it by 2.

Mr. MARSCHALK. Let me explain it in this manner. The data collected on the 293 firms participating, from which your figure came, extends only to the prime contract level, the big companies participating. It is quite true at that prime contract level that if you take all the dollars that come into a prime and measure how much goes out to small business, then you also have to measure how much goes out to big business. So you wind up this first tier with 18.8 percent and that is the figure. It is true that some of that 18.8 percent small business then spends back with big business, but it is also entirely true that some of the remaining percent, which is approximately 25 percent—I am guessing now, because I would have to refer to the figures—big business spends back with small. To be precise, as I recall, in 1960 of all purchases made by prime contractors, 37 percent went to small business at the first tier, 63 percent to the large.

The smalls will buy some materials from the large, and the large again are going down and will be buying from small. So where these

things balance, sir, none of us could argue. It would take a statistician endless time to try to work it down the endless chain.

I will say that as far as our company is concerned as an instance—this is Anadite of which I speak—we tend and we think we are more or less typical, to do more work—we are processors—on material which the prime has purchased, and our purchasing is very slight from large business.

Senator PROXMIRE. It seems to me it would be just as consistent for me to take the 81.2 percent of the prime contracting business that big business gets, I don't have the percentage available, but it might be 80 percent or 70 percent of subcontracting big business gets and add it up and say big business gets 150 percent of the defense pie.

Mr. MARSCHALK. No, sir; I see where I have failed to make myself clear. But I am starting out with a pie and that is the whole of the defense procurement and 16 percent comes off and goes to small business.

Senator PROXMIRE. It doesn't come off because part of that remains to be subcontracted to big business.

Mr. MARSCHALK. All right, let us tear some more off and let us say 15.

Senator PROXMIRE. It may go down to 8 or 9.

Mr. MARSCHALK. Possibly, but we take all figures at the first tier, sir, because we are comparing as to a prime and subcontracting basis. We have to say of this remaining 84 percent approximately, which goes to the large companies to begin with, they place the 18.8 that you represented as the figure at the prime level.

And there is the 18.8 [indicating] if you take these two together, at least at the first level of purchasing to small business, it does add up to the approximate 30 percent.

Senator PROXMIRE. You are adding the first and the second tier. I do not want to detain you on this point, but I do object to your mathematics. I think maybe we can work this out privately.

It is late and we have another witness. I am sure you understand the nature of my questions.

Mr. MARSCHALK. I do, I also understand this, and I am sure you are mindful of it, that in the statistics compiled by SBA, or I say compiled by them, they have been reported in SBA reports from, I imagine, statistics gathered perhaps in the Department of Commerce—I do not know—generally it is shown that small business in manufacturing, as of the last report I saw, had gone down to 13 percent.

This is the aggregate. This is measured by output of small business. And nationally then, small manufacturers have an output or sale equivalent to 13 percent or less of total manufacturing output.

Senator PROXMIRE. Procurement is one of the reasons for that.

Mr. MARSCHALK. This is quite possible, but relatively speaking, if small business in the aggregate gets 13 percent, but gets a higher percent from the Government, then its non-Government business must be less than 13.

I am certainly not presenting myself as a skilled statistician or mathematician, but I feel one thing is very certain, Senator:

We have yet to establish by any criteria, SBA or elsewhere, what is a fair share of dollars.

Merely to say that a given amount is not fair does not mean it is not fair, or to say it is fair does not mean it is fair. I am not saying you are wrong, Senator, that it is not a fair share.

I am saying that neither of us has a criterion—which SBA should develop. Now SBA statistics I gave you on the 13 percent are based on the asset size, and it has always struck me as a peculiar thing that the agency given this responsibility sets a standard of employment as a measure of what is small, and yet measures the sales dollars by the amount of assets they have, and I think they rate small as under a million dollars in assets. With inflation this reduces the number of companies that are small as our dollar tends to depreciate in value.

I am trying to say, sir, that the SBA could and should run an extensive study of this entire area of problem, and, if I may, because you do have the printed testimony, I would like to mention an excerpt of this and then answer any questions.

We are vitally concerned with problems that are most serious to us, most serious. We have appealed to the Senate Small Business Committee, the House Small Business Committee. They have on several occasions given very good help. Yet in this particular area again, we are up against some extremely tough things in doing business with prime contractors or with the Government, and I was particularly asked to stress these in my testimony.

First, the contract terms under which we must sell are established 90 percent by Government law and regulation, and when I get a purchase order or a contract from a prime contractor or the Government, it is covered with the finest of fine print, most of which references some provision in regulation or law, and does not even repeat it.

It merely says, "Section so and so of the Walsh-Healey Act is incorporated by reference."

This is a most burdensome proposition and means that we cannot really negotiate in subcontracting or with the Government. We have to sign our lives away, and we cannot argue these terms.

Just 2 months ago I was asked to sign on the dotted line on a contract from one of the agencies—this is a prime contract—there were 46 pages in this contract of terms and conditions from that particular agency. And we were told, "You may not take exception to those. Those are set."

Those things included giving away some of our proprietary rights in things we had developed, and we were very much concerned.

Two, of the kinds of things that we give away—and this applies particularly at the subcontract level—termination. Now, the Government demands the right to terminate a prime contract and to have subcontracts terminated at Government convenience.

To enable this, there was put into regulation some time ago—I believe it is ASPR 7—I am sorry, I cannot call off the number. However, it is a standard subcontract termination clause.

That gives to the prime contractor the right to terminate for his convenience. It means that if, after he has placed his order with me and another man comes in there and says, "Look, I will do it for $2 cheaper than this first fellow," then the prime cancels and owes me nothing except for work I did up to the minute of termination, and he can take that free right with full Government connivance, if you will.

Not only this, but he is not obligated to pay me one single cent until it is approved by the contracting officer, but I may not discuss my claim with the contracting officer. I have seen claims sit for months and for actually over a year, tying up thousands and tens of thousands of dollars in subcontract claims.

Three, the sub has no privity of contract with the Government, although it is fully bound by all these terms that are preconditioned, preset, with which it may not argue.

If the prime goes broke—and incidentally this happened out in our area—the Government has our goods, but has no obligation to pay us for what we delivered to the prime and did not get paid for.

We cannot dispute any decision adverse to us.

Four, our know-how and our designs are in constant jeopardy. In the course of normal business, we make and sell things of our own design. For civilian sales we give customers nothing more than operating and maintenance information, but in order to do business with the Government and Government prime contractors, we are required to prepare detailed drawings and specifications in accordance with a mandatory military requirement, (MIL–D–70327) of such a straitjacket character that we would never ordinarily prepare such material for anyone, even ourselves. I am referring to drawings of things created entirely by ourselves at our own expense, many times things especially created to serve a unique military need which we recognized before our customers did.

If I might again just briefly depart from the statement, Senator, and say Anadite has developed a technique which, when we first presented it to the originator of the process, which was North American Aviation, they said couldn't be done. By way of explaining, chemical milling was developed by North American and Turco. We are licensees of Turco. This process applied initially in the field of aluminum. We developed techniques in the field of steel and went to North American and said, "Gentlemen, we can take a sheet of steel that is way out of tolerance and can now chemically bring it into tolerance as close as plus or minus one one-thousandth of an inch."

And the gentleman said, "Frankly, it can't be done."

Since that time we have proved it can be done, and under the requirements of the military they are seeking to have us reveal to them how it is done. Yet this is our lifeblood.

Five, we take tremendous gambles on facilities. Again using Anadite for example, we have invested almost half of our net worth in facilities which we engineered, we installed at our own expense, in anticipation of the fact that the process I mentioned was absolutely essential for the development of the B–70. When the B–70 was cut back initially, we thought it would be years before we had a chance to recover our investment.

Most of the plant of the large companies, something in the average of 67 to 70 percent, is necessarily financed by the Government, but we in small business really prefer—we do not want to have the Government put their money in. We want to be independent. But we do take tremendous risks.

The money that we invested in this facility—and it is now in the neighborhood of $600,000 for our very small company—has been a plowback of profits from prior good years. And yet the good year immediately preceding the heavy investment year is now being re-

viewed by the Renegotiation Board. Whether the Board will demand a refund is unknown.

The rate of return is lower on investment, but slightly higher on sales than a rate established in one previous "good" year, 3 years before.

This situation may be contrasted with that of the larger companies where investments in such specialized facilities are usually made by the Government. Well, I have covered the thing about the large companies. Let me cover points 6 and 7 in our troubles.

Six, specifications are complex, cumbersome, and sometimes impossible. The MIL–D–70327 specification which I previously may have mentioned has never been fully complied with by anyone. This is a mandatory spec. One company spent 6 months trying to track down all the other specifications and requirements this single specification incorporated by reference.

At the last count, it had received 346 known referenced specifications containing 2,894 pages and it still had 168 missing.

Finally, I would mention costs.

Under the pressures from the General Accounting Office, what we regard as the commonsense of competition appears to be tossed out the window in favor of procurement-by-audit. Again taking Anadite as an example, in the metal processing and finishing field, we have about 300 competitors in the Los Angeles area.

In the segment of chemical milling, in addition to the Government-owned facilities with which we compete, there are, I believe, 11 other small- and medium-size companies which we battle for every order. We make quotations on this work, mostly one piece at a time, on a 24-hour or 48-hour delivery.

Because we are the leader in skills and can guarantee close tolerances on complex parts, we sometimes get orders about the prices quoted by others. The buyer knows it is not much sense to save $2 on a processing charge of $50, if a missed tolerance can ruin a part worth $1,000.

Yet, today, and this is being more and more experienced by us, the military people are in the plant, breathing down the buyer's neck to purchase at the lowest price.

Gentlemen, we believe this Government can only tolerate buying best value, and we try to do this competitively, not on the basis of being locked in. We are not locked in. And yet I left Texas Monday, and I had seen at that plant a 25-line breakdown that we were supposed to furnish on each segment of what had cost us months before to make up parts in prices ranging from $25 on up.

This kind of overhead burden is just literally killing us.

Senator PROXMIRE. I am going to ask you, Mr. Marschalk, if you will put the rest of your testimony in the record. Allowing 5 minutes for my interruption, you are 5 minutes over the time.

Mr. MARSCHALK. Let me do this: I am sure the companies I represent would approve S. 836 with the amendments suggested by the Small Business representative this morning, so long as final responsibility for procurement and authority rests in the same hands we are happy.

We would be very unhappy about it if this were not the case.

Senator PROXMIRE. The Senator from Oregon?

Senator NEUBERGER. No questions, thank you.

Senator PROXMIRE. Thank you very much, Mr. Marschalk. I appreciate very much your coming.

(Mr. Marschalk's prepared statement follows:)

STATEMENT OF JOHN MARSCHALK, ASSISTANT TO THE PRESIDENT, ANADITE, INC., LOS ANGELES, CALIF.

My name is John Marschalk. I live at 2850 Belden Drive, Los Angeles, Calif., and I am a small businessman. I am assistant to the president of Anadite, Inc., a small metal-processing firm located in South Gate, Calif. Also, I serve as a consultant to other firms in the defense field, primarily small companies engaged in subcontracting. Finally, I write a weekly column on defense contracting problems for the Southern California Industrial News.

My appearance today is specifically in behalf of Anadite, Inc., and the Task Corp., a design and manufacturing company specializing in advanced developments of electric motors, airborne refrigeration systems, precision hydraulic pumps, and force measurement devices for supersonic wind tunnels. Task and Anadite, which both began with a handful of people when I first met their principals, now employ approximately 100 and 200 people, respectively.

Both companies are very strongly opposed to the enactment of section 8 of S. 836. They also believe that section 9, if enacted, will be more wasteful than fruitful, but they regard this as an internal administrative problem at Government level and wish me to devote my time to the subject with which section 8 is concerned.

The first basis of their objection is the same as indicated in my Industrial News column of February 27, 1961, and with the permission of the Chair, I would like to submit that column as a part of my testimony (see attachment).

It is their belief that section 2 of S. 836 is motivated by a sincere desire to assist small business toward fair treatment both as to the volume and manner of subcontracting. Their opposition is to the means and not to the objective.

They believe the extent of potential SBA authority is not sufficiently delineated and that if this authority can in any way supersede the authority of the Department of Defense and its weapons contractors, the results can be dangerous both to the defense effort and the free enterprise system.

They submit to you gentlemen the fact that they experience many and serious problems in their role of defense subcontractors, but that in the past 8 years the SBA—

(1) Has never truly surveyed the small business community serving defense as subcontractors,

(2) Has not surveyed the Nation's total small manufacturing community to determine what portion serves defense, what portion does not,

(3) Has not surveyed prime contractor purchasing to determine what the purchase package consists of,

(4) Has never established comparative criteria by which the share of defense business going to small firms could be checked against the share of civilian business which small firms enjoy,

(5) Has never made a statistical study of small business to determine the methods of purchase and sale which small business itself prefers.

(6) Has not staffed its regional offices with people equipped to answer the contract administration questions which arise from the mandatory obligations imposed by such things as the Renegotiation Act, the Armed Services Procurement Regulations, the Air Force Procurement Instructions, Navy Procurement Directives, Army Procurement Procedures, the Space Act, the Walsh-Healy Act, etc., and

(7) Has never made more than spot checks of the specific serious problems which small businesses regularly participating in defense encounter as a matter of daily practice.

Now, some of us in other positions—on the staffs of committees, or in small business, itself—would have to own up that we haven't done very much about collecting this type of factual information on a statistically accurate basis, either. We know about complaints. But do we know whether the complaints come from typical small firms, or are we merely telling ourselves that we know what a typical small firm is?

Anadite and Task think they are typical. But there are those here in Washington who don't think so. They think these two companies are too successful to be typical. We don't think we are nearly successful enough.

All I wish to suggest is that there is a big room for difference of opinion. Perhaps there is too much opinion. Before the Congress takes such a drastic step as the one proposed, it would appear to need a great many facts that just have not been determined.

Senator Proxmire, in his statement introducing S. 836, indicated his feeling that the 18.8 percent of prime contractor funds going to small business under the Department of Defense program is not satisfactory. At the prime level, we understand small business presently gets about 16 percent. Thus, the overall percent going to small business is 16 prime plus (18.8 times 84) 15.7 sub, or a total of 31.7 percent.

Whether 31.7 percent is enough, or not enough, is something everybody can argue if there is no standard of comparison. We all want more. But we go to statistics published by the SBA and we find that small manufacturers generally have less than 13 percent of the total business (civilian and defense combined) across the United States. Which must mean that civilian, alone, is well under 13 percent. Of course, the trouble with that statistic is that the criterion for dividing between large and small is asset size, not employment. If we really want to know the truth, why doesn't the responsible agency get comparative information to the same standards?

Before I tell you what my companies hope this committee will look at, I want to make very clear that I am not here to criticize the work of the SBA. They appear to have done an excellent job in their loan program and one of the other sections of this proposed bill is aimed at improving their loan authority, a purpose we fully endorse. We are simply saying that in this complex area of military subcontract procurement, there is no evidence to show that SBA has gathered the type of factual information which would be essential for it to have to come up with any sort of a sound subcontracting program.

Here, for example, are seven problem areas which those of us engaged in defense subcontracting find really burdensome, but on which the SBA has had little to say:

(1) The terms under which we must sell are established 90 percent by Government law and regulation, nearly all of which contemplate problems at prime contract level, but which are required by the Government to be extended to all tiers of subcontracting. Many of these things require us to "sign our lives away," without any recourse.

(2) Termination is an example. The Government demands the right to terminate subcontracts at Government convenience. We see the need for this right. But when we are terminated and submit a claim for settlement, the prime will only pay us what the Government approves. Yet we are forbidden by the Government representative to even discuss our claims with him. If he sits on the claim indefinitely, and issues no instruction to clear termination inventory, that is our tough luck. If the claim is left unpaid for months, or even years—as has happened to many of us—that is also our tough luck. We cannot collect interest on the money we have tied up in such a claim. We get a partial payment only if the prime feels justified in taking the risk. He is reluctant, because if the contracting officer disallows some cost—however arbitrary the disallowance may be—the prime cannot recover.

(3) We are bound by the Government terms, but the Government is in no way bound to us. If the prime goes broke, the Government has our goods, but has no obligation to pay us. Officially we do not exist. We have no privity of contract. We cannot dispute any decision adverse to us.

(4) Our designs and know-how are in constant jeopardy. In the course of normal business, we make and sell things of our own design. For civilian sales, we give customers nothing more than operating and maintenance information. But, in order to do business with Government prime contractors, we are required to prepare detailed drawings and specifications in accordance with a mandatory military requirement (MIL–D–70327) of such a straitjacket character that we would never ordinarily prepare such material for anyone, even ourselves. I am not talking about design created at Government expense. I am referring to things created entirely by ourselves at our own expense—many times things especially created to serve a unique military need which we recognized before our customers did. These are not requirements thought up by the primes, they are mandatory requirements in their prime contracts which the ASPR demands that they extend to our level of supply.

(5) We take tremendous gambles on facilities. Anadite, for example, invested almost half its net worth in facilities which it engineered and installed in anticipation of B–70 chemical milling needs. The company has led the way in

technical competence for chemical milling of exotic metals. These facilities are useless for any civilian purpose. Anadite was fully aware of its gamble, but believed it was justified for the long haul on the premise that certain supersonic progress, it appears, can only be accomplished if these techniques are employed.

The money invested has been a plowback of profits from prior years. The good year immediately preceding the heavy investment year is now being reviewed by the Renegotiation Board. Whether the Board will demand a refund is unknown.

The rate of return is lower on investment, but slightly higher on sales than a rate established in one previous good year, 3 years before.

This situation may be contrasted with that of the larger companies where investments in such specialized facilities are usually made by the Government. Anadite is competing, in fact, with at least three such Government-financed chemical milling facilities at the present time. The company prefers to take the gamble; it prefers to be a private enterprise; but it is not much fun for a small company which has invested heavily in the Nation's future to be faced with the fact that its good years are up for Renegotiation grabs, while its low profit years must remain its own worry.

(6) Specifications are complex, cumbersome and sometimes impossible. The MIL–D–70327 specification which I previously mentioned has never been fully complied with by anyone. One company spent 6 months trying to track down all the other specifications and requirements this single specification incorporated by reference. At the last count, it had received 346 known referenced specifications containing 2,894 pages. But it had not been able to obtain 168 specifications, many of which appeared to be out of print. How many additional specifications are referenced in the missing 168 is a matter of pure conjecture. It may surprise you to know MIL–D–70327 doesn't specify how to make anything. It only tells how to draw Government-approved pictures of what you do make.

(7) Finally, I would mention costs. Under the pressures from the General Accounting Office, what we regard as the commonsense of competition appears to be tossed out the window in favor of procurement-by-audit. Again taking Anadite as an example, in the metal processing and finishing field, we have about 300 competitors in the Los Angeles area. In the segment of chemical milling, in addition to the Government-owned facilities with which we compete, there are, I believe, 11 other small and medium-size companies which we battle for every order. We make quotations on this work, mostly one piece at a time. Because we are the leader in skills and can guarantee close tolerances on complex parts, we sometimes get orders above the prices quoted by others. The buyer knows it isn't much sense to save $2 on a processing charge of $50, if a missed tolerance can ruin a part worth $1,000.

Nevertheless, the buyer is more and more on the defensive. The military people breathe down his neck to get the lowest price. More and more he is taking the path of least resistance and letting the inspectors worry about the piled up rejects.

Simultaneously we are under demand to furnish detailed cost breakdowns to accompany our bids—so many minutes at such-and-such a rate per hour for each of 25 operations on a part we bid for $25. This paperwork nonsense is pure harassment. It adds to our total operating cost and, if we are to stay in business, must be reflected in our pricing. Every other small company is being asked to do the same thing. So every cost is going up, not down. The very thing which makes us most efficient as small firms—minimum paperwork and overhead—is being destroyed.

Perhaps I have dwelled too long on these examples of difficulty. It is all too easy to do. But I have felt the urgency of giving you something of a subcontractor-eye view. When we hear of getting a "fair share" of subcontracts, we would like to think that means a share of subcontracts "fairly" handled, rather than merely the dollar measure of how many orders we secured.

Mr. Ward, president of Task Corp., has appeared before the staff of the Senate Small Business Committee to tell them how the military calmly took his privately created design for a revolutionary six-element balance, and without so much as a by-your-leave proceeded to set up production within the Army. He has similarly testified before the House Small Business Committee on his difficulties in protecting his company's privately designed electric motors.

I became a consultant to Task Corp. simply because the fine print of defense contracts and subcontracts got to be too much for them. Under the impression that such Government terms would not take advantage of a small business, they several times found that the small print entailed obligations or took away rights which they had never anticipated.

The bearing of the situations I have described upon the proposals of S. 836 we feel to be as follows:

(*a*) Encumbered as we are with regulation upon regulation, we are frightened when still more program control is proposed to be superimposed on that which exists.

(*b*) Within the bounds of present regulation, the prime contractors seem generally to attempt businesslike and ethical relationships. Ninety-nine times out of a hundred we find that a source of discomfort or complaint is actually in the law or regulation—hence the contract—by which our customers are bound.

(*c*) Knowing the intense competition, the rapid changes in technology, the intricate nature of requirements for the space age, we are aware that any attempt to squeeze the pattern of procurement into a pat formula—similar to that which might work for rope, or 10-penny nails—will be a wasteful failure.

(*d*) We believe the defense effort cannot afford second best, or even the slightest risk of second best, since we are aware that the defense race has no second prize. It is one thing to make the assumption that interference will not harm the defense effort. It is quite something else to take on the responsibility for betting our security against that assumption.

(*e*) As things stand, the Department of Defense and those of us—primes and subcontractors—who undertake to supply military needs have the responsibility to produce the best possible quality at the most efficient cost. Take away 1 ounce of authority in this chain of command and you take away all responsibility.

(*f*) We realize that under S. 836 the SBA would not be permitted to specify which small business concerns would receive a subcontractor. But there is no proposed restriction against SBA specifying the method by which a subcontract award shall be determined. If it should do such a thing—and in 1960 it made a series of questionable recommendations in this area—it means that the SBA would superimpose its judgment over that of the people in business whose careers are devoted to the science of procurement. Even if SBA should permit exceptions to its program formulas, every contractor would be constantly on the defensive to justify its use of such exceptions. The prospect of wasted time and cost, investigation, and delay is frightening.

In the light of such a prospect, we cannot see this country closing a missile gap. We can only see such a gap ever widening. We can see an unending bureaucracy growing up in SBA. We can't imagine the Administration attempting to establish or maintain a program without infinitely more staff in this area than it now has. And yet no clear benefit is indicated. The entire proposal rests on the conjecture that the small business share might be increased. But until something specific in the way of a program is detailed, how can it possibly be predetermined that this share would be definitely increased?

The companies I represent make a simple plea. We ask that this committee approve S. 836 with the deletion of sections 8 and 9. We ask that the committee offer a separate bill directing the SBA to undertake a detailed 6-month study of the small manufacturers of America, that they require SBA to make factual determination of what these companies do, what they make, the extent to which they serve defense, the number that are proprietary manufacturers and the number that are not—in summary, that SBA cover the points enumerated in the early part of my testimony—and that after they obtain this information, they then recommend to the Congress a specific program which they feel will assist smaller firms in the subcontracting field. At such time as these facts and recommendations are fully assembled, the Armed Services Procurement Act can be appropriately amended to install any needed corrections in the military program, but also keep such corrections within the authority of those who have the responsibility to perform.

I thank the committee for its courtesy in receiving our point of view. I'll be glad to answer any detailed questions.

(The following was subsequently received for the record:)

ANADITE, INC.,
South Gate, Calif., March 29, 1961.

Re hearings—S. 836.

Hon. WILLIAM PROXMIRE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: In view of your offer to receive additional material for the record of the hearings on S. 836, I will be grateful for your kindness in including this letter.

Two points seem much in need of clarification. One is that the two companies which I represented at the hearings—Anadite, Inc., and Task Corp.—along with those companies represented by Mr. Lent, who appeared in behalf of the Strategic Industries Association, do not in any way represent an "in" group. Any belief that this might be the situation—that the companies are motivated by some basely selfish desire to fence off a private domain—would be utterly unsupported by the facts surrounding their intensely competitive operations. More seriously, such a belief tends to throw up an iron curtain of ignorance between those who genuinely wish to help all small business, on the one hand, and the facts of small business life on the other.

The other point is that those of us who have opposed the provisions of section 8 in S. 836 have never doubted the sincerity with which these provisions were proposed. We have, for example, known and respected Senator Sparkman and his efforts in behalf of small business over a long period of time. It would not enter our heads that Senator Sparkman would join in a proposal unless he were convinced—based on the facts available to him—that the proposal had merit. So our desire in trekking across the country to testify has not been to say, "We are against small business, or against other small businesses," nor to question in any sense the motives of those we have opposed, but rather to plead that all the facts have not been available. Further, some of the "facts" which have been offered prove, on examination, to fall short of validity. We do not mean that they are untrue, but that without proper weighting they give rise to inaccurate conclusions.

Typical is the assertion that 29 million people, representing almost half the working force, are employed by small business. We don't know whether this is a fact, or not, but we must agree that it tells us absolutely nothing about the kind of occupations in which these people are employed, or what fraction may conceivably perform some kind of work for which the military has a need. Obviously, it includes service station operators, hand laundries, peanut vendors, horse trainers, perhaps even bookies.

The question would seem to be, not how many people work for small business, but how many people in small business perform work of the types for which the defense effort generates a productive requirement? This question remains completely unanswered. As noted in my testimony, the Small Business Administration, in its first 8 years, has not evaluated the small business population to determine what ought to be basic to legislative action in this field—that is, the supply of small business skills adaptable to military needs, versus the nature of these needs.

At our end of the stick—engaged in small business, and having daily contact with others with whom we compete—we are finding that the typical operator of a machine job shop is in a declining market, having an almost impossible time in all but a few rare instances. He is in the most intensely competitive situation.

Contrary to some opinion, the declining work for these job shops is not because the large defense producers are saying, "This job of machining is too complex for you little fellows to do." The truth is that what is being bought by the military is more and more a kind of weapon that isn't made on lathes, drill presses, mills or punch presses. Your Atlas, your Polaris, your B–58, your B–70—all the weapons which represent the big share of defense dollars—do not have 20 percent of the machined parts with which the preceding generation of weapons was made.

This is the sort of fact which could be readily ascertained by anyone familiar with production who attempted an impartial analysis. The result is that there are 50 machine shops now competing for the work which 10 can handle. No one I know has a privileged "in" for the business available. Competition is actually so cutthroat that many of these small companies are going broke because of their successful bids for work below cost.

Against this background of what is actually happening, it is strange to find the SBA already engaged in a subcontracting program in which, among other things, they are persuading cooperative prime contractors to let SBA suggest additional sources.

Experience shows that when a small business gets into work it doesn't understand, its chances of going broke are only enhanced. The Government quickly loses its charitable mein when it is a matter of insisting that a supplier live up to the specifications and terms of a contract or subcontract. And anyone who has ever had to struggle with the endless special terms and conditions, plus voluminous specifications, applicable to the smallest purchase order, will quickly sympathize with the plight of the poor, uninformed fellow who is "lucky" enough to get an order.

It needs to be understood that these "subcontracts" which we are considering are not arrangements for production over a period of time of some substantial and volume-required component of a weapon system. More than 90 percent of so-called subcontracts are commitments for one, two, or a half-dozen parts or pieces. The period of performance is from a couple of days to 2 weeks. The dollar value of an individual subcontract averages less than $250. At Anadite, last year, our average billing was $78, and from time of sale to delivery of the order averaged less than a week.

As a matter of interest, Anadite is not involved in competition with machine shops. So we are pleading a cause on principle, rather than in terms of competitive fear. In the various phases of our processing work, we have from 10 to 250 competitors. Our worst competitor, in time past, has been the Government, itself, in respect to the rent-free facilities which have been furnished for certain of our types of work at large prime contractor plants. Thanks, in part, to the efforts of the Senate Small Business Committee—in publicizing the unfairness of such situations—it appears that this type of competition has been lessened in the last few years.

Considering the fact that we, as small businessmen, in common with so many others of our acquaintances, continue to experience great difficulty with the terms and conditions of subcontracting, etc., it may seem contradictory that we have been against having the SBA establish a subcontracting program.

No such contradiction exists. The SBA has concentrated on its loan programs. It has not concentrated on "procurement assistance." Its field people are almost totally uninformed on the intricacies of subcontract requirements. They do not know the regulations, the contract terms, the subcontract specifications on quality control, or the myriad of other requirements which competing companies have to meet.

We do not believe SBA should be criticized for this. Funds appropriated to SBA have not, we believe, ever provided for the type of fact gathering which would yield this information. Nothing would be more unfair to them than to ask that they establish "within 90 days" an effective subcontracting program.

More particularly, nothing would be more unfair to small business. It would almost be cruel to "help" a small businessman get into something without full knowledge of the pitfalls.

This is why we want to see the SBA make its studies and its recommendations before any legislation is passed. We do not believe it is right to divide authority over procurement. We most sincerely believe that it would not accomplish your aim and ours—to assist small business. And, as appears probable from all the evidence, if the new authority would vest with those who have yet to obtain the necessary facts, it seems so likely to be misused that the danger to our defense effort is too great to risk.

Sincerely and respectfully yours,

JOHN MARSCHALK,
Assistant to the President.

Senator PROXMIRE. We have one more witness this morning. Mr. Harold Heath has asked if he could testify today. He has to leave town, I understand. So we will hear from you, Mr. Heath.

You have a one-page statement. Won't you come down and sit at the mike and identify yourself and your company?

STATEMENT OF HAROLD H. HEATH, HEATH AIRCRAFT, INC., AUBURN, WASH.

Mr. HEATH. Senator, and members, I am Harold Heath and I am president of Heath Manufacturing and Heath Aircraft Co. of Auburn, Wash.

We have 217 employees and I am here particularly to object to section 8. The rest of the bill I am more or less in agreement with.

Senator PROXMIRE. Section 8 only. Do you agree with section 9?

Mr. HEATH. Section 9 I do not have any disagreement with, sir.

The majority of the business of my companies is subcontract work on commercial and military jets and missile production for several of the prime contractors to the Department of Defense.

The prime responsibility for the procurement of defense needs is that of Department of Defense. In the interests of this responsibility and the Nation's welfare, I feel that Department must have freedom of movement to provide for its requirements in the most expeditious manner possible and at the least cost to the taxpayers.

It appears to me that section 8 of S. 836 would extend the authority of the Small Business Administration over that of the Department of Defense in the placing of subcontracts. This could very well add to the burdens of doing business with the Government and possibly even delay vital programs.

Our relationships with prime contractors have been excellent. They know of our production capacities and capabilities. We, in turn, are aware of their programs and where we can best serve on subcontracts in relation to their prime contracts. The interposing of the SBA between the prime and subcontracting companies would lead to confusion, delay, and the disruption of program coordination which we have developed over the past several years.

Senator PROXMIRE. Where do you see that in the bill, the interposing of SBA?

Mr. HEATH. This is my opinion, sir. It is my understanding of the bill that the Small Business Administration would administer subcontracts from the prime contracts.

Senator PROXMIRE. That understanding is wrong. The bill provides that the complete procurement responsibility would be within the procurement agency. All SBA can do is to propose a program. It is entirely up to the appropriate agency to administer it. Otherwise, I would agree with you 100 percent, this would be a division of authority and so forth. But I would want to correct that because I think that is a misapprehension on the part of many people. There is absolutely no division whatsoever. The authority is clear.

Mr. HEATH. I am sorry.

I misunderstood your intent.

To continue with my statement, it would appear that section 8 would necessitate considerable additional personnel in the SBA in order for the agency to comply with this provision, in that it would be engaged in checking out a supplier's qualifications, capabilities, and capacity to perform something which has already been done by private industry prime contractors. Government costs would duplicate those of private industry—to some extent at least, and small business as a taxpayer, would suffer by increased costs of Government.

The Small Business Administration is directed by law to insure as far as possible that a fair proportion of total purchases and contracts for property and services for the Government be placed with small business enterprises.

It does not appear advisable to extend the law past its present intent and, by so doing disturb free enterprise. Here we are getting into this interjection of the Small Business Administration between the contractor and the subcontractor again. I wish to withdraw that part of it if it is in conflict with your bill. But this was my main concern, because we deal primarily with prime contractors, and we feel it would be very detrimental to our business and to the prime contractors as a whole to have an agency in the middle.

Senator PROXMIRE. I agree with you. I would never support a bill like that, and we would never get a vote in the House or the Senate.

The Senator from Oregon?

Senator NEUBERGER. No questions.

Senator PROXMIRE. I think the thrust of your objection to the bill is exactly this. You feel the SBA would be a coordinator, combined with a procuring agency, which it would not be under the bill at all. It would have nothing to do with the relationship between the prime and subcontractors. The closest it would come would be a kind of postaudit situation in which they could examine what had happened in various situations and make recommendations for the future and modify their overall program on the basis of that. But they would have nothing to do with any specific relationship of that kind.

I would like to ask you about something which we think is quite a coincidence.

I have received many, many communications—I think they were probably in the hundreds—and the committee has received many communications, almost identical. They all say the same thing.

"Postpone this bill for 30 days." They do not say "2 weeks," "1 month," or "6 weeks"; they all say "30 days"—identical. It is a marvelous illustration of how great minds perhaps think alike, but it indicates to us there is a long lobbying hand in opposition to this bill. In my judgment, while the Defense Department may not be in command of it, I would not be surprised if they did not have something to do with the quarterbacking. However, it seems to me they could be more adroit and subtle in attempting to have an impact on the chairman and the committee generally.

What was the basis for your telegram asking for a 30-day extension?

Mr. HEATH. I did not want to come east at this time.

Senator PROXMIRE. Why did you ask for 30 days?

Mr. HEATH. Because in 30 days I would be better prepared to talk to you and my business in New York would be better prepared for me to go there also.

Senator PROXMIRE. Had the period been suggested by anyone else?

Mr. HEATH. Many of the subcontractors in that area have talked about that bill.

Senator PROXMIRE. And agreed 30 days would be about right?

Mr. HEATH. Yes; 30 days was picked out of the air as a number.

Senator PROXMIRE. It extends farther than Seattle. It comes from New England and the Chicago area, and so on. And 30 days is the magic number.

Mr. HEATH. It must have been the magic number because I only know about Seattle. In various places, other I know of have been in business there and though we are competitors, when a crisis like this comes up, we get together and discuss it.

Senator PROXMIRE. I want to apologize for quoting Senator Capehart in his absence, but he made what I feel was an excellent statement. He said:

> Isn't it true that the real objection to this on the part of some small businesses is that they are getting their cut of defense work now and do not want anybody else to get in on it? After all they feel they are in a good position and have a good relationship with the Defense Department. They do not want any more competition.

We want to assure an opportunity for small business generally to know what contracts and subcontracts are available, and for SBA to provide a situation which will maximize the opportunities for bidding or participating in subcontracts for all small businesses, whether or not they have a happy, close relationship with a person or group in the Defense Department.

What is your answer to that?

Mr. HEATH. My experience with the various departments in prime contracts has not been very good, Senator. I do not bid on many contracts. I prefer to deal with the prime contractors. My relationships there have been better. I am very fortunate, through my own initiative and that of the people in our company, to have a good relationship with companies in California and in Seattle.

What we have to go through to deal with a Government agency as a prime contractor is not worth the contract. And that is the way I feel about it, so I do not bid on prime contracts as such.

Senator PROXMIRE. I think that is an excellent statement and one of the best reasons I have heard for having the SBA to develop a program so it will be possible for small businesses to bid.

I think Mr. Marschalk today did an excellent job of reinforcing that. Forty-one pages—fantastic. If the SBA can only work out a program that recognizes that it is very difficult for small business when we require these many details which would be no problem at all for big business which has many auditors and many lawyers, and so forth, to advise them. But for small business this is a very great problem.

I think incidentally, Mr. Marschalk deserves credit for emphasizing the fact that we should not simply consider price, but should consider quality.

Mr. HEATH. I think that is becoming more of a factor as years go by. In the past there was too much production and not enough technical knowledge required.

Senator PROXMIRE. I thank you very much for your appearance, Mr. Heath.

Did you wish to speak, sir?

STATEMENT OF CLYDE BOTHMER, DIRECTOR OF SMALL BUSINESS POLICY, DEPARTMENT OF DEFENSE

Mr. BOTHMER. My name is Clyde Bothmer. I am Director of Small Business Policy for the Department of Defense.

Senator PROXMIRE. We welcome your statement.

Mr. BOTHMER. I think I would be very remiss if I did not answer your suggestion of the lobbying practices that the Defense Department has engaged in.

Senator PROXMIRE. Fine.

Mr. BOTHMER. I can assure you we are not lobbying against this bill. We have made no effort to stimulate any kind of telegrams or letters that you may have been getting. We are going to testify on Friday, and we will be glad to talk further to that point.

Senator PROXMIRE. I wish you would. And I wish when you testify Friday, you would also talk to the point of whether there was any lobbying last August when all of a sudden there was an inunda-

tion of similar communications from all over the country trying to block the agreement on the conference report, which was blocked by only a tie vote in the House.

Mr. BOTHMER. I was not in this job last August, sir, but we will address ourselves to that.

Senator PROXMIRE. Fine. Thank you, Mr. Heath. I know Mr. Marschalk wants to have some words with me after this is over and I welcome his coming up then.

There will be 2 more days of testimony.

The committee will reconvene at 10 o'clock on Thursday, tomorrow. The committee will stand in recess until then.

(Whereupon, at 1 p.m. the hearing was recessed, to reconvene at 10 a.m., Thursday, March 16, 1961.)

SMALL BUSINESS ACT AMENDMENTS OF 1961

THURSDAY, MARCH 16, 1961

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to recess, in room 5302, New Senate Office Building, at 10:15 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire, Sparkman, and Neuberger.

Senator PROXMIRE. The committee will come to order.

I understand that Mr. King is ill and Mr. Hallahan, I am happy to say, is present and is going to read Mr. King's statement, which I see is short. We will try to follow the same rule today that we did yesterday of making the formal statements 15 minutes or less.

If you do not finish what you would like to deliver directly to the committee, we can put it into the record. We prefer to have you do that so we can have time for discussion with the witnesses. There are six witnesses this morning and we would appreciate it if you all would do that.

STATEMENT OF WILLIAM J. HALLAHAN, IRRIGATION EQUIPMENT CO., INC., EUGENE, WASH.

Mr. HALLAHAN. Thank you. That will give me sufficient time, Mr. Chairman. I appreciate the opportunity to present this statement on behalf of Mr. King who was suddenly taken ill and confined to the hospital.

My name is Joseph T. King. I am an attorney with offices at 1028 Connecticut Avenue NW. I am appearing before the committee as the representative of the Irrigation Equipment Co., Inc., of Eugene, Oreg. Mr. Robert Burke, the president of the company, had planned on appearing but was unable to rearrange his schedule in the time necessary. He has asked me to appear in his place.

Irrigation Equipment Co., Inc., commonly referred to as IRECO, was organized in 1950 to produce items required for portable agricultural irrigation systems. The company is located at 1300 Bethel Drive, Eugene, Oreg. The 1,500 items produced by the company for portable irrigation systems are distributed and sold nationally and internationally. The company's employment averages between 75 and 100 people.

The nature and use of the items produced by the company for agricultural irrigation systems are such that weather conditions and the economy of agriculture generally cause extreme fluctuations of sales. Because of the extreme downward trend of sales from $1,200,000 in 1955 to $300,000 in 1956, it was decided by the management of the company that IRECO should diversify.

In June of 1956, the IRECO Industrial Division of Irrigation Equipment Co., Inc., was founded. This division began and is presently manufacturing castings, subassemblies, and assemblies for the aircraft companies and missile contractors.

In 1960 this division had a gross volume of $460,000. Approximately 50 percent of the company's employees are engaged at the present time on Government subcontracts.

These aircraft and missile components have been developed after considerable time and at substantial engineering expense. Except in minor instances, the expenses incurred in the research and development of these products have been borne entirely by IRECO. IRECO rightfully feels that its proprietary rights on these designs and configurations should be protected. One of these designs alone, a wing access panel for the KC–135 aircraft, resulted in a saving of over $4,000 per aircraft.

The company is constantly working on improvements in the design of these items. In order to better serve our customers in emergencies for spare requirements, we have voluntarily produced extra units for inventory.

Mr. Chairman, and members of the committee, our concern with respect to S. 836 is centered on the matter of protecting the proprietary rights of small business companies such as ours who have developed, as a result of considerable time and expense, substantial improvements in the components of military items.

In our own instance, as previously stated, we entered this field because of declining sales in our regular activity and spent considerable sums of money to develop the products we are manufacturing for aircraft companies and missile contracts.

Unless proprietary rights are protected, you eliminate all initiative for small business concerns such as ours to go into research and development programs, to maintain personnel capable of redesigning and improving components currently produced and carry excess inventories which inactivate operating capital.

We are a small business concern that invested time and money to produce products which enabled us to go out and secure our own contracts. Having done this, we do not want our ingenuity rewarded by governmental dissemination of our know-how or an arbitrary allocation of a portion of our Government business to concerns who have been unwilling to make similar investments in time and money.

We wish to thank the chairman for his consideration of our comments on the provisions of last year's bill. We are happy to note that the provisions of section 8(d)(1) of S. 836 are a considerable improvement over the provisions contained in the amendments to H.R. 11207 which the Senate considered during the last Congress.

However, we believe that the measure should not infringe in any way upon the proprietary rights of small business concerns and in order to insure that these rights are protected and that the initiative, energy, and resourcefulness of America's small business enterprises will continue to make a maximum contribution to the defense effort, we beseech you to consider and adopt the following amendment:

On page 5, line 17, after the word "records," insert the following: "(except information and records relating to proprietary rights and data)."

The adoption of this amendment will not interfere with the objectives of the bill, but will protect the proprietary rights and data of small business concerns in products which they have developed at their own expense.

This committee, as well as other committees of Congress, has been concerned with the protection of proprietary rights and data on products or techniques which small business firms have designed and developed with their own know-how and resources.

The purpose of this amendment is to insure that the Small Business Administration in obtaining information and records from Government procurement agencies does not obtain information and records relating to proprietary rights, the dissemination of which to other concerns without compensation would materially penalize or drive out of business the concerns which actually developed them.

Mr. Chairman, there is an additional matter of concern to us involved in the possible construction of the prohibitory clause appearing at the end of the proposed new section 8(d)(1). We believe that the provisions should be amended as follows:

Page 5, line 22, after "specify," insert "or limit," and

Page 5, line 23, before the period, insert "or limit the amount of subcontracts that may be awarded to any small business concern."

This language is suggested to clarify what we conceive to be the chairman's intention. We are sure there is no intention to (*a*) limit the number of small

business concerns eligible to bid on subcontract, (*b*) limit the number of subcontracts that may be awarded to a small business concern, or (*c*) allocate subcontracts among several small business concerns.

The addition of this language would make it clear that such is the intention and that successful small business concerns will not be penalized under any program promulgated under the proposed section 8(d)(1).

Mr. Chairman, and members of the committee, I thank you for the opportunity of presenting the views of the Irrigation Equipment Co., Inc., on S. 836 and hope that you will adopt the amendments which we have proposed.

Senator PROXMIRE. Senator Sparkman?

Senator SPARKMAN. Mr. Chairman, I am very much interested in these suggestions that Mr. Hallahan makes. I was interested in those suggested amendments, but I want to ask about this: How do you keep separate, if your company is engaged on Government work and new processes or new methods are developed in the course of the work on the Government contract, the contribution made by the company's own resources and those made by the Government?

As you know, there is a great deal of interest up here on this matter of patent rights, property rights, and so forth on processes that are arrived at by companies while working on Government contracts. There is no uniformity as I understand it in the Government practice on that.

Some of the agencies give full rights to the contractor and others give none.

A young man called me the night before last from my State, for instance. He told me that he had developed something on which he was seeking a patent. Apparently he is working on a Government contract of some kind.

He started to turn this idea in as one of these incentive suggestions for which a reward is made. And some lawyer, perhaps the patent attorney there in Redstone Arsenal told him if he did that he would lose all his rights to it. And then he could not get a patent or his patent would not be worth anything.

He was calling me to talk to me about it. Of course, I could not tell him one way or the other. You say here that these processes developed at this company were developed by the resources of the company itself?

Mr. HALLAHAN. That is correct, Senator.

Senator SPARKMAN. How do you keep it separate so you can say that?

Mr. HALLAHAN. That, as the Senator well knows, is a complicated and complex problem.

Senator SPARKMAN. It seemed to me it would be.

Mr. HALLAHAN. Yes. I believe that in some cases, Senator, some of the proprietary rights involved are probably not patentable items or processes. Yet they do represent a considerable amount of time and substantial amounts of money invested by the companies concerned.

Senator SPARKMAN. I realize that. There might be processes or methods that are not patentable that might fall into the category, I suppose, of what we would call trade secrets.

Mr. HALLAHAN. And know-how.

Senator SPARKMAN. Yes, and know-how. The point I am trying to get at is this: If we should put such amendments in, we ought to know that we are not just throwing the gate wide open and that we

are protecting the Government on processes that are arrived at as a part of regular Government contract work. The information I was trying to get is how you keep separate and apart the expenses of research and development that brings you to these processes or these methods that are achieved?

Mr. HALLAHAN. I do not know that I can give the Senator a simple answer to that because of the complexity of the problem. I presume that it is almost something that you have to look at on an individual case basis, as happens with this particular concern. Almost all of the development expenses were expenses that they bore themselves. The amendment, the suggested amendment, Senator, is merely to prevent the Small Business Administration from disseminating this information which may already be in the hands of the prime contractor or the Department of Defense itself.

Senator SPARKMAN. The thing that concerns me is this, though: If it is of the nature that it is really Government property—in other words, how are you going to determine whether it is something that the Government ought to own or have an interest in, or is something that belongs wholly to the company itself. I am not asking for any specific answer at this time. But it just seems to me that that is something that ought to be thought through.

Mr. HALLAHAN. I think it is.

Senator SPARKMAN. In order that these so-called proprietary rights may be pretty clearly defined.

Mr. HALLAHAN. It would almost depend, Senator, on the consideration of individual cases actually to get an answer. I do not know that you can have an overall program that would give you the specific answer without considering the specifics of a particular case.

Senator SPARKMAN. Senator Long of the Select Committee on Small Business has been quite concerned about this. He is chairman of the Monopolies Subcommittee and he has held some hearings from time to time. One thing he has been quite concerned about has been the establishment of division of rights as between the Government and the individual for patents and processes that result from work on Government contracts. He has been wanting to set up a special committee to make a study of that, and he has been led strongly to that conclusion as I understand it, because of the diversity of practice in different Government agencies themselves. We do have some agencies that give the entire patent rights over to the individual or to the company.

We have others that give none, takes it all for the Government. He thinks there ought to be some uniformity and it ought to be studied. He talked with me about it just yesterday.

He said if he cannot get a special committee set up, then he wants to proceed in his Monopoly Subcommittee of the Select Committee on Small Business to study it. So we most likely will have a study made of that problem.

Senator NEUBERGER. Mr. Chairman, may I just comment on this? I came in late but I was interested partly because the company represented here is from my home State in our university city at Eugene, but also we have another business in Oregon that may be out of the classification of small business. It verges on large now. Their representatives have spoken to me many times about this very thing you have just spoken of. Of the development of an ingenious device that

is used in some of our defense materiel and now other companies are just by changing a wire producing the same thing. They think the quality is not as good and it is an infringement upon their business. I have taken quite an interest in this because I do think these people have a lot of investment, and are concerned about developing this. So I was interested in your comment, Senator Sparkman, about protecting them.

Senator SPARKMAN. I think it is a problem that probably we ought to give more attention to than we have.

Mr. HALLAHAN. This is a problem of this country.

Senator SPARKMAN. You recognize it in your paper and present suggestions there for recognizing it in the legislation.

Thank you, Mr. Chairman.

Senator PROXMIRE. I would like to ask you, Mr. Hallahan, in the same connection: Your amendment, as I understand it, would have nothing whatsoever to do with the Defense Department procuring proprietary rights and data?

Mr. HALLAHAN. That is correct.

Senator PROXMIRE. All it would do would be to prevent the Administrator of the Small Business Administration from securing such data from the Defense Department?

Mr. HALLAHAN. And disseminate it, yes, that is a problem, I think——

Senator PROXMIRE. It would be limited to that.

Mr. HALLAHAN. That is the suggested amendment, yes, sir.

Senator PROXMIRE. I think that has a lot of merit.

Senator SPARKMAN. May I ask a question for clarification in my own mind?

Senator PROXMIRE. Yes.

Senator SPARKMAN. Does the Defense Department disseminate that information to other contractors?

Mr. HALLAHAN. The House Small Business Committee last year, Senator, held some hearings on this very problem. I believe in March. There was dissemination, they believed, unjustly on the part of the Defense Department to other contractors or subcontractors of this proprietary right or proprietary data.

That is our problem. This concern did not want to compound that in this bill.

Senator SPARKMAN. It seems to me it comes back to the same point I was trying to make. If the Government owns it, and I believe the Defense Department takes the attitude that it does belong to the Government, then it seems that any Government agency has the right to disseminate. If the Government does not own it, then no Government agency has the right to disseminate the information. Except as permitted under the patent law.

Senator PROXMIRE. Your amendment could be modified to provide for that very easily if you would agree.

Mr. HALLAHAN. I think you have two questions, as I say, Mr. Chairman: One is the question of patentable rights and the other is this other question of proprietary rights that do not lend themselves to the patentable processes but in many cases are just as valuable.

Senator PROXMIRE. The fact is if the Government puts up the money it is in the same position as a corporation that has put up the money. The scientist or the engineer who has made the breakthrough has in

effect sold his right to the corporation he works for. They have the proprietary right. In this case if the Federal Government has put up the money, although the corporation may have provided the brains and they have had the ingenuity, the fact is when they accepted the Government's money to go into this kind of work they should recognize it is the taxpayer's money and they ought to have the right to it.

Mr. HALLAHAN. Yes. We get into the question of the understanding initially between the Government and the contractor in those cases too.

Senator PROXMIRE. I think that this undoubtedly will have a great appeal to the committee. But it could be made really effective if what I think is a very legitimate doubt Senator Sparkman has expressed was written into your amendment. Why don't you give this further thought and maybe you can communicate with us in the next day or two on the possible refinement of this to make sure that the Government will have complete freedom to use, or to disseminate their own processes which they themselves have paid for to any other agency?

Mr. HALLAHAN. We will be glad to consider it.

(The information requested follows:)

WASHINGTON, D.C., *March 28, 1961.*

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Small Business,
Committee on Banking and Currency,
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In my statement on S. 836 which was presented to the Subcommittee on Small Business by Mr. William Hallahan on March 16, 1961, I suggested the following amendment be made to the bill:

On page 5, line 17, after the word "records", insert the following: "(except information and records relating to proprietary rights and data)."

The purpose of the amendment is to assure that small business firms, such as Irrigation Equipment Co., Inc., which I represent, who have invested considerable time and money in research and development in connection with Government subcontracts in the aircraft and missile field, are protected in their proprietary rights. As you will recall, a colloquy developed in which Senator Sparkman and yourself participated regarding the dissemination of information and records which belong to the Federal Government. In this connection you suggested that possibly my amendment could be refined to cover the point which Senator Sparkman and yourself raised. I have given this matter considerable thought and believe that the amendment restated as follows will cover the point that you raised:

On page 5, line 17, after the word "record", insert the following: "(except information and records relating to proprietary rights and data not owned by the U.S. Government)."

I deeply appreciate the interest of yourself and the subcommittee in the amendments contained in my statement on S. 836.

Sincerely,

JOSEPH T. KING.

Senator SPARKMAN. May I say this? I am not objecting to the amendment. I am just raising a question that is troublesome to me. I am wondering if the amendment, the suggested amendment, takes into full consideration this complex problem with which we are confronted.

Senator PROXMIRE. As far as your last amendment is concerned, where you say "or limit the amount of subcontracts that may be awarded to any small business concern" it is inconceivable to me that the SBA would take that position. They might. I would feel that language may not be necessary. If there is much feeling on the part of other members of the committee or the small business community

generally that this is a necessary safeguard I would not see any objection to putting it in. It would be a matter of how strongly we feel about it.

Mr. HALLAHAN. We thought it carried out your intention. The concern has been successful in the work that it has done, and it did not want, because of its success, to be eliminated from being awarded additional contracts or subcontracts. I think that is exactly in line with the intention of the chairman and cosponsers the legislation.

Senator PROXMIRE. It is indeed.

Mr. HALLAHAN. That plus the fact that because we are successful in a small way that that success does not result in our being penalized on subcontracts that might be awarded.

Senator PROXMIRE. You think from your experience that might be that tendency?

Mr. HALLAHAN. I just wanted to make this clear, Mr. Chairman. I would not say that that would be the result. I just wanted to point that up for your consideration to ascertain if that was not exactly the intention of yourself and your cosponsors on the committee?

Senator PROXMIRE. It certainly was our intention. Senator Neuberger, do you have a question?

Senator NEUBERGER. No questions.

Senator PROXMIRE. Thank you very much, Mr. Hallahan.

Mr. HALLAHAN. Thank you very much.

Senator PROXMIRE. I appreciate your statement. It was very, very useful and to the point.

Dr. Woodruff? And you are the chairman of the economic policy committee of the National Small Business Men's Association?

Dr. WOODRUFF. Yes, sir; and with your permission, Mr. Chairman, I will not read my statement but will summarize it.

Senator PROXMIRE. Fine, do you want your statement to be put in the record?

Dr. WOODRUFF. At your pleasure, sir.

Senator PROXMIRE. Without objection, it will be done. It will appear at the end of your presentation.

STATEMENT OF DR. ARCHIBALD WOODRUFF, CHAIRMAN, ECONOMIC POLICY COMMITTEE, NATIONAL SMALL BUSINESS MEN'S ASSOCIATION

Dr. WOODRUFF. The National Association of Small Business Men is heartily in favor of the principles expressed in this bill, sir. We have many times appeared before you and have expressed our appreciation to this committee for its efforts to secure for the small business community a more realistic share of the defense business of the United States.

The particular bill in question has led to a great deal of testimony here and to a great deal of question as to the relative roles of the various Government agencies concerned in this, and I want to make clear that the association does not feel competent as such nor do I as an individual feel competent to speak in detail about the relation between the Defense Department and the Small Business Administration, and General Services Administration and the working out of the matter. We recognize the paramount interests of the Nation.

We do, however, warmly and heartily endorse the position taken by this bill in allocating a larger share of the defense business to the small business community.

You have had previous testimony, sir, concerning the size of the small business community and concerning its makeup and I do not want to repeat words that you have heard before. I do want to mention a few things because I think they deserve additional emphasis. About 29 million people, not very far from half the labor force of the United States, is engaged in small business, in 4½ million firms. The point I want to emphasize is both the numbers of these people and how very small the firms are on the average.

The average size of the small firms is about 6½ people. In other words, there is a very large group of highly inarticulate individuals who make up an important segment of the economy of the country and we have on a number of occasions in the past come before you pleading on our behalf and we are here today for that purpose.

Large number, numerically large but proportionately small of firms on the borderline between large-small, and small-large, taking 500 as the breaking point, and there are quite a few firms right in this bracket and there are other firms at the large end of the small business segment that are potential prime contractors.

Their problems have been dealt with, I think, rather adequately in previous testimony. The great contribution which the small firms can make and the great contribution that the defense contracts can make to the economic stability of the small firms lies in my opinion in small contract work of the smaller firms rather than the prime contract work of the larger small firms. This raises all the questions which have come before you previously in connection with subcontracting.

In my own business days I became a firm believer in the virtue of a prime contract from the standpoint of the contracting party. I can testify on this point from an abundance of personal experience, although my connection with the defense procurement is extremely meager. In fact, I am marvelously ignorant in this field, but I apprehend the same rules undoubtedly apply as to the advantages of the Defense Establishment to operate on the basis of as many prime contracts as they can and I think this makes very good sense.

The question then becomes one of working out some sort of subcontracting arrangement which does not cast the Small Business Administration in a sort of a den-mother role of attempting to, shall we say, reach into the subcontracting procedures of prime contractors to the extent which is to the advantage of no parties at all.

This leaves me in the embarrassing position of a man with a point but without very much in the way of a concrete suggestion. We have felt that some arrangement may be made whereby a prime contractor would indicate that he is prepared to subcontract a certain portion of the prime contract to small business concerns and this be considered in the award of the prime contract, i.e., that a prime contract that indicated a larger subcontract in segment to small business be given careful consideration.

Whether this can be worked out in a way which can avoid the other situation of having an arm of Government investigating and participating to a fairly considerable extent with the subcontracting process, I do not know, but may I say I am hopeful.

May I finish generally by repeating our support for the objectives of this bill and our confidence that the administrative problems which it raises can be worked out so we can realize the objective of the bill, to obtain for the small business community a greater portion of the defense business.

Thank you, sir.

Senator PROXMIRE. Thank you very much.

Senator Sparkman?

Senator SPARKMAN. You do endorse the legislation?

Dr. WOODRUFF. Yes.

Senator SPARKMAN. And you believe it is needed in order to bolster the part that small business may play in the economy of the country?

Dr. WOODRUFF. Yes, sir.

Senator SPARKMAN. That is all.

Senator PROXMIRE. Senator Neuberger?

Senator NEUBERGER. No questions.

Senator PROXMIRE. By what authority do you appear? You are chairman of the Economic Policy Committee of the National Small Business Men's Association. Did you have a directors' meeting or do you have a directive of any kind to authorize your appearance on this bill?

Dr. WOODRUFF. I will have to turn that question over to Mr. Liebenson who is here.

Senator PROXMIRE. Will you come up, Mr. Liebenson?

Mr. LIEBENSON. The authority for those statements is under the general directive by our board of trustees. The association operates under their guidance.

Senator PROXMIRE. The board of trustees is familiar with this bill?

Mr. LIEBENSON. They have been apprised of it. As far as I understand they were apprised of it, of the line of testimony that would be taken here and there was no objection raised.

Senator PROXMIRE. All right, we did not get your name. Would you spell your last name and identify yourself for us?

Mr. LIEBENSON. Herbert Liebenson, national director of the National Small Business Men's Association.

Senator PROXMIRE. How large is your organization, Dr. Woodruff?

Dr. WOODRUFF. We have 15,000 manufacturing members and about 30,000 total membership.

Senator PROXMIRE. What business are you in?

Dr. WOODRUFF. Personally?

Senator PROXMIRE. You said something about your own business.

Dr. WOODRUFF. I am dean of the School of Government, School of Business and International Affairs, George Washington University.

Senator PROXMIRE. Do you have a business of any kind yourself?

Dr. WOODRUFF. Yes, I had for a long time a private business, the Western Pennsylvania Research Associates, located in Pittsburgh. Since I moved to Washington, I no longer have control of the business although I do have an interest in it. It is a small business, sir.

Senator PROXMIRE. You said that about half of your people are manufacturers?

Dr. WOODRUFF. Roughly half, yes, sir.

Senator PROXMIRE. You said about half of the employees in the country are employed by small business?

Mr. WOODRUFF. About 29 million members of the labor force of the country are employed in small business.

Senator PROXMIRE. Mr. Marschalk yesterday made a very constructive suggestion on the possibility of getting more detail than we have now on exactly what small business consisted of, particularly in manufacturing. Can you enlighten us at all on the proportion of manufacturing as distinct from retailing or other fields small business represents?

Dr. WOODRUFF. Manufacturing is the smallest segment of the small business community. The largest segment is retailing and the largest single block there at the moment is gas stations. The next largest are independent stores of one sort or another.

The service industry is a large part. Laundries, drycleaning, barbershops.

Senator PROXMIRE. The reason I am asking this question is we are trying to get some kind of a basis for a fair appraisal of small business' share of defense work. If small business is getting 16 percent of the defense contracts presumably entirely for manufacturing and they constitute less than 16 percent in terms of assets or in terms of sales or in terms of employees of the total manufacturing industry in America, then the situation would not be as bad as if they constituted 40 percent or 45 percent. Do you have any basis at all for estimating the proportion that small business represents of the total manufacturing industry in America?

Mr. WOODRUFF. Yes, I think I can get those figures for you. I would not want to trust my memory. I am sure I can have them for you before the day is out.

(The information requested appears on p. —.)

Senator PROXMIRE. That would be very useful. The main testimony so far has been related to section 8 and particularly to the proposal that was made yesterday by SBA and supported by GSA. Presumably the Defense Department will take the same position, instead of the present section 8 they suggest that a small business procurement program be developed by GSA, the Defense Department, and SBA in concert and that if they could not agree, that GSA and the Defense Department could decide what to do.

If you have the bill in front of you, lines 13 through 22 apparently would simply be deleted. That is, the opportunity for small business to consult with prime contractors and the opportunity for small business to obtain information and records concerning subcontractors. Do you feel if the act were changed in this way that it could have any real force?

Dr. WOODRUFF. It would obviously have less force, Senator, if it were changed as this document states. I think it would still be a useful——

Senator PROXMIRE. This document being——

Dr. WOODRUFF. This document being entitled "Changes that have been made in S. 836."

Senator PROXMIRE. That is not the document.

Dr. WOODRUFF. That is not the document you referred to?

Senator PROXMIRE. No, I am referring to far more substantial surgery. All that did was cut the toenails and fingernails. This cuts off the arms and legs. The Administration would hand us a basket case.

Dr. WOODRUFF. In this case I would say the problems of this small business community are not met.

Senator PROXMIRE. You feel that this bill is quite urgently needed by the small business community?

Dr. WOODRUFF. Yes, I think it is.

Senator PROXMIRE. Thank you very much.

(Dr. Woodruff's prepared statement follows:)

STATEMENT OF DR. ARCHIBALD M. WOODRUFF, NATIONAL SMALL BUSINESS MEN'S ASSOCIATION

I am A. M. Woodruff, dean of the School of Government Business and International Affairs at the George Washington University. I also act as economic adviser to the National Small Business Men's Association. I am here this morning to express the sentiments of the association on S. 836, and also to express my personal opinions on certain aspects of this legislation.

The association is heartily in favor of the principles expressed in this bill. We have many times appeared before this honorable committee expressing the hope that small concerns could have a more realistic share of the defense contract business of the United States; and on behalf of the 15,000 manufacturing members of the association we wish to state again our appreciation to this committee and to the Congress for action heretofore taken to assure this result.

The bill in question has led to some discussion of the relative roles of the Small Business Administration on the one hand and of the General Services Administration and the Department of Defense on the other. The association does not feel qualified to discuss this question in detail; but we would reiterate our confidence that a successful resolution of the interagency matter will be found, so that the objectives of the bill will be achieved in ways consistent with national defense requirements.

Previous witnesses before the committee have stated that about half the labor force of the Nation is engaged in its small firms. In terms of figures about 29 million people are associated with about 4,500,000 small firms. The balance of the labor force is associated with barely 100,000 firms. The average size of the small firms happens to be about 6½ people. The average of the large firms is about 3,000 people. In the size distribution there is a clustering at each end, although there is a sizable number of firms on the borderline between large small and small large; i.e., about 500 employees.

Many firms of this approximate size can handle prime contracts of modest size and in fact many of them exist as commercial entities on substantial contracts either from Government or from other industries. On the other hand the much larger number of smaller firms probably can participate in defense contract activity only as subcontractors.

In either the prime or subcontract market the small firms need help they are not now getting, and the smaller the firm the more seriously they need it. I have personally talked to one small businessman who owned a factory with about 100 employees. He was a good small manufacturer with a good record of product success. He told me he had bid on over 30 contracts during the Korean war, but as he said, "he never got the paperwork right." Many other small manufacturers whom I have advised were seriously deficient in information on their own costs and from a paperwork angle were clumsy bidders. Fairly minor improvements in their paperwork would have put them in a much better position to benefit from defense business both prime and subcontract. This aspect of the problem is not explicitly raised in S. 836 but this committee has considered it previously in other connections and it remains a matter of abiding concern.

The association is actively working on the matter of Federal reports and the paperwork occasioned to small concerns. We hope that this committee will continue its support of wider advisory services to small firms with internal paperwork problems.

With the increasing complexity of defense requirements, a new and important factor of size has entered the field of defense procurement. Individual items of military hardware are not only big but incomprehensibly complicated. In my own business days I became well aware of the advantage of dealing with prime contractors on any complex undertaking. I was primarily concerned at this time in the matter of building construction. Competent individuals who attempted to "sub out" their own construction jobs usually wished, before the job

was finished, that they had retained a prime contractor. To this I can testify from an abundance of personal experience. And while my knowledge of military procurement is meager I apprehend that the same situation exists there. In other words, smaller small business must look to the subcontract market rather than to the prime contract market.

The matter of subcontracting raises questions of interfirm relationships which can become themselves very complex. The prime contractor has to ride herd on the subcontractors; indeed he is paid to do just this. He must assure that the subcontract work is done according to time schedule and also according to quality specifications. A serious failure, with respect to a small subcontract part either in time sequence or in quality, can affect the outcome of a missile launching in the same way as the famous lost horseshoe nail. Thus, the acceptance of any prime contract obligates the prime contractor either to do the work himself or to see that it is competently done.

On the other hand the prime contractor shoulders obligations when he assumes Government work that he does not when he assumes a contract from another private corporation. For example, various stipulations concerning wages and racial nondiscrimination apply to Government contracts and the prime contractors seem undiscouraged by them. By the same logic a prime contractor could legitimately be asked to spread subcontract work into the small business community, and a requirement of this sort would probably not noticeably diminish the number of prime contractors submitting bids.

The final requirement, however, is that the resultant system in no way impair the efficiency of military procurement, in terms of quality of product, speed of production or in any substantial way, in cost. I am confident as I said before that the overall objective of S. 836, which we endorse, can be met without causing the kind of interference which has been feared.

Senator PROXMIRE. We will proceed with Mr. Lent, of the Strategic Industries Association, Los Angeles. That is Robert R. Lent?

Mr. LENT. Right, Mr. Chairman. In compliance with your request, I have edited down my prepared testimony.

Senator PROXMIRE. Do you have copies of your statement?

Mr. LENT. Yes.

I would like to ask the Chair to include the full text of my remarks in the record.

Senator PROXMIRE. That will be done, without objection. It will appear at the end of your oral presentation.

STATEMENT OF ROBERT R. LENT, STRATEGIC INDUSTRIES ASSOCIATION

Mr. LENT. In addition to my work as vice president of Riggs Nucleonics Corp. in Burbank, Calif., I am vice president and chairman of the Government Relations Committee of the Strategic Industries Association, a group of 130 small business companies engaged in the design, development, and production of defense oriented products which are sold to the Military Establishment, prime contractors of the military and subcontractors of the primes.

The Strategic Industries Association opposes passage of S. 836 in its present form. Specifically, SIA opposes sections 8 and 9 of the bill.

Of major concern to the membership of the Strategic Industries Association is section 8 of S. 836. Frankly, we are very fearful of it because we interpret it to be another bureaucratic control superimposed on a myriad of existing controls.

The volume and complexity of these existing controls are threatening the very existence of our industrial complex and to add to this awesome burden at this time, a program which at its best, would be of questionable value, seems utter folly.

In empowering the SBA to "promulgate a small business subcontracting program," section 8 of the bill raises questions of interpretation more from what it does not say than from what it does say. For instance: Is it intended that the SBA program (whatever that program is to be) shall take precedence—that is, represent a superior authority—over the authority of the Department of Defense?

After reading Senator Proxmire's introductory remarks on S. 836, one can only conclude that he intends that such authority be granted the SBA.

The Senator has criticized the Department of Defense program for not "obtaining for small business a fair and decent share of subcontract awards." We cannot question the Senator's assessment—it is a point that no one can argue, because no one has ever set a standard to determine when a share is fair and when it is not—but it does seem that section 8 is intended to obtain a greater share.

Therefore, it would follow that the bill intends greater authority for the SBA. It must intend then, that the proposed SBA program shall supersede—take precedence over—the programs of the Department of Defense and industry.

Why is this new authority so essential?

The SBA has authority—has had it for years—but to date, it has not seen fit to use that authority—or it has not been qualified to use the authority—to increase the participation of the small business community in defense production.

This authority is provided in section 8(b)5 of the present act.

If the SBA possesses adequate competence in the field of military procurement to enable it to create a military subcontracting program within 90 days from the date of enactment of S. 836, why hasn't it used this competence and authority previously?

More specifically, What is it that is wrong with this present authority?

What is it that S. 836 would empower the SBA to do for which SBA does not have present authority clearly spelled out in section 8(b)(5)?

This leads us to another major concern of the members of SIA. If additional authority is intended, what is the nature of this authority and what are its limitations?

The bill in its present form is extremely vague in this respect.

We do not queston the probity of purpose associated with the proposed measure, but we are very much in doubt as to the probity of every man who may now or in the future be granted the opportunity to wield this authority.

We submit, that since this authority must be vested in a mortal being, his knowledge and judgment can be fallible no matter how high his purpose.

So we feel confident that it is not your intent to place unlimited authority in the hands of the SBA or for that matter in the hands of any Government agency. But when we review section 8 of the bill under consideration, we lose some of this confidence. We see only two limitations expressed:

(1) No program promulgated hereunder shall prescribe the extent to which any contractor shall enter into subcontracts, or

(2) Specify the business concerns to which subcontractors shall be granted.

These limitations imply a tremendous amount of new authority just short of the two points specified. They imply the right to regulate the methods by which prime contractors undertake their procurement.

For the moment, let us pass over the question of whether the SBA should have such authority, and concentrate on the question of whether they would have such authority.

We have every reason to believe that this is the sort of thing intended.

Last year the SBA had a list of proposed requirements which it presumably wanted the Department of Defense to accept.

Included on that list were the following:

1. A requirement that all small firms listed in the files of a prime contractor be given an opportunity to quote on each procurement.

2. A right to SBA to add names to the prime contractor list.

3. A right to require rotation of bidders on successive procurements if the list for a given purchase is too long.

4. A right to SBA to control the quantities and delivery schedules to suit SBA judgment on what is most suited to procurement from small business.

There is nothing in section 8 of S. 836 which would prohibit the SBA from incorporating such things in its "small business subcontracting program."

Or, for that matter, a great many other things which were not on the list last year.

We do not suggest that SBA has such things in mind. Our problem is that we have no way of knowing what it is that the SBA might have in mind.

But even if we knew exactly the form and shape of the program this would be meaningless. Nothing in the proposed bill would stop them from changing direction or adding more sweeping provisions at a later date.

This brings us to another concern of SIA. What reasonable prospect is there that if SBA could exert such authority in the subcontract area it would mean "a fair and decent share of subcontract awards"—or a larger share than small business is presently getting?

Where is the statistical evidence to show that we in small business are being denied a fair opportunity to get the work that is being subcontracted?

We must keep in mind that S. 836, in one of its two limitations, prohibits decisions on the extent of subcontracting.

So, unless the extent of subcontracting is changed, the question is whether small business is getting fair opportunity to compete for the amount of work that is subcontracted.

Mr. Chairman, I have my share of statistics, but I am sure we would not win anything. We would probably waste time if we discussed them at this time.

Let me pass over the statistics at this time.

So, may I say it could be better. We would not be unhappy if we could increase our sales. That is not the point. The question is what is it that gives us any assurance it could be better? What is that SBA could do with its new authority to make it better?

What types of things that big companies are now buying from other big companies would the SBA get them to buy from small companies? Where is the evidence and what are the facts?

Not facts about an isolated case here and there, but facts that represent enough volume to have any measurable effect on the percentages quoted?

No such facts have been offered. The truth is that no comprehensive study appears to have been made. All we are asked to go on is a generalized criticism of a percentage against which there is no standard of comparison. And then it is proposed that if we will just turn this problem over to the SBA, they will make everything fine for us.

Mr. Chairman, we are skeptics. The business of making a living in small business is a tough, realistic, day-to-day matter where we do not have time to think about the goodies the Government is going to give us. We have to concentrate on keeping our skills up, our competitive muscles flexed. We enjoy slugging it out. And the truth is that we can beat big business seven ways to Sunday most of the time.

Big business does not give us orders because they are kindhearted and want to take care of their little brothers. We get their orders when we offer the best quality at the best price. They would have rocks in their heads if they bought any other way. We cannot imagine our Government wanting the big firms to buy in any other way.

Surely, it is not intended to have the large firms buy from inferior sources. Or to take risks with doubtful quality. We can't imagine anyone endorsing such a risk. To do so would be to play fast and loose with the most important responsibility of Government today—the task of assuring that we have the best possible defense.

But if SBA is going to have authority in this area, what does it amount to?

It means that a small group of people in a Government agency would have to set their judgment against the judgment of major industry on how major industry should buy.

It means that an experienced buyer in industry will be second-guessed by someone with less experience on the question of whether procurement can safely be made from sources other than those which the buyer would normally choose.

It means that to whatever extent the judgment of the Government agency is allowed to prevail, then to that extent the responsibility for efficient procurement is taken out of the hands of the men who are solely responsible for production of quality weapons.

If what that company makes fails to perform, then they have a hand-tailored excuse. They need only blame the interference of the agency. We cannot afford to provide them with such an excuse. We want the responsibility to stay where it is. Then, when we get an order, we are fully responsible for our performance, our customers are responsible for theirs, and the Department of Defense is responsible for the total result.

From the testimony I have given, I hope that I have made it crystal clear that the Strategic Industries Association did not send me back here to testify in behalf of some selfish, short-range goal. We do not believe that defense orders are something to be treated as pork crops on the table to be dispensed on the basis of the size of the eater

or his location at the table. Our interest in this matter is confined to one question:

What is best for our country?

So far as we are aware, there is almost no precedent in present law for giving an agency such authority without specifically delineating the exact ground rules.

And whenever there has been a law of this kind, there has been an overwhelming evidence of need. When ground rules are not spelled out, procedure becomes arbitrary, and often capricious. Such possibility is to be approached only with the gravest showing of need, the gravest concern as to the effects.

Along these lines, I wish to quote from the "Weekly Staff Report to the Senate Small Business Committee" dated February 18, 1961.

The committee also deplored the lack of specific statistical information pertaining to the small business segment of the economy.

This statement is repeated day in and day out by different representatives of Government, and it is true, because so little is known about what small business wants for itself; how it handles its day to day business affairs; how it prefers to buy and sell; and where it belongs in our national economy.

Self-styled experts frequently preach the offer of salvation for small business without troubling to find out whether or not small business really needs saving.

The disease is not diagnosed; the cure is not prescribed; in fact, it is not even determined whether the patient is afflicted with a disease before some compassionate group wants to offer an aid to perfect health.

We do not criticize this desire to help—we welcome it—but we do criticize overzealous attempts to promote change without first establishing the foundation of facts necessary to assure that the right changes are being made.

In the hope that we can contribute to the knowledge of the committee, to other interested legislators, as well as members of the executive branch, I have here an advance copy of a survey conducted by a team at the University of Washington, College of Business Administration. It is entitled "Defense Procurement and Small Business" and the subtitle is "A Survey of the Practices and Opinions of Small Business Firms Selling to Defense Programs."

Because my company was one of those surveyed, I have successfully persuaded the university people to let me have this copy ahead of the publication date. I feel it contains a wealth of facts gathered directly from small business organizations across the country. I wish to present this copy to the committee for its use and we will be glad to furnish extra copies when the printed edition is released.

Meanwhile, with the possibilities of great harm, both to our defense effort and our system of doing business, which we see as potential in section 8 of S. 836, we urge that you reconsider the inclusion of this section in the bill.

Without evidence that men are injuring one another—except in the most isolated cases—and without any showing that a specific type of improvement is to be achieved, we believe section 8 is a very grave risk.

To accept it in the face of such tenuous promises of uncertain benefit is—to our membership—to make a very bad bargain with the future of America.

We respectfully recommend that S. 836 be passed after deletion of sections 8 and 9 and that the SBA be required to submit a specific program for the approval of the Congress before any legislation is enacted to give them further power.

Thank you.

Senator PROXMIRE. Thank you.

Senator Sparkman?

Senator SPARKMAN. You have headquarters at Burbank, Calif.? Are all your small business concerns California concerns?

Mr. LENT. The majority of them are.

Senator SPARKMAN. Are they engaged in a particular line of work?

Mr. LENT. They are exclusively in defense activities. We do not have member companies who are engaged in private pursuits such as the retail trade or something like that. It runs the gamut from high-tolerance machines to complex electronics systems. We have none that are doing any major weapons systems prime activity but we have some companies who are prime contractors, but are small business.

Senator SPARKMAN. Each one of these small businesses devotes its full activity to Government defense work?

Mr. LENT. Yes.

Senator SPARKMAN. You have no companies engaged in the production of civilian goods that are trying to supplement their business with defense contracts?

Mr. LENT. It might be the reverse. In other words, where they are predominantly engaged in defense activities but because of the rather difficult nature of doing business with the Government they may desire or attempt to pursue the manufacture of industrial types of goods. In testifying before Mr. Long in the Monopoly Subcommittee, I mentioned a company that was so frustrated with defense activities that they were trying to get into the field of making ladies' compacts. It was my opinion that this was a waste of a tremendous amount of creative talent, caused by the proprietary data policies of the Government.

Senator SPARKMAN. To my way of thinking, the nature of the business of your companies really differentiates them from the great mass of small business across the country. Many of them are struggling to get some defense work, to help supplement their programs of production of civilian goods. I think that has been a great problem and apparently your companies do not have to struggle with that. The subcontracts or the contracts more or less fall into your laps. But I assure you that is not true with hundreds of thousands of small businesses across the country.

Mr. LENT. I can assure you, Senator Sparkman, that that is not the case. I am sure that perhaps Mr. Mahoney, who is president of Mahoney Engineering in Los Angeles, would not take kindly to that remark. He has been struggling for 2 years trying to save his company. As I said, you see, I am not certain that Mr. Mahoney is sure that that company is going to survive or not. It is not a fair statement to say that we are rare and therefore we want to keep this as an exclusive society.

This bill and specifically section 8 is not designed really to help this great mass of small business that the previous witness talked about. This does not help filling stations or cleaning establishments or other types of service organizations. This is directed at a very small segment of small business. It is more specifically for the creative organizations who have engineering skills and are developing products for use in advanced technological developments.

So this is the real problem here. You as a reasonable man and the chairman as a reasonable man, would be flabbergasted if you could see the ridiculous administrative burden that any company has to put up with in doing business with the Government.

Mr. Marschalk mentioned it the other day.

Senator PROXMIRE. That is one of the principal purposes of this bill.

Mr. LENT. In this respect I do not see it in section 8. My whole testimony revolves around the problem that you say the Small Business Administration shall promulgate a program. But what is this program?

What are they doing? Is it going to make another group of administrative controls that we have to meet with?

For instance, we have petitioned the Congress on two or three occasions, we petitioned the Senate Select Committee on Small Business and also the House Small Business Committee, asking relief from some of this oppressive burden that we are trying to get out from under.

Renegotiation on small business is ridiculous. We have asked that you raise the minimum refund from a $40,000 base to $100,000 base.

Senator SPARKMAN. I believe you know that the Senate Select Committee on Small Business has reacted favorably to your suggestions and at different times we have tried to get some relief on renegotiation. As a matter of fact, we have succeeded in raising the amount. I believe on two different occasions that has happened.

Mr. LENT. I think that you raised the minimum limit. The minimum limit has been raised twice, by your committee. It was a very commendable action, but there is another point on it, though, that the raising of the base which is at $40,000 has not been followed with the raising of the limitation. So what is happening is that in accounting procedures, we are getting down to where the renegotiation board is making a determination sometimes on the basis of one-half of 1 percent.

Senator SPARKMAN. Let me say that I am in agreement with you pertaining to renegotiation. As a matter of fact our subcommittee of the Select Committee on Small Business has presented that problem two or three times to the Finance Committee. In fact, every time renegotiation has come up in recent years, we have tried to get them to liberalize it. Furthermore, I am in agreement with you about this great mass of Government regulation and controls.

I think by all means they should be simplified. But I do not regard this bill as complicating that problem. You recommend taking out sections 8 and 9. I regarded them as the heart of the bill. I realize there are other necessary things carried in the bill, but let me say this in all kindness but in all frankness, I think you live in a kind of a rarefied atmosphere so far as small businesses are concerned doing

business with the Government. I wish you could come down into my State or out into Wisconsin or in some of the other States and see these small engineering firms, small machine shops, small businesses of different kinds that are struggling to get Government contracts. Some of them get a few crumbs but most of them go on without being able to get those contracts. We have seen that in spite of the figures that you give. I want to analyze them a little more carefully. You say you have taken them from the report of the Senate Select Committee on Small Business, but if you had looked elsewhere in that report you would have seen statistics to show that over the past several years there has been a declining percentage of overall contracts to small business.

What we are trying to do, and what I think is the purpose of this legislation, is to reverse that trend and to get small business an increasing amount. Just yesterday, I believe it was, President Kennedy announced that he was issuing an Executive order directing the Defense Department to raise that amount 10 percent. If I remember correctly, the figure last year was 16 percent.

If we could get 10 percent added to that, and get it up to 26 percent, that is just about where we need to be. In fact, we have advocated in the Senate Select Committee on Small Business that somewhere between 20 and 25 percent of Government procurement ought to be given to small businesses.

If you are not going to do it by a set-aside or by an arrangement such as we are trying to provide in this bill, then at least throw it open to competitive bids. In every report that we have made from the Select Committee on Small Business, we have called for competitive bids. We believe small business will have a good chance if they are given a right to bid competitively.

Mr. LENT. Don't misinterpret me in this respect, I am not objecting——

Senator SPARKMAN. I certainly do not want to. At the same time I want you to understand what we are up against in other parts of the small business community.

Mr. LENT. My organization is not objecting to the philosophy just stated under any circumstances.

We are saying that perhaps you are putting the cart before the horse. You are putting the power in a Government agency without any knowledge as to what that Government agency is going to do with it. Why don't you ask the SBA to study the means by which they can help small business and then enact legislation.

Senator SPARKMAN. We have certainly asked them for that over the years. We have had them before us each year to try to work out these programs. By the way, you mentioned the impracticality of this. During World War II, we had the Smaller War Plants Corporation. You know we have had three organizations.

Mr. LENT. Yes; I know.

Senator SPARKMAN. We have had the Smaller War Plants Corporation, the Small Defense Plants Administration, and after the Korean war ended we had the Small Business Administration. Do you remember that in World War II, the Smaller War Plants Corporation had more power than section 8 seems to give SBA? It had the power to go in and take contracts from the Defense Department. We are not giving SBA the power to do that.

Mr. LENT. But, Senator, please understand that the reason it is difficult to do business with the Government today is because of legislative practices that have been established and of regulation and administrative changes which reflect this legislative direction. This is where we are in trouble today.

Renegotiation, termination, the whole kit and caboodle.

Senator SPARKMAN. I go along with you on renegotiation. I think some parts of the requirements of renegotiation today certainly are unjustified. And our committee has tried repeatedly to get them corrected. But the thing that we are trying to do now is to work out some kind of insurance that some businesses in this country will get a fair break in securing Government contracts. That is all we ask for. The small businesses of this country account for 50 percent of the employment. Why shouldn't they share in the defense business?

Mr. LENT. We wholeheartedly agree.

Senator SPARKMAN. That is what we are trying to do and that is what section 8(a) says.

Mr. LENT. I am criticizing the approach to the problem. I am sure SBA has been requested by your committee to make studies in this field but I am not aware of any studies that have been promulgated.

Senator SPARKMAN. Were you here yesterday?

Mr. LENT. Yes, sir.

Senator SPARKMAN. Did you hear what I said about the statement that SBA presented to us yesterday?

Mr. LENT. Yes, sir.

Senator SPARKMAN. It was a milk and water statement. It was no more written by the Small Business Administration than by me.

Mr. LENT. I was surprised to get assistance from that source.

Senator SPARKMAN. It was dictated by the Budget Bureau and by the same people who have been dictating these statements.

I said then that I became quite irritated every time I saw in a statement that the Budget Bureau permits it to be made or has no objection to the statement being made. They exercise virtually complete control, I am sorry to say, over the Government agencies. Congress did not intend that when it was set up. But thank goodness, they do not exercise control over Congress. If we could get Small Business Administration to come in here and give us a fair statement of their own thinking as to what they could do, you would see an entirely different story.

Mr. LENT. I honestly hope, Senator, that this document can be of some help to you, because it is the first one I have seen where small business was actually surveyed to find out what their troubles are.

Senator SPARKMAN. Where was your survey conducted?

Mr. LENT. It was conducted nationwide on a selected list of some 3,000 or 3,500 small businesses and it was conducted by the——

Senator SPARKMAN. It will be interesting I am sure to the staff of this subcommittee and I certainly want the staff of the Select Committee on Small Business to study it very carefully.

(The publication referred to will be found in the files of the committee.)

Mr. LENT. We believe that more studies like this are absolutely essential if we are going to really help the small business community.

Senator SPARKMAN. I will go along with you on that.

Mr. LENT. I don't object to the philosophy of section 8—I am objecting to the fact that I see nothing which assures our organization that section 8 is going to help this matter.

I am of the honest conviction that it will do more harm than it will do good in its present state. If you will give the SBA 6 months to come in here with a fully outlined program of implementation and then propose this amendment, we would in all probability wholeheartedly support it.

Senator SPARKMAN. How is the SBA going to do it with the Budget Bureau sitting over them and telling them what to say?

Mr. LENT. I have enough problems in my own business.

I can't help you with that one.

Senator SPARKMAN. I want you to understand some of our problems too in trying to approach this matter.

Thank you, Mr. Chairman.

Senator PROXMIRE. Mr. Lent, your association consists of 130 small small business companies?

Mr. LENT. Yes, sir.

Senator PROXMIRE. And with what authority do you appear here?

Mr. LENT. From the executive committee of the organization. Unfortunately our knowledge of this hearing was pretty short and so we did not have the time to call our full directors' meeting which is usual. But in this case, it was an executive committee meeting, which has the authority to act.

Senator PROXMIRE. When was that meeting held?

Mr. LENT. It was held last Monday.

Senator PROXMIRE. At that meeting this bill, S. 836, before us today, was considered?

Mr. LENT. Yes. As perhaps you know, we opposed it rather strenuously in the last session. So we were quite aware——

Senator PROXMIRE. Did members of your association wire the committee?

Mr. LENT. I sincerely hope they did.

Senator PROXMIRE. What did they ask for in their wire?

Mr. LENT. I hope they asked for 30 days delay.

Senator PROXMIRE. Why did you ask for 30 days?

Mr. LENT. Because we needed some time.

Senator PROXMIRE. Why didn't you ask for 2 months?

Mr. LENT. Thirty days is a good round figure and most of us could adjust our schedules in that time.

Senator PROXMIRE. Did you have any communication from any other part of the country on this 30-day determination to ask for 30 days?

Mr. LENT. How do you mean?

Senator PROXMIRE. Did you coordinate your actions with any other group that has similar objectives in regard to this bill?

Mr. LENT. Sometimes we do. In this particular case we did not because we did not have time. We have a mailing list of some 500 names. In this particular case we sent them a fact sheet on the bill.

Senator PROXMIRE. These were not members of your group?

Mr. LENT. This was 130 members plus about 370 additional people.

Senator PROXMIRE. Where are the 370 additional people?

Mr. LENT. They are all over the country.

Senator PROXMIRE. You say you did or did not?

Mr. LENT. We did what?

Senator PROXMIRE. Contact them to ask them to send telegrams?

Mr. LENT. We used our mailing list which is about 500 names, 130 of which are members and 370 of them which we hope will be members. In other words people that we know are confronted with the same problems we are.

Senator PROXMIRE. And you suggested that they send wires?

Mr. LENT. We gave them a fact sheet in which we listed the bill and then we told them if they were interested in this they should contact their Congressmen or their Senators.

Senator PROXMIRE. You would not know offhand whether you contacted anybody in Wisconsin?

Mr. LENT. I could not tell you.

Senator PROXMIRE. Did you contact any groups that did not primarily produce for defense?

Mr. LENT. I would say Senator, without having that list in front of me, that if there was someone outside of the defense activity, it would be a mistake in the list. Generally speaking, this list of people are——

Senator PROXMIRE. I received requests for a 30-day delay on this bill from people who had nothing to do with defense, big business people.

Mr. LENT. This would not be an activity of ours.

Senator PROXMIRE. But they are indirectly related to defense. It is very interesting to see what lobbying is going on.

Mr. LENT. It is an interesting question, what lobbying is.

Senator PROXMIRE. There is nothing wrong with lobbying. The constitutional right to petition Congress is a cherished right.

Mr. LENT. We have a funny definition of lobbying. If the people are for the bill, that is legislative interest; if people are opposed to the bill, it is lobbying.

Senator PROXMIRE. I welcome lobbying. I think it is fine. In your testimony, you say that you enjoy slugging it out with big business and you can really; that you welcome that kind of slugging. Don't you think if this bill passed, let's take section 9 to begin with, and small business were more aware of the opportunities for subcontracts and prime contracts, there would be more slugging going on? Wouldn't there be more competition?

Mr. LENT. I do not subscribe to that.

Senator PROXMIRE. Why not? More people would know about it.

Mr. LENT. I guess I should qualify myself by telling you my particular speciality in business is marketing.

Senator PROXMIRE. Your speciality is what?

Mr. LENT. Marketing. In other words sales: I see no reason why a company that does not know what is going on, should be let feed at the breast of the Government just because they do not know enough.

Senator PROXMITE. Oh, for heavens sake—a company that does not know what is going on. You have been feeding at the breast of the Government, that is all your company and your association has been doing according to what you have been telling us. We have firms in Wisconsin that are small business. They do not have agents in Washington who can get information from the Government as you do. We ask in section 9 that the Secretary of Commerce publish a list of sub and prime contracts of a minimal amount. Why is this feeding at

the breast of Government if they want to find that out and compete?

Mr. LENT. Let me hasten to add that I do not know of over 5 or 10 of the companies belonging to strategic industries that have a Washington representative. I want to dispel this feeling that strategic industries is a group of organizations eminently wealthy, and just got contracts handed to them. The only way to do business today, Senator, is to aggressively do business, and if we are going to use a crying towel instead of selling techniques I do not know who is going to help us.

Senator PROXMIRE. Who is doing the crying? You fellows are coming up crying that if we put this in all kinds of things are going to happen. In my view what will happen is, you will have a lot more competition.

Mr. LENT. We are not crying for help from the Government; we are crying for help to get the Government off our back.

Senator PROXMIRE. We will come to that a little later.

Mr. LENT. Let me tell you. What are you talking about? Listing all of these things. Are you talking about listing a complex electronic component and have it put out for bid to everyone?

Senator PROXMIRE. Of course not. We simply indicate very, very briefly what is available and then they can make further inquiry and find out what it amounts to.

Mr. LENT. In section 9 one of the dangers of what you are talking about, as I mentioned, is that your exceptions are inconsistent with the sections of the Armed Services Procurement Act. They permit some 17 exceptions. You permit only nine. And so the uninformed small businessman can engage in a lot of wasteful activities in trying to pursue a piece of government business which he is not remotely qualified to perform.

Senator PROXMIRE. If he is not remotely qualified to perform, he will not get the contract.

Mr. LENT. But you see there is a matter of eight exceptions which are not covered in your particular bill that are covered in the Procurement Act. If these things are listed and there is no intent of going on an advertised bid on it or having qualified——

Senator PROXMIRE. You are talking about S. 836, not the bill last year. We added five more exceptions.

Mr. LENT. So you have 14.

Senator PROXMIRE. It was indicated to us yesterday by GSA or SBA that our exceptions pretty much corresponded with theirs. They indicated that they would do the same thing by administrative action. You will get the nine anyway. We wonder whether it would not be a good idea to make sure that future administrations and future Defense Departments, do this as a matter of law, so that the small business community can expect it always rather than just temporarily, as is indicated is going to be done?

Mr. LENT. If that inconsistency is eliminated, the various exceptions, we would have no objection to section 9. Section 9, as we read it, could be very misleading to a great many small companies who are not aware of the relationship between some of these projects.

Senator PROXMIRE. All right. Now let us get into section 8. In the first place it provides that SBA will promulgate this program in conference with the Defense Department and GSA. SBA of course would accept the advice of the Defense Department as far as assuring

quality, making sure that the procurement would be as inexpensive as possible and as efficient as possible.

There is no question about it in my mind. SBA's thrust would be to try and achieve procurement in a way that would be economical and practical for small business. You seem to envision SBA as an outfit which would have all kinds of requirements which would make it much more tedious and difficult for small business to get procurement.

This is exactly the kind of thing that I think their small business procurement program would be meant to prevent. In other words, instead of requiring 40 pages or 60 pages of data, much of which may not be necessary, SBA's purpose would be to try to eliminate that knowing it would be no trick at all for big business to do this but knowing it would be impossible in some cases for small business to have the clerical staff to comply with it.

Mr. LENT. Mr. Chairman, you say this, but section 8 does not assure this.

Senator PROXMIRE. Of course, it doesn't assure it.

Mr. LENT. You say that SBA will just eliminate all the red tape. Let me read a little something to you. This is the 19th semiannual report of the Small Business Administration. Yesterday Administrator Horne indicated that the subcontracting program would be administered by the Department of Defense and you confirmed this and Senator Sparkman confirmed this.

Section 8 doesn't say this. It assumes that this would be done. As a matter of fact, we have reason to expect otherwise because this report I am quoting from, on page 19, makes it clear that SBA is going around the Defense Department which is seeking to establish a program directly with prime contractors. Among other things SBA is seeking agreements on (1), the right to screen requirements; (2), the right to check on the adequacy of specifications; (3), the right to check on the reasonableness of delivery schedules; and (4), the right to obtain direct reports from the prime contractors to evaluate the results of the program.

These are the things that they are doing now, Mr. Chairman, and if you do not think that this affects the procurement cycle, you have never been there.

Senator PROXMIRE. It may require a little work on the part of the prime contractor. This has to be administered with some judgment but I think that kind of requirement may be essential. The fact is that we are going to make very sure either in the committee report or in the legislative history that the responsibility for procurement for specific contracts is a responsibility solely and completely and totally of a single procurement agency, Defense or GSA or whatever the procurement agency may be. But that SBA must have the authority and power to follow this process and to secure information in some cases from a prime contractor. This is not telling the prime contractor to whom to subcontract.

Mr. LENT. Mr. Chairman, all I am saying and all my organization is saying: Show us that program and then enact legislation to implement it. Because things get tangled up as they go downstream from the legislative branch.

Senator PROXMIRE. You have just told us, and so have other opponents of this bill, that they wanted as much flexibility as possible.

We should not legislate a complete, precise, detailed 150-page program. It would make it extremely difficult for an administrator if he were tied down in that particular way. We have to place faith in people in SBA and GSA and the Defense Department.

The record indicates that SBA is not going to be so zealous that they would adversely affect procurement. There is nothing in the record at any time to indicate an overzealousness in that respect. I am sure they won't be, especially in view of the vast power that the Defense Department has in the Administration and the relatively modest power that the SBA has.

Mr. LENT. Mr. Chairman, I do not know how many people are involved in Los Angeles in the SBA office, but I think it must be 170 or 180 people all of whom are involved in loan administration. Only five, to my knowledge, are involved in the coordination of the SBA program for procurement.

Of those five, I know of none of them who are qualified to interpret the procurement regulations or to interpret the specifications or the technology involved in some of this procurement. And one company such as North American has perhaps anywhere from 1,000 to 2,000 people in their procurement organization alone. Do you know why they have this many people?

It is not because it takes that many people to buy what they have to buy. It requires that many people to handle the administrative burden that is being placed on it already. And all you are talking about doing right now, as far as I can see, in section 8 is increasing that burden with inadequate people in the field.

SBA, to be able to have this commence—man alive, they would have to have a recruiting program and it would have to be a recruiting program of competence before they can even hope to understand the problem that exists! All that I am saying is that I believe that it should be thought out. I don't expect the Congress to legislate 150-page documents, but I do think the Congress should set an outline of the objectives or the approaches to reaching these objectives.

Senator PROXMIRE. Our position is not that SBA is going to do any of the technical procurement at all. If the prime contractor wishes to disregard advice on the part of SBA, he is perfectly free to do so. All SBA will be able to do is to report on the progress made under the program and work in consultation with the Defense Department in connection with the program. But as far as procurement is concerned, in the first place, it is with the procurement agency; in the second place, the subcontracts are with the prime contractor. But information will be procured constantly by SBA so they can oversee this, know what is going on, realize the extent to which small business does have an equitable opportunity. In this real world in which we live the fact is that contacts, associations in Washington with personnel in the Defense Department—we are all human beings—are effective.

Mr. LENT. Right.

Senator PROXMIRE. No question that they are effective. And small business, by and large, with some exceptions, does not have that kind of contact or association or experience.

Mr. LENT. Right.

Senator PROXMIRE. Therefore, unless there can be some agency that is providing more objective opportunities for small business, it seems to me that small business is not going to get them. Furthermore, in

my judgment, as far as the taxpayer is concerned, far more significant than what is happening to small business is what has happened to competitive bidding. We have had one alibi after another by the Defense Department as to why every year they put more in negotiated bidding than under competitive bidding. Small business gets much more of the competitive bidding, very little of the negotiated bidding. The differences are enormous. Part of the Small Business Administration's responsibilities would be to try and require the Defense Department to justify the excessive amount of negotiated bidding. They would be in a strong position under section 8 which they would not be under the proposal we had yesterday, to judge whether or not competitive bidding could be more widespread. This would enormously benefit the taxpayer.

We talk about savings in our Government. They have to come from the Department of Defense. Here is where an enormous amount of Government spending is.

More than half of it. Here is where the waste is and we know it. It has been, by and large, in negotiated Government contracts. If we are going to eliminate waste and cut Government spending, here is where we will have to do it.

Mr. LENT. If you confine competitive bidding—meaning advertising——

Senator PROXMIRE. They reported to us in their statistics how much has been negotiated and how much has been competitive. We are accepting their definition.

Mr. LENT. You are not talking about competitive negotiated bidding; you are talking about advertised bidding.

Senator PROXMIRE. Advertised bidding.

Mr. LENT. We don't fight you on advertised bidding. The thing we fight you about is the determination of what shall be advertised for bid. If you see a complex piece of electronic gear here, and someone has the temerity to call it a radio set and it goes out on an advertised bid, you are losing more money than you think you would.

Senator PROXMIRE. Exactly. That is why we need an agency like SBA that can judge each case on its merits.

We can't have competitive bidding on some missile system. There may be only one firm in the country qualified to do this. There may be other reasons for negotiated bidding. Of course we have to have it. That is why we need a reliable, responsible group of people such as we have in SBA to oversee this whole thing to see that we get as much competitive biddings, we can possibly get. This would be part of the procurement program.

Mr. LENT. The real problem is to determine what can be advertised and what has to be negotiated.

Senator PROXMIRE. That is right. Sitting here in the committee, and in the Senate, where we have many other responsibilities and we can only give this relatively limited attention, and our competence is very limited in all cases in the Senate as far as this kind of thing is concerned, it seems to me to be sensible to get the SBA to do this in a fulltime way. Get people who are competent to watch this carefully and advise us.

Mr. LENT. You will have to follow, Senator, with a considerable increase in appropriations for the SBA because they do not have in their stable right now the technical horses to be able to do this. They

are sure in the world going to have to have them because the panacea for saving is not necessarily an advertised bid.

The panacea for saving is to get the best quality at the best price in the weapons system. We talk about the downgrading of prime contractors, in small business.

Unfortunately the technology is changed. We are talking about missiles rather than airplanes. There are fewer of them, fewer parts. We cannot legislate against missiles. A lot of things are affecting this whole picture. It takes a great deal of knowledge and a great deal of appreciation of the type of technology we are dealing with in this world that we are living in today.

Senator PROXMIRE. I want to thank you very much, Mr. Lent, and I want to say in conclusion that I do think that we are trying to bring some technological intelligence to bear on this.

I do not think it requires the kind of enormous competence and extensive personnel recruitment and appropriation that you suggest. I do think that it would not be very hard to get people more competent and with more time than Senators have, and Congressmen, to oversee it. At the present time we just are not doing it at all. We have no check on the relationship between the Defense Department and the manufacturing industry in America.

My bill is designed to secure some of that.

Mr. LENT. As I told Senator Sparkman, I was rather surprised to get support from the Small Business Administration in our position but I do think this, Mr. Chairman——

Senator PROXMIRE. We were pretty surprised too.

Mr. LENT. I do think this: That the program outlined by the Administrator can go a long way toward solving some of these problems without necessarily empowering that agency to oversee with authority which supersedes that of the Defense Department.

I think these are reasonable men and I think they can accomplish our objectives.

Senator PROXMIRE. Thank you very much, Mr. Lent.

(Mr. Lent's prepared statement follows:)

STATEMENT OF ROBERT R. LENT, STRATEGIC INDUSTRIES ASSOCIATION

Mr. Chairman, my name is Robert R. Lent. I am vice president of Riggs Nucleonics Corp., 135 West Magnolia Street, Burbank, Calif. My home address is 1119 Las Lomas Avenue, Pacific Palisades, Calif.

I am also a vice president and serve as chairman of the Government Relations Committee of the Strategic Industries Association, a group of 130 small business companies engaged in the design, development, and production of defense oriented products which are sold to the Military Establishment, prime contractors of the military and subcontractors of the primes. Our member companies participate in all phases of defense production, with the exception of major weapon systems, and produce a great variety of items and services including simple mechanical devices, as well as complex electronic systems; sophisticated systems engineering as well as metal plating; exhaustive product test analysis as well as high finish, close tolerance machining. We are, therefore, representative of the group most directly affected by the policies, regulations, and administrative practices of the Government in its procurement of technical material in support of the defense effort of the United States. All of our member companies serve as vendors, suppliers and/or subcontractors of the Government or its prime contractors, and some participate as prime contractors of the Government.

The Strategic Industries Association opposes passage of S. 836 in its present form. Specifically, SIA opposes sections 8 and 9 of the bill.

Section 9 of S. 836 requires the Department of Commerce to publish daily all military procurement actions over $10,000 except those which meet the nine

criteria listed in that section. The Armed Services Procurement Act (title 10, U.S.C., sec. 2304), lists some 17 exceptions to advertised procurement and authorizes negotiated procurement when the purchase requirement meets the exception criteria. Such inconsistency will cause a great deal of misunderstanding on the part of prospective bidders because it is apparent that the Department of Commerce synopsis of proposed procurement will include requirements where formally advertised procurement is not intended or possible. It would create the danger that subscribers to the Department of Commerce publication would be misled into expensive and wasteful efforts to bid on types of business where circumstances prevent their being considered.

Of major concern to the membership of the Strategic Industries Association is section 8 of S. 836. Frankly, we are very fearful of it because we interpret it to be another bureaucratic control superimposed on a myriad of existing controls. The volume and complexity of these existing controls are threatening the very existence of our industrial complex and to add to this awesome burden at this time, a program which at its best, would be of questionable value, seems utter folly.

In empowering the SBA to "promulgate a small business subcontracting program," section 8 of the bill raises questions of interpretation more from what it does not say than from what it does say. For instance: Is it intended that the SBA program (whatever that program is to be) shall take precedence—that is, represent a superior authority—over the authority of the Department of Defense? After reading Senator Proxmire's introductory remarks on S. 836, one can only conclude that he intends that such authority be granted the SBA. The Senator has criticized the Department of Defense program for not "obtaining for small business a fair and decent share of subcontract awards." We cannot question the Senator's assessment—it is a point that no one can argue, because no one has ever set a standard to determine when a share is fair and when it is not—but it does seem that section 8 is intended to obtain a greater share. Therefore, it would follow that the bill intends greater authority for the SBA. It must intend then, that the proposed SBA program shall supersede—take precedence over—the programs of the Department of Defense and industry.

Why is this new authority so essential? The SBA has authority—has had it for years, but, to date, it has not seen fit to use that authority, or it has not been qualified to use the authority—to increase the participation of the small business community in defense production. This authority is provided in section 8(b)(5) of the present act which reads:

"Section 8(b)(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small business concerns at prices and on conditions and terms which are fair and equitable."

If the SBA possesses adequate competence in the field of military procurement to enable it to create a military subcontracting program within 90 days from the date of enactment of S. 836, why hasn't it used this competence and authority previously? More specifically, what is it that is wrong with this present authority? What is it that S. 836 would empower the SBA to do, for which SBA does not have present authority clearly spelled out in section 8(b)(5)?

This leads us to another major concern of the members of SIA. If additional authority is intended, what is the nature of this authority and what are its limitations? The bill in its present form is extremely vague in this respect. We do not question the probity of purpose associated with the proposed measure, but we are very much in doubt as to the probity of every man who may now or in the future be granted the opportunity to wield this authority. We submit that, since this authority must be vested in a mortal being, his knowledge and judgment can be fallible no matter how high his purpose. The Soviet concept of a superstate, with superwisdom and superjudgment to manipulate the affairs of men, is not a concept that would gain endorsement either from this committee of legislators, or from us as small businessmen.

So we feel confident that it is not your intent to place unlimited authority in the hands of the SBA or, for that matter, in the hands of any Government agency. But when we review section 8 of the bill under consideration we lose some of this confidence. We see only two limitations expressed:

(1) "No program promulgated hereunder shall prescribe the extent to which any contractor shall enter into subcontracts, or

(2) "Specify the business concerns to which subcontractors shall be granted."

(Incidentally, we assume the word "subcontractors" in the last phrase is a typographical error; that the word "subcontracts" was intended.)

These limitations imply a tremendous amount of new authority just short of the two points specified. They imply the right to regulate the methods by which prime contractors undertake their procurement. They imply the right to specify a group of concerns which a prime might be forced to add to his list of prospective suppliers—that is not the same thing as specifying, or naming, a particular concern to which a subcontract would have to be granted—and then enforcing a procedure by which the prime would be required to go about making his selection.

For the moment, let us pass over the question of whether the SBA should have such authority, and concentrate on the question of whether they would have such authority.

We have every reason to believe that this is the sort of thing intended. Last year the SBA had a list of proposed requirements which it presumably wanted the Department of Defense to accept. Included on that list were the following:

1. A requirement that all small firms listed in the files of a prime contractor be given an opportunity to quote on each procurement.
2. A right to SBA to add names to the prime contractor list.
3. A right to require rotation of bidders on successive procurements if the list for a given purchase is too long.
4. A right to SBA to control the quantities and delivery schedules to suit SBA judgment on what is most suited to procurement from small business.

There is nothing in section 8 of S. 836 which would prohibit the SBA from incorporating such things in its small business subcontracting program. Or, for that matter, a great many other things which were not on the list last year. What would stop a requirement that small business subcontract procurements would have to be copied to the SBA office, or that SBA have the right to publish notices of such procurements before orders could be placed?

We do not suggest that SBA has such things in mind. Our problem is that we have no way of knowing what it is that the SBA might have in mind. But even if we knew exactly the form and shape of the program which SBA might intend to inaugurate, this would be meaningless. Nothing in the proposed bill would stop them from changing direction or adding more sweeping provisions at a later date.

This brings us to another concern of SIA. What reasonable prospect is there that if the SBA could exert such authority in the subcontract area it would mean a fair and decent share of subcontract awards—or to put it another way, a larger share than small business is presently getting?

Where is the statistical evidence to show that we in small business are being denied a fair opportunity to get the work that is being subcontracted? We must keep in mind that S. 836, in one of its two limitations, prohibits decisions on the extent of subcontracting. So, unless the extent of subcontracting is changed, the question is whether small business is getting fair opportunity to compete for the amount of work that is subcontracted.

Available statistics are those gathered through the Department of Defense reports on form DD 1140. In introducing S. 836, Senator Proxmire noted that the reports for 1960 from 293 participating contractors showed 18.8 percent of total receipts going to small business. This compares with 18.5 percent in fiscal 1958 and 17.8 percent in fiscal 1959. Thus the percentage for the last year was up over either of the 2 preceding years. We have taken these figures from reports by the Senate Select Committee on Small Business.

Yet the statistics are still misleading in terms of the bill under consideration. They refer to a percentage of receipts, not to a percentage of purchases. On examination of the figures in the Small Business Committee reports, we find that the small business share of the total amounts being subcontracted by prime contractors is the following:

[In billions of dollars]

	Total purchases	To small business	
		Dollars	Percent
Fiscal 1957	$9.31	$3.56	37.1
Fiscal 1958	9.02	3.24	35.9
Fiscal 1959	8.99	3.26	36.2
Fiscal 1960	9.65	3.58	37.1

Small business, in the role of subcontractors, is therefore getting more than a third of everything subcontracted. Whether this is good, or not, it is more than double the percentage that small business gets as a share of prime contracting.

Maybe it could be better. We wouldn't be unhappy if we could increase our sales. That isn't the point. The question is what is it that gives us any assurance it could be better? What is it that the SBA could do with its new authority to make it better? What types of things that big companies are now buying from other big companies would the SBA get them to buy from small companies? Where is the evidence and what are the facts? Not facts about an isolated case here and there, but facts that represent enough volume to have any measurable effect on percentages quoted?

No such facts have been offered. The truth is that no comprehensive study appears to have been made. All we are asked to go on is a generalized criticism of a percentage against which there is no standard of comparison. And then it is proposed that if we will just turn this problem over to the SBA, they will make everything fine for us.

Gentlemen, we are skeptics. The business of making a living in small business is a tough, realistic, day-to-day matter where we don't have time to think of what orders the Government might give to us. We have to concentrate on keeping our skills up, our competitive muscles flexed. We enjoy slugging it out. And the truth is that we can beat big business seven ways to Sunday most of the time.

Big business doesn't give us orders because they are kindhearted and want to "take care" of their little brothers. We get their orders when we offer the best quality at the best price. They would have rocks in their heads if they bought any other way. We can't imagine our Government wanting the big firms to buy in any other way.

This leads us to the principal concern which the members of SIA have in reference to S. 836.

Surely it isn't intended to have the large firms buy from inferior sources. Or to take risks with doubtful quality. We can't imagine anyone endorsing such a risk. To do so would be to play fast and loose with the most important responsibility of Government, today—the task of assuring that we have the best possible defense.

But if SBA is going to have authority in this area, what does it amount to? It means that a small group of people in a Government agency would have to set their judgment against the judgment of major industry on how major industry should buy. It means that an experienced buyer in industry will be second-guessed by someone with less experience on the question of whether procurement can safely be made from sources other than those which the buyer would normally choose. It means that to whatever extent the judgment of the Government agency is allowed to prevail, then to that extent the responsibility for efficient procurement is taken out of the hands of the men who are solely responsible for producing a quality weapon.

If what that company makes fails to perform, then they have a hand-tailored excuse. They need only blame the interference of the agency. We cannot afford to provide them with such an excuse. We want the responsibility to stay where it is. Then, when we get an order, we are fully responsible for our performance, our customers are responsible for theirs, and the Department of Defense is responsible for the total result.

It can only be this way so long as the line of authority stays with the line of responsibility.

From the testimony I have given, I hope that I have made it crystal clear that the Strategic Industries Association did not send me back here to testify in behalf of some selfish, short-range goal. We do not believe that defense orders are something to be treated as pork chops on the table to be dispensed on the basis of the size of the eater or his location at the table. Our interest in this matter is confined to one question: What is best for our country? We know your motivation is the same.

Which brings me to my final point. The freedom of a free enterprise system, as Thomas Jefferson described it, depends on having a system of government which "shall restrain men from injuring one another," but "leave them otherwise free to regulate their own pursuits of industry and improvement."

The Government treads perilous ground when it goes so far as to come between buyers and sellers.

So far as we are aware, there is almost no precedent in present law for giving an agency such authority without specifically delineating the exact ground

rules. And whenever there has been a law of this kind, there has been an overwhelming evidence of need. When ground rules are not spelled out, procedure becomes arbitrary, and often capricious. Such possibility is to be approached only with the gravest showing of need, the gravest concern as to the effects.

Along these lines, I wish to quote from the "Weekly Staff Report to the Senate Small Business Committee" dated February 18, 1961. "The committee also deplored the lack of specific statistical information pertaining to the small business segment of the economy." This statement is repeated day in and day out by different representatives of Government—and it is true—because so little is known about what small business wants for itself; how it handles its day to day business affairs; how it prefers to buy and sell; and where it belongs in our national economy. Self-styled experts frequently preach the offer of salvation for small business without troubling to find out whether or not small business really needs saving. The disease is not diagnosed; the cure is not prescribed; in fact it is not even determined whether the patient is afflicted with a disease before some compassionate group wants to offer an aid to perfect health.

We do not criticize this desire to help—we welcome it—but we do criticize overzealous attempts to promote change without first establishing the foundation of facts necessary to assure that the right changes are made. In the hope that we can contribute to the knowledge of the committee, to other interested legislators, as well as members of the executive branch, I have here an advanced copy of a survey conducted by a team at the University of Washington, College of Business Administration. It is entitled "Defense Procurement and Small Business" and the subtitle is "A Survey of the Practices and Opinions of Small Business Firms Selling to Defense Programs." Because my company was one of those surveyed, I have successfully persuaded the university people to let me have this copy ahead of the publication date . I feel it contains a wealth of facts gathered directly from small business organizations across the country. I wish to present this copy to the committee for its use and we will be glad to present extra copies when the printed edition is released.

Meanwhile, with the possibilities of great harm, both to our defense effort and our system of doing business, which we see as potential in section 8 of S. 836, we urge that you reconsider the inclusion of this section in the bill. Without evidence that men are injuring one another—except in the most isolated cases—and without any showing that a specific type of improvement is to be achieved, we believe section 8 is a very grave risk. To accept it in the face of such tenuous promises of uncertain benefit is—to our membership—to make a very bad bargain with the future of America.

We respectfully recommend that S. 836 be passed after deletion of sections 8 and 9 and that the SBA be required to submit a specific program for the approval of the Congress before any legislation is enacted to give them further power beyond that which they now have.

Thank you.

Senator PROXMIRE. Mr. Emrich?

You are H. S. Emrich, is that correct, sir?

Mr. EMRICH. Yes.

Senator PROXMIRE. You are the general manager of Hydro Mill Co. in Santa Monica, Calif.?

Mr. EMRICH. Yes.

Senator PROXMIRE. We are happy to have you here. You understand we are trying to have ground rules of taking 15 minutes or less with your prepared statement. Anything you are not able to deliver directly we will put in the record. We prefer to ask questions after that.

Mr. EMRICH. Yes, sir. I have no prepared statement; I would just like to make a few comments off the cuff.

STATEMENT OF H. S. EMRICH, GENERAL MANAGER, HYDRO MILL CO., SANTA MONICA, CALIF.

Mr. EMRICH. Our company employs about 150 men, most of whom are trained machinists and we have for the past 20 years, been engaged primarily in the manufacture of precision parts, essentially for the aircraft business, both commercial and military.

I am here because we are concerned about this bill S. 836, particularly about section 8. We are not members of the Strategic Industries Association, but I would classify ourselves as possibly similar to the firms that Mr. Lent represents.

However, I do not know Mr. Lent or any of his organization. We have had a very bad trend in the past 4 or 5 years and we have had a great mortality in competing firms in Los Angeles area. Principally because of the complexity of the parts that have been coming up on missiles and aircraft and because of shrinkage in the amount of the dollar that is being spent by the Government in our particular line, which is machining, and with the decline in the number of airplanes that have been built, the available work has declined proportionately.

I might say too we are entirely subcontractors. We are not prime contractors and, therefore, the problems envisaged in your act with the prime contractors would not affect us. We get our business from all of the aircraft factories and we are not primarily a favored son of any. We have, as a matter of fact, worked for all of them. We feel that if the Small Business Administration possibly could be given power over Boeing or North American or Lockheed, these are qualified sources to bid and any of them can bid on these machines. We feel three things would happen:

No. 1, the company, the small business which would be the successful bidder, let's say in bidding on 60 parts, bidding against 60 other firms, in the great majority of instances would be very badly hurt financially; No. 2, plants which are competent and have been proven competent would lose this business and would consequently be very badly hurt; and, No. 3, in regard to the quality of the parts and the delivery of the parts, the Defense Department and the prime contractor would not get them on time and they would not be of the best quality.

We think the present controls are adequate to give competent shops their share of the business. We bid against large businesses 50 percent of the time; we bid against plants from 25 people up to 5,000 people, and we have been able to get our share of the business. We think that the present know-how which has been built up over the years by the Defense Department and by the major aircraft companies is sufficient to insure healthy competition.

If small business in the machining area is not getting their fair share now, I cannot understand why, unless they are poorly set up from a quality standpoint.

We feel, if you put this section 8 into effect, although it does not say so here, the Small Business Administration could come in and make it very complex and very unhealthy for the remainder of the machine shops which are engaged in this business.

Thank you for letting me appear. I have nothing else to say.

Senator PROXMIRE. Senator Sparkman?

Senator SPARKMAN. You say in your opinion that small businesses, at least some of them, are not getting their fair share of defense contracts. Did I understand you correctly?

Mr. EMRICH. They are not getting their fair share of subcontracts.

Senator SPARKMAN. Of Government business, whether subcontract or prime contract.

Mr. EMRICH. Yes.

Senator SPARKMAN. What is your view with reference to this particular legislation? Do you think it will be helpful?

Mr. EMRICH. I am not opposed to any part of the legislation. I am for anything that helps small business. Except the nebulous nature of this section as to advertised bidding at the subcontract level would, I think, be very unhealthy for the machinery industry.

Senator SPARKMAN. Are you speaking of section 8?

Mr. EMRICH. Specifically, yes, sir.

Senator SPARKMAN. Is this your attitude then, you think the objective is good but you do not think the section is properly drawn?

Mr. EMRICH. I think that is right. I do not think that a large approved list of machine shops, for instance, if there were such a thing set up by the Small Business Administration, and if firms which had prime contracts were told these are machine shops which are qualified, I think there would be in that list many, many firms which are not qualified which would be bidding against us. We always bid competitively. We get a blue print for an airplane, we estimate what it will take us in machine hours and we quote against 5, 10, or 15 other plants. If we were quoting against a hundred other plants, many of them not trained in this industry, not only would we lose the business, which is, of course, a selfish motive, but the ones that would get it at a very low figure would be sticking their neck way out and would get hurt.

Senator SPARKMAN. You know, of course, that the Small Business Administration, I suppose from the very beginning, has had the power of certifying as to the competency of plants to perform on Government contracts?

Mr. EMRICH. I was not aware that they could certify competency at the subcontracting level.

Senator SPARKMAN. I was not making that distinction, but I say though, that you are aware that they do have a part to play and that it has been a very successful program, this program of certifying competency.

Mr. EMRICH. I am aware of that.

Senator SPARKMAN. And if it worked at the prime contract level why would it not work at the subcontract level?

Mr. EMRICH. I just do not think it would, Senator, in our business.

Senator SPARKMAN. Let me ask you: If a certificate of competency for a business to perform a prime contract, that is to do the whole job on a Government program, if it will work there, why won't it work in a plant to do a part of that program?

I just can't follow your reasoning on that and I believe that everyone testified that the certificate of competency program that has been carried on by SBA in connection with the awarding of its contracts has been most successful.

Mr. EMRICH. That is probably true, but the machining industry is too complex an industry to have an overall approval by some people

who are not possibly as trained as the Defense Department people or the major aircraft contractors to say who should bid.

Senator SPARKMAN. Of course, SBA has had about 8 years' experience, now and before we had the Small War Plants Corporation that had been in existence for 3 years. So putting the whole together we have 11 years of experience. It has recruited some of the finest talent in the country to do this very job you are speaking of.

They have come from these plants or up through the lines you have suggested. I wish you would check that a little more carefully on the basis of what the experience has been and I think you would change your thinking.

Mr. EMRICH. I will be glad to do so. I know that SBA wrote to our firm and asked us if we were interested in registering for Government contracts several years ago. We naturally, of course, said we were and we registered with them. We have not gotten any business out of this. We have gotten notices of things to bid on which have been completely alien to our field, but we have never been able to get anything directly prime from the Government. I think that most available defense dollars for small businesses over the years has come through subcontracts. I may be wrong, but this is my impression.

Senator SPARKMAN. I do not know. I am not prepared to comment on that. It is entirely possible that that may be true. The thing though that I cannot erase from my mind is the fact that the dollar value of Government contracts that are going to small business has been declining gradually, slowly but steadily, over the past several years. We believe that it ought to be much higher than it is, and we are striving to arrive at the means of insuring that it will be. That is the objective as I see it, of section 8 and of this legislation generally, whether it is perfect or not.

Mr. EMRICH. Senator, I have a theory on that. I think most people who are in comparable positions would also say this: That one of the basic reasons, and you must recognize this in relation to the decline in small business participation in the defense dollar, has been the amount of money being spent on research and development.

Senator SPARKMAN. That undoubtedly accounts in large part for it, and coupled with that, the failure of the Defense Department primarily and of some other Government agencies to recognize the fact that many small businesses are competent to do many parts of that work that they just simply have not recognized heretofore.

That is all, Mr. Chairman.

Senator PROXMIRE. Mr. Emrich, are you a member of strategic industries?

Mr. EMRICH. No, sir.

Senator PROXMIRE. You have no association with them?

Mr. EMRICH. No, sir. Don't even know the gentlemen or anything about them.

Senator PROXMIRE. Your firm is not a member?

Mr. EMRICH. No. I just heard their testimony.

Senator PROXMIRE. You said that competitive bidding could be destructive if you had instead of a group of 4 or 5, a limited number, you had perhaps 50 or 60 machine shops bidding.

Why would you necessarily think that the additional list of bidders would be unqualified? Do you think the Government agency certify-

ing a list or the prime contractor approving a list would be so unreasonable that they would put people on whom they did not know in the first place and whose financial responsibilities could not be borne out and whose technical competence could not be established in one way or another? It seems to me this would be a perfectly reasonable requirement which nobody could object to.

Mr. EMRICH. I feel that every machine shop, let us say large, I say large not in point of employees, but in point of machinery, in the country, if they were qualified by SBA to bid on every job that the Government had—this is an exaggeration but let us say this was the case—I think they would all go broke in the space of about 2 years.

Senator PROXMIRE. No. 1, I doubt very much if they would be qualified to bid. I think you would have to have a limited number. No. 2, there would be a great differential in cost because they would not be located the same distance from the customer.

Mr. EMRICH. That is true.

Senator PROXMIRE. There would be all kinds of other differences. You are simply arguing primarily against advertised bidding as a method?

Mr. EMRICH. That is right.

Senator PROXMIRE. I would like to put into the record something that is very interesting. Mr. Lent was the gentleman who gave us this compilation of defense procurement of small business. It is a preliminary study summary of purchases made by the bidding method. This is the Aerospace Corp. involved here. Advertised bidding was 2.4 percent. Competitive negotiated bidding was 53.3 percent. That is where they have a limited number of people whom they know. You might say they are friends, or people they have had experience with before. Sole source negotiated bidding, 27.4 percent. Mail order 17 percent. In other words, advertised bidding is insignificant. You can almost forget it. This in an economy in which we pride ourselves on competition, a system which we think is based on competition. We vehemently criticize the electrical industry, for example, for getting together and parceling out the market as they did. It is pretty hard to make a similar case on the basis of principle against competitive bidding. It would seem to me that we would have to have some evidence of a competitive advertised bidding situation in the past that had resulted in this kind of chaos and bankruptcy.

Do you have any such experience?

Mr. EMRICH. Oh, yes. I would say as of 4 years ago or 5 years ago that in the shops in the Los Angeles area that were competitive with ours or that were similar to ours, and there were many, that we must have had at least 30 percent mortality.

Senator PROXMIRE. 30 percent?

Mr. EMRICH. Yes, sir.

Senator PROXMIRE. That is pretty low compared to the retail industry. The average retailer has a 50–50 chance to surive for 2½ years as I recall it, on the basis of evidence presented to the Subcommittee on Small Business. People have a right to succeed or fail. If they cannot make a go of it, they sink.

Mr. EMRICH. These are established companies that I meant, who have been in business for a long time. The statistics you quoted are applicable to new firms.

Senator PROXMIRE. I think you will find it is true the mortality in the retail industry is higher than in machine shops. Any industry that requires only small capital for entry is likely to have a high mortality.

Small capital and limited technological ability. The machine shops require some. Certainly more than retail but far less than many other lines. You cannot attribute this necessarily to competitive bidding, can you?

Mr. EMRICH. The competitive bidding has stepped up rather than down in the past few years, there is no question about that.

Whereas an aircraft manufacturer or missile manufacturer would formerly bid a job to five or six or seven shops, they now bid to 20 shops, throughout the country.

They do not just ask for bids in our area. They ask for bids around the country.

Boeing does not ask for bids only around the Los Angeles area. Nor does Convair ask for bids only in the Fort Worth-Dallas area. They ask for bids from companies all over the country.

Senator PROXMIRE. What would be the purpose of the Small Business Administration in this kind of a program. Would it be primarily to secure low prices or to protect and foster the small business community?

Mr. EMRICH. I think is is to foster the small business community.

Senator PROXMIRE. Why would they necessarily favor a practice which would destroy it?

Mr. EMRICH. I do not say they would favor it.

I say this is an unknown facet of section 8. I cannot quite read into it clearly what is going to happen.

Senator PROXMIRE. It would seem to me that SBA of all the Government agencies would be the most concerned with attempting to work out a program which could help small business to grow and survive. They have no other reason for existence.

Mr. EMRICH. I would say their reason for existence would be to see that small business gets its fair share of the defense dollar.

I think that is very true, to see that they are helped through their loan activities to survive.

Senator PROXMIRE. That is part of it, but the Budget Bureau and the Defense Department on the other hand have the prime purpose of getting high quality procurement at the lowest possible price. Congress is anxious for them to operate that way.

In this instance SBA would intercede as a friend of small business, not an enemy, not one that would go in and ruthlessly adopt this policy on the theory small business would get a bigger share.

Mr. EMRICH. I feel some trepidation about whether further intervention on the part of the Small Business Administration would be beneficial.

Senator PROXMIRE. Are you satisfied with the share that small business is able to get at the present time of defense work?

Mr. EMRICH. I am not satisfied, but I think, I attribute it, the major portion of it as I said before, to the amount of money that is now going into research and development. I do not think small business is qualified possibly to continue to get more than they did 5 years ago under this kind of a program. Perhaps later, if it ever comes about that the research and development dollar equalizes again with

the production dollar, small business will build up the amount they will get.

Senator PROXMIRE. In the course of your direct presentation, you asked why small business is not getting a bigger share now. You don't see why except it is not set up for quality.

Mr. EMRICH. I beg your pardon.

Senator PROXMIRE. I think you were referring to subcontracts. Why wasn't small business getting a greater share of subcontracting money now than they are getting? The only reason you can see is that they do not have the quality, can't do quality work.

Mr. EMRICH. This was not the only reason.

Senator PROXMIRE. Would this be the principal reason?

Mr. EMRICH. If a small business was not getting their share this would be the principal reason in our line of business. I am not qualified to generalize on this. I cannot do that.

Senator PROXMIRE. The statistics that were presented, from the Department of Defense, indicated that over the last 4 years only about 50 percent was subcontracted out. The rest was kept by the prime contractor.

Isn't there a tremendous incentive for a prime contractor in times like the present, when work is slack, when firms are operating at less than capacity, not to subcontract out?

And the prime contractors are overwhelmingly big business. The statistics are clear on that and we can all agree on that. Wouldn't it be a useful function for an agency like SBA to be able to oversee this and see if a prime contractor was holding onto business that he could subcontract out at less cost to the Government. As a subcontractor it would seem to me that you and firms like you would be inclined to benefit by having a friend in court who would be able to work with the prime contractor and be able to assure that business that should be subcontracted out would go out?

Mr. EMRICH. I think controls could be put into effect if they are not already in effect. I thought they were whereby the larger prime contractors would have to subcontract a certain proportion of the defense dollar.

Senator PROXMIRE. They may, but of course they still have leeway. It is a more or less proposition and it has to be that way pretty much. The Defense Department would not be as diligent in fighting for subcontracting, it would seem to me, as an agency whose sole function was to do all they could legitimately and properly do for small business at the lowest possible cost.

Section 8 as we drafted it would do this. Section 8 as the Administration's position would not do it. The Administration would provide an opportunity for small business to take part at the very beginning but there would be no followup. There would be no opportunity for consultation with prime contractors, none of that.

Mr. EMRICH. Section 2 also insures that prime contractors and subcontractors shall consult with SBA when requested to do so by SBA.

Senator PROXMIRE. That is correct. Section 8 in subparagraph 2 would provide that and that would be one of the assurances that the Congress would have that the agency fighting for small business would have a chance to see that the business that could be contracted out was so subcontracted out.

Mr. EMRICH. I cannot agree. That is all I can say. I think that interference of this kind by SBA would not benefit our firm or firms like ours in the machine industry.

Senator PROXMIRE. I want to thank you very, very much, Mr. Emrich, for coming here. You have come a long distance to testify and we are very appreciative and your testimony is very useful.

Mr. EMRICH. Thank you for allowing me to come.

Senator PROXMIRE. We are going to recess the hearings until tomorrow at 10 o'clock.

The committee will recess until 10 o'clock tomorrow morning.

(Whereupon, at 12:05 p.m. the hearing was recessed, to reconvene at 10 a.m. Friday, March 17, 1961.)

TO AMEND THE SMALL BUSINESS ACT

FRIDAY, MARCH 17, 1961

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to recess, in room 5302, New Senate Office Building, at 10:10 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire, Robertson, Sparkman, and Bennett.

Also present: Senator Hart.

Senator PROXMIRE. The subcommittee will come to order.

Our first witness is the Honorable Thomas Morris, Assistant Secretary of Defense for Supply and Installations.

Mr. Morris, we are very happy to have you here. I apologize for keeping you waiting for a few minutes. We are expecting another member of the committee who is coming along any minute. So you go right ahead and identify the gentlemen who are with you.

STATEMENT OF THOMAS MORRIS, ASSISTANT SECRETARY OF DEFENSE, SUPPLY AND INSTALLATIONS; ACCOMPANIED BY GRAEME C. BANNERMAN, DEPUTY ASSISTANT SECRETARY FOR PROCUREMENT; AND CLYDE B. BOTHMER, DIRECTOR OF SMALL BUSINESS POLICY, DEPARTMENT OF DEFENSE

Mr. MORRIS. Thank you, Mr. Chairman.

I have with me, Mr. Chairman, Mr. Graeme C. Bannerman, our Deputy Assistant Secretary for Procurement, and our Director of Small Business Policy, Mr. Clyde B. Bothmer.

Senator PROXMIRE. We have been following the policy of having the witnesses take 15 minutes for their formal presentations and then answer questions. You have a very concise statement. I would like to vary a little bit from that because you are a key witness in this hearing and ask you a few clarifying questions, possibly, as we go along.

At this point, I would like to ask you and each of the gentlemen who are with you to state how long you have been in the Defense Department, how long each of them has been assigned to the particular job and responsibility they are assigned to now.

Mr. MORRIS. Very fine, sir.

My career in Defense has been one that has had several periods—4 years in the Navy during the war, under Secretary Forrestal, in management work, 2 years in 1957 and 1958 in the Office of Deputy

Secretary, at which time I likewise served as Deputy Assistant Secretary for Supply and Logistics for a period of time.

My current tenure began on January 20.

Senator PROXMIRE. Thank you.

Mr. BOTHMER. I am Clyde Bothmer. I have been in the Defense Department since 1951. I was with the Assistant Secretary of the Air Force for Procurement until about 2 months ago, at which time, I took over my present duties.

In the Air Force, among the other responsibilities of that office, we have the responsibility of small business policy.

Senator PROXMIRE. And for 2 months, you have had this responsibility that you have at the present time?

Mr. BOTHMER. Approximately 2 months. Actually, a month, I would say.

Senator PROXMIRE. Prior to that, you say you had responsibility for small business procurement policy?

Mr. BOTHMER. Yes. I was in the Office of the Assistant Secretary of the Air Force, Materiel, and one of our responsibilities there, of course, was the small business policy as far as the Air Force was concerned.

Senator PROXMIRE. Good. Mr. Bannerman?

Mr. BANNERMAN. I have been in the Government service for approximately 25 years, practically all of that time in purchasing activities of one kind or another and a good part of that in the old Treasury Procurement Division. I have been in the Department of Defense since 1948. Until 1957, I was in the Navy Department in various purchasing jobs. Since 1957, I have been in the Office of the Assistant Secretary of Defense for Supply and Logistics.

I have been the Director for Procurement Policy up until about a month and a half ago, at which time——

Senator PROXMIRE. You have been Director for Procurement Policy for how long, again?

Mr. BANNERMAN. March of 1957.

Senator PROXMIRE. 1957?

Mr. BANNERMAN. That is correct.

Senator PROXMIRE. Go ahead, Mr. Morris.

Mr. MORRIS. Mr. Chairman, we are here today at the invitation of your committee to discuss the position of the Department of Defense on a bill, S. 836, "To amend the Small Business Act, and for other purposes."

We have previously submitted a detailed analysis of this bill. I will, therefore, not go into great detail in this statement, but will limit my remarks to several paramount issues. I would like to request that a copy of our more detailed legislative comment be included in the record of this hearing as an extension of this statement.

Senator PROXMIRE. That has already been inserted in the record.

It is a fairly concise report of seven pages to the chairman of the committee, Senator Robertson.

Mr. MORRIS. Thank you, sir.

First, I want to be as emphatic as I know how in saying that the Defense Department strongly supports the main objectives of this bill. We are wholeheartedly in favor of providing broad opportunities for small business participation in our procurement programs, both in prime contracting, and at the subcontracting level.

Nevertheless, we oppose the bill itself. Our objections are based, first, on the principle that responsibility and authority for defense programs should not be separated and, second, that there would be inflexibility attendant to legislation or to regulations issued by another agency of the Government, when the purpose sought can be equally well attained by regulations of the Department of Defense.

The Department of Defense is responsible for buying the necessary weapons to assure the safety of our country. To accomplish this, the Congress has heretofore recognized that we must have the authority to issue the regulations governing procurement within this Department so that we can effectively control the processes of contracting and the production of military supplies.

This necessarily entails authority for the vast portion of our program that is supplied through subcontract. Section 8 of S. 836 provides for the promulgation of a subcontracting program by the Administrator of the Small Business Administration which would be mandatory upon certain of our contractors.

Since the Secretary of Defense has the responsibility for the design and production of such weapons, it follows that he, rather than the head of some other agency of the Government must have the authority to issue and revise the regulations which control such an important part of our weapons programs. Through control of these regulations within the Department of Defense, we can retain the flexibility to make quick changes in the regulations, or to authorize deviations from the regulations, if these actions are essential to avoid unacceptable interference with important programs.

There would not be comparable flexibility if these regulations were issued by another agency on a governmentwide basis. Changes would be more time consuming and, in the event of disagreements, we might lose control over phases of our contracts which are important to the timeliness of production.

Section 8 of S. 836 is objectionable on another ground. It would inject another Government agency into the contractual relationship. Clause (B) of subsection (d) (1) would require contractors to consult with the Small Business Administration when requested by the Administration. This would impose a direct obligation on a Defense contractor to respond to requests of another Government agency concerning contract performance.

We recognize that this provision requires "consultation," and does not explicitly require the contractor to abide by recommendations of SBA. However, such a requirement will confuse contractors, who might well conclude there is an obligation to follow the suggestions of the Administration.

If a contractor acquiesced in an SBA recommendation on the choice of a subcontractor, and the subcontractor failed in performance, the entire procurement might be jeopardized. Certainly, costs to the Defense Department could be substantially increased.

I said earlier that we are wholly in favor of an effective small business subcontracting program. I would like to touch very briefly on the program we now have which was put into effect early in 1960. It was developed after detailed study over several years and after extensive consultation with the Small Business Administration.

Under this program, which is described at some length is our legislative comment, we attempt to meet several broad issues. First, we

require our larger prime contractors to establish a small business subcontracting program under which procedures are established to assure small business an equitable opportunity to compete.

Secondly, we have also recognized the need to review our prime contractors' plans for producing items "inhouse" as opposed to subcontracting. We have provided, therefore, for reviewing "make or buy" decisions affecting, among other things, small business, and agreeing upon such plans during negotiations.

Senator PROXMIRE. Mr. Morris, at this point, I would like to interrupt long enough to read into the record a paragraph from your report to Senator Robertson. I think it is a very important paragraph, and it is left out of your presentation here. I would like to ask you just a few very brief clarifying questions on it to make sure I understand exactly how your small business program is set up and so forth.

This is the paragraph that begins:

> The Armed Services Procurement Regulation, ASPR, requires the inclusion of a clause in all contracts exceeding $5,000, with certain minor exceptions, by which the contractor agrees to accomplish the maximum amount of subcontracting with small businesses consistent with efficient performance of the contract. ASPR also provides for the inclusion of a contract clause obliging contractors to establish a defense subcontracting small business program in most contracts in excess of $1 million which, in the judgment of the contracting officer, offer substantial opportunities for subcontracting. This clause provides for its reinclusion in subcontracts for $1 million or more which offer substantial opportunities for subcontracting. In addition, in contracts of less than $1 million, but which offer substantial opportunities for subcontracting, defense policy requires that such contractors be urged to establish a similar subcontracting program.

Then, you give a list of the requirements on the contractor to establish a defense subcontracting program.

I want to ask you: When was this put into effect? What was the date?

Mr. MORRIS. May I ask Mr. Bannerman, the chairman of the committee?

Mr. BANNERMAN. The mandatory subcontracting program was put into effect approximately 1 year ago.

Senator PROXMIRE. When was the previous program put into effect?

Mr. BANNERMAN. I think it had a period, as I recall it, of approximately 8 months, during which it was on a voluntary basis. And then, the clause which is referred to in the first sentence of the paragraph which you have just read which doesn't establish the program at all, but simply establishes a principle, has been in effect for approximately 5 or 6 years.

Senator PROXMIRE. You say in here:

> A defense subcontracting small business program in most contracts in excess of $1 million which, in the judgment of the contracting officer, offer substantial opportunities for subcontracting.

Who are the contracting officers?

Mr. BANNERMAN. The contracting officer is usually one of the senior officials in each of the principal offices of the Department.

Senator PROXMIRE. It would not be anyone who has any direct and primary responsibility for small business? He would be simply a contracting official of the procurement agency; is that correct?

Mr. BANNERMAN. Senator, that is correct, although we are charged by our regulations—all of our contracting officers—with responsibilities for small business. And his judgment that he exercises here is simply whether the contract has any substantial subcontracting possibilities.

Some contracts, we believe, are performed 100 percent by the contracting activity. Most of the contracts of this size, however, would have substantial contracting opportunities, and the result is that this clause is mandatory in most of those contracts.

Senator PROXMIRE. I will not ask you the results of this now, but I do want to ask you just one more brief question.

You say further—this was not included in the part I read—that a first point under your specific program is:

1. Designation of a small business liaison officer to maintain liaison with Government small business representatives, supervise compliance with the clause and administer the contractor's program.

What small business representatives would you maintain liaison with?

Mr. BANNERMAN. This would be primarily the small business representative of the contracting activity.

Senator PROXMIRE. It would not be with SBA?

Mr. BANNERMAN. SBA would normally work through the contracting officer.

Senator PROXMIRE. SBA would not work at this level?

Mr. BANNERMAN. I think that is correct. The SBA suggestions, comments, proposals would be made via the small business representative of the contracting agency. And to the extent that they are put into effect, they would be put into effect by the contracting officer.

We found that it is very difficult and extremely confusing and frequently leads to quite a few claims if we have too many people issuing direct orders to contracting——

Senator PROXMIRE. The responsible officer is an employee of the procurement subordinate of the Secretary of Defense?

Mr. BANNERMAN. The small business representative we talk to here is an employee of the major purchasing activity of the Department of Defense and usually reports directly to the head of that activity and not to the contracting officer.

In other words, he has coordinate responsibilities with the contracting officer.

Senator PROXMIRE. Mr. Morris, go ahead. I am very sorry to interrupt, but I did want to clarify that.

Senator SPARKMAN. Mr. Chairman, before Mr. Morris resumes——

Senator PROXMIRE. By all means.

Senator SPARKMAN. I am going to have to leave. I have another appointment, as I told you. Before I go, I would just like to say this and ask one very brief question:

I notice in your statement, Mr. Morris, that you say you approve the objectives of this bill, but you find fault with the specifics. I think that is entirely understandable. Of course, what I hope would be done, perhaps this is not the method of doing it, is that some means will be found whereby small business may have a better break on defense contracts. That is what we are really driving for. And if this is not the way to do it, I certainly hope you will come up with a program that will insure it.

I was quite interested in the President's statement the other day, the Executive order or directive that he issued in which he referred to a 10-percent increase in the business going to small business. I believe our statistics in the Senate Select Committee on Small Business, which were supplied by you, show that small business has been getting about 16 percent of the dollar value.

We have urged throughout the years that it ought to be around 25 percent. As I said yesterday, small businesses in this country employ approximately 50 percent of the people who work. So it seems to me that somewhere between 20 and 25 percent certainly should be a fair break for small business. Anything less than that, I should think would be disappointing.

One thing that has been a great concern to us has been the fact that over the past few years there has been a steady decline, small, but steady, nevertheless, in the percentage going to small business. What we would like is to see that reversed.

When the President said a 10-percent increase, did he mean taking 16 percent as a base, that it should be 26 percent, or did he mean 17.6 percent?

Mr. MORRIS. Sir, he meant the latter. We are setting a minimum goal to begin reversing this downward trend in fiscal 1962 that it shall not be less than 10 percent of the rate or 16 percent overall. This varies by department. The Air Force is much less, around 9 or 10, whereas Army is in the thirties, but each of them must do at least 10 percent better than they have done before. And we hope this is just the beginning.

Senator SPARKMAN. I am glad that, certainly, there is a start, but I must say that I am disappointed that it is not greater than that. It seems to me it could have been lifted to at least 20 percent during the first year, working toward taking it up to a 25-percent level in 2 or 3 years—3 years, perhaps.

And I say that that would be taken as a minimum. I want to urge that you do everything you can to exceed that minimum.

I am sorry to have to leave, Mr. Chairman, but I must.

Senator PROXMIRE. Thank you very much.

Go ahead, Mr. Morris.

Mr. MORRIS. Finally, we have established policies designed to assure consideration of the effectiveness of small business subcontracting programs in connection with contract price negotiations.

As is readily apparent, this is a rather extensive program. Much of it is relatively new, having been first placed into full effect in the early part of 1960. It contains certain of the features found in S. 836. Accordingly, it should be noted that this Department is not and has not been opposed in principle to the establishment of a small business subcontracting program.

We will continue to welcome suggestions from the committee or from the Small Business Administration for improvements in the program. However, for the reasons which I have already stated, I feel that it is quite important that the regulations governing this program be issued by the Department of Defense.

We have found it necessary to dwell at some length on the many provisions of section 8 of the bill because of the basic matters of principle involved. However, we would have no objection to legislation

in this field to the extent that revisions are made in the bill to remove its objectionable features.

We have provided a suggested revision to accomplish this objective. I believe that our suggested revision will accommodate the principal purposes sought by S. 836. This revision, as you know, vests final authority, in the case of disagreement, in the procurement agency.

I want to assure you that we do not anticipate any widespread disagreement. We have established close, cooperative relationships with Mr. Horne and his people during past few weeks. We have every intention of expanding this. I also feel that the President and Mr. McNamara have demonstrated quite conclusively that we intend to cooperate fully with SBA in increasing the small business share of our contracts.

For example, on Wednesday of this week, the President announced the Defense action in setting goals for fiscal year 1962 increasing that share. The necessary cooperative spirit is present to make this program work under the revision we propose. On the other hand, we must have the final authority on matters which involve our procurement and production responsibilities.

Last year, in commenting on similar legislation, we also objected to the requirement for synopsizing certain procurements in Department of Commerce publications. Since then, we have expanded our own requirements for synopsizing. In addition, we are pleased to see that the synopsizing features of this bill have been amended since it was originally introduced. We now feel that we can adopt all of these provisions in our own regulations. For the reasons set forth in our detailed analysis of the bill, we believe it preferable to handle this matter by regulation rather than by legislation.

Let me conclude by reemphasizing three points. First, we want to work closely with the Small Business Administration in developing the best small business subcontracting program possible.

Second, we are extremely strong in our belief that overall procurement responsibility must be supported by the necessary authority to establish procurement regulations.

Third, we can best help small business by having the maximum possible flexibility in adjusting, with SBA, our policies and procedures.

As a result of Senator Proxmire's question during the hearings on this bill on Wednesday of this week, I would like to add one comment to my statement. The Defense Department has not, in any way, attempted to stimulate letters or telegrams opposing this bill, as has been suggested. Since I was not in the Defense Department last year when a similar bill was under consideration, I do not think it appropriate for me to speak to that period.

Senator PROXMIRE. Thank you very much, Mr. Morris.

I would like to start off by asking you about the two principal points you made. First, you object to this bill because it would mean the diminution of the authority of the Defense Department without a corresponding sharing of responsibility.

Mr. MORRIS. Yes, sir.

Senator PROXMIRE. The Small Business Act, section 8(b)(7), provides for the issuance by SBA of certificates of competency. These certificates may be issued by the SBA to a small business concern which

has been low bidder on Government contracts, but has been denied that contract for an alleged lack of competency and credit.

Once the certificate of competency is issued by the SBA, the procurement agency is bound. This, then, has the effect of a granting of a contract by SBA.

I ask you whether this does not violate the principle which you have just enunciated which you say is the first objection you have to this bill, and I think by far the most serious objection.

Mr. MORRIS. We do not think so, Senator. I have asked Mr. Bannerman this very question this morning, and I think it would be helpful if he could review the way in which this process is operated.

Mr. BANNERMAN. I think that I would say, Senator, that the principle probably is involved.

Senator PROXMIRE. It seemed to me the principle would be much more involved under that procedure than it would be under our procedure which, we will bring out a little later, does not interfere in the direct relationship between the procurement agency and the procuring company.

Mr. BANNERMAN. I do not think there is any question but what the principle is involved in the certificate of competency procedure. The fact of the matter is that in the actual administration of that procedure, I would say that the preponderance of the certificates of competency which have been issued have been issued in circumstances where what was lacking was financial support. And we were delighted to have them issued.

There have been relatively few cases—I would say not over a handful over 10 years, or 8 or 9 years, I believe—since that provision has been in the bill where we have had any significant disagreement with SBA as to the actual qualifications of bidders that have involved certificates of competence. I think that I would be less than honest if I said to you that we agree that they should have that authority. But, nevertheless, they have it, and we work with it. And it has not worked too badly. It has not caused any serious interference with our programs.

Senator PROXMIRE. I would like to comment about this point by saying you have had this experience with SBA in which they have been given a degree of authority. In my judgment far more significant and substantial than what we give them in S. 836.

You say there have been a few instances of disagreement, but by and large, SBA has been very cooperative, very helpful. It has not really impeded the procurement process significantly and, of course, we have statistics to show it has been very successful and has saved the taxpayers literally millions of dollars. We say $11 million.

Mr. BANNERMAN. I think that any time you can provide a form of financial support to a company which is a low bidder who without that support could not receive the award, you are, no matter how you arrive at that result, going to save the Government money simply by virtue of awarding to a lower bidder. We certainly do not object to that procedure.

As to whether any lesson is to be drawn that would be applicable to the problem that is presented by this legislation, I do not know. I think there are many people, and I for one would be included in them, who feel that the certificate of competence procedure that takes a basic judgment as to qualifications out of the procuring activity has

the same problem, philosophical problem, in it that is present in this bill. And I for one would not like to see that problem extended.

Senator PROXMIRE. Section 15 of the act provides for a joint determination by SBA and the procuring agencies for contracts to be set aside solely or in part for small business. Does this result in a violation of the principle?

Mr. BANNERMAN. The set-aside procedure, Senator, it seems to me, is careful to protect the principle that we are urging in connection with section 8 of this bill. The set-aside procedures make it very clear that the SBA can recommend the set aside and that the decision to agree or disagree with that recommendation remains with the procuring activity.

Senator PROXMIRE. We are going to make it clear in our bill the decision remains entirely with the procuring agency. And I think, we will come to it a little later, there is a perfectly legitimate objection in that the language may not be as explicit or precise as it should be. But certainly, our intention is that the procuring agency is going to be the sole decisionmaker in determining who shall get the contract.

Mr. BANNERMAN. Senator, what we were trying to accomplish by the proposed revision to section 8, and I think this view is shared by all of the agencies within the executive branch who have considered it, is to assure the Congress that we are perfectly willing to sit down and work these things out in a cooperative manner. But, in the last analysis, the decision must rest with the procuring agency.

Senator PROXMIRE. We say, "In the last analysis, the decision should rest with you as far as the procurement is concerned." But as far as a small business program, as contrasted with procurement, is concerned, we are disappointed that SBA should in your judgment be cut out of the final decision. The results of exactly this decision have been very, very discouraging for small business—every year more discouraging.

Mr. BANNERMAN. Senator, the program we have introduced within the last year, which is the first time that we have had any mandatory subcontracting program with our major contractors simply has not had time to be reflected in the statistics at all as of now.

I do not know; I would not even hazard a guess as to what it is going to show, but I think it is clear that this program or any other program will depend upon, for its effectiveness, a careful, thoughtful, enthusiastic administration.

Senator PROXMIRE. No question about it.

Mr. BANNERMAN. And that is what we are trying to accomplish.

Senator PROXMIRE. Let me refer to another act which may already violate this provision. Section 202 of the Federal Property Administrative Services Act of 1949 empowers the Administrator of GSA, not Small Business, but GSA, to prescribe policies and methods of procurement to be used both by the GSA and other executive agencies, excluding the Department of Defense. S. 836 includes the Department of Defense, but it seems to me at the same time the principle you have enunciated as being a major objection to this bill, is violated in this particular case.

Mr. MORRIS. Sir, we feel in this case there is quite a difference. GSA is a regulating group in this instance and also a major procuring agency and understands and knows the problems. Many of the civil-

ian agencies of Government do not find procurement a major purpose activity, and it is logical, we believe, that GSA thus be the center of regulations covering such agencies.

In our case, we have about 80 percent of the procurement responsibility in Government, and procurement is intermeshed with the whole process of development, design and production of military weapons. Thus, we cannot subtract it and set apart as a function to be separately regulated. We think it must be interwoven with this basic responsibility.

Senator PROXMIRE. Nevertheless, the fact is that GSA, which is not the procuring agency, does, in fact, prescribe policies and methods of procurement.

Mr. MORRIS. And does much of the procurement, sir.

Senator PROXMIRE. Oh, yes, it has its own procurement, which is very substantial. It is probably second to the Defense Department.

Mr. MORRIS. Yes, sir.

Senator PROXMIRE. Title 41, section 35, of the United States Code, the Walsh-Healey Act, provides that any contract entered into by any agency of the United States for the manufacture or furnishing of materials in any amount exceeding $10,000 shall contain a provision requiring the contractor, among other things, to pay the prevailing wage rates to any person employed in the execution of the contracts. The Secretary of Labor establishes the prevailing wage rate.

Would you object to that as a violation?

Mr. BANNERMAN. Senator, that has caused no trouble, as I am sure we are all aware, over the years. The decision to be taken under the Walsh-Healey Act by the Secretary of Labor outside the contracting activity is a simple decision. It is: How much is the prevailing wage? Thereafter, the contractor's sole obligation is to pay it.

This does not interfere, interrupt, or affect or change in any nature the basic obligations under the contract since he was obligated to pay the prevailing wage from the outset.

I may say, Senator, I think it is pretty clear that the point we are talking about is really one of degree. I think it is. We would have to agree with you that there are precedents—you have mentioned a number of them—for regulations affecting procurement to be issued by other agencies. But it seems to us that in our case, particularly, this becomes quite vital because the area that we are talking about is important to the progress, the design, the development, the continuity, the scheduling of all the intermeshing parts that go into major weapons.

And it is important in a different degree, in connection with our situation, than it might be with respect to an agency which, as Mr. Morris has said, has procurement purely as a sideline to its basic responsibility.

Senator PROXMIRE. I think that is a very proper and intelligent observation, but I still feel that under the bill as we intend it and as it certainly will be in its final form, there will be no interference whatsoever in the procurement process. This is a matter of the SBA working out the program in consultation with the Defense Department and with others.

Let me go on to further exceptions, I think I have established my point. The Davis-Bacon Act is another clear exception in which the

Secretary of Labor does interfere, in a sense, in the procurement process.

Mr. BANNERMAN. I think the practice there is almost identical with that under the Walsh-Healey Act.

Senator PROXMIRE. Finally, just the other day the President signed an executive order establishing a Committee on Equal Employment Opportunity that requires Government contractors and subcontractors to be directed to sign contract clauses assuring they will take affirmative action against employment discrimination.

Once again I say there are instances in other acts which now provide the authority for an agency other than the procuring agency to determine policy.

I think you have answered my main question, and that is that there is precedent in law at the present time for a sharing of responsibility. And my position is that this bill, far from extending that notion of divided responsibility, fixes responsibility clearly with the contracting agency, but does share the responsibility of determining a program, overall program, between SBA and the procuring agency, SBA having the principal authority and the final authority.

Mr. BANNERMAN. We would certainly agree that there is a precedent, as you pointed out. I think that in every one of these instances, it is a legitimate subject of inquiry to determine whether it is wise in the given case, as it is proposed.

Senator PROXMIRE. In your statement, Mr. Morris, you say, "It would inject another Government agency into the contractual relationship." And you refer to section 8, clause (B) of subsection (b)(1), where we say to insure that such program contractors or subcontractors will consult with the administration—meaning, the program contractors and subcontractors would have to consult with the SBA official when requested by the SBA to do so.

I think that I feel quite strongly that you are right in this and that the language should be clarified to make it clear that this consultation shall in no sense diminish the authority of the prime contractor to whom he shall subcontract or the procuring agencies to determine to whom they shall let their prime contract. Consultation shall be selective and solely and completely for two purposes.

One, and this is most important in my judgment, so SBA can really follow this in the field to know what is going on and be on top of it, to be able to watch the program.

And too, so that where we do have a big prime contract, we can have in SBA an official who is not primarily subordinate to the Defense Department or some other procurement agency, but is independent in the sense that he is subordinate only to the SBA itself.

Mr. MORRIS. Sir, the principle that we would like to maintain is the integrity of the relationship between the contractor and the Government.

Senator PROXMIRE. I think you are right, and I think that principle should be maintained.

Mr. MORRIS. We just want to avoid——

Senator PROXMIRE. I think that is a very constructive suggestion as far as improving this bill is concerned.

You said in your statement, "We have established policies designed to assure consideration of the effectiveness of small business subcontracting programs in connection with contract price negotiations."

That was not elaborated very much in your report on the legislation. Do you want to give me a little more explicit explanation of that?

Mr. BANNERMAN. Senator, perhaps the best way for me to give this to you in detail would be simply for me to provide, and I do not have it with me, a copy of our regulations in this respect. They are quite complete, and they go into considerable detail.

Senator PROXMIRE. I do not want to have a big tome of regulations. I think if you could summarize them succinctly so we could have it in the record that would suffice. I think this is an interesting little sentence, but we do not know anything about it.

Mr. BANNERMAN. For a variety of reasons, not the least of which is some challenges that have been made with respect to the effectiveness of our contract pricing, we have, within the last year and a half, completely revised our regulations as they relate to the review of subcontracts. And in the course of this revision, we have provided, not only for much closer scrutiny into the caliber of the subcontract pricing which our major, prime contractors are doing, but we also have tried to assure ourselves of certain collateral matters such as, for instance, that they are not producing in their own plants items which can more effectively be produced by some subcontractor.

Or, second, that they are not seeking Government facilities where specialty subcontractors are available to produce the item without such facilities.

We are also assuring that in the determination of how such work will be produced that all qualified small business firms who may perform such subcontracts are considered and given an opportunity to compete. We think these very items are the things which probably motivate you and the others on the committee and the Small Business Administration in this field to see to it that small business does get an opportunity to compete.

We think that our regulations now provide this. And as I say, I will be glad to give you copies of them, and I think that time will show how effective they are.

Senator PROXMIRE. Give us copies of them and then give us a summary, if you could do that.

Mr. BANNERMAN. I will be glad to, Senator.

(The information requested follows:)

SUMMARY AND EXTRACT OF ARMED FORCES PROCUREMENT REGULATIONS (ASPR) CONCERNING SUBCONTRACTING WITH SMALL BUSINESS

ASPR 1–707, set out below, requires the inclusion of the "Utilization of Small Business Concerns" clause and the "Defense Small Business Subcontracting Program" clause in appropriate contracts (1–707.2 and 1–707.3, respectively). That portion of ASPR also establishes the responsibility for reviewing such subcontracting programs (1–707.4) and establishes a reporting requirement (1–707.5). There is also set out below the sections of ASPR which contain the two clauses (7–104.14 and 7–104.22). These are the primary regulations dealing with subcontracting with small business firms.

1.707 *Subcontracting.*

1.707.1 *General policy.* It is the policy of the Department of Defense that small business concerns be afforded an equitable opportunity to compete for Defense subcontracts within their capabilities.

1–707.2 *Required clauses.*

(*a*) The clause, "Utilization of Small Business Concerns," set forth in 7–104.14, shall be included in all contracts in amounts exceeding $5,000 except—

(i) contracts for services which are personal in nature; and

(ii) contracts which, including all subcontracts thereunder, are to be performed outside the United States, its possessions, and Puerto Rico.

(*b*) The clause set forth in 7–104.22, "Defense Subcontracting Small Business Program," shall be included in all contracts (except negotiated contracts with foreign concerns) in excess of $1 million which contain the clause required by 1–707.2(a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities; except that this clause shall not be included in contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. Prime contractors to be awarded contracts not in excess of $1 million, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, should be urged to establish and conduct a "Defense Subcontracting Small Business Program," to accept the clause contained in 7–104.22, and to follow the program described in 1.707.3.

1–707.3 *Defense subcontracting in small business programs.* Each contractor having a prime contract which contains the clause set forth in 7–104.22 shall be required to establish and conduct a "Defense Subcontracting Small Business Program" to include the following:

(i) designate a small business liaison officer who will (A) maintain liaison with the purchasing activity and SBA in small business matters; (B) supervise compliance with the "Utilization of Small Business Concerns" clause; and (C) administer contractor's "Defense Subcontracting Small Business Program";

(ii) provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions;

(iii) assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(iv) maintain records showing (A) whether each prospective subcontractor is a small business concern, and (B) procedures which have been adopted to comply with the policies set forth in this paragraph;

(v) include the "utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities;

(vi) require subcontractors having subcontracts in excess of $1,000,000 which contain the clause entitled "Utilization of Smal Busines Concerns" to establish and conduct a "Defense Subcontracting Small Business Program"; and

(vii) submit such information on subcontracting to small business as is called for on DD Form 1140.

1–707.4 *Responsibility for Reviewing Subcontracting Program.* Only one Military Department shall be responsible for reviewing a contractor's Defense Subcontracting Small Business Program. Such review shall be the responsibility of—

(i) the Military Department having industrial readiness planning responsibility at the plant where the contract is being performed; or

(ii) if (i) above is inapplicable, the Military Department having "plant cognizance procurement" (see 5–1100.2(ii)); or

(iii) if neither (i) nor (ii) above is applicable, the Military Department assigned the responsibility through coordinated action of the Director for Small Business Policy of the Department of Defense and the Small Business Advisors of the Military Departments.

The responsible Military Department will determine the adequacy of the contractor's "Defense Subcontracting Small Business Program," and bring any deficiencies to the attention of the contractor's Small Business Liaison Officer with an appropriate request for corrective action.

1–707.5 *Reports on DD Form 1140.*

(a) In connection with the submission of DD Form 1140 Reports under the "Defense Subcontracting Small Business Program" clause, a subcontractor may contact the nearest military purchasing or contract administration activity and request advice as to the Military Department to which he should submit reports. The military purchasing or contract administration activity shall, through channels, submit such a request to the Small Business Advisor of the Department concerned. The Small Business Advisor shall submit it to the Director for Small Busines Policy of the Department of Defense for his determination in coordination with the Small Business Advisors of the Military Departments.

(b) Each Military Department shall forward to the Assistant Secretary of Defense (Comptroller), by March 15 and September 15, a copy of each DD Form 1140 received for the semiannual periods ending December 31 and June 30, respectively.

7–104.14 *Utilization of Small Business Concerns.* Insert the clause set forth below in all fixed-price supply contracts, in amounts exceeding $5,000, except those contracts entered into with foreign contracts which are to be performed outside of the United States, its possessions, and Puerto Rico.

UTILIZATION OF SMALL BUSINESS CONCERNS (JAN. 1958)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

7–104.22 *Defense Subcontracting Small Business Program.* In accordance with 1–707.2(b) insert the following clause.

DEFENSE SUBCONTRACTING SMALL BUSINESS PROGRAM (JAN. 1961)

(a) The Contractor agrees to establish and conduct a program to afford small business concerns an equitable opportunity to compete for Defense subcontracts within their capabilities. In this connection, the Contractor shall—

(i) designate a small business liaison officer, who will (A) maintain liaison with duly authorized representatives of the Government on small business matters, (B) supervise compliance with the clause of this contract entitled Utilization of Small Business Concerns, and (C) administer the Contractor's Small Business Program;

(ii) provide adequate and timely consideration of the potentialities of small business concerns in all "make or buy" decisions;

(iii) assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate small business participation;

(iv) maintain records showing (A) whether each prospective subcontractor is a small business concern; and (B) procedures which have been adopted to comply with the policies set forth in this clause;

(v) include the "Utilization of Small Business Concerns" clause in subcontracts which offer substantial small business subcontracting opportunities; and

(vi) submit DD Form 1140 reports, in triplicate, to the Military Department that reviews his subcontracting program, except that were the Contractor elects to report on a corporate rather than a plant basis, he may submit his reports to the Military Department having industrial readiness planning responsibility at the corporate headquarters.

(b) A "small business concern" is a concern that—

(i) is independently owned and operated, is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees; or

(ii) is certified as a small business concern by the Small Business Administration.

(c) The Contractor further agrees to insert, in any subcontract hereunder which is in excess of $1,000,000 and which contains the clause entitled "Utilization of Small Business Concerns," provisions which shall conform substantially to the language of this clause, including this paragraph (c); except that a subcontractor will submit the DD Form 1140 reports to the Military Department having industrial readiness planning responsibility or plant cognizance. (A subcontractor may request advice from the nearest military purchasing or contract administration activity as to the Military Department to which he should submit his reports.)

There are however, in addition, other sections in ASPR which have a direct bearing on small business subcontracting, i.e., sections providing for consideration of small businesses in connection with contractor's "make-or-buy" programs and contractor's subcontracting programs, and with respect to the consideration given in the negotiation of a proposed contractor's fee to the effectiveness of the contractor's program of awarding subcontracts to small business.

ASPR 3–807.5, which relates to consideration of subcontracting in the negotiation of prices for negotiated contracts, refers procurement personnel to Part 9 of Section III of ASPR, a copy of which is attached. Part 9 of Section III of ASPR sets forth the policies and procedures for the evaluation, review, and approval of contractors' "make-or-buy" programs, purchase systems, and pro-

posed subcontracts. Throughout this Part 9, consideration is given to the Government's small business policies and programs.

ASPR 3–901(a)(iii) notes that consideration of information regarding the contractors' subcontracting programs may be important to carrying out Government policies regarding small business. It advises, where subcontracting plans of a contractor will have a substantial impact on that policy, that the contractor's "make-or-buy" program and subcontracting, to the extent practicable, be evaluated and agreed on during the negotiations.

ASPR 3–902(e) requires, among other things, that consideration shall be given to whether small business concerns are given an equitable opportunity to compete for subcontracts in evaluating any prospective contractor's subcontracting program.

ASPR 3–903 requires that consideration should be given to the factors set forth in ASPR 3–901 as a part of the negotiation of the prime contract.

ASPR 3–903.3 indicates that an approval of a contractor's purchasing system should be granted only after a review which includes review of the extent to which the purchasing system is consistent with any contract requirements covering small business and labor surplus area concerns.

ASPR 3–904 refers procurement personnel to a clause in section 7 relating to subcontracting with small business.

Regarding negotiation of a contractor's feet, ASPR 3–808.2(h) requires the consideration of the nature and extent of any subcontracting and requires procurement personnel, in this conection, to give consideration to the contractor's past and present effectiveness in affording qualified small business concerns and firms in labor surplus areas an opportunity to compete for subcontracts. ASPR provides that a contractor's effectiveness in furnishing such opportunity or assistance to an unusual or exceptional degree should be given favorable consideration in determining the amount of fee or profit. ASPR 3–808.2(h) is set forth below:

3–808.2

(h) *Subcontracting.* In negotiating the profit or fee, the nature and extent of any subcontracting should be considered, particularly as it bears on the contractor's performance, administrative responsibility, financial investment, and degree of risk as outlined above. The degree and nature of subcontract programs vary on a broad spectrum. While it is not possible to define precisely the exact profit or fee treatment to be accorded each situation, the general guidelines which follow will be taken into consideration. The evaluation of a contractor's subcontracting program should not consist merely of applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price. A relatively large amount of subcontracting need not make for negotiation of a lesser profit or fee—the character and circumstances of the subcontracting and the effect on the prime contractor's costs must be taken into account. Although purchased material and subcontracted work are usually properly included in the base upon which profit is computed, instances may arise in which a significant portion or portions of a contract are subcontracted in such a way that only a minimum amount of responsibility or risk remains with the prime contractor. In such a case, the amount of fee or profit should be less than where the contractor assumes substantial risk. Of primary importance is the degree to which the subcontracting provides a better product and lower costs, with timely delivery, and in which the contractor assumes heavy managerial effort, responsibility and risk. In this connection, consideration should be given to the contractor's past and present effectiveness in offering to qualified small business concerns and to firms in labor surplus areas an opportunity to compete for subcontracts (see for example 1–707.3) and to the contractor's furnishing assistance to such concerns as they require or as the Government may specifically request. A contractor's effectiveness in furnishing such opportunity or assistance to an unusual or exceptional degree, should be given favorable consideration in determining the amount of fee or profit.

ASPR section 13–102.3(a) sets forth the general policy of the Department of Defense concerning the furnishing of Government facilities to contractors to assist in their performance of contracts. Furnishing of such facilities is generally accomplished through a separate facilities contract. As with all procurements, SBA representatives are afforded an opportunity to review such proposed facilities contracts, at which time the SBA would have an opportunity to suggest small business subcontractors who have adequate facilities in order to avoid the furnishing of such facilities to contractors.

Senator PROXMIRE. Your report to the committee—do you have it with you?

Mr. MORRIS. Yes, sir.

Senator PROXMIRE. You say that there has been in the past consultation with SBA concerning the procedures which were adopted in the Defense Department on the small business subcontracting program. Can you tell me the extent of this consultation, what weight was given to the suggestions made by SBA?

Mr. BANNERMAN. Yes, sir. In connection with the adoption of our mandatory small business subcontracting program approximately a year ago, we worked very closely with SBA at that time. They had a number of suggestions to make. We, working largely as a committee, I would say, sharpened these up, changed them, modified them and determined which ones could be included and which ones could not, and wrote the regulations accordingly. SBA participated right from the outset in that.

I might add, throughout the adoption of our procurement regulations, SBA representatives have a full opportunity to participate in that process. Our Armed Services Procurement Regulations Committee meets twice a week, and they have a regular agenda. This is furnished to SBA representatives. They may attend those meetings and participate in the discussions. And the same is true with respect to this program which is now in that regulation.

Senator PROXMIRE. Fine, but, of course, we are very disappointed. We have been disappointed in the results. I presume that SBA went in there fighting for a strong small business program.

Did you find any instances, or can you cite an instance or series of instances, in which SBA disagreed with what had been done in the past and perhaps disagreed with the Defense Department that persuaded you to change your mind and strengthen the program?

Mr. BANNERMAN. Senator, my memory simply is not that good. I am sure there are such cases, and I would be glad to try to document the record with those cases.

Senator PROXMIRE. I would appreciate it. Good.

(The information requested follows:)

SMALL BUSINESS ADMINISTRATION (SBA) RECOMMENDATIONS WITH REGARD TO DEFENSE-SMALL BUSINESS SUBCONTRACTING PROGRAM

1. SBA recommendation: That the armed services procurement regulation (ASPR) provisions concerning the Defense small business subcontracting program be changed so as to require contractors subject to the provisions to establish and conduct such a program.

DOD action: This recommendation as presented was accepted by DOD and an appropriate change was made in ASPR. Prior to this change, contractors were encouraged to establish such a program. The change makes establishment of a program mandatory.

2. SBA recommendation: That the "utilization of small business concerns" clause be changed to provide that the contractor will agree to accomplish the maximum amount of subcontracting to small business concerns that the contracting officer and the contractor jointly find to be consistent with the efficient performance of the contract.

DOD action: This recommendation would have made the contracting officer an equal party with the contractor in specific decisions on subcontracting and on determinations with respect to whether a contractor would "make or buy" particular items required in the performance of the contract. In the judgment of DOD this recommendation was not appropriate, since DOD was of the opinion that the contracting officer should not be made a party to these decisions. It is believed the objective of the recommendation was satisfied by revision of other

sections of the ASPR which brought "make-or-buy" decisions under closer scrutiny by contracting officers and revisions which strengthened contracting officer's review-and-approval authority of both individual subcontracting decisions and subcontracting practices, generally.

3. SBA recommendation: That ASPR be changed to provide as follows: "In order to assure that small business concerns will have an equitable opportunity to compete for subcontracts, all small firms requesting permission to bid and who have not been disqualified through actual survey, will be granted an opportunity. In the event the bidders list is so large as to preclude utilization of the entire listing, the rotation system will be used in the same manner as required under ASPR for Government contracting officers; also the establishment of policy to assure that small business concerns have an equitable opportunity to compete, with particular regard to time for the preparation of bids, quantities, specifications, and delivery schedules, suitable to small business participation."

DOD action: There were technical objections to the language of this proposal which made it unacceptable in the form presented. However, ASPR 1–707.3(iii) effects, in most part, the objectives of the SBA recommendation. In addition, the expanded authority of the contracting officer in the field of review and approval of subcontracting more effectively accomplishes the purpose of this SBA recommendation, i.e., to assure that small business concerns will have an equitable opportunity to compete for subcontracts.

4. SBA recommendation: That the small business liaison officer of the prime contractor be required to participate, in his capacity as small business liaison officer, in all decisions pertaining to "make or buy."

DOD action: DOD action on item 2 herein should be considered in conjunction with this recommentdation. Consideration was given to adopting this recommendation with certain qualifications but, since it involves the internal management of contractors and the term "participation" is indefinite, it was decided that vesting clearly defined authority in the contracting officer with respect to "make or buy" decisions would accomplish the purpose of this recommendation. ASPR was modified accordingly (see item 2 above).

Mr. BANNERMAN. The fact of the matter is, I think SBA strongly urged all of the items that are in our present program and some of which are listed there on the bottom of page 3, the very page we are looking at. We do not claim that we had all these good ideas ourselves.

Senator PROXMIRE. You say that if a statute fixes a requirement—this is from the letter that was written to you, Senator Robertson—if a statute fixes the requirements of a program, flexible control over the development of the program will be impaired.

It seems to me the statute is necessarily broad and the flexible control be handled administratively as in all programs of this kind. Is that not a fair interpretation?

Mr. MORRIS. Sir, I think that we would like to stress here, in our Department, with some thousands of people involved in the procurement actions and many organizational units, we have to tailor our regulations to get the best implementation down the line. And thus, the broader the scope we can start with in terms of thinking through the most intelligent implementation, the better the results we think we can achieve. .

I would just like to stress that today, we have a much different climate, I believe, than we have had in the past with the very specific attention from the President and the Secretary of Defense, which is going right down the chain of command to the Secretaries of departments and the bureau chiefs. And we are getting recognition, and with the psychological value, it should produce very effective implementation, much better than just written words.

Senator ROBERTSON. Senator, would you yield?

Senator PROXMIRE. I yield to the Senator from Virginia.

Senator ROBERTSON. Mr. Secretary, in your statement you have prepared for us today, you say that the Department strongly supports the main objectives of this bill.

Mr. MORRIS. Yes, sir.

Senator ROBERTSON. That is to permit small business to participate in defense contracts.

In your statement, from which the chairman has just read, you say your Department would not object to a statutory provision requiring the establishment of a subcontracting program by each contracting agency in cooperation with the Small Business Administration. Could you furnish a revision of this bill which would promote the opportunities of small business to participate in defense purchasing, but would not allow the Small Business Administrator or any other agency to dictate to the Defense Department the specifications of a contract or just how contracts should be let? Could you give us a revision that would help to carry out the real purpose of this bill, which is to help small business, without running into difficulty? You express objections, and you say you are opposed to, turning over control of the operations of your Department in any respect to any other agency, because, you say, you have the responsibility and you must have commensurate authority.

Mr. MORRIS. Sir, we have made suggestions for language changes with our formal letter.

Senator ROBERTSON. Would you prepare a complete bill? We can take it up in executive session and call it the administration bill. The staff will put the pending bill in one column and your bill in another. And the committee can look at it and see what ought to be done.

Evidently, small business is not getting its fair share, and there has also been complaint, as you know, of course, of the extent of negotiated contracts, even among the big contractors. We do not have enough competitive bidding which we think would insure us better prices.

Would you prepare a bill that we can call the administration bill to carry out the statement you made of the purposes of this legislation.

Mr. BANNERMAN. Senator, I would say the majority of the provisions of this bill do not relate to defense procurement at all.

And, of course, we have no comment on them. We would be glad to and can compile the comments we have made in the form of one complete bill and submit it to the committee. I think that the executive departments are together on it, if I am not mistaken.

Senator PROXMIRE. It seems to me SBA came in with their proposal and said they had sat down with you and GSA and that what this was was what you all wanted; that you were agreed on it.

Does that statement meet with your understanding?

Mr. BANNERMAN. That is correct, Senator.

Senator ROBERTSON. Do you have a bill all ready?

Senator PROXMIRE. We have a proposed revision of the amendment to section 8 contained in the bill. It has not been drafted as a bill, but it can easily be drafted as a bill if the committee wishes to do so.

Senator ROBERTSON. Do I understand now we have their approval on that provision?

Senator PROXMIRE. That is a good question. I think we have not gotten an answer to it so far this morning. We ought to find out.

Mr. MORRIS. That is correct, sir.

Senator PROXMIRE. It is our understanding you would support that.

Mr. MORRIS. Yes.

Senator PROXMIRE. I think we ought to be a little more explicit as to what we are talking about.

Senator ROBERTSON. I think that is important. I would like to have a bill, or at least a specific provision, and then I would like the witness to say, "We endorse this bill or this provision." Then we will know what we are talking about.

Senator PROXMIRE. I want to say, incidentally, to make the record clear, I think their proposal is worthless. I made it clear when SBA offered it. But I think Senator Robertson is completely correct. We should find out precisely what your positive position is so we can agree on what position the Administration is taking.

Senator ROBERTSON. Over a period of years, there have been proposals to let the Small Business Administration have a voice in letting defense contracts. And the Congress would never approve it because each department concerned has always recommended against it—including the Defense Department.

Senator PROXMIRE. I made it clear this morning that I am opposed completely to letting SBA have anything to say concerning specific procurement. That would be a great error. I would not vote for it, and I am sure no Senator would.

What I am saying is they should have authority over the program; how the program is being actually operated that is to audit it effectively. But they should not be able to say in any specific instance that a contract should go to company A or company B or a subcontract should go to company A or company B or that a prime contractor should subcontract to particular companies.

I agree with you 100 percent that would be wrong, but we disagree on the extent to which SBA should have the authority, or responsibility, for establishing this program for the agencies.

Senator ROBERTSON. I think for the benefit of the full committee as well as the subcommittee, I would be pleased if we could have a specific bill or a specific provision with statements that the Defense Department and SBA and GSA or anybody else having anything to do with it approved of it as an Administration proposal. Then, we have that stopped. If we want to go further than that, that would be our affair.

Senator PROXMIRE. Very good.

While the chairman of the Banking and Currency Committee is here, I think this is a very proper time to make sure we know what we are talking about. On March 14, Mr. Horne of the SBA, in his report on the bill, already in the record, made a suggestion spelling out exactly the kind of program which he would support. I want to make sure that this is what we understand it to be. If you do not have a copy of it, I can read it fairly rapidly.

It begins:

(d) (1) The Administrator of General Services, the Secretary of Defense and the Administrator of Small Business shall cooperatively develop and thereafter the Administrator of General Services shall publish in the Federal Procurement Regulations—

et cetera.

Mr. BANNERMAN. Senator, that is exactly the same, I think, word for word, in our report of March 15, our legislative comment. And as a result, I am quite positive that the positions are identical, and this would constitute, I think, the joint position of the SBA, GSA, and the Department of Defense.

Senator PROXMIRE. We have that here. Counsel tells me there might be a minor difference in the wording.

Mr. BANNERMAN. Possibly we can get together with counsel, Senator, and determine what this is. And if there is, it is probably a mistake.

Senator ROBERTSON. Mr. Chairman, I understand the Small Business Administrator and the Defense Department have suggested what you have read from the report from Mr. Horne as a substitute for what we find on page 5 of the pending bill section 8(d)(1).

"Within 90 days after the effective date of this subsection, the Administrator"—that would be Small Business Administrator—"could issue these orders."

This new proposal does not permit the Small Business Administration to issue these orders to the Defense Department, but after consultation between SBA and the Defense Department, the Defense Department may issue them. Is that the difference?

Senator PROXMIRE. The basic difference, as I understand it, is that under the bill, SBA would be responsible for promulgating the program. It would first advise and consult with GSA and the Defense Department and then would go ahead and promulgate its program and would have under subsections (b) and (c) certain additional powers. Under the proposal here, the three agencies would consult. And if there were a disagreement, if they were unable to agree, GSA and Defense would promulgate it. If there were disagreements, GSA and Defense would have the final say; Small Business would not have the final decision.

Mr. BANNERMAN. I think that is a completely fair summary, Senator, of our position.

Senator ROBERTSON. That satisfies me.

Senator PROXMIRE. In your report on the bill, you say there is no specific limitation on the type of records SBA may require the procuring agency to furnish. I do not see any reason that any limitation should be placed in the bill. You remember we amended this bill to require that SBA obtain this information from the agency, rather than from a contractor, at the suggestion of the Defense Department. They felt that, otherwise, there might be interference with a private company. The inquiry should go to the agency rather than private industry.

I do not anticipate that any additional specialized information would be needed. If such information is needed for the success of the program, I see no objection to having SBA obtain it. After all, this is a Government agency also under the President of the United States.

Mr. BANNERMAN. Senator, we have no objection to SBA obtaining our records. They are doing it all day every day, and we are delighted to work with them on it. Where you have a statutory provision requiring that records be available to another agency, you are introducing an element of doubt as to how long you must maintain records, what records must be maintained, quite a number of questions.

If this were a problem, we would certainly not object to legislation. I do not think it is problem at all. And hence, we do not see any need for the legislation.

I think that SBA completely agrees with our position on this. The legislation simply introduces another element of doubt as to what you must maintain, what you must dig out, what circumstances do you trace back 10 years to find records, and questions like that.

Senator PROXMIRE. I see. The difficulty is SBA. Not that we do not think you people are trustworthy, but as I said the other day, to quote Peter Finley Dunn, "Trust everybody, but cut the cards." In other words, if SBA can have the chance to have access to this, they will know they are getting the facts. They will know they are not having documents withheld or records withheld.

Why not let them do it as long as you trust them? They are good Americans.

Mr. BANNERMAN. Senator, this is not, in our judgment, the most important of our objections. I think you realize that quite as well as we do. We certainly have no objections to cutting the cards. I think, however, that we should recognize that the SBA representative in our procurement office is living right with us all day every day. They see the same records we do on current procurements going through our offices. They see the entire file. Usually, our procurement man and their man are sitting at adjacent desks. Far from being any withholding of information, I think sometimes we give them so much, it is hard to analyze. It is all there and available to them.

This has been no problem whatsoever, either philosophically or operatively in the office.

Senator PROXMIRE. The leadoff statement by President Kennedy at his press conference Wednesday, was with respect to what this bill wishes to do. It was a statement to the effect he has indicated the Secretary of Defense was to increase the procurement of small business by 10 percent. This has been interrupted by you as not to go from 16 to 26 percent, but 16 to 17.6 percent. I think that is pretty slight. We think on the basis of the whole trend and everything that has gone before, it might be very difficult for you with your present procedures.

In view of the President's order, have you in mind any further modification of your present operation so that you can be sure to comply with that proposal of the President of the United States?

Mr. BANNERMAN. Senator, I think it is well to distinguish two things. We have been talking here this morning up to now about provision of the proposed bill which relates to subcontracting. The procedures which we introduced a year ago and to which we have referred several times have to do with subcontracting. The President's message with respect to a 10-percent increase deals with prime contracting. Hence, these regulations that we have been discussing simply are not pertinent to that.

Senator PROXMIRE. It is pertinent to it in this sense, I am sure, that the objective of the President of the United States to see that small business gets a fair share and has an equal opportunity to bid on subcontracts as well as prime contracts. All that was said in the press conference was that they get, specifically, a greater share of prime contracting. This bill does not deal with prime contracting.

Mr. BANNERMAN. I think that is right, Senator, but to answer your question: Do we have anything in mind? I think that most of us have concluded, who have been exposed to this problem for some time, that we probably have written about all the regulations that you need to write. It is not the time now to do something about the regulations, but we should act through straight administrative changes——

Senator PROXMIRE. I certainly agree with that.

Mr. BANNERMAN. There should be administrative changes. We are operating in concert with the President's order, and I might add, to answer your question as to whether we are doing something, I would say we are doing some rather revolutionary things in this respect.

Senator PROXMIRE. Finally—I have kept Senator Bennett waiting; I know he has some questions—at the conclusion of your statement, you say:

> As a result of Senator Proxmire's question during the hearings on this bill on Wednesday of this week, I must add one comment to my statement. The Defense Department has not, in any way, attempted to stimulate letters or telegrams opposing this bill, as has been suggested. Since I was not in the Defense Department last year when a similar bill was under consideration, I do not think it appropriate for me to speak to that period.

I believe, Mr. Bannerman, you were in the Defense Department at that time.

Mr. BANNERMAN. That is correct, sir.

Senator PROXMIRE. Do you want to speak to that period? We were astonished, incidentally, at the inundation of almost identical telegrams we received from various parts of the country. And, believe me, I am still astonished.

I think in order to give you both, or all three of you gentlemen, an opportunity to reply if you wish to, I may say I have in front of me telegrams that came from people in various places. Most of these telegrams happen to be from California, but they came also from Connecticut and from other areas of the Nation—South Bend, Ind., and so forth.

To read from a few:

> Respectfully submit that hearings on bill S. 836 be postponed a minimum of 30 days.
>
> Urgently request that hearings on Senate bill 836 be postponed for at least 30 days.
>
> Thirty days' postponement of hearings on S. 836 urgently requested.
>
> Request your aid in postponement of hearings on S. 836 30 days.

Why should there be such an overwhelming concurrence in exactly 30 days? Thirty days seem to be the cry. I had communications from companies, very large companies, in Wisconsin which do not have much to do with defense, but they asked me for a 30-day delay on this bill. I think it is unusual, quite peculiar, that there should be this precise agreement from different people, presumably acting without a tightly organized lobby, but swamping the chairman of this subcommittee and the chairman of the full committee with telegrams saying that they want this bill postponed for 30 days—not that they oppose the bill, not that they want to postpone action on it for 2 weeks, not for 6 weeks, not for a month; but always the same time, 30 days.

Do you have any explanation for this?

Mr. BANNERMAN. Senator, there are, to my knowledge, several industry associations who feel pretty strongly about this bill. I can

assure you that they have gotten, not only no support, no encouragement from our office, but there has been almost no contact.

I did get a call myself about a week and a half ago from one of the representatives of one of the associations, merely to ask me whether the Defense position was going to be the same as it had been last summer when the bill was up. I told him in complete honesty and candor at that time that I did not have any idea what the Defense position was going to be, it had not been firmed up at that stage of the game and there would have to be an administration position, I would assume, anyway, since all legislative comment we submit goes through the Bureau of the Budget.

Senator PROXMIRE. I would certainly accept that statement as you give it. I am sure it is absolutely true. However, we know the kind of world in which we live. We are all big boys. We know how these things can happen. One official in the Defense Department does not have to organize anything very tightly. He makes a phone call or two.

The law, I might say, is very explicit on this, as you know. The law on lobbying with appropriated money is very clear. I think all Federal officials in responsible positions such as you are in know it is a violation of the law, with a fine and a jail sentence attached. I am not charging that anybody in the Defense Department would violate the law in that way at all. What I am saying is that this is a tightly organized kind of lobbying as revealed by these almost identical telegrams from all over the country saying almost the same thing.

I am sure the responsible and top people such as you are in the Defense Department did not violate the lobby law. I am saying it is peculiar that this was organized in the way it was and that the interest that the Defense Deparment primarily has in this has been so universally and unanimously reflected in such a precise and exact manner.

Mr. BANNERMAN. Senator, I think that those telegrams you have read are peculiar. I think this myself. Certainly, I will deny that anyone that I know of in the Defense Department has had anything to do with encouraging those telegrams.

In the first place, we have no interest in delaying these hearings one iota. We were prepared to testify when the committee asked, and I would personally like to see us get on with this matter. And I can assure that we have not stimulated the telegrams that you are talking about.

Senator PROXMIRE. Mr. Morris, do you want to answer me?

Mr. MORRIS. I would certainly like to echo that statement and say as an Assistant Secretary, I would not tolerate any activity in my office or in that of the assistant secretaries of departments in this direction.

Senator PROXMIRE. Very glad to hear that.

Mr. BOTHMER. I would like to add, Senator, this is the first time I have heard the content of any of these letters and telegrams, and I have never seen any of them. I did not know they existed until you mentioned it the day before yesterday.

Senator PROXMIRE. I want to make one statement before I yield to the Senator from Utah, and that is that several people asked me yesterday after the hearings why in the world small business people were coming out against this bill. We can understand why big contractors might be against it. The Department of Defense has a

perfectly understandable reason. Why should small business be against it?

And the explanation which Senator Capehart enunciated in our discussions last year was that the fact is that the small business people who are opposing this bill are the people who are now feeding at the trough, and they are in a position to get access to negotiated bids and so forth. They have a great advantage. It is to their interest to keep this as limited and as restricted as they possibly can.

It seems to me, therefore, that it is understandable why this large number of telegrams should came from people who purport to be and, I am sure, are, small businessmen. They are small businessmen all right, but they are the small business people who are benefiting very greatly from the present restricted, limited kind of procurement which is costing the taxpayer very greatly and closing out a very large part of the small business community.

The Senator from Utah.

Senator BENNETT. Mr. Chairman, I have not seen any of those telegrams. I have received none in my office. Do those telegrams object to the legislation, or just ask for a 30-day postponement?

Senator PROXMIRE. They do both. Some object, and some just ask for a 30-day postponement.

Senator BENNETT. Have you received any telegram in support of the legislation?

Senator PROXMIRE. We have received letters; we have not received telegrams. I have had people talk to me, call me, but there certainly has been no campaign of any kind supporting the legislation.

Senator BENNETT. I was just interested.

Just to pursue this question to clear the thing up completely in my own mind, would there by any advantage to the Defense Department if there had been a 30-day postponement?

Mr. MORRIS. We know of none, sir.

Senator BENNETT. You have no interest in the question of timing for these hearings?

Mr. MORRIS. No.

Senator BENNETT. There has been some discussion, and while I did not get here in time to hear your testimony or to read it, I assume that you are in favor of the proposal which would bring all three of the agencies together in this problem of working out regulations. But, as has been said since I came here, in the event of disagreement with SBA, it would leave either you or GSA the final responsibility of writing its own regulations.

Mr. MORRIS. That is correct, sir.

Senator BENNETT. Are you in favor of that proposal? Is it your suggestion that this should be the solution of this problem?

Mr. MORRIS. That is correct, sir. We think this is the sound method of working together. It is the way in which we are now working together and intend to expand.

Senator BENNETT. This is not just an expression on your part to pass the problem along, but if you were in our place, this would be the proposal that you would prefer to see enacted.

Mr. MORRIS. Yes, sir.

Senator BENNETT. I have no other questions, Mr. Chairman.

Senator PROXMIRE. I just want to finish up by asking this question: Is it not true that you have had a small business program of one kind

or another now for some years? You had one in 1955; you had one in 1960. A year ago, you had a specific and compulsory program. And while, as Mr. Bannerman well said, there has been no opportunity for the newest program to show its statistical evidence, the fact is that the principle of having subordinate officials of a procurement department with a small business function in the past has not worked and that we have not given a trial to the principle of having an independent agency responsible for the program under circumstances in which they would not be responsible or have any authority or any right to interfere with any specific procurement. You have not given this a trial yet, is that not correct?

Mr. BANNERMAN. We certainly have not given trial to any arrangement under which SBA, for instance, can or does issue regulations affecting our procurement. I think that we never want to overlook the fact that SBA is very active, not only in the development of our regulation, but also in the administration of our programs right within our own offices.

For instance, it perhaps is not as generally known as it should be that all of our significant procurements of $10,000 and over in our major procurement offices are actually screened by an SBA representative. I said "all," I think that is perhaps an exaggeration. Most are screened by an SBA representative to determine whether any small business sources who are not being considered can be introduced into such procurements. This is going on now and has been for some years. I do not accept that it has been totally unsuccessful. I do not think it has been.

Senator PROXMIRE. SBA has been active in that they are nice fellows with whom you talk, friendly, pleasant companions. But they do not have any authority for a program. The authority is with you, and you have your responsibility, which I respect highly. It is a vital responsibility for the efficient procurement of weapons to save this country from invasion and to maintain our defenses. It is the heaviest responsibility that perhaps any Government agency has and is enormously important. But I do think that it is possible to develop a small business program which will not dilute that responsibility in the least, but will say that people who are responsible for small business have a chance to develop these small business programs.

Mr. BANNERMAN. Senator, we feel very strongly that when you use the expression "people responsible for small business," you have not excluded us. We have very serious responsibilities, too, for small business, both by statute and within the framework of the regulations which the President has asked us to follow.

I think that you have summarized our position exactly right in your last statement. We do feel that in the last analysis, we cannot lose control of the regulations that govern our activities if we are going to be responsible for the activities themselves.

Senator PROXMIRE. Thank you, very, very much, Mr. Morris, Mr. Bothmer, Mr. Bannerman. I appreciate your testimony. I again want to tell you that any hostility in my questions was in no way personal. I have the highest regard for your Agency and for you. You certainly enlightened me. Thank you very much.

Mr. Hastings, I understand you represent the U.S. Chamber of Commerce and you are the president of Hastings-Raydist, Inc.

STATEMENT OF CHARLES E. HASTINGS, U.S. CHAMBER OF COMMERCE

Mr. HASTINGS. That is correct, sir.

Senator PROXMIRE. Senator Robertson has informed me he is very, very sorry he could not be here, but he was called away and could not possibly attend to hear you. He wanted to be here.

You know we have laid down ground rules, which I must say I violated, in trying to hold formal statements to 15 minutes and reserve the rest of the time for questions. But I would appreciate it very much if you could stick to that. I will not interrupt while you are making your direct presentation.

Mr. HASTINGS. I feel I can stay within those ground rules.

Senator PROXMIRE. You have a concise statement.

Mr. HASTINGS. My name is Charles E. Hastings. I am president and chief engineer of Hastings-Raydist, Inc., of Hampton, Va., a small business concern engaged primarily in the development and manufacture of electronic instruments.

I appear today for the Chamber of Commerce of the United States, a federation of 3,500 business organizations with an underlying membership of 2,750,000—most of whom are small businessmen like myself.

I am a member of the chamber's national defense committee. Since becoming a member of the committee, I have served on a procurement subcommittee which has conducted careful studies and continuous review of the major defense procurement problems.

Senator PROXMIRE. Mr. Hastings, what I have been doing regularly on this bill and other hearings is to ask people who represent well known national organizations such as yours if they will identify the specific authority by which they come before the committee and represent that group. Whether it is an order of a board of directors or an executive committee which considered the legislation and who understand it and acted on it.

Mr. HASTINGS. First of all, I am a member of the subcommittee on procurement and the national defense committee. The national chamber is broken down into committees which recommend to the board of directors and eventually to the membership, who sets the policy of the chamber. I have never been in an organization which I feel is more democratic and that the organization members have an opportunity to set policies as is done in the national chamber.

The board of directors reaffirmed policies which were recommended by my subcommittee just a few weeks ago, and the staff members and myself felt that the testimony that I am to present here, which I worked out with the staff members who wanted to be sure that they had an opportunity to point anything out in these policies which was inconsistent with the chamber policy. And so, really, I represent the chamber as a result of being a member of this committee. And they felt it might be more appropriate and I might have more knowledge concerning some of these matters you might wish to ask questions on since I am small business and also because I have been a member of the National Board of Field Advisers, the fourth region of the Small Business Administration for several years, up until last year.

Actually, I am not here as a result of an actual board of directors resolution to what I should say or saying that I should come down and testify.

Senator PROXMIRE. So that there was no action taken by officials or taken by the chamber or any agency of the chamber on this specific bill. But you are on the subcommittee, and you have authority to come in and speak your mind as a member of the subcommittee?

In other words, what I am getting at, is you have no authority from the members of the chamber of commerce ? You have many in my State and my hometown. Evidently, there is no chance, either through their elected representatives or through others to pass in any way on this bill. This is simply a position that you have taken as one who understands chamber policy and who is interpreting chamber policy as it affects this bill.

Is that a fair statement?

Mr. HASTINGS. That is true. I was asked on the phone to appear.

Senator PROXMIRE. Our problem is, I think, the chamber is primarily a small business organization. You have many large businesses, too, but, undoubtedly, many more small businesses. And it is very important, in my mind, to know how the small business community feels about it. I think that what you have told us suggests to me that what you are saying is how you feel about it and how some of the people you have consulted with feel about it. But you have no explicit directive of the chamber of commerce saying, "This is the official policy. We oppose bill S. 836 for these reasons."

Mr. HASTINGS. When I was asked last week if I would testify, I did not give an immediate answer, but asked to reserve my decision until the next day, until I carefully reread the minutes of our committees and also the chamber policy in relation to this. And if I were not fully in accord with it, I would have said, "No."

Senator PROXMIRE. Very good.

Mr. HASTINGS. The bill, S. 836, in many respects is similar to H.R. 11207, as amended and passed by the Senate, and S. 3689, both of the 86th Congress. In a letter to the chairman of the House Banking and Currency Committee last year, the chamber opposed the controversial and highly objectionable military subcontracting provisions of H.R. 11207, as amended by the Senate.

The chamber concurred with the Department of Defense view that the enactment of sections 6, 7, 8, and 9 of H.R. 11207, as approved by the Senate, would "create confusion and inefficiency" and would "interfere with efficient and orderly performance of contracts and subcontracts."

The chamber opposes enactment of S. 836 because of provisions of the bill which would, in our opinion, abrogate the necessary control and authority now vested to the Department of Defense in matters of military procurement.

In addition to the objectionable features of the bill, on which I will comment, we do not feel that this legislation is needed in view of existing programs designed to assist small business concerns in obtaining their fair share of defense procurement contracts, and subcontracts.

Section 7 of the bill provides the Small Business Administration with authority to obtain procurement records "for the purpose of review." This is unnecessary because, under the present law, the Small Business Administration has the authority to obtain from any Federal department engaged in procurement, reports concerning the letting of contracts or subcontracts. Procedures established under the

present act enable the SBA to screen procurement actions and make recommendations as to the participation of small business concerns in such procurements.

The exact meaning of section 7 of the bill is not clear and appears to be too broad for proper administration. The requirement could well extend to all types of records involving the letting of contracts and subcontracts, whether of a classified nature or not, or whether or not they are pertinent to the responsibilities of the Small Business Administration.

If the Small Business Administration is not obtaining all the information it deems necessary in the performance of its proper functions, the remedy does not lie in granting statutory authority to have access to the records of the other Government agency, but in closer liaison and cooperation with the procurement agencies.

Section 8 of the bill authorizes establishment of a small business subcontracting program.

Because this section would have the greatest impact on the Department of Defense, my comments on the establishment of a small business subcontracting program will be limited to the application of such a program to military procurement. Before going into the provisions of section 8 of the bill, I would like to advise the subcommittee of a few of the principles which the chamber feels should apply to Government procurement. These are:

1. Government procurement programs vitally affect our national economy and national security. These programs, therefore, must be conducted in a manner that is consistent with sound business practices.

2. Legislative and administrative policies governing procurement should be sufficiently flexible to permit adjustment to the method of procurement most appropriate to the type of supplies and services to be procured.

With reference to the administration of defense procurement, we feel present procedures for the administration of procurement are cumbersome, create unnecessary delay, and are impeding our major defense program for new weapons. Certainly, the enactment of the objectionable provisions of S. 836 would only compound, rather than solve them.

We strongly believe that present conditions should be alleviated by initiating a forthright program enbracing the following objectives:

1. Streamlining the organization for the administration of procurement eliminating the multiple layers of review, placing maximum authority and responsibility at the operating field levels, and removing the obstacles to prompt decisions in the evaluation and selection of new weapons;

2. Selecting suppliers having management and technical knowledge, skilled manpower, adequate facilities and capacity, and sufficient financial stability;

3. Providing greater flexibility in the selection of the procurement method most appropriate in securing top quality products and services, within the time required and at minimum cost, but at the same time providing a maximum of competition.

In fiscal year 1960, total procurement for the Defense Department exceeded $14 billion. Procurement in the current fiscal year will, in all probability, be even higher. When this huge expenditure is com-

bined with funds spent by other agencies such as NASA and the Atomic Energy Commission on behalf of our national defense, the total imposes a tremendous responsibility on the executive agencies involved to assure obtaining the maximum defense at minimum cost. However, since the security of our Nation is involved, it is essential that all procurement policies be directed toward equipping our Armed Forces with the very best possible material.

We will willingly pay the price. We will, however, resist any attempt that is made, either by congressional action or administrative fiat, to add to the administrative cost, or to further complicate the procurement process.

I might just offhand comment to that, I think the complication is one of the things that the small businessman has the least possibility to cope with.

The promulgation of a small business subcontracting program, or any other procurement program, by other than the agency responsible is not only wasteful, but will adversely affect the ability of the respective agency to administer its procurement program. In the case of the Defense Department no legislative actions should be taken that would supplant the Department's primary responsibility in the awarding of contracts.

As I have previously stated, Government procurement must be conducted on a sound, businesslike, administrative basis. This cannot be done unless there is clearly established responsibility and this responsibility must necessarily be backed up with the prerogatives of control and authority.

The chamber supports the principle of subcontracting and small business participation in defense contracting. We recognize the importance of small business in the national economy and the need for integrating small business into the defense production program. The strength of American industry lies in its reliance, not on any one company or on any small group of companies, but on the teamwork of many business organizations both large and small working together.

But we must also face up to the fact that the complexity of military technology, coupled with the rising importance of research and development in lieu of large production contracts, is making it increasingly difficult for small business to qualify and to compete for prime defense contract awards.

The primary objective of the program authorized in section 8 of the bill before the subcommittee is to make certain that prime defense contracts are subcontracted to the maximum extent to small business concerns. If the responsibility for implementing this objective were placed with the agency responsible for the procurement program, and were coupled with adequate safeguards to insure that this was done consistent with efficient and economical performance of such contracts, this would indeed be a sound objective.

There are no size limitations on skill and ingenuity. It is well known that many prime contractors, because of the variety and large volume of parts entering into defense items, cannot make many of the parts they require as economically as they can buy them from small business.

Although purporting to "help" the small business concerns—the provisions of the bill which require contractors to consult with the

Small Business Administration, when requested to do so, and which enable the SBA to obtain information and records from any procurement agency concerning subcontracting by its contractors, would in fact hurt the small businessman, rather than help him—I speak from experience.

These provisions would have the effect of requiring the contractor to satisfy the demands of still another Government agency in the performance of a contract, although that agency would not be responsible for the successful execution of the procurement involved.

Placing another agency between the contractor and the agency responsible can only result in delays in contract and subcontract awards, longer leadtime required in obtaining goods and services, further confusion and inefficiency, and also add to the cost of military procurement.

Delays in contract awards and increased recordkeeping and reporting, which result in higher costs, are items which the small businessman can ill afford. They only make it harder for him to compete for defense work with larger concerns that can afford to wait for contracts and whose operations are departmentalized and are, therefore, better able to handle increased administrative procedures.

This bill does not offer any incentive for small business concerns to seek defense contract work. It will, in our opinion, drive more small businesses away from Government contracts by adding to the often insurmountable hodgepodge of redtape and accounting procedures which they are not equipped to handle.

The chamber is not in a position to fully evaluate the effectiveness of Department of Defense small business subcontracting program, other than to study the reports of the Department. These reports appear to us to be encouraging, rather than the reverse. For example, although the percentage of total military receipts paid out by large contractors to small firms for fiscal 1960 ran 18.8 percent, this is an improvement over the previous 2 fiscal years.

Because not all military prime subcontractors are taking part in the program, it would definitely appear that the reported volume of subcontract payments to small firms is understated. The program became mandatory January 1, 1960, on all prime contractors, and also on all subcontractors, who get contracts of $1 million or more which have substantial subcontracting possibilities. The mandatory program applies only to contracts awarded after January 1, 1960; thus it has little if any effect on the number of contractors reporting subcontract payments in the January–June 1960 period.

As this program takes full effect, a definite improvement in subcontracting to small business firms will be shown.

It is interesting to note that in the 4-year period from July 1956 through June 1960, small firms averaged $3.4 billion per year in reported subcontract receipts and $3.7 billion in direct prime contract awards—a total of $7.1 billion in defense business per year. Total military procurement from all business firms averaged $21.2 billion during this same period.

As I have previously indicated, our Procurement Subcommittee has studied and continually evaluated the Armed Services Procurement Act of 1947 and its implementing regulations.

There are many features of the armed services procurement regulations which we feel should be revised. Military procurement is by no

means completely satisfactory, and we do not mean to imply by this testimony that it is.

However, on the recommendation of our subcommittee, the National Defense Committee of the chamber, on February 7 of this year, after carefully studying the reports on procurement submitted by the Senate and House Armed Services Committees, pursuant to section 4(a) of Public Law 86–89, concurred in the findings of the Senate Armed Services Committee that, "Most, if not all, of the procurement problems in the Department of Defense can be solved administratively."

This recommendation was endorsed by the National Chamber's Board of Directors on February 25, 1961.

For the reasons I have stated, the Chamber of Commerce of the United States opposes enactment of S. 836.

Senator PROXMIRE. Senator Bennett.

Senator BENNETT. I just have one question at this point. You indicate opposition to S. 836. What would be your position in regard to the proposed amendment which would bring the three services together for the purpose of cooperating and writing regulations?

Mr. HASTINGS. I think it would be more in line with chamber policy, but I still feel it is not needed. I still feel that the administrative procedures could be corrected without additional legislation. It is my opinion that the passing of a new law is not the thing that can do the most good.

Of course, I am not a lawyer, and I cannot say for certain that there is sufficient authority to do many of the things which I think should be done by the Department of Defense or where additional legislation is needed. But it would be in other areas, and I do not feel that the overall bill is one that can be cleaned up or should be. There are many items in this bill that the chamber does not have a policy on and would not oppose.

Senator BENNETT. When you talk about the Department of Defense in your text, do you also include the General Services Administration, and the Atomic Energy Commission, which were mentioned in the bill?

Mr. HASTINGS. I certainly feel the Atomic Energy Commission is in a parallel situation with the Department of Defense and should have been included, and GSA, also.

Senator BENNETT. Unless something else comes up, I have no further questions at this time, Mr. Chairman.

Senator PROXMIRE. The chamber opposes unnecessary spending, does it not?

Mr. HASTINGS. It does, sir.

Senator PROXMIRE. How do you feel about the fact that this bill would authorize another $75 million for the SBA? Do you favor that or oppose it, or have you a position on it?

Mr. HASTINGS. We very carefully evaluated that as best we could. I have really burned some midnight oil, trying to make up my mind as to whether the chamber policy should take a position on that. And we came up with the conclusion that we should not, that there was not sufficient opinion that has been expressed by the membership to take a position on whether that $75 million should be added.

Senator PROXMIRE. Are you aware of the position taken by the Administrator of the SBA who said he would not need it until fiscal 1962?

Mr. HASTINGS. I heard that last night. And immediately, my answer was that it should not be added.

Senator PROXMIRE. I am inclined to agree with you. I am inclined to think we should take that $75 million out. SBA says it does not need it, I am not one, and I know Senator Bennett is not, to believe in authorizing one nickel unless the administration can make a strong case for it.

Mr. HASTINGS. I agree with you.

Senator PROXMIRE. Mr. Hastings, you are president and chief engineer of Hastings-Raydist, Inc. Is this your own company? Do you own it?

Mr. HASTINGS. I am the largest stockholder. My family and I own 55 percent of the stock, but it is a stock corporation which has approximately 250 stockholders.

Senator PROXMIRE. In your prepared testimony, you speak of the difficulties of dealing with a procurement agency and how it would hurt procurement if additional records were required, and so forth. You say it would hurt the small businessman. You add, "I speak from experience."

Have you had any experience with the Defense Department?

Mr. HASTINGS. I have had a lot, sir. I had continuous experience since my company started in 1944 contracting with the Department of Defense. And I think one of the real factors has been the redtape, the compartmentalization of authority in the one bureau and itself. And there are certain contracts which I feel that the small businessman is incapable of taking. I mean, I think the procurement regulations, particularly section 15 of the Armed Services Procurement Act, is something the small businessman is not in a position to cope with. It is something that is bad for small business.

Senator PROXMIRE. How long has been your experience with Government procurement agencies? How recent, for instance, has your procurement experience been?

Mr. HASTINGS. We have active contracts with the Department of Defense now, except that they are on a fixed-price basis. In 1954——

Senator PROXMIRE. You have negotiated bid contracts with the Defense Department now?

Mr. HASTINGS. Yes; we have negotiated bid contracts and ones that were publicly bid. We have all the usual types, except that we feel that we are not in a position to cope with the accounting procedures of cost evaluations. And we will not accept that type of contract.

Senator PROXMIRE. Would you mind indicating in the first place how big your company is, how many employees?

Mr. HASTINGS. We have 70 employees in Virginia.

Senator PROXMIRE. What proportion of your business is done with the Defense Department?

Mr. HASTINGS. It has varied very greatly. In 1954, it was 80-some percent with the Defense Department. In 1959, it was 3.6 percent. And I would estimate it is 15 or 20 percent last year.

Senator PROXMIRE. So you have done a substantial amount of business with the Defense Department in the past, ranging up to 80 percent?

Mr. HASTINGS. That is correct, sir.

Senator PROXMIRE. You have experience in working with the Defense Department, you have associations, you have contacts, you have relationships which have proven more or less satisfactory to you. As a small businessman, you are pretty unusual in this respect.

Mr. HASTINGS. I would say they have proven satisfactory.

Senator PROXMIRE. I should say they have proven satisfactory; I should say that through these relationships, you have succeeded in selling as much as 80 percent of what you produced to the Army, Navy, and Air Force.

Mr. HASTINGS. I think that was a very great mistake on my part to ever be in that position.

Senator PROXMIRE. We have had a succession of witnesses who are small business people who testified before this subcommittee. I notice that everyone who objects to this bill is a small businessman who already sells to the Federal Government or has over a period of time and has sold a great deal and, undoubtedly, has made a lot of money.

Does it not seem to you that it is pretty logical that these fellows would be a little reluctant to approve a bill which would provide greater competition? Does it not appear to you that if more small businesses could get into this situation, there would be less opportunity, perhaps, for your firm to compete?

Mr. HASTINGS. No, sir, I do not. I am quite sure that that is not the case. It would take quite a long time for me to give you all the little details, but I am very certain that I am not one of those contractors who opposes anything that would be good to get more small businesses to want to get contracts and get contracts that they are capable of handling.

Senator PROXMIRE. You would like to see more vigorous competition? You would like to see somebody competing with you who would go below you once in a while because it would give you a feeling you were really in there fighting for business. And if you lose a contract, you lose part of your profit, you would have that feeling in your heart this was American free enterprise and you would be satisfied? This would appeal to you?

Mr. HASTINGS. That is surprisingly so. Everybody has a little mixed emotions, you know, about these things. You always like to be in somebody else's lick. But, nevertheless, I still feel that what you said is the way we should all feel, whether we do or not.

Senator PROXMIRE. You said in two places, in one: "The chamber opposes enactment of S. 836." And you end up with the very emphatic statement, "The chamber opposes enactment of S. 836." Yet, you tell me there was no specific authorization from any agency, any responsible agency, of the chamber of commerce. They knew you were coming down; nobody was objecting to it, but you tell me you were primarily speaking as a member of a subcommittee on the basis of your experience and your own interpretation of what chamber policy is.

In other words, you cannot really tell this committee that the Chamber of Commerce of the United States is opposed to the enactment of this bill. Maybe they would be, and your guess is undoubtedly a great deal better than mine. You are a member and in good standing and active in a subcommittee. But you cannot really tell us that

the chamber of commerce is opposed to the enactment of this bill, can you?

Mr. HASTINGS. My feeling is, yes, sir. The first thing I did was to read the 1960 policy declarations. This is the first book I went for after I got this telephone call.

Senator PROXMIRE. Would you modify your statement to the effect that you are convinced on your own evaluation of the policy of the chamber of commerce that their position would be opposed to this bill.

Mr. HASTINGS. That is a better statement, yes, sir.

Senator PROXMIRE. Is that not a fair statement?

Mr. HASTINGS. Yes, sir.

Senator PROXMIRE. It seems to me that we can agree with a great deal that is in this statement of yours. Certainly, we are all in favor of efficiency. We all favor eliminating redtape. We all favor knocking out unnecessary agencies, and so forth. But I want to see if we can be a little specific.

You say, "Streamlining the organization for the administration of procurement, eliminating the multiple layers of review, placing maximum authority and responsibility at the operating field levels."

Were you here this morning earlier when I interrogated Mr. Morris of the Defense Department?

Mr. HASTINGS. Yes, I was, sir.

Senator PROXMIRE. Do you recall the six instances of interferences we have now with the Defense agencies?

Mr. HASTINGS. Yes, sir.

Senator PROXMIRE. A number of which he disagrees with. I would like to call your attention to only one because I do not want to continue too long; that is, on the certificates of competency.

I will just read two sentences:

> These certificates may be issued by the SBA to a small business concern which has been low bidder on a Government contract and has been denied that contract for an alleged lack of competency. Once the certificate of competence is issued by the SBA the procurement agency is bound.

Would you say this is one of the examples of interference by another agency which you would——

Mr. HASTINGS. That does not fall in with the policy. I think that this is one which SBA is more in a position to do something about through its loan agency.

Senator PROXMIRE. That would be all right, this particular exception.

Mr. HASTINGS. I would prefer a little bit that they were not there.

Senator PROXMIRE. Do you not realize that literally hundreds and hundreds of small businesses have had an opportunity to qualify who otherwise could not have qualified for defense work. They had an opportunity to bid, and have saved the Government, on the basis of calculations that have not been challenged, over $11 million by doing defense work for less than the other low bidders do it?

Mr. HASTINGS. I think there is no question in my mind at all, but there have been examples of that kind which were very excellent and did some good. Whether in a few cases where it did not work out so well or not or whether the time, the efforts and the cost to the Government of bad loans and a lot of things, I am not in a position to evaluate. It may well be that this is a plus factor, and under proper administration, even a bad law can be worked right and to do good.

Senator PROXMIRE. Just one more question. The main thrust of your testimony was that this would interpose another Government agency between the procurement agency and the manufacturer.

Mr. HASTINGS. Yes, sir.

Senator PROXMIRE. Or between the prime contractor and the subcontractor. I would agree with that sentiment 100 percent. I do not think you should have any other Government agency in it, and I have said so.

Do you not think that we could handle this problem satisfactorily by making it clear, which I fully intend to do, that SBA will have no authority to interfere in any way, shape, or form with the administration of any specific contract? The whole purpose of this bill is to provide that SBA can properly promulgate a program, have an opportunity to audit it and see that opportunities are called to the attention of prime contractors, but not to dictate, designate, or determine who should get the contract.

Mr. HASTINGS. I am fearful that there will be an extension of some of the same things that I have seen back in my own company. It is true that maybe the Small Business Administration, will never come to my plant and try to dictate and question and waste our time and effort in trying to get into the details of whether we should have contracted some other smaller business. However, I have seen what happens when the Department of Defense is riding herd on some contractor who buys some small item from me.

I think I could justify that there has been a lot of forms sent out by different prime contractors to my office. I would guess that in the mail today, there would be a possibility of some form, something so that the results can be passed down, to help get all these statistics to try to prove that they are working for the small businessman. Somebody might have bought a gage from us for $12, and have $15 worth of forms on my desk when I get back.

Senator PROXMIRE. We have tried to emphasize over and over this is something that does hurt the small businessman. This is right. If these forms go on and on, it hurts. The big businessman does not hurt because he has the lawyers and accountants and others to do it for him. I agree. This is one of the difficulties that a small business program, it seems to me, could meet.

SBA should do all they can to tremendously reduce, even eliminate, the unnecessary verbiage. And if they did not do it, it would seem to me they were not doing their job.

It would seem to me your position generally is that SBA, in administering this, is going to act like idiots, or administer the job in such a way as to impede or worsen the opportunities for small business.

Senator BENNETT. Mr. Chairman, would you yield to a possible synonym for "idiots"—bureaucrats. There are a lot of people in this Government who when they get a job and assignment try to build it into an empire. And the way to build it into an empire is to prepare more forms and get more reports and get a finger and nose into more situations so that you can hire more people to develop the information that you yourself have dreamed up. I do not say these are idiots, but I would think the risk of this kind of a program is that this empire-building tendency that you and I can comment about because we are on the elected side of the table has plagued this Government for 180 years.

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Senator PROXMIRE. I would agree it plagued the Government, and I certainly agree with your general sentiment on it. But I cannot see how this is going to provide an empire for the Small Business Administration. Small business under this bill is going to have a greater opportunity, because an agency responsible to small business will have the power to fight for them. Whereas, the defense proposal gives the Defense Department the enormous advantage of being able to say, "Well, we have many responsibilities we have to meet. Our prime responsibility is for an adequate defense, high quality weapons, short leadtime, and various other things. We just cannot meet this very subordinate responsibility we have in small business."

Mr. HASTINGS. I would like to comment a little further on the question that you and Senator Bennett have brought up and I would like to first say I was very pleased yesterday at some of the comments between you and Mr. Sparkman indicating you wished to do something about the overlapping and redtape the small businessman must cope with. But I would like to say that that is not mentioned in your bill. I looked very carefully for it. I have looked for it in many of the SBA manuals.

I attended meetings, and the economic climate of the small businessman was not what I have seen anybody working for. They wanted to do something for the small businessman directly. The small businessman is an individualist. There are not enough members in the Small Business Administration who could ever be very effective in doing directly for the small businessman anything that in the national level would be really worthwhile.

Senator PROXMIRE. Do you think the SBA ought to be abolished?

Mr. HASTINGS. Unless it changes some of its policies of direct aid and goes directly to the business climate, I think it should, sir.

Senator PROXMIRE. Thank you very much. I appreciate your testimony. It is very helpful, and it certainly is based on experience. Thank you.

Mr. HASTINGS. Thank you.

Senator PROXMIRE. We have a couple of witnesses, but I know that Senator Hart is here, and he is rushed and has a very brief statement. I understand.

Did you want to say something, Mr. Hastings?

Mr. HASTINGS. Yes; I would like to make one statement. That last statement is probably not in conformance with the national chamber policy. It was probably a personal statement, and I do not wish to indicate at all that that personal last remark should be attributed to the national chamber.

Senator PROXMIRE. Thank you, sir.

Senator Hart, we welcome you.

I might say that Senator Hart is the author of a part of this bill, section 9, and we are very happy to have his comment.

STATEMENT OF PHILIP A. HART, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Senator HART. Mr. Chairman, Senator Bennett, thank you. I shall read only one page.

In July of 1959, you graciously permitted me to testify before this committee in support of S. 2032 introduced by Senator Sparkman.

On that occasion I proposed that a provision be added to the Proxmire bill which would authorize the Department of Commerce to include announcement of all procurements of $5,000 or more in their daily synopsis of proposed procurements. While there were certain compelling reasons why a figure of $10,000 would be more applicable to defense procurements, this proposed $5,000 figure seemed suitable for all other procurements.

As a consequence of these deliberations, I am happy to say, Senator Proxmire included this proposal in his bill this year, as section 9 of S. 836, and I have joined him as one of the cosponsors of this bill.

Our experience with the problems of small business since that first appearance before this committee has convinced me all the more that the adoption of the improvements proposed in S. 836 would be desirable. Except for detail, the essential experience which I reported at that time has changed so little that I would ask approval to conclude my statement this morning with the request that the attached statement be included in the record of this hearing.

Mr. Chairman, I am very grateful to you for permitting me to come in.

Senator PROXMIRE. I think it would be very useful to the committee, Senator, if I could read two short paragraphs from the Defense Department's statement and have your comment on it:

> Section 9 of S. 836 would further amend the act by adding a new subsection requiring the publication of proposed procurements in the U.S. Department of Commerce Synopsis of the U.S. Government Proposed Procurements, Sales and Contract Awards. This Department was very much opposed to similar provisions in H.R. 11207 and S. 3689. It is recognized that the exceptions to the publication requirement contained in S. 836 are a significant improvement over the number and type of exceptions contained in H.R. 11207 and S. 3689.
>
> This Department has reexamined its position in this section of the bill, in the light of these changes in the exceptions, and has determined, notwithstanding problems which may well arise, to adopt in its procurement regulations the features contained in section 9. Action to implement this determination has been initiated and publication of appropriate changes in this Department's regulations regarding publication will be issued as soon as the editorial changes can be composed.

I would like to say, the Defense Department says they are going to do just what you ask for, but administratively. I want to congratulate you on having achieved this. It undoubtedly would not have been done if it had not been for your initiative.

Do you feel this is adequate, or do you feel you may agree with me that this should not be left to regulation and it should be, since it is signed and proper and correct, written into law.

Senator HART. Mr. Chairman, one is always hesitant to seem to abuse anyone who says that an idea makes sense and they will do it, but they do not want to be compelled to do it. I do feel, as you indicated you yourself feel, that it would be wise to establish by statutory requirement precisely what they indicate by administrative action they intend to do. If they are going to do it in any event then establishing it as a requirement would not make life difficult for them. If a later administration undertook to modify the administrative directive the present administration indicates it will undertake, then, it would be desirable that there be statutory prohibition against that.

Senator PROXMIRE. Which reminds me of an observation of George Bernard Shaw in which he said he loved to fight successful people,

loved to badger them, attack them, denounce them, raise the dickens with them, kick in their castles of sand and force them to build castles of rock. This is a castle already, and it looks just like yours, but it is of sand, which can change, as you say, with a new administration. And it would seem to me this is the kind of provision which—how anybody in the world can object to it, I do not understand—would serve small business and give them an opportunity.

Senator BENNETT. Mr. Chairman, I notice there are nine exceptions in this list. Suppose when these are written into the law, somebody discovers there should have been a tenth exception. If it is in the regulations, the regulations can be amended. If it is in law, we have to wait to go through the whole legislative process. And you and I know that sometimes it takes years to get the matter handled. This is the other side of the coin to the idea that we might get so specific in law as to create a situation where a big, overlooked exception might exist.

Senator HART. It would not have been overlooked by reason of shortage of time to thoroughly evaluate the matter. So perhaps it would not be overlooked. And, Senator Bennett, you have taken a good, easy example to iluustrate what is really a basic problem in all legislation.

Senator BENNETT. That is right.

Senator HART. We can understand what we are talking about here more clearly than we can some of our other problems.

Senator BENNETT. We just finished the depressed areas bill in this committee. In that bill, there are criteria in one section, and in another section the criteria are so general and so loose that the Secretary of Agriculture and the Secretary of Commerce can just about write their own order.

I object to them being too loose. There is not even a statement in this section 9 which says, "or any other pertinent exception that may occur." This just nails it right down. There are nine exceptions, and everything else has got to go in a register.

Senator PROXMIRE. If I could comment on that, it would seem to me this is exactly the kind of change that should be a matter of law. I know that the Senator from Utah shares with me the feeling that the Congress should not give up to the administration all of our legislative authority. The Defense Department has had ample time to study this. We have amended it to add additional exceptions, and I am sure we have covered all of the significant and important areas. If they do discover another one, let us debate it, discuss it, let it go through the legislative process and take its chances.

The fact is that if there were no exceptions, the only real burden would be that you would publish a great deal of information that might result in additional expense and so forth. There would be an obvious exception on classified material, but the only purpose of this proposal is to let small businessmen know what is going on so they can get in on prime contracts and subcontracts. To give them the information they need to have so they can compete.

Senator HART. To be responsive to the Senator from Utah's question, I think I would recommend that you resolve this ever-present dilemma by assuming some legislative wisdom and establishing very clearly the exceptions in these categories that have been developed after long study. It is very unlikely in view of the time that was

available to the Department that they would have missed a big one. But if they did, and I am not assuming they did, I think they should be credited with having made very careful study. If they do miss a big one, we are not so unresponsive as to not correct it. I know we move slowly lots of times, but I cannot concede the error would be a real big one in view of all the time they have had to determine whether it is wise or unwise.

Senator BENNETT. I have made my point.

Senator PROXMIRE. Thank you.

Senator HART. Thank you very much.

(Senator Hart's prepared statement follows:)

STATEMENT OF SENATOR PHILIP A. HART, A U.S. SENATOR FROM THE STATE OF MICHIGAN

Mr. Chairman, thank you for the opportunity to appear in support of legislation designed to make the Small Business Administration's assistance to small business concerns more effective in the complicated and often confusing problem of obtaining subcontracts from prime contractors working for the Federal Government.

Almost from the day I came to the Senate 7 months ago, I have been attempting to assemble information and knowledge on how to help firms in the State of Michigan regain some of the losses suffered on defense contracts.

Without going into detail on the many possible explanations of why Michigan firms have dropped, from obtaining an average of 6.4 percent of the prime defense contracts between July 1, 1950, and December 31, 1956, to where today Michigan receives only 3.2 percent of the prime contracts being awarded, I would only point out that this has had an equally serious impact on many of the smaller firms of our State.

One of the clearly discernible patterns has been the pulling in by the prime contractors of work previously done by smaller firms on a subcontract basis.

This theme has been an all-too-frequent one as I have read the mail and listened to the problems of company after company sharing with me its difficulties in the past several months.

But I come before your subcommittee today, Mr. Chairman, with what I hope are some typical examples of the difficulties of small business concerns in Michigan as they review their problems of obtaining defense subcontracts.

If this were just hearsay material, I would not be before you testifying on this important subject, since there are those with experience far greater than mine in the Congress who have struggled with this subject for many years. But I believe the material I have to present is pertinent to the problem under study and very definitely substantiates the need for amendments to the Small Business Administration Act as outlined in S. 2032, introduced by the distinguished chairman of the Senate Small Business Committee, Senator Sparkman.

About a month ago, I decided that if I were to gain insight into this problem of why Michigan firms have been receiving less and less defense work from the Government, I should obtain firsthand the views of these firms.

The results of the first returns from a questionnaire sent from my office, sampling the views of Michigan industry, were so pertinent to the subject of these hearings, that I have prepared a summary of the comments and findings.

For the record, Mr. Chairman, I am submitting a copy of my letter to these firms, a copy of the questionnaire, and excerpts from their replies on the problems of obtaining subcontracts. I have not identified the firms by name, but by number, since I indicated in my letter that complete anonymity would be observed in using the data from the returns. If necessary, I have the name of each firm on file in my office.

There are certain recurring themes in the returned questionnaires. They suggest three conclusions:

1. The Small Business set-aside program in Michigan has not been working.

2. Nearly half of those responding produce hardware and services that are of a specialized nature and their businesses are not organized to handle either the sales, cost analysis or other technical aspects of most defense procurement.

3. The biggest need of this large and specialized group who feel they are better geared to subcontracting is greater access to the prime contractor and the processes by which subcontracting work is allocated.

These conclusions are based on the preliminary findings of the first phase of this survey which included 1,100 questionnaires, with about 14 percent responding in the first 2 weeks. Another 2,000 questionnaires are now being processed for mailing throughout the State, and I hope to make the final tabulation available to the committee at a later date.

The first item of significance is that nearly half—46 percent, to be exact, or 67 of 145 returns—have indicated that they are primarily interested in obtaining and performing work under subcontracts rather than as prime contractors. The reasons for this may be analyzed as follows:

	Percent
End product or service unsuited to prime contract	33
Not organized to make bids (cost analysis, sales, technical) on prime contracts	16
Consider firm too small to operate as prime contractor	13
Lack of contact or information necessary to make bid	12
Previous bad experience as prime contractor	7
Overhead and labor costs are not competitive	4
No reason given	15
Total	100

More than two-thirds (51) of those interested only in subcontract work were "small" firms employing less than 200 people and otherwise would qualify for assistance as a small business. In fact, slightly more than two-thirds of those responding thus far to my questionnaire could be defined as small businesses.

A final note of significance from the questionnaire returns: Only 18 percent (19 companies) of those who may be defined as small businesses indicate that they have had any contact with the Small Business Administration. Perhaps more significant, only 12 percent (17 companies) indicate any benefits from the small business set-aside program.

I will conclude with a few additional observations. I have some doubts, on the basis of the information that I have been able to obtain, that the small business set-aside program is operating very unsuccessfully in Michigan. For the period July 1, 1958 to April 30, 1959, Michigan small business firms were awarded contracts under the joint set-aside program of a value of only $58,776,772. Michigan was tenth of the top 10 States ranked in order of prime military contracts awarded by States. The total value of awards for these top 10 procurement States was $1,686,760,772. Michigan received only about 3 percent of this amount.

I am not sure what the reasons are for this lag in Michigan; I would hope that it might be possible for the Small Business Administration to look into this situation. There does seem to be evidence that the Detroit regional office of the Small Business Administration is seriously understaffed in personnel assigned full time to assisting small businesses in Michigan to obtain information and aid on Government procurement activities.

Mr. Chairman, speaking of the bill before the subcommittee, I would specifically endorse the provisions which would provide a clear and explicit directive to the Small Business Administration to concern itself in every feasible manner with assisting small business firms in obtaining subcontracts under Government contracts with prime contractors.

Attached to my statement is a brief sampling of comments by small businessmen throughout the State of Michigan taken from the survey I am conducting. I submit the list for the record, and will read just a few of these comments that seem to illustrate the need for real assistance on subcontracting.

"We do not have enough information as to who is a prime contractor for the type of work we are able to perform."

"* * * We have never known who would use our service or who had a prime contract which would require zinc die castings as a component."

"* * * We have been seeking subcontracting work and would be pleased if some of the large prime contractors would give us an opportunity to utilize our skills and capabilities."

"* * * We are not big enough to stand the cost of soliciting through outside agents."

The section of the bill which would rewrite the authority of the SBA to make studies at all stages of the procurement process, including the observation of any negotiations and awards board discussions, and to submit recommendations to the appropriate Federal agency to insure that a proper share of the contracts and

subcontracts go to small business concerns, seems to me to be a very essential addition to SBA authority.

Today, there is misgiving with the extent to which prime contractors are required to exert themselves in seeking out qualified subcontractors and opening as many subcontracts as possible to competitive bids.

Today, there are far too many skilled men, tools, and facilities throughout the Nation that could well be woven into both production and research and development work on our defense and defense-related programs. It is the purpose of the Small Business Administration to see that the small businesses of America are integrated into this pattern in the most efficient and productive manner.

It is to this end that I support the proposed legislation, and will continue to probe into the activities of Federal procurement in my State until I am satisfied that the entire State of Michigan is obtaining its fair share of both prime and subcontracts from the procurement activities of our Federal Government.

EXCERPTS FROM COMMENTS RECEIVED BY SENATOR PHILIP A. HART IN RESPONSE TO A QUESTIONNAIRE SURVEY OF MICHIGAN MANUFACTURERS AND THEIR EXPERIENCE WITH DEFENSE CONTRACTS, JULY 1959

1. "We do not have enough information as to who is a prime contractor for the type of work we are able to perform."

2. "Sixty percent of our volume is subcontract work—this is the best type of work for small business as prime contracts will put a lot of small business out of business."

3. "A further detriment to the position of medium sized manufacturers and specialists has been the overall systems concept. Many large companies who have been awarded systems contracts with the responsibility of subcontracting various components have been put in the enviable position of choosing for themselves any portion that they desire. There have been glaring examples of this even in the audio field which has cost the Government millions of dollars. I do not believe that these represent dishonesty at any level in the Government but simply are examples of military procurement at its worst."

4. "You will notice that we preferred to do only subcontracting work, and we are doing quite a little of it at the present time. Our experience with prime contracts during the war led us to believe that we could best serve our country and our employees by confining our efforts to subcontracting."

5. "We feel that because of the small size of our concern we fare better soliciting subcontract orders from prime contractors."

6. The firm has not sought prime contracts because there is "too much redtape" and has only about 10 percent of its capacity devoted to subcontracting because "have not been able to contact the proper agent."

7. "We are better equipped to do subcontract work rather than take on a prime contract * * *. It has been over 2 years since we have had any subcontract work on a Government contract. We just haven't been able to get any."

8. This firm has not sought prime contracts because "we did not believe we were large enough to seek or handle prime contracts." The firm has been successful in obtaining subcontracts.

9. "Our products lend themselves to subcontracts. * * * we have sought to find sources for our products through the Small Business Administration and others but results, frankly, have been disappointing. * * * finding the right person in the right job in the right agency is no small problem."

10. This firm says no primes have been available in their field "in 5 years" but the firm has obtained some subcontracts. "Would be glad to have work as direct or subcontract work."

11. "We also feel that the time and cost involved in securing information on the many phases of activity required to enter a bid on Government contracts is too high for the results obtained. Although we would like to bid on more jobs we feel that the exceptionally large amount of redtape involved prevents us from doing so."

12. "The development of missiles, we feel, will have a further impact upon the aircraft industry, and our information indicates that there is not a very large amount of work obtainable from the missile manufacturers. We believe our past demonstrated abilities indicate we could be employed for new projects and we would be interested in securing work in the missile and other related fields.

"* * * I should like to point out something that greatly disturbs the small manufacturer. That is the request by the large prime air frame manufacturers requesting certain confidential detailed information regarding the basis of quotations. * * * The small manufacturer has nothing remaining insofar as skills and know-how are concerned to help him maintain a competitive advantage. The request also states failure of the bidder to comply with requirements may disqualify the bidder's quotation. * * * As you are well aware, leaks can and do occur and the possibility of such information reaching one's competitors makes one reluctant to comply with requests of this kind. The small manufacturer now is being asked to open up all of his detailed records to his prime or next tier subcontractor's representatives for investigation and review. * * * I know of no regulations or reasons why a subcontractor obtaining his business through competitive bidding on a fixed price contract would be required to disclose such foregoing confidential data."

13. "We are a small concern, 50 employees, and after investigating the work and problems involved in prime contracts, we find it more pleasant and profitable to let the large corporations have the prime contracts and we can assist them to do the work. * * * I believe the taxpayer, small business and all would be better off if large corporations would get the prime contracts and let small manufacturers do the specialized work."

14. "We do not desire to deal directly with Government agencies due to the 'redtape' involved but prefer to do subcontract work. * * *"

15. "It would seem that the small business must confine itself to subcontract work business because of the complicated procedures the Government has set up as essential to bidding on prime contracts. Either that or it would be necessary to set up another agency to help in explaining and deciphering the various requests to bid."

16. "Our work has to be on a subcontract basis and we have never known who could use our service or who had a prime contract which would require zinc die castings as a component."

17. "Government prime contracts are far too involved with procedure, unnecessary complex specifications and handled by incompetent personnel to warrant spending the excessive amount of time required to obtain an opportunity to bid * * *. We have been and are constantly bidding on subcontract work to a variety of firms holding prime contracts. To date we have been most successful in obtaining this subcontract work."

18. "* * * we have been seeking subcontracting work and would be pleased if some of the large prime contractors would give us an opportunity to utilize our skills and capabilities."

19. "We would be very happy to bid on subcontract work, however it is very difficult to find out which prime contracts have subcontract work which would fit in with our facilities."

20. "It is very difficult to locate"—reason why the firm has not actively sought subcontracting work with Government prime contracts.

21. "We are a small corporation * * * do not have the personnel to follow through with some type of Government program. However, we are interested."

22. "* * * we are not big enough to stand the cost of soliciting through outside agents." (Difficulty contacting prime contractors outside of Michigan on possible subcontract work.)

Senator PROXMIRE. I understand that Mr. Spencer Smith and Mr. Michael Boake Carter are present.

Mr. Smith, I understand you are project director and Mr. Carter is research assistant with the Economics Department of the University of Maryland. We welcome you gentlemen.

I am sure you are familiar with the procedure we are trying to follow—15 minutes for direct presentation, if you can do so. We will put whatever you cannot get into that direct presentation into the record and ask questions.

STATEMENT OF SPENCER M. SMITH, JR., ACCOMPANIED BY MICHAEL BOAKE CARTER, ECONOMICS DEPARTMENT, UNIVERSITY OF MARYLAND

Mr. SMITH. I know your interrogation of some other witnesses, Senator, and I should say here that I am speaking only for myself. This certainly is not the position, either of the Small Business Administration, obviously, to which we have a grant, nor is it the official position of the University of Maryland.

Mr. Chairman and members of the committee, I am Dr. Spencer M. Smith, Jr., assistant professor of economics at the University of Maryland.

I am presently engaged in a study entitled "Potential Small Business Expansion in Electronic and Related Research Development Industries in the State of Maryland and the Area of Metropolitan Washington, D.C." This study is being financed by the University of Maryland, through a grant from the Small Business Administration. I am being assisted in this study by Mr. Michael Boake Carter, research assistant in the Department of Economics, University of Maryland.

We have been asked to indicate to the committee some of the preliminary findings of our efforts to date. We must caution all concerned, however, that our project is not quite one-third completed and very little statistical data is available to lend quantitative substance to much of the analysis that follows.

The recent emphasis upon research and development in our society has caused new industries to take shape and has changed the character and dimensions of the established ones. A number of factors make it apparent that this area is one in which small business might play a major and more significant role.

After having been present at a national conference on small business in the research and development field at Omaha, Nebr., last year, and analyzing the information from the interviews, questionnaires, and exchanges of information with others, our analysis of the 160 or so research and development firms in the Washington, D.C., area, is more than representative of the problems facing small businessmen generally. A common denominator in the field of research and development applying to firms in this area and elsewhere in the country is the reliance upon the Defense Department procurement dollar.

If our efforts are to be pertinent in appraising the limitations on the growth and development of small business, it is necessary to determine what factors are preventing small businesses from receiving their needed share of the defense procurement dollar. With this understanding, the results of our investigation and study to date leads us to the following tentative conclusions:

1. Small businesses have not participated in the overall economic expansion and have lost ground relatively.

2. The principal deterrents to maintaining their relative position have been:

(*a*) Inability to obtain sufficient capital for basic growth.

(*b*) Inability to obtain prime and subcontracts from the Government, primarily defense.

(*c*) Inability to obtain, maintain or develop patents.

(*d*) Inability to have an agency of sufficient power consider Government procurement procedures.

Mr. Chairman, I notice that some of the witnesses have placed their statistics into the record. It would seem to me to be somewhat redundant to read them here. I would appreciate it, however, if they would be included with my testimony in the record, if that is possible.

Senator PROXMIRE. Without objection, so ordered. We are very happy to have the statistics. We need a lot more than we have so far.

(The material referred to is as follows:)

I. SMALL BUSINESSES HAVE NOT PARTICIPATED IN THE RESEARCH EXPANSION FOSTERED ESSENTIALLY BY GOVERNMENT

The share of Government procurement dollars secured by small business continues to decline. Statistics for the fiscal year 1960 show that the downward trend in the net value of military procurement actions awarded to small business since 1955 is endangering the health and welfare of small business and the country as a whole. In a report issued by the Department of Defense entitled "100 Companies and Subsidiary Corporations Listed According to Net Value of Military Prime Contract Awards, for the Fiscal Year 1960," it is revealed that in the year 1960, 73.4 percent of the prime contract awards have gone to 100 companies. These 100 companies can be classified in the category of big business. The report also shows that only 20 companies received 49.8 percent of the net value of all military prime contracts awarded. Total procurement from all business firms totaled 21.3 billion in fiscal 1960. Of this, small business received only 3.44 billion in prime contract awards, which was 16.1 percent of the total procurement from all business firms, as compared to 16.6 percent in fiscal 1959, 17.1 percent in 1958, 19.8 percent in 1957, 19.6 percent in 1956, and 21.5 percent in 1955. Awards for experimental, developmental, test and research work to all business totaled 5.5 billion, of which 0.2 billion went to small business. This is a 3.4 percent of total research work. (EDTR)

Transactions in the category of only $10,000 or more totaled 19.7 billion in fiscal year 1960. (Contracts of less than $10,000 was 1.4 billion and only 7 percent of the total). In other words, small businesses were excluded from 77.6 percent of the total which represented 15.3 billion. Of the remaining 4.36 billion,, however, only 2.44 billion was actually awarded to small business. Only 12 percent of the total was awarded small business.

Mr. SMITH. There may be many of us who stand in awe of the probing of outer space, the miracle of nuclear energy, and the present day marvels of physical science and admittedly, we may have little to say as to their understanding and effect. Apparently, no one is similarly humbled by the diagnosis of small business problems or the urgency of their remedy. Everyone appears concerned about the plight of small business, but—paraphrasing Mark Twain's much quoted observation that everyone talks about the weather—nobody has been able to do much about it.

Perhaps part of the difficulty has been in the method of considering the problems of small business and part in insisting upon some one plan—one that will solve all known problems confronting small business.

If the aims and objectives of our economy are to be met, small business problems cannot be ignored. It should be freely admitted, however, that all small business problems are not necessarily amenable to or deserving of collective action. The identity and precise definition of small business must be looked upon as group concepts rather than descriptions of a firm typical of all firms.

Size concepts will, likewise, vary from industry to industry so that any classification must be flexible and still be meaningful. This fact is very apparent in our study. Because of the Small Business Administration's definition of a small business as having 500 or less

employees, we must exclude from our study local firms like Melpar, Atlantic Research, and Vitro, to name just a few. If a flexible definition existed, the inclusion of these firms would add greatly to the knowledge of those who wish to enter small business because here are some firms who have grown despite some overwhelming problems.

Certainly, some small business problems cannot be solved, since to do so would alter seriously the adjustment process of our entire economy. Changes in technique of manufacturing, changes in product, or a new product that better meets the need than the old, abilities or lack of them by individual businessmen, are all variations that can be loosely described as small business problems.

Society should be reluctant, however, to interfere with efficient utilization of our country's resources even if this does work some hardship on some businesses. If society tried to stop change because of problems, then the harness shop would continue and the automobile would yet be an inventor's fancy. Neither should society seek to save the inefficient at the expense of the efficient.

If all of the problems of small business fell into the above classification, there would be no need for anyone to appeal to this committee for special consideration for small business. There are other compelling problems, however, that are not in conflict with society's most efficient use of its resources and which have nothing to do with an inefficient entrepreneur. On the contrary, the primary problem of many efficient small businesses is that they are being denied the opportunities for growth which were available to many of our most successful larger concerns in their formative years.

The present desperate need of small business is one of capital to expand. Small businesses must either grow or perish. This is their turning point. In many instances, we have counted on them for the stimulus and vigor essential to our economic system. This is not to say that they are automatically a success or that positive assurance exists that they will be a success.

The argument of many, however, that these businesses would expand if they were successfully operated begs the question. The test of their success or failure is whether they can continue as a going concern after digesting certain degrees of expansion. Many large firms of today would never have reached their present size if—to exist at all—they were forced to expand under the present circumstances.

The problem of credit for small businesses has not been as materially aided as many seem to think. It is easy to calculate loans made, but difficult to determine loans refused and the implications resulting. If a firm applies at a bank, due to the rate of risk, his interest may be 6 to 7 percent or excessive in view of his opportunities. If he then applies for a loan under the Small Business Act of 1957, the SBA attempts to ascertain whether the applicant has been turned down by a bank, and upon learning he has not, finds its own directives and authorizations often preclude a loan being made.

Thus, being priced out of the market is not the equivalent of being turned down. If the small firm mentioned in the foregoing has a good product, the open-arms policy of a large corporation will be available—this aid may take the form of an out and out sale with no strings, a sale contingent on particular employment of one or more of small business employees, a loan with rather rigid detail as to the conduct of the small businessman.

There are many more problems involved in capital financing confronting small business, such as the inability to shift the incidence of taxation; inability to enter the capital market by the sale of stocks and bonds, the inability to retain sufficient earnings, et cetera. But, in the interest of time, I will not try and expand on these, since they have only general relevance and the purpose here is of greater specificity.

The inability to obtain prime and sub-contracts from the Government is illustrated by the figures mentioned earlier in this statement.

These figures tend to indicate that the Defense Department continues to award an overwhelming proportion of its procurement dollar to large corporations. Also, many of these awards are done by negotiations rather than by formal advertising. Formally advertised contracts accounted for only 14 percent of the total procurement from U.S. business firms in 1960. Sixty-seven percent were negotiated with one source. These figures are important because small business received 39 percent of all advertised awards, but only 12 percent of all negotiated awards.

Formal procedure has the Department of Defense, State Department, Department of Agriculture, the National Institutes of Health, and Health, Education, and Welfare has their intentions to contract actions, production goods, and/or research sources at monthly intervals. These contracts may be open bidding or selected bidding at the discretion of the agency. These contracts will be so described in their releases.

The difficulty with the bidding procedure is the approved list procedure. The open bid is open to the lists only and problems of obtaining a listing is one which often confronts many small businesses with an insurmountable obstacle. Obviously, in the case of Defense, security is a major problem, but even the kindest apologist for Defense procurement would not contend that the criteria is used for judgments other than security.

When taken together, a seemingly abnormal block of powerful restraints act upon small business participation. Some contracts are negotiated—small businesses are excluded. Some contracts are open for bids, but many small businesses cannot qualify for the bid list—hence they are excluded. Some contracts are of such size and magnitude small businesses are automatically excluded.

All of these factors, plus the usual reluctance of the contracting officer to place orders with other than name companies, present a formidable deterrent to small businesses in their efforts to participate in the defense program.

The above procedure applies to prime as well as to subcontracts, and on the basis of cursory observations of the figures, and from interviews we have had with small businessmen, it appears that not many small businesses received contracts through these formal channels. It does, however, appear that by far the largest majority of small business recipients of research and development contracts receive information by word of mouth or similar contacts within the industry, rather than by the formal procedures.

Actually, many contracts are awarded the day they are formally announced——

Senator PROXMIRE. Do you have any documentation or any substantiation of that? That is very interesting—the large majority of

small businesses have knowledge of this through word-of-mouth association or through some informal procedure.

Mr. SMITH. We have a questionnaire that has been out for a kind of select list to try and determine whether the questionnaire is going to be adequate, and we are mailing it out. As I indicated at the outset, much of this is by word of mouth, and much of our judgment is by certain experiences we have had.

I think that limits its effectiveness here, and I am sorry about it, but you can see a number of the great, overwhelming waves that come before this committee in support of this bill to give you some idea as to how important these small business people think it is. That is partly sarcasm, but it is quite obvious that no small businessman is going to come down here and testify in front of this committee very strongly if he has hopes of getting a subcontract which he has not realized. And no small businessman is going to come down here now as a result of the Administration position, the Small Business Administration, yesterday.

In fact, one of them mentioned to me this morning. I asked him why he did not go down and testify on this bill. It is very simple, the reason he does not come down here.

> I hope some day to have a contract, and if the Administration is going to take the position that we are going to leave all of these things to the tender mercies of the Defense Department, then, you will pardon me, I am not going to get on record for anything.

I think this may be one of the reasons why a number of people who speak to us privately, begging us at the same time not to mention their names, "but we certainly hope to see some strong testimony for the bill."

I bring these things in, and I am unable to document them, except to say they are simply personal observations, and we have no ax to grind one way or another. We are just trying to find out what the situation is. This is not going to make us very popular, and we are not going, probably, to be spearheading the majority as to this bill, but that should not make any difference to us.

Actually, many contracts are awarded the day they are formally announced, and often the subcontractor is named simultaneously. This situation has not improved the morale of many of the small businessmen.

The significance of this might be that for all practical purposes the decision to award the contract has been made at the time of formal announcement. The explanation often given for this trend away from competitive bidding is the complexities of new weapons, the exigencies of time and the reorders involved in previous commitments.

We feel, however, that far too many negotiated contracts are awarded without the benefit of competition. This is particularly true in the purchase of spare parts, in the area of electronic and other components. Then, too, basic research often involves no great plant and equipment outlay, and the automatic superiority of efficiency on the part of all big business enterprise cannot be assumed.

No credence is apparently given to the merits of competition in meeting this criteria. Many feel that delivery is stimulated, companies have incentives to provide better products, and results favor such an organization rather than the automatic assumption that big corporations can do it cheaper than small business.

No one is contending that small business is properly eligible to handle all or even the majority of contracts entered into by the Government, but the contention that small business can participate to a greater degree at many levels, appears to us, most difficult to rebut. Many small businesses can play an important role in subcontracting, even in connection with large complex contracts that must necessarily be awarded to large corporations.

The inability to obtain, maintain or develop patents is a serious problem for small business and directly associated with the other factors mentioned heretofore. Many small businesses find upon reading the "fine print" in their subcontract that all discoveries, patentable inventions and innovations are the property of the prime contractor. Some subcontractors contend that they had verbal assurances of the contrary, but this, of course, did not hold in court. Many companies have candidly stated their position in this matter.

On December 31, 1959, the Martin Co., in response to a request for information from the Defense Department wrote the Secretary of Defense stating that "when Martin Company's own funds are involved, title to invention conceived or reduced to practice by subcontractors rests in the company."

Boeing Airplane Co. has a similar policy; the same is true of Western Electric, General Dynamics and General Motors. In fact, the general counsel of General Motors informed the Defense Department on January 21, 1960:

> When the corporation finances research and development work to be performed by others in connection with its operations, it ordinarily expects to get all rights with respect to any inventions made in the course of the work.

Senator PROXMIRE. Supposing the Federal Government financed that?

Mr. SMITH. The next paragraph covers that. That is exactly what I say. It seems to me the prime contractor, Senator, takes the position it is his money, the Government is in a perfect position to take precisely that position. If it is awarded the prime contract, it could say, "You are doing this on our money. Therefore, we would retain patent rights."

If the Government retains patent rights, this has the challenging effect of making them available as it sees fit, or generally. The effect is when it retains patent rights to make them generally available, the thought being this would accelerate and provide incentive for competition.

It has been the Department of Defense policy for some time that they do not want to hold patent rights. They have, obviously, taken themselves out of it, and now it is between the prime contractor and the subcontractor. And that is hard to contest.

Senator PROXMIRE. If you push it back that far, it seems to me—I have the feeling; I could be wrong, and some Senators have spoken on the floor in disagreement—I have a feeling it would discourage research. In other words, if the Federal Government said, "You are going to do prime contract work for us and research on it and develop patentable processes and so forth, and it is public domain," you would lose a lot of incentive for taking some of these contracts. And you would not have as much research as you need at the time we desperately need research.

What you are saying is, therefore, the prime contractor should provide the same incentive to the subcontractor.

Mr. SMITH. I do, indeed, if that is going to be the effect. But I would quarrel pretty specifically with the idea they would not take it. I think some of the overhead contracts I have seen on research and percentage allowed for overhead, I think that is sufficient incentive. I do not think the retention of patents would be a determining thing here at all.

I think we have had some experiences with it in the past. I do not think it is a prime motivation of research on the part of these organizations. I think that they will naturally take this as long as they are operating anything in addition, but I think the funds themselves are sufficient to be a motivating or strong incentive.

The problems of defense of patent rights is most difficult for one with limited funds. Few can strive through the courts for a period of years to obtain ultimate justice. On the other hand, large corporations will deal with alleged patent infringements at the drop of a hat.

We know that this present bill does not provide for such a measure, but it does provide for the investigation of factors that will endanger competition by the Attorney General and the Small Business Administration. This situation is a serious deterrent to competition. It is highly relevant to indicate that the awarding of subcontracts by a large corporation is left much to the discretion of the prime contractor. If the stimulus for a greater subcontracting program is to be provided by this bill, the situation of patents must not be overlooked.

The Small Business Administration has been greatly handicapped by the law they now administer. One critic indicated that this organization was excellent in that it did not offend big business because it did little for small business, but its very existence indicated a genuine interest in small business. This is not the best of two possible worlds. The Small Business Administration must have greater latitude in awarding loans and courageous enough leadership to use such latitude.

Some protection must be afforded small business as to their patent rights. The present attitude of the Defense Department to small business patent rights is a cross between Ivan the Terrible and Marie Antoinette and little effort to remove inequities will be forthcoming here.

Last, if not least, the Small Business Administration should be permitted to take a more active part in the awarding of the Defense Department dollar. As the situation exists now, the Defense Department is almost the sole judge and jury to what contracts shall be issued and to whom.

The Small Business Administration has what is called a set-aside program, in which the SBA tries to get the Defense Department to set aside certain contracts for the exclusive use of small business. However, this set-aside program has had dwindling success to the present. The figures for 1960 for the SBA set-aside program has shown a 27 percent decrease over the same period for 1959.

The total dollar value of the set-aside initiated by the SBA in 1960 was $600 million as compared to $1.2 billion in 1959, and the dollar value of those contracts actually awarded under this program

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was only $480 million compared with $700 million in 1959. This decline over 1959 is continuing in 1961, and if the present trend continues, it will be less significant than it is now—which is difficult to believe.

The SBA Administrator should have the authority and should use such authority in the screening of military purchases for potential set-aside. If small business is going to be able to survive and continue to grow, more power must be given to the Small Business Administration to oversee the awarding of the Defense Department dollar.

In analyzing the shift of our economy from small to large corporations, we have seemed to take it for granted that the small businesses still existing shall continue to survive in the little section of the competitive world that the large corporations have left to them to fight over. This little section, however, is slowly being tightened like a noose, around the neck of small business. It is slowly dying and unless something is done, be it through legislation or other means, this small section of competition that is left will completely disappear and small business along with it.

S. 836 is a big step forward in the fight to help small business secure its fair share of the defense dollar. Section 5 of this bill will do much to strengthen competition by requiring the Attorney General to make surveys and submit yearly reports to Congress on any activity of the Government which may affect small business, for the purpose of determining any factors which may endanger competition.

A most important point in section 5 is the reference—

the Administrator of SBA may also request the Attorney General to make supplemental surveys and reports on any particular activities of the Government which may affect a small business.

Sections 6 and 7 further strengthen the SBA by encouraging a greater allocation of subcontracts to small business and allowing the SBA to have access to a more complete record of procurement actions.

Sections 8 and 9 of this act broaden the authority of the SBA as to subcontracting awards and improve the program for advertising Government contracts. It is much to be desired to have the bid lists and the criteria, therefore, revised. Also, the provisions requiring publication in the daily U.S. Department of Commerce, "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards" of all military procurement actions over $10,000 and all civilian actions over $5,000 will provide small business with a more complete list of what the Government is buying.

This provision of S. 836 will give small business a greater opportunity to compete with firms who have heretofore enjoyed a head start by virtue of the concentration of research contracts in the laboratories of large corporations.

This important segment of our economy is losing its position, and it will continue to lose its position if adjustments are not made in the Small Business Act of 1947 and the SBA itself, as proposed by S. 836. The area wherein small business can effectively compete must be widened and strengthened. This act takes a good firm step in the right direction.

There are one or two other things I would like to add, Senator, in light of some of the testimony of yesterday and today. It is that the bill would unnecessarily complicate the administrative procedure.

Senator PROXMIRE. The bill does what—unnecessarily complicates the administrative——

Mr. SMITH. The thought is that the bill would unnecessarily add to the administrative cost and unnecessarily complicate.

Senator PROXMIRE. You want to comment on that?

Mr. SMITH. I want to comment because I think the opposite would occur. In the first place, I defy anyone to greater complicate the procedure than it is today.

Secondly, it would occur to me that in many instances, they are unduly complicated. Some businesses cannot afford a bid when the specifications of the bid come out. In one instance, a medium-sized firm here in this area said it cost about $150,000 to bid on this particular product. I think I can visualize very definitely that some of these specifications may have to be very complex. We are dealing in complex properties, but other do not. And many of them are unnecessarily elaborate and have been unnecessarily elaborate for years and years.

Senator PROXMIRE. Is it your view that the SBA might, under this bill, play a role in persuading the procuring agencies to simplify their procurement policies?

Mr. SMITH. Absolutely. As anyone who has observed this over a period of time, I think it is difficult to criticize the Defense Department. This is like becoming a critic of God or motherhood, something like that. The Defense Department is involved in providing automatic weapons for our defense. And the tendency has been that if any criticism is made of it, No. 1, you do not understand; this is too complicated for the lay mind and please shut up.

The second thing is, when you do understand, you have not had the experience. Have you actually been an administrator and so forth? And, basically, the attitude of the public is to tend to go with the Defense Department. I was literally stunned when I saw the statement by the SBA Administrator on this bill. I do not know what happened.

I am just guessing, and this may not be the proper province for it. On the other hand, it may, but my guess would be that the Defense Department, with its flags flying, rushed screaming to the Budget Bureau, and the Budget Bureau said, "See here, we have got to make a decision." And the policy of the administration became, in a short time, that the SBA Administrator would say, "No, we do not want this bill." Maybe I am wrong. I cannot even prove that I am right, but I just suggest that the problem of interjecting any judgmental attitudes other than the Defense Department itself over its procedures has always been called meddling, No. 1.

And No. 2, you are interfering with the defense effort. I do not think either one of these could be justified. I think some of the laymen ought to gird their loins, so to speak, and even without full knowledge, ask them very pointed questions and keep asking them until they get some respectable answers to them.

One of the first ones is the idea that these problems are too complex, and we just cannot handle things in little businesses. Yet, big businesses are decentralizing all over the place. The solution of some of these problems of research and development they are involved in requires smaller units and can be broke into many smaller component parts.

This is one of the big fields for development of small business research and development because much of this is paperwork. You

don't have to have a steel plant or tremendous capital indicated here. And then, when a large contractor gets hold of a contract, what happens? Quite often, he develops a situation and announces he is decentralizing. What is so specific and precious about having single ownership. It is one thing to have a big plant because he needed it on a mass basis to get low cost per unit, but what does single ownership contribute, necessarily, when this single owner will turn around and distribute out on a decentralized basis?

I suggest that in many instances, the area of small business participation can greatly accelerate, and the reason that they have not gotten more of it, I can understand in some instances. If I was a member of the Defense Department and had to undertake the responsibilities for some of these things and three firms came to my attention—and I am just picking this out of the air, I have no brief, for or against—but one happens to be General Motors and another XYZ and another ABC. If I give it to General Motors, and it comes up, probably nobody is going to jump on it. Maybe no one else could do it, but if I give it to the ABC Corp. and the thing does not work out, you all say, "Why did not he give it to the large company, and you will have demonstrated the ability to do this type of thing."

This is part of the difficulty of having the responsibility and having it diluted, or having the ability to meet this responsibility, I do not think is governing at all. And I think it ought to be vitiated.

Senator PROXMIRE. You think there would be a tendency on the part of the Defense Department, without this bill, or with the kind of proposal that was made by the three agencies when they were in here to be safe and make their determination for an established, blue-chip outfit?

Mr. SMITH. Sure.

Senator PROXMIRE. Whereas, with this bill, there would at least be a countervailing pressure for them to make a showing on small business where they could.

Mr. SMITH. Let me put it this way: It would take them at least 10 years to overcome the effects of this bill, and that would be somewhat helpful. I do not think that this bill, even as good as it is in the step that it has taken, it would take some time for them to overcome the effects, but I have great confidence in this Administrator in overcoming legislative effects of almost any kind. And I think in all probability, this would happen here.

But I do say this: I am not so sanguine as to assume that the plans of the three administrative agencies are going to work. I can just see the Small Business Administration sitting between the Department of Defense and GSA and carrying the day. I would not like to look upon its chances at all.

I think unless you have some specific statutory authority that puts the onus squarely and directly and then places an administrative agency to carry that out that you are not going to have any kind of success. And I wish that the number of people who have expressed that to me would come here and express it to you because I am sure that there are significant amounts of them.

Senator PROXMIRE. We have one other factor involved here. We did not have when this bill was introduced and up until a couple of days ago. That is the President of the United States has given orders

to the Department of Defense to set a goal at least of an increase in prime contracts for small business of from 16 to 17.6 percent, or something like that. That is the way it has been interpreted this morning.

Do you think this can be done by administrative edict for effective——

Mr. SMITH. This has been more specific than we have had before, but if you recall, Mr. Truman urged the Defense Department to take into consideration small business. You recall on three different occasions, Mr. Eisenhower called upon the Defense Department to take this into consideration.

But I have seen the statistics, and they go straight down, and they have been going down in terms of these relative amounts, small business participation. Oddly enough, just the other day, it has come out that the Defense Department is going to spend an increase of $2 billion on conventional weapons.

It has also been announced that it is questionable as to how much this can be Small Business Administration activity or small businesses activity because it involves mass production. If we are talking about missiles, it is too complicated for them. Now, we are talking about conventional arms, not complicated any more. But the industry process is too big for them.

This reminds me of when I was a kid flipping nickels with the corner bully. If it came up heads, I got to keep it, but all the others went to him.

It seems to me that under the circumstances, unless you have certain specific descriptions, statutory provisions, nothing is going to take place. And I am sure that President Kennedy is just as sincere as he can be, but I do not think he can implement an administrative decision that way.

There is no way to check on it. Suppose 6 months from now, it shows there has been a further reduction? What recourse does the President have except calling in the defense people and saying, "Do this." And, certainly, you would be reluctant to do that, at least under the administrative procedure that most executives operate on.

I do not think that is the solution. I do not think it is going to be effective.

Senator PROXMIRE. They can say that national defense must come first.

Mr. SMITH. Absolutely, and this will be the argument.

Interestingly enough, I was a bureaucrat at one time, and I do know that we were concerned at that time with the price control, and we were concerned about the voluntary methods by which the banking industry was working. This was when everyone took an oath and got a little pin, you know, for a member of a commercial bank if you would make only loans in terms of defense policy, no other loans unless you could prove to yourself that it was going to increase and enhance.

I know one commercial bank that made a loan who had a most interesting rationale. They made it for high priced steel kitchenware, and it was good for defense purposes because the morale of the housewife would be immeasurably improved. That was the classification.

I think you can sell almost anything or preclude almost anything on the basis it is good for defense. And I think it is time whether

we have another Truman committee or whether it be this committee, I think it is time that the American people started looking pretty close at some of the activities. I know that the actions of General Electric took place only in an outside world. I know it is a thing that could never conceivably happen in defense, but I think, to keep that record clear, we ought to just keep looking carefully.

I think small business ought to share more in it, and I would again say that much of the activity they contended they cannot do, they can do. I also guess that in many instances, especially in research and development, they will do a better job.

I think there is an excellent book out, Senator, on a study that has been going on since 1900 on 61 basic inventions in industry. The 61 basic inventions come without such benefit of great elaborate research. I am referring now to a book published by Macmillan Co. in 1958 by Jewkes, Sawers and Stillerman, "The Sources of Invention." I think it is a pretty good analysis.

I think we have been brainwashed of the fact that all our inventions are coming out of these huge corporate laboratories. We mentioned nylon and a few others. I think a careful look at this indicates this is not quite a fact. And I think small businesses can and do an excellent job.

I am not worried about small businesses just for small businesses per se. I am thinking about the overall aspect of our economy. I am not thinking of small businesses, some little business in a musty fashion with simply walls around him, and the Government takes a commitment to support him for the rest of his life. That is not what I am thinking of.

I am thinking of the small businesses that provided the yeast for this economy in the past, the ones that have stuck their head up and challenged others. I would suggest to you that the big innovations that have occurred in the steel companies are not coming from the leaders of the steel companies. The inventions are coming from the small companies—the oxygen converter and various other things that are threatening right now to revolutionize steel.

Let me quote one of the most knowledgeable people I know, Mr. Fairless, who used to be president of United States Steel. He said, "Unfortunately, bigness in industry also runs to the head." And I think it is extremely important that it does. And they have a tendency quite often to defend their committed capital and not be very representative on inventions.

I am thinking about the things that caused Sunbean Corp. in electronics to take on Westinghouse and General Electric that everybody said could not be done. I think if we have these small businesses—and I am not interested in saying they will stay small—the same businesses, I hope they have opportunity for growth—will come up, provide new inventions and much of the vigor that our economy has had in the past.

I think one of the most and great parodoxes I have seen, I think more is probably said in behalf of the free enterprise system by the large businesses, and I think that they practice it less and create a climate less for it than any other institutions in the United States.

If the little businessman cannot come up with a patentable product that is a good article that can help, perhaps, and facilitate greatly defensability and the welfare of society, cannot get money for it,

cannot patent it, cannot get into operation himself, then, I think something has gone out of the country and something else is going to have to replace it. And I think the thing that is going to replace it is greater and more vigorous Government activity.

And nobody seems to like it, but it seems to be ever increasingly necessary. And I think that is why it is necessary.

I did not mean to get wound up.

Senator PROXMIRE. I think it was wonderful. I was glad to hear it.

A number of witnesses have said that the cost of the defense program will be increased by this bill. What is your answer to that?

Mr. SMITH. It is another thing. Cost of the program, I suppose it could conceivably be increased, but——

Senator PROXMIRE. I am talking about the overall cost of defense.

Mr. SMITH. I think that if the effects of this bill, if both provisions we mentioned in our prepared statement—one, the Attorney General watching very carefully for the competitive action; the other the Small Business Administration who determines this bill, that the total cost of doing business on a dollar for dollar basis will be less and not greater.

I am convinced that the competition and the bidding for some of this material, that the lack of it has added to the cost. I am not questioning anybody's integrity. That is not the important thing, but two people can get together. These people have a budget to go by. They deal with one person. It is handy; it is easy; it is quick. They are interested in defense or not interested in all the hanky-panky or interested in this business of procurement. They want to get it over with. They want to get on with the program.

They are willing to pay a little more to expedite in that fashion. I think the cost will come down. I do not know how anybody can judge this, really, but all I am saying is we have just as much documentation on our side to suggest the cost will be less as they do on their side to suggest it will be more because I think the effect of competition is going to do more than offset some of these other dragons that have been raised in the last day or two.

Senator PROXMIRE. I just cannot see any significant increased cost except the usual kind of argument about more bureaucracy. But I can see specific savings and more competition. Just section 9 alone it would seem to me would provide a greater opportunity for more people to bid. And if more people bid, we are going to get somebody who is going to come in at a lower price.

Mr. SMITH. I think one of the things that is important here, too, it is automatically assumed if you get two bureaucrats together, you get a proliferation of bureaucracy. I do not mind a little quarrelsome attitude. I do not mean raging warfare, but I do not mind a little quarreling of two bureaucracies. There is a tendency to watch each other rather carefully.

Anybody talking about bureaucracy or worried about increasing bureaucracy, if this is the worry regarding the Defense Department, this concern should have been manifested many years ago. I do not think it is terribly important here now, the idea of the increased bureaucracy. I do not see that as offsetting the other obvious values that are involved.

Senator PROXMIRE. You say:

Small businesses have not participated in the overall economic expansion and have lost ground relatively.

And under II–D, you say—

Inability to have an agency of sufficient power consider Government procurement procedures.

How important do you think this is because in my judgment section 8 is the most significant part of the bill.

Mr. SMITH. Well, I think it is of crucial importance. And, by the way, I think the other things in the bill are nice, but I do not think they are crucial. I think if section 8 is knocked out of the bill, you might as well forget it. This is my judgment.

Senator PROXMIRE. My name would not be on it; I will tell you that.

Mr. SMITH. Godspeed, Senator. I am glad you feel that way because there is no particular reason to have the bill if section 8 comes out of it. I think this is important. As I said before, small business in its general posture in the economy is having its troubles.

In some cases, it is not all due to the evil design of either Government or business. In some cases, it is inherent in the technological process. I grant you that what I am saying is, Here is an area, just the area of research and development, plus other areas, too, for subcontracting, for participation, for small business. If there is ever going to be an opportunity for them to get their foot back on the rung of the ladder, this is it. And if they fail to do it herein, it is going to be a usual winnowing away of their effort and impact on society.

And I do not like the maturity aspect of our economic society in the sense of each significant industry being dominated to the extent that it is. I think it is an unhealthy situation. That is why, one of the reasons, I feel so strongly about the bill. Because I think this will—I do not look at it as a panacea at all. I think it is a step in the right direction. And I think some important results will flow from it. I would certainly like to see us be inventive enough to try it.

Senator PROXMIRE. You give figures that are pretty compelling on the difference between the small business portion of advertised awards and of negotiated awards—39 percent compared to 12 percent. This seems to me a tremendously persuasive figure. But I am wondering if there are not some pretty good reasons for that discrepancy. I think maybe we ought to put them in the record.

Mr. SMITH. I would imagine so. I think we have to remember that 67 percent of these are negotiated with one source. And when you have just one source involved on contract awards, I would imagine that some of that 67 percent, for example, should very definitely be one source.

I do not think there are many things that would come up: there would be only one firm, perhaps, in the country that could handle it. I am not willing to put into the record that all the 67 percent being negotiated with one source could not have been opened up to greater bidding. I would agree that a percent very well normally could go into future bidding.

Senator PROXMIRE. Thank you very much.

Mr. CARTER. Senator Proxmire?

Senator PROXMIRE. Yes, Mr. Carter.

Mr. CARTER. I would like to inject and refer back to a statement or question that you had asked Dr. Smith about the Small Business Administration in section 8 of the bill.

In our interviews, and also I had the opportunity to attend a small business conference in Troy, N.Y., for small businesses that had been tied to the textile industry, but had been cut loose and were floundering because the textile industry had moved—from them and from the small businessmen in this area and other men I have talked to, they have made the one statement, a one-sentence statement, that I think can adequately sum up their opinion.

They said:

What has the Small Business Administration done for us?

I wanted to get this into the record because this is the feeling of many.

Senator PROXMIRE. Sounds like one of my constituents talking about me.

Mr. SMITH. Mr. Carter has done a lot of interviewing on the basis of a very elaborate questionnaire, and this is one of the things that has impressed him very much.

Senator PROXMIRE. I think that is a very useful observation because I have heard that in Wisconsin over and over and over again in regard to the SBA. There is great feeling of disillusion and disappointment.

Frankly, it doesn't have much to do with this kind of thing—procurement—but it has everything to do with loans.

Mr. CARTER. For instance, on loans, Senator, in this conference in New York, a man from the Small Business Administration came up to address this conference on loans. He gave them a four-page statement and immediately after his statement, he said, "I have to fly back to Washington; I have important business. Therefore, we will cut the questioning short, and I have to leave."

And after he left, all the small businessmen who had problems with the loans, getting loans, said, "This is typical of the Small Business Administration." And they felt that the Small Business Administration needs more power and more administrative ability to award loans and to be able to have more latitude in loans.

Senator PROXMIRE. I just wanted to say at this point that I called this to the attention of the Small Business Administrator, Mr. Horne, and indicated that we urgently hoped he would correct that. While there are all kinds of restrictions on SBA and it is about as tough a job as you can find. They have to take loans, after all, that the people cannot get from banks. At the same time, they have to be safe because, otherwise, they would get the dickens from the Congress. And it is very, very difficult to meet this combination.

Nevertheless, at least, they can be courteous and attentive and as helpful as they can be.

Mr. SMITH. I should say in behalf of them that all the operative people I know of in SBA are trying extremely hard and are very competent folks. I think the difficulty is the tremendous restrictions of that law. I do not think anyone really fully appreciates it until they get into trying to administer that law.

It started out as a good law. It has been amended pretty significantly, and I think, also, there was an attitude, whether it will con-

tinue now or not, that there were certain things and certain areas that SBA just could not get into. And they did not.

So when you impose these restrictions on that group of people you cannot expect very exciting results.

Senator PROXMIRE. I thought this was very, very compelling testimony. I thought you were devastating. I think it would be hard for anybody to argue with what you said. Your statement to begin with, explaining why you thought small business would not come down and testify was interesting and useful.

The fact is, we have small business representatives here for the bill. The New England Small Business Association represents many, many people and appeared to support the bill, as did others. We had a fairly good balance.

I think that by and large, we have had testimony which represents more small businessmen on the side of the bill than against, although there is vehemence and vigor and eloquence on the side of the people opposing it.

Mr. SMITH. I appreciate that, and I can understand why. I suppose if you have been successful under one circumstance, you have a tendency to feel that anyone who has not, it is his fault as well as anything.

Senator PROXMIRE. When I was in the Wisconsin Legislature, I found the strongest desire of those who came to us was to "fence me in; just let us have this all to ourselves." This is the attitude of chiropractors and others. They do not want competition, or as they might put it, "others butting into their business." They want it for themselves.

I am not charging it is the prime motive of the people appearing this morning, but it is certainly an understandable motive.

Mr. SMITH. It is one that has continued. I do feel, however, that some of the people who are testifying and some of the organizations, I would like to go back and try and find out what their attitudes have been about other measures such as—if I seem to recall, the chamber of commerce's testimony—when the Small Business Administration bill was up—didn't feel that it was very effective. I do not say that the chamber of commerce is precisely in league with the National Association of Manufacturers because I would not wish to place that brand on anyone, but I do feel that the chamber, in many instances, has taken a pretty strong line, which has not been, in my judgment, financially as——

Senator PROXMIRE. As you may know, Senator Bennett, a distinguished member of this committee, was formerly the national head of the National Association of Manufacturers.

Mr. SMITH. I know. I am aware of that.

Senator PROXMIRE. I want to thank you very much, Mr. Smith. This has been a pleasure. The hour is late, and I think this was a fitting climax to our testimony.

Mr. SMITH. Thank you very much.

Senator PROXMIRE. Thank you.

We have received a number of communications. They will all go in the record, together with any others that may be received prior to the printing of the record.

(The communications referred to follow:)

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Burlingame, Calif., March 14, 1961.

Subject: S. 836.

Hon. WILLIAM PROXMIRE,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR: As your Subcommittee of Banking and Currency is instituting hearings on the above bill I believe it may be of interest to you and Members of the Committee to get the views of the National Federation of Independent Business as to our position on this legislation.

It is interesting to note that due to a conference with one of your staff early in August 1960, when a similar bill was up for consideration, in view of the fact that we had no polled on the bill in question (and as all official action for or against legislative proposals is determined by a nationwide poll of our complete membership) we advised you under date of August 9 the Federation's position at that time:

"As you undoubtedly know, we cannot commit the Federation officially on any legislation prior to taking a nationwide mandate poll of our membership. However, there are several points we can make:

"First, by repeated vote of our membership we are committed officially to approval generally of the Small Business Administration program. As you may know, in line with these votes, we went to bat for creation of SBA in 1953, for various expansions and improvements in same, and finally for establishment of the agency on a permanent basis, which was accomplished by the Congress in 1958. On this basis, and conscious of the fact that the agency is charged with meeting the reasonable financing needs of smaller firms which private institutions cannot or will not meet, we can say generally that we do look favorably on any effort to supply the agency with funds it needs for the proper fulfillment of its financing activities.

"Second, by repeated vote of our membership we are committed officially to approval generally of all efforts to secure for independent, smaller firms a fairer chance to go out after Government defense business. We do believe that Nation's smaller business institutions have shown time and again their ability to service the Defense Establishment on an economical basis, in fact have saved Government's money repeatedly, and we do know that should any all-out emergency ever arise our defense posture would be stronger for the presence of thousands of smaller suppliers than it would be without them.

"Further than this, since in line with the foregoing, we have supported the Small Business Administration in its work to provide fairer opportunities for independent businesses in defense contracting, we can say generally that we would approve all reasonable efforts to strengthen the SBA's ability to do this job. In this connection we might note that we are aware, as likely you are, that at least some of the SBA regional offices have been hard at work for several years attempting to induce prime contractors to give independent subcontractors a fair chance to bid in on the subcontract phase of their defense production requirements, in some cases with a fine record of success. We understand there is a general feeling that the recommendations in this bill would strengthen the hand of the agency in this work, so long as no effort is made toward requiring SBA to use compulsion in forcing any prime contractor to do business with any particular subcontractor.

"As to that section of the bill dealing with the requirement that the Attorney General survey, or require the Federal Trade Commission to survey, activities of Government to determine if any of same are injurious to small, independent business opportunities, on the basis of repeated mandate votes which commit us to the strongest possible stand for antitrust enforcement and against monopolies, again, generally we might say that we favor this provision. We might add, however, that to the extent that this places additional burdens on either of the agencies, that the Congress should make sure that it does not compel them to divert funds from regular antitrust activities which need all the financial support that can be mustered for them."

Then again, when we were notified the above bill (S. 836) was going to be considered by your committee, our head office advised us under date of March 10:

"While we haven't polled on the bill, and therefore cannot commit the federation on it, we must note that earlier federation polls have shown membership in favor of all moves to help SBA meet credit needs. Thus if this bill would

advance additional needed funds, it would seem generally in line with federation votes.

"Also, earlier mandate polls show membership in favor of all reasonable moves to expand independent business fair opportunities to participate in Government procurements. Subcontracts are definitely a part of the procurement picture. Certainly it would seem only right that SBA, if it is to be charged with the obligation of insuring small firms a fair share of subcontracts, be granted the means of getting the information it needs by setting up programs and calling on prime contracts for same. Again, this would seem generally in line with federation votes.

"As I have already advised, some SBA regional offices already are active in working with prime contractors for distribution of contracts to small business suppliers. I sent further information on to you as result of my December visits. I can report some of these people feel this type of approach, suggested in the bill, will greatly strengthen their hands."

It is a matter of public record, and SBA has full information that from the creation of the act the National Federation of Independent Business has kept in closest contact with the administration, both at the Washington and local levels to make certain that their overall action was carrying out the will of Congress.

Senator Proxmire, you are privileged to make this letter a part of the record of the hearing now being held and from the above it is definite that the basic principles outlined in the legislation receives the support of the National Federation of Independent Business.

Sincerely,

GEORGE J. BURGER,
Vice President.

MACHINERY AND ALLIED PRODUCTS INSTITUTE,
Washington, D.C., March 16, 1961.

Hon. WILLIAM PROXMIRE,
Chairman, Small Business Subcommittee, Senate Banking and Currency Committee, U.S. Senate, Washington, D.C.

MY DEAR SENATOR PROXMIRE: We appreciate the opportunity of presenting the views of the Machinery and Allied Products Institute and its affiliate organization, the Council for Technological Advancement, on S. 836, a bill to amend the Small Business Act.

As you may know, the Machinery and Allied Products Institute is a national organization of capital goods and allied product manufacturers and includes within its membership a considerable number of companies which qualify as small business. Historically, this segment of American industry has been characterized by smaller and medium sized firms. Thus we approach the consideration of those objectives set forth in S. 836 from a completely sympathetic point of view and with some direct experience with the problems of small business.

Inasmuch as our comments which follow relate wholly to those portions of S. 836 which would expand and intensify the small business Government contracting and subcontracting program, it becomes relevant also to indicate the extent and character of capital goods manufacturing companies' interest in Government contracting. Although it is necessarily an estimate, it seems likely that not more than 8 to 10 percent of the total of American capital goods production finds its way into defense work. Thus, the members of the institute are primarily producers of commercial goods, although many of them have considerable experience in Government contracting, and it is from this point of view that our comments with reference to S. 836 are made.

WHITE HOUSE ACTION

As you know, President Kennedy announced yesterday the issuance of an internal Department of Defense directive requiring the placement of a greater share of military prime contracts with small business. An increase of 10 percent in such placement is set as a goal by the directive in question. Obviously, such a move will have a most substantial impact on small business' overall share of Government business.

This action within the executive branch—quite aside from other reasons—would seem to make the proposal now before the subcommittee inadvisable if not, indeed, completely unnecessary.

Nevertheless, we think it appropriate to set forth herein in some detail our views respecting S. 836. We do this, first, to be completely responsive to the purposes of the hearing; second, to suggest the need for a searching examination of the causes of the small business contracting problem; and, third, to examine this problem in relation to certain overriding considerations of public policy from which it cannot properly be detached.

WHAT IS THE NATURE OF THE PROBLEM?

The problem to which the main provisions of S. 836 are addressed is a hardy perennial. In the Small Business Act Congress has declared its intention that small business enterprises shall receive a fair share of Government contract work. What is a fair share of such business? And, if small business is not, in fact, receiving its due proportion of Government procurement, why should this be so? What are the handicaps to attainment of this ideal? What are the problems of small business in this area?

Past legislative remedies proposed for solution of the problem seem to proceed on the assumption that corrective action must be accomplished largely, if not wholly, through modifications of present Government procurement policy and practice. The present provisions of S. 836 adopt this same approach.

Without arguing the validity or invalidity of this assumption it does not seem amiss to undertake a further diagnosis of the ailment before considering any prescription for its cure. We believe there are any number of reasons contributing to the situation, which are in no way directly related to the immediate question of contracting or subcontracting with small business enterprise.

Many of the problems of small business in this area are Government creations. The repeated extension of statutory renegotiation provides a built-in disincentive to subcontracting by prime and major subcontractors. The costly and time-consuming administrative burden of Government work—and this burden is continually increasing—automatically places small business at a considerable disadvantage in competing with larger firms possessed of greater staffs and broader experience in dealing with this burden. Military procurement itself, insofar as it may have reduced the area of genuine competition, either on a negotiated or advertised basis, has contributed in some measure to the problem; the Pentagon, it should be noted, has made and continues to make alterations in procurement practice designed to meet this problem and to enlarge competition.

We suggest that broader considerations such as the total resources of individual contractors, the ready availability of working capital—and particularly the availability of funds for continuing research and development work—the general business climate, the inability to obtain promptly contract information, the corporate tax structure—including particularly the inadequacy of depreciation allowances—may in the aggregate represent the greatest of all handicaps to fulfillment of congressional intent in this area. All of these considerations bear on the ability of small business to compete both in the Government contract area and in general business.

Moreover, in defining the problem solely in statistical terms—in percentages of military prime contracts placed with small business—as Senator Proxmire has done in offering S. 836 for consideration, we tend to assume a generality of experience on the part of small business that does not, in our opinion, square with the facts. In our contacts with small business firms we find that many do quite well in Government contract work. Others do less well and still others prefer not to take Government business. This variety of experience, purpose, and results applies equally to larger firms. The point is that we have not a single problem but a congeries of problems which are as various as the nature, the abilities, and the intentions of our myriad small businessmen.

We have no pat explanation of these differences but it seems evident that some firms are more successful than others because of greater creativity of design and engineering, more imaginative marketing practices, better relationships with prime contractors based on demonstrated abilities, in short, because of better management. The normal forces of competition apply quite as strongly—perhaps more strongly—within small business as elsewhere and the results of such competition are identical. Some small business firms prosper, some stand still, some fail.

We call attention to this aspect of the problem merely to suggest that one result of Government intervention through means proposed by S. 836 may be to disrupt or distort the interplay of normal competitive forces within the small business sector. We do not believe this is the intention of the Congress.

WHAT HAS BEEN DONE TO SOLVE THE PROBLEM?

Much action has already been taken by Congress to assist in the solution of small business problems in the Government procurement area and elsewhere. The permanent establishment of the Small Business Administration and the numerous programs which it administers have been, and are, most helpful to small business in such vital matters as sources of financing, instruction in managerial techniques, and in Government procurement. In this latter field we think SBA has done a commendable job.

We have been impressed with the caliber of pertinent SBA publications on procurement opportunities, the administration's subcontracting program operated jointly with the Department of Defense and the continuing aid provided to small business contractors through its network of regional offices. It has been our pleasure and privilege to confer with SBA officials in the past on procurement problems—including some of those here involved. And in the course of such consultation we have been impressed even more by the genuine concern of the SBA staff with small business problems, the knowledgeability of the staff and the spirit with which it approaches this most important Government program.

DOES S. 836 SOLVE THE PROBLEM?

We acknowledge that there is a problem in assuring a fair share of Government procurement for small business, although we cannot be sure of its character or dimensions. In fact, for all of the reasons already suggested we doubt if there is enough concrete information on these questions to proceed with legislation at this time. And, at a later point, we shall make a specific suggestion as to how this lack of information might be overcome.

Nevertheless, we understand the congressional attitude which seeks to place with SBA a new responsibility and a new mechanism for carrying out one of the broad purposes of the Small Business Act. Unfortunately, we do not believe that adoption of S. 836, the bill now before the subcommittee, would solve the problems to which it is addressed and, what is worse, its passage would probably bring in its train a whole series of new problems. Our views on the Government procurement aspects of the proposal appear below.

What would S. 836 require?—If S. 836 were adopted it would require the promulgation by the Administrator of SBA, after consultation with the Department of Defense, the General Services Administration, and the Atomic Energy Commission, of a new small business subcontracting program which, in Senator Proxmire's words, will "put life and effectiveness into a small business subcontracting program for all the procurement agencies of the Government." The main features of this new program include provisions:

1. To enable small business concerns to be considered fairly as subcontractors and suppliers under Government procurement contracts;

2. To insure that prime and subcontractors "shall consult" with the Small Business Administration when requested so to do by that Administration; and

3. To enable the Small Business Administration to obtain from any Government agency such information and records concerning subcontracting by its prime contractors and subcontractors as the Administration may deem necessary.

This seemingly broad but ill-defined grant of new authority is limited in some measure by a proviso which stipulates that the small business subcontracting program created in accordance with the terms of the bill shall not prescribe the extent to which any contractor shall enter into subcontracts or specify the business concerns to which subcontracts shall be let.

In addition to the general provisions of the small business subcontracting program identified above, the bill would require that every prime contract for goods and services in excess of $1 million and every subcontract of this character in excess of $500,000 shall contain a provision requiring the contractor or subcontractor to conform to this small business contracting program.

Finally—in the procurement area—the bill would require publication in the daily U.S. Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards," with certain exceptions, of all military procurement actions over $10,000 and all civilian procurement actions of $5,000 or more.

This is a brief but, we think, reasonably accurate summation of those provisions of the bill now before the subcommittee which directly affect Government procurement. Now let us consider the efficacy of the remedy recommended.

The real nature of S. 836.—Although we may be mistaken, it seems to us that the clear intent of S. 836 is to place in the hands of the Administrator of the Small Business Administration an enforcement device by which he may compel the award of a "fair share" of Government procurement to small business enterprises. Such a broad grant of authority must be considered in the light of its effects on those programs to which such a power of compulsion would apply.

Defense procurement is intended to secure the defense of the United States. Thus, national security is the overriding objective which impels us to spend vast sums for military weapons and supplies. The Small Business Act, insofar as it affects Government procurement, emphasizes a different objective although the two parallel objectives have not hitherto been seriously in opposition one to the other. Nevertheless, there is involved a certain measure of competition in the fulfillment of these two general goals.

So long as the small business subcontracting program has depended upon the cooperative efforts of the military procurement agencies and the Small Business Administration, it has not seriously impeded our national defense program. However, to introduce into this relationship the element of compulsion—as S. 836 would do—will almost certainly tend to obstruct in some measure the advancement of our national security program. In short, it becomes necessary, we think, to balance our national survival—which the defense procurement program is designed to insure—with the attainment of otherwise desirable objectives such as the small business subcontracting program. Put in these terms, we think there can be no doubt that the imperatives of national security must take precedence.

Inevitably, it seems to us, the effect of adopting S. 836 would be to reduce the authority and thus diminish the responsibility of both the Department of Defense and its military contractors and subcontractors. Moreover, it would, in our judgment, tend to replace the present cooperative effort within the Government with a situation that will lead, with the best of will on both sides, to endless controversy between governmental departments. Finally, it will add an immense and costly superstructure of administration to a procurement apparatus already overburdened with such nonproductive effort.[1] Let us examine briefly how S. 836 might work in practice.

The responsibility of the Department of Defense.—It is a truism that responsibility for the fulfillment of any mission must carry with it coordinate authority. It is conceded that any new authority to be vested in the Administrator of SBA by S. 836—and thus necessarily removed from the Department of Defense—is not precisely defined and its limits would be fully ascertained only in the process of practical administration. However, the Administrator would be empowered to require consultation with the SBA by prime contractors and subcontractors and to obtain from any Government procuring agency such information and records concerning the process of subcontracting as the Administrator may deem necessary to carry out his program.

Thus, conceivably, the program envisioned by S. 836 could have no real effect in enlarging the share of Government business placed with small business enterprises but it would of necessity interpose the Small Business Administration between the Department of Defense and its principal contractors and subcontractors and by its authority to examine pertinent procurement records and information it would impose still another layer of second-guessing over the procurement function.

We may assume it is not intended by the bill that the Small Business Administration shall simply examine governmental procurement records with no action in view. Obviously, it is intended that such examination is to provide a basis for the SBA to insist that a fair share of defense work—although no one has defined what that amount is—be placed with small business. The result is to place the Department of Defense in an administratively impossible position. If it carries out its procurement program in accordance with its own best judgment, inevitably in some cases it will be in conflict with the small business subcontracting program envisioned by S. 836. To the extent that it submits to the importunities of the Small Business Administration it will have

[1] This administrative burden is composed of voluminous recordkeeping extensive and complicated preparation of reports, audits, and reaudits, the performance of onerous contract provisions bearing no relation to end products, etc.

abdicated its own responsibilities and we shall have given a major Government program—probably the major Government program—two masters.

The position of the Small Business Administration.—We think, moreover, that the results of enacting S. 836 would be equally unfortunate for the Small Business Administration.

If, in undertaking the promulgation and carrying out of the subcontracting program envisioned by S. 836, the SBA undertakes actively to cooperate with the Department of Defense and to yield the resolution of disputed issues to DOD—and this we understand to be the SBA position from its statements in these hearings—the purpose of the act will have been almost totally nullified. If, on the other hand, it seeks vigorously to enforce to its uttermost limits the vague but substantial grant of authority contained in S. 836, then SBA will be put in the position of substituting its judgment on technical procurement matters for that of the Department of Defense.

In either case, the Small Business Administration would find itself in an absurd administrative position. Moreover, in the very nature of the case, there would seem to be no middle ground, because no man—or program—can serve two masters.

Position of prime and subcontractors.—Although the Department of Defense now maintains, in accordance with established procurement regulations, a close surveillance of major subcontracting programs, S. 836 envisions the establishment of a new system of review of such programs by the Small Business Administration. To be sure, the bill bars any grant of authority for the Administrator to specify the precise amount to be subcontracted with small business or the firms with whom such business is to be let: nevertheless, if it is not intended by the bill to arm the Administrator with sufficient power to enlarge the area or shape the character of subcontracting with small business, then the passage of the act would seem to be a largely fruitless exercise.

If, as we believe to be the case, the SBA would have real—although ill-defined—powers to compel action of a character which it deemed appropriate in the letting of subcontracts to small business enterprises by major defense contractors and subcontractors, what would the result be for such firms? To answer the question requires an examination of industrial practice. Most major contractors—and major business firms wholly engaged in commercial work—have developed a network of trustworthy suppliers, both large and small, to whom they turn regularly for components, subassemblies, special machining and similar services, etc.[2] Necessarily, this "going concern," this network of business enterprises which within itself produces the product ultimately desired would be gravely disturbed if not indeed shattered by a vigorous pursuit of the policy expressed and implied in S. 836.

We assume that the power to require "consultation" with the SBA by prime and subcontractors necessarily implies the power to require direct reporting on small business subcontracting and related activities. Under the present Department of Defense small business subcontracting program the principal contractors and subcontractors have long since established small business offices whose purpose it is to encourage procurement from small business, where suitable, and to report the result of such activity to the Department of Defense. Presumably, that line of reporting would continue since the line of authority is a primary one from the Department of Defense to the prime contractor and through him to principal subcontractors. Now S. 836 proposes to impose upon the contractor and subcontractor a new line of authority which would involve the contractor's consultation with SBA officials as to the manner in which he proposes to subcontract any portion of Government work originally let to him.

As in the case of the Department of Defense, the result is necessarily a dilution of the prime contractor's or subcontractor's authority by taking from him some of the responsibility which he has assumed by acceptance of a contract or subcontract. It may be argued that S. 836 contains no real authority by which SBA can direct in part or in whole a company's subcontracting program. We repeat that, if the bill does not intend to provide sufficient authority for the Small Business Administration to direct and to mold a company's subcontracting program, then the act itself would be a wholly useless thing and we cannot believe that such a result is intended.

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[2] This does not imply any rigidity of position on the part of industry in restricting new entry into such a chain of suppliers. On the contrary, our experience would indicate that competition in this area is strongly encouraged. Nevertheless, complex end products cannot be built without at least a nucleus of experienced, creative, and reliable suppliers.

We assume further that the SBA, armed with authority contained in S. 836, would undertake—by persuasion, by importunity, and by covert compulsion—to alter the subcontracting plans of major prime and subcontractors. This possibility presents a very practical question. If the Government is to insist that some portion of major prime or subcontracts are to be let to small business without regard to the desires of the principal, how then can it insist upon reliability of performance of the end product?

If we are correct in our assumption as to the effects of S. 836 on prime and principal subcontractors, we foresee delays in contract performance, a reduction in the quality of end products, a disruption of long-existing commercial relationships, and the imposition upon prime and subcontractors affected of an immense new burden of administrative cost, all of which ultimately will be passed on to the Government.

OUR SUGGESTIONS

We believe we have at least some appreciation of the problems which S. 836 seeks to solve and of the congressional attitude which has led to its introduction. For the reasons set out above we doubt seriously if it would be either a proper or an efficient solution. Recognizing, however, that the privilege of offering our comments imposes an obligation of constructive criticism, we take the liberty of respectfully offering one specific recommendation and certain suggestions for the subcommittee's consideration.

As we have already indicated, we question if there is available sufficient information on the problem now before the subcommittee and, in the absence of a thorough study, we urge that neither S. 836 nor any similar legislation be enacted. To remedy this lack of information, we recommend that Congress direct a cooperative study, by those agencies identified in S. 836, of the nature, extent, and causes of this problem. Such a study would provide a substantial body of facts bearing directly on the questions now under consideration and thus provide a basis for appropriate administrative action and, if necessary, legislative enactment.

Any such inquiry might, for example, consider the effect upon small businesses' share of Government procurement of the changing "mix" and the increasing complexity of military equipment; the effect of changes in numbers, armament, and disposition of military forces; the results on contracting or subcontracting with small business of the continuing pressures from Congress and the executive branch to reduce the cost of our defense program; and, of course, the effects of procurement techniques now being employed. These are suggestions of a most tentative character but they indicate, we think, fruitful avenues of inquiry into the real causes of the problem which the subcommittee is now considering.

The advent of a new administration and its natural desire to reexamine past policies makes this, we think, a singularly propitious moment to undertake such a review. No doubt the total programs of all agencies affected are now undergoing top-to-bottom review; in these circumstances it would seem appropriate to include in any congressional mandate for the kind of study here contemplated a direction for continuing liaison and consultation at the highest levels.

Beyond this, we think there are certain general principles to which any administrative programs or legislative enactments affecting Government procurement must adhere. They include the following:

1. National security is and must remain the foremost consideration of our defense procurement program.

2. In order best to secure the national defense and to protect the national interest, Government procurement must be directed toward purchase of the best product on the most favorable terms from a responsible source.

3. The full and undiluted responsibility for procurement must remain with the appropriate executive department or agency.

4. Measures designed to achieve objectives not directly contributing to national security should be undertaken within the existing framework of administrative authority and responsibility.

5. Having relied upon the experience, reputation, and judgment of a private contractor or subcontractor in placing Government business with him, we should not thereafter provide him with an excuse for failure to perform by undertaking to make for him some of the basic decisions necessary to such performance.

6. Rather than attempting to impose upon the procurement system new burdens of a wholly negative character, we believe that Congress should instead

consider the desirability of examining the incentives by which the efficient are challenged and the penalties by which the inefficient ought to be punished with a view to sharpening both—and without regard to the size of the business involved.

In conclusion we should like to reaffirm our endorsement of a positive program for the assistance of small business generally and particularly with reference to insuring that small business enterprise receive its fair share of Government procurement. Toward this end we urge the continued vigorous prosecution of small business programs now in force and the development of such new programs as may be indicated by the kind of thoroughgoing study of Government procurement suggested above. We do not think that the program contemplated by S. 836 would be desirable in the national interest or even advantageous to small business in the long run.

This concludes our comments on S. 836. We should like to express once again our appreciation for this opportuity to present the institute's views on this proposal. If in the course of considering the bill, the institute can be of any assistance to the subcommittee or its staff, we hope that you will not hesitate to call upon us.

Respectfully submitted.

CHARLES I. DERR, *Vice President.*

ELECTROLIZING SALES, INC.,
Los Angeles, Calif., March 22, 1961.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Small Business,
Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR SENATOR PROXMIRE: In view of our inability to appear at your hearings on S. 836, we will appreciate your kindness in placing this letter in record of those hearings. This is in response to your letter of March 14, 1961, in reply to our telegram of March 13, 1961.

We are opposed to section 8 of S. 836. Our experience is that SBA, however well intentioned, is ill equipped to advise, consult, or pass on military subcontract procurement problems.

We are a quite small company, having only 30 employees. All of our business is competitively obtained. Hundreds of companies compete against us. We welcome this competition. We have survived it so far and are confident that we can continue to survive it—so long as the extra quality of our electrolizing process is weighed as a procurement factor.

In many applications, the quality required is met by our competitors. In numerous critical applications, however, our process of electrolizing is the only one that will yield the essential military result. We believe the engineering-buying team of a major contractor organization is the only one competent to judge this quality requirement.

If the SBA tries to set up a program for subcontract procurement, it will inevitably try to second guess buyers—or at least call upon them to engage in constant defensive justifications for their judgment.

This will not hurt our sales. We will still sell as much as we sell today. We are in no way fearful of losing business.

What we fear is the wasted time, the interference, the redtape which can't help but go with an attempt to serve two masters. We fear a buildup of bureaucracy that won't add a dime to the total of what small business sells.

The fact, Senator Proxmire, is that small business is already getting 100 percent of the class of work done by my kind of company—with the sole exception of what is done on Government-furnished (rent-free) facilities which some prime contractors have obtained in years past.

In summary, we believe your objectives are praiseworthy, but your proposed method is unworkable and would not be offered if you really had the facts about the intensely competitive situation already existing. We would be happy to receive staff people from your committee to show them firsthand. We doubt they will ever get a true picture if they don't get out and really get to know the small businesses they want to help.

Sincerely yours,

DAVID B. GRANT, *Vice President.*

NORTH PACIFIC BANK NOTE CO.,
Seattle, Wash., March 14, 1961.

Re S. 836.

Senator A. WILLIS ROBERTSON,
Chairman, Washington, D.C.

DEAR SENATOR ROBERTSON: I understand that the Senate Banking and Currency Committee is considering S. 836 which if passed would instruct the Small Business Administration to promulgate a small business subcontracting program. Because we are a small business and because we do some subcontracting with the Boeing Airplane Co., we are concerned with how this would affect our future. The fact that under this bill the SBA would require prime and subcontractors to reveal whatever records and information the SBA felt necessary, would certainly work a hardship on any small business. We are already overburdened with Government tax forms, State forms, redtape, and Government security problems.

The requirement in the bill that would require prime and sub-contractors to consult with the SBA in selecting suppliers to the extent that the SBA felt necessary is certainly an intrusion into private business by Government. Where today work is assigned or negotiated on a basis of price, quality, and service, under this new bill the SBA could require work to be assigned to various concerns for reasons other than the three I mentioned.

Under this proposed bill the SBA could establish provisions and requirements that they deem necessary to insure that small business subcontracting was handled in a manner that the SBA felt was appropriate. It appears to us that this would in effect be giving the Government agency a blank check and complete control over those of us who from time to time do subcontracting on defense work.

We feel that this proposed bill would certainly hinder our relations with the defense contractor like the Boeing Airplane Co. It would appear to us that such regulations could further complicate and perhaps hamstring their efforts to give the Government expeditious delivery of those items on order. Small business appreciates the sentiments of those in Congress who want to help small business. But in my opinion this particular bill would hinder and hurt small business much more than it would help it. I urge you to oppose this bill.

Sincerely,

FRANK A. PRITCHARD, Jr.
Executive Vice President and General Manager.

P.S.—Although you do not represent my State, I am writing to you as neither of the Washington State Senators are on the Senate Banking and Currency Committee.

KANARR CORP.,
Kingston, Pa., March 13, 1961.

Re Senator Proxmire's Bill No. S–836.

SENATE COMMITTEE ON BANKING AND CURRENCY,
Senate Office Building,
Washington, D.C.

GENTLEMEN: Our company produces machined parts for most of the prime contractors making fighters, bombers, cargo planes, and missiles for our Defense Department. We employ under 500 persons and therefore are classed as small business.

The parts that we make are the larger and more complex structural components that go to make up an airplane. They must be made strictly to the customer's blueprints and specifications. They must pass rigid inspection by qualified inspectors for compliance with all drawing dimensions, as well as magnaflux and nygle inspection tests for cracks or flaws, and hardness testing such as Rockwell and Brinell for heat treat temper.

Our customers, the prime contractors, have selected us as vendors for this type of complex machining, assembly and finishing service after careful survey by their quality control and process engineering staffs. After passing these examinations, a prospective vendor is allowed to bid on available work, usually on a fixed-price basis. The bid goes to the prime contractor's bid room and the work is let to the lowest bidder.

It is our belief that selection of the subcontractor in this manner already provides a fair system under which the work available for subcontract automati-

cally finds a level for distribution into the proper size shop or company that is best suited to handle it properly and economically. This is because the easier work commands a lower rate or price and does go into the smaller shops because of their low overhead, shops usually located near the prime letting the work. The more difficult work, under this system developed by time and experience, usually finds its level in larger plants more fully staffed and equipped. Small business, such as ours, has been able to grow as we have proved under this natural system.

We do believe that the Small Business Administration should be assisted by legislation that would aid it to help small businesses to overcome roadblocks now set up in their way by the various Government buying agencies themselves. One of the roadblocks is the placement in the Government agencies' request to quote a ridiculously short time for delivery of first pieces, thus making it virtually impossible for anyone but the current producer to qualify. The Small Business Administration should also have more power to cause items procured by the various Government agencies to be broken out in smaller lots so that smaller businesses can qualify.

This agency is doing an excellent job in aiding small business. It still has some way to go in legislated authority to deal with Government buying groups in order to be completely successful.

Very truly yours,

GEORGE W. KANARR, *President.*

BOEING AIRPLANE CO.,
HEADQUARTERS OFFICES,
Seattle, Wash., March 24, 1961.

Subject: Hearings on S. 836 before the Subcommittee on Small Business of the Senate Banking and Currency Committee.

Hon. WILLIAM PROXMIRE,
U.S. Senate, Washington, D.C.

SIR: It is requested that the following statement be entered into the record of the hearings on Senate bill 836, which I understood will be open until April 1, 1961.

The statement is as follows:

In the written testimony of Dr. Spencer M. Smith, Jr., assistant professor of economics, University of Maryland, presented before the subcommittee on March 17, 1961, is contained an allegation to the effect that the Boeing Airplane Co. and other major companies have a policy of patent procurement similar to that of the Government; namely, that when it is company funds being expended that the company takes title to any patents resulting from the procurement. This allegation, insofar as it affects the Boeing Airplane Co., is incorrect.

I would suspect that his information was secured from the transcript of my testimony before the Senate Subcommittee on Government Procurement of the Select Committee on Small Business, dated April 24, 1959. In that transcript is found the following statement made in answer to a question:

"That is right. We have gone out and gotten other people to develop something and then claimed a royalty on that, or claimed a patent on that, which is, I think, what you were trying to illustrate there a minute ago."

This statement is incorrect. It should have read:

"That is right. We have not gone out and gotten other people to develop something and then claimed a royalty on that, or claimed a patent on that, which is, I think, what you were trying to illustrate there a minute ago."

I have informed Mr. McInarnay, counsel for the Senate Subcommittee on Government Procurement of the Select Committee on Small Business, that this statement is in error and asked that the record be changed accordingly. I was informed that this would not be possible as the hearing record has been closed and printed. However, for the purpose of the present testimony, I request that that record state correctly the policy of the Boeing Airplane Co. on this matter.

Very truly yours,

F. L. DOBBINS, *Director of Materiel.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., April 3, 1961.

Senator WILLIAM PROXMIRE,
Chairman of Small Business Subcommittee of Senate Banking and Currency Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR PROXMIRE: I understand that although the hearings on S. 836 have been concluded that the record has been left open for the filing of additional statements. I enclose herewith an original statement of the legislative committee of the Woodward Governor Co. in Rockford, Ill., which has been sent to me with a request that I transmit it to you with the hope that it be included in the record of these hearings.

I might add that I am personally acquainted with all of the gentlemen who comprise this committee. They are thoughtful, well informed citizens who have given this matter close scrutiny. I would, therefore, wish to add my recommendation to those voiced by the signers of this letter that S. 836 be amended to eliminate the objectionable features presently contained therein before it is reported for action and passage.

With all good wishes.

Very truly yours,

JOHN B. ANDERSON,
Member of Congress.

WOODWARD GOVERNOR CO.,
Rockford, Ill., March 30, 1961.

Senator WILLIAM PROXMIRE,
Chairman of Small Business Subcommittee of Senate Banking and Currency Committee, Senate Office Building, Washington, D.C.:

The Legislative Committee of Woodward Governor Co., Rockford, Ill., respectfully submits the following comment on S. 836:

1. Purpose of the bill is commendable.

2. The bill as drafted contains many ambiguities and generalities. For example, section 8 of the bill fails to designate the essential elements to be contained in the proposed small business subcontracting program to be promulgated by the Administrator. Without knowing at least the primary provisions to be included in such a program, it is unfair to compel a contractor to conform to it.

3. Expense of administering the act will be great due to the vast number of proposed defense procurement actions in excess of $10,000 and civilian procurement actions in excess of $5,000.

4. To carry out the provisions of section 10 of the bill, a multitude of additional employees for the Commerce Department will have to be obtained.

5. The bill does not adequately limit, if it limits at all, the authority of Small Business Administration as to manner of determining supplier qualifications, and methods by which subcontracting must be accomplished.

6. The requirement that bids must be obtained from small businesses is a very excellent feature of the bill but will result in delay in production. We do not believe the delay overweights the benefits derived from competitive bidding.

7. The writing of specifications for solicitation of bids will be extremely intricate and difficult.

8. The bill fails to designate who shall draw up the specifications, presumably this would be a part of the program to be promulgated by the Administrator pursuant to provisions contained in section 8.

9. There is a real question regarding the need for this legislation. If the Small Business Administration can not possibly secure Government contracts for small companies and can not equitably apportion Government prime contracts or subcontracts under the existing laws, then suitable legislation should be passed. S. 836 with necessary amendments to eliminate the objectionable features fulfills the need.

CONCLUSION

We do not believe S. 836 should pass unless it is extensively amended to remove the objectionable features of the bill.

Respectfully submitted this 30th day of March, 1961.

Legislative Committee: Charles S. Thomas, Chairman; Robert J. Knott, Assistant Chairman; Ed Nowland, Roger Proctor, Robert Fritz, Martin Sorensen, John Hartman, Dan Rogers.

AMERICAN PRODUCTS CO., INC.,
Kenilworth, N.J., April 3, 1961.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: We have studied S. 836 and have followed the hearings conducted thereon.

We are classified as "small business" employing approximately 65 people and are engaged in the precision machining of metal parts. Ninety to ninety-five percent of our business comprises subcontracts from large prime or subcontractors of the Defense Department. We have developed and increased our business on the basis of know-how, high quality, good service and fair prices.

Section 8d–1 would become a new subsection to section 8 of the Small Business Act. According to our interpretation, we would be subject to the Department of Defense and the Small Business Administration in conducting our business. The authority which would be granted to the SBA would be so great that they could request whatever information and records they desire. We are fearful that the above-mentioned subsection would not benefit firms like ours but would require us to keep additional records and furnish cumbersome reports.

We cannot see where any benefits would be derived by small business through section 9. It would primarily involve expensive clerical burdens for Government agencies.

Sections 8 and 9 of S. 836 would, in our opinion, only increase operating costs in Government agencies, but would be of no help to competent small business.

We, therefore, strongly recommend that sections 8 and 9 be deleted from S. 836.

Very truly yours,

ARTHUR F. HARDEN, *Executive Vice President.*

DELAVAN MANUFACTURING CO.
West Des Moines, Iowa, March 27, 1961.

SMALL BUSINESS SUBCOMMITTEE,
SENATE BANKING AND CURRENCY COMMITTEE,
Senate Office Building, Washington, D.C.

GENTLEMEN: As a small businessman it is my honor to address my comments to you with regard to Senate bill 836 presently being discussed before your subcommittee.

Briefly, it is my opinion that the provisions of this bill would cause us unnecessary waste in the administration of our national defense contracts, and would actually set up overlapping lines of authority which would, at best, create much confusion and cross-purposes.

Of course, I feel it is necessary for us to do whatever we need to do in order to protect our economy and our national security. This bill in my opinion will neither foster our economy, nor add to the protection afforded by our defense establishments. Also, in my opinion, it will not mean more value received by the defense establishments in their procurement program; but just the opposite.

Small business is a dynamic force in the American economy. We want to maintain this dynamic force. We do not, however, want to encourage legislation in the name of small business which might very well negatively affect our overall economy, but will have wasteful effects on the defense procurement program as well as injecting confusion and overlapping authorities.

For these reasons I oppose enactment of Senate bill 836, and strongly urge its defeat in the committee.

Very truly yours,

J. D. HOPKINS, *Vice President of Sales.*

ELECTRO-MEC,
DIVISION OF WALTHAM PRECISION INSTRUMENT CO., INC.,
Long Island City, N.Y., April 3, 1961.

Hon. WILLIAM PROXMIRE,
U.S. Senate, Washington, D.C.

DEAR SENATOR PROXMIRE: It was not possible for us to attend the hearings on S. 836 conducted by the Committee on Banking and Currency which were held in the middle of March 1961. We understand, however, that the record of

these hearings will remain open for some time to permit written statements to be introduced into the record.

The general substance of this bill is not objectionable, however, we are most concerned with the broad scope of new subsection (d) (1) and section 8 of the Small Business Act and also the subsection (e) to section 8 of the act itself. As we understand it in reading the bill it indicates that we would be subject to the Department of Defense and Small Business Administration in the conduct of our business. Additionally, the Small Business Administration could require a Government procurement agency to solicit information and records as they deem necessary in addition to the present requirements of the Department of Defense. This would place a further burden on all Government contractors and I believe substantially increase the cost of defense material and delay in deliveries.

Worst of all the authority granted to the Small Business Administration by these objectionable subsections are almost unlimited, but it does not appear that the SBA has any responsibilities for the performance of the contracts in question. This is a most undesirable situation.

We are as anxious as any other small business to secure our fair share of Government business, however, we do consider that the objectionable sections to the bill noted above would do more harm than good, and respectfully request that you use your influence to have these two sections of S. 836 deleted.

Very truly yours,

FORBES MORSE, *President.*

STATEMENT OF C. J. HARRISON, THE ELECTRONICS INDUSTRIES ASSOCIATION

This statement is submitted in behalf of the Electronic Industries Association, the national trade association representing approximately 350 electronic manufacturers.

The Electronic Industries Association represents manufacturers of electronic products over 50 percent of which is sold to the military departments and other Government agencies. Over 50 percent of our membership includes small business manufacturers who would be directly affected by the enactment of S. 836.

The electronics industry, which is currently producing about $6 billion worth of military electronic products on an annual basis, has an excellent record for small business participation in our defense program. This participation is achieved through both prime and subcontracts and the supplying of the vital components which make up the complex electronic systems and equipment used by our armed services.

The views expressed herein are based upon an analysis by our small business committee, the members of which have had broad experience in dealings with the Government, particularly the military departments, as both prime and subcontractors. This position has the approval of our board of directors.

The purpose of this statement is to express our opposition to section 8 of S. 836. The objective of this section is to establish a method for aiding small business to participate in Government subcontract work. We think the objective is sound, but we do not agree that the method proposed is an effective approach for accomplishing this objective.

The Electronic Industries Association has continuously supported effective programs that would assure maximum participation of small business concerns in Government contract work, both at the prime and subcontract levels. However, we do not believe that the program advanced in section 8 of S. 836 is a sound program for achieving this objective. There are two principal reasons for our recommendation that section 8 should be deleted:

1. It would impose unnecessary and burdensome restrictions upon procurement agencies, as well as prime contractors, thereby interfering with the placement and administration of contracts; and

2. It does not represent an effective method for assuring maximum participation in Government contract work.

1. Imposition of unnecessary and burdensome restrictions in the administration of contracts

We strongly believe that the Small Business Administration should play a vital role in furthering the interests of small business and assuring that a fair share of Government contract work is awarded to qualified small business concerns. In this respect, we agree with the objectives of this section of the bill. But we do not agree with the methods proposed in section 8. On the contrary, we are convinced that enactment of this section would impose unnecessary and

burdensome restrictions on the Defense Department and prime contractors in the placement and administration of defense contracts and could well endanger this phase of our national security.

In performing a defense contract, particularly involving complex weapons systems, a prime contractor assumes a great responsibility—one that tests its technical competence, ingenuity, skill, and management ability. Therefore, any action by the Government which would impair the contractor's ability to perform would not only be burdensome but also could seriously affect efficient and satisfactory performance.

Section 8 of this bill would require prime contractors and subcontractors to consult with the Small Business Administration in the interest of widening small business participation in defense procurement. This would impose upon prime and subcontractors added contractual duties, the effect of which would make the Small Business Administration an additional contractual agency to be dealt with in the administration of defense contracts. In other words, the Small Business Administration would become a party in interest to contracts entered into by the military departments. The result would be confusion and delays in the administration of contracts and would seriously impair performance and delivery of military equipment.

Moreover, it is our belief that section 8 overlooks the complex nature and structure of military procurement programs and the manner in which defense contracts are administered. Although department procedures and organization vary, the great bulk of defense contracts are awarded and administered through a decentralized organization which places responsibility for administration with contracting officers who carry out this responsibility on a decentralized basis. Relations between prime contractors and subcontractors vary depending upon the prime contractor's legal obligations to the Government. These relations, which are already burdened with redtape, would be even more strained if the provisions of section 8 of S. 836 were enacted.

It is our view, therefore, that if section 8 of this bill became law, the Small Business Administration would become an additional statutory contracting party with each of the thousands of contracting officers throughout the country who are charged with the responsibility for the administration of defense contracts. The adoption of any such program could only result in delays in awarding prime contracts and in the selection of subcontractors; it would extend unnecessarily the leadtime for securing performance and delivery of military equipment; and it would further complicate an already cumbersome and slow procurement process.

2. Section 8 is not an effective method for assuring small business participation

The Department of Defense has the authority and responsibility to procure military equipment needed for national defense. Any dilution of this authority, in our view, would produce confusion and complicate the management and administration of our defense procurement programs to the detriment of our defense efforts. Section 8 of this bill raises a serious question of whether cooperation between the Small Business Administration and the Department of Defense can be effected more appropriately through legislative action than through administrative action.

We believe strongly that the important role of the Small Business Administration in aiding small business participation in defense procurement can be more effectively carried out administratively through cooperative programs worked out with the Department of Defense. We do not believe that such cooperation would be achieved by enactment of section 8 of this bill because it would divide authority for the administration of our defense procurement programs while leaving responsibility with the procurement agencies. Such an approach, in our opinion, could impair our national defense efforts and would add greatly to the burdensome procedures now used for procuring over $20 billion of military supplies and services each year. The result would be legislative confusion and frustration, rather than legislative cooperation, in the administration of this large and complex procurement program.

CONCLUSION

Therefore, the Electronic Industries Association urges that section 8 of S. 836 be deleted and that the Small Business Administration and the procurement agencies be permitted to develop administratively a cooperative program to assure maximum participation of small business in Government procurement programs, both at the prime and subcontract levels.

THE EMERSON ELECTRIC MANUFACTURING CO.,
St. Louis, Mo., April 4, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This company is engaged in the production of items in the electronic, aircraft, and missile fields for the military services. We are, consequently, interested in Senate bill 836 to amend the Small Business Act which is currently under consideration by your committee.

In our dealings as a supplier to the Government we recognize that a considerable amount of administrative detail over and above that required in our commercial transactions is necessary. Such effort must, we believe, be kept to a minimum if the cost of the products supplied to the military are to be held at reasonable levels. It is in the interest of cost control that we wish to express our opposition to those features of Senate bill 836 which would subject defense contractors to the regulation of yet another Government agency.

We are of the firm opinion that more efficient administration will result if defense contractors are accountable for the performance of their contracts, so far as may be, to a single Government agency. The addition of another agency; namely, the Small Business Administration, to the agencies presently controlling defense contractors' operations will not, we believe, result in a more effective small business program but will instead result in administrative confusion. We have wholeheartedly supported the small business policies of the Congress as administered by the Department of Defense. Our small business program has been effective as is evidenced by the fact that the fourth quarter of 1960 our subcontract awards to small business totaled $4,144,118 which constituted 44 percent of all subcontracts awarded by this company in its defense contract operations during the quarter.

In conclusion, we shall appreciate your consideration of our view that the administration of defense contractors' small business programs should remain under the sole control of the Department of Defense.

Very truly yours,

W. R. PERSONS, *President.*

FEDERAL TOOL & MANUFACTURING CO.,
Minneapolis, Minn., March 31, 1961.

Subject: Small Business Act bill S. 836.

Senator WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: It is our understanding that until April 5 the record is open for statements concerning subject.

We oppose section 8 in particular because the Small Business Administration may wind up with too much power and regulatory control. Small business is seldom helped by additional rules and never helped when regulated concerning the conduct of its business with its customers.

Competition is severe and freedom from regulation insures the lowest possible costs to the Government procurement agencies.

We sincerely request that section 8 be deleted from S. 836.

Very truly yours,

E. J. SKRAMSTAD, *President.*

FEDERAL TOOL & MANUFACTURING CO.,
Minneapolis, Minn., March 31, 1961.

Subject: Small Business Act bill S. 836.

Hon. HUBERT HUMPHREY,
U.S. Senate,
Washington, D.C.:

My letter concerns the hearings I was unable to attend on bill S. 836 conducted by the Committee on Banking and Currency held March 15, 16, and 17.

It is our understanding that until April 5 the record is open for statements concerning subject.

We oppose section 8 in particular because the Small Business Administration may wind up with too much power and regulatory control. Small business is seldom helped by additional rules and never helped when regulated concerning the conduct of its business with its customers.

Competition is severe and freedom from regulation insures the lowest possible costs to the Government procurement agencies.

We sincerely request that section 8 be deleted from S. 836.

Very truly yours,

E. J. SKRAMSTAD, *President.*

THE GARRETT CORP.,
Los Angeles, Calif., March 31, 1961.

Senator WILLIAM PROXMIRE,
Chairman, Small Business Subcommittee,
Senate Banking and Currency Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR PROXMIRE AND MEMBERS OF THE COMMITTEE: The Garrett Corp. appreciates the opportunity to submit this statement on S. 836 containing the proposed amendments to the Small Business Act.

The Garrett Corp. is a medium size firm engaged in the design and manufacture of military products for many major defense programs. Our equipment is primarily for aerospace applications.

Comments on S. 836 will be confied to section 8, which is the proposed small business subcontracting program. While the plan would apply to all Government procurements, we want to discuss it as it would affect our business, which would be through military contracts in either a prime or subcontractor capacity. Our position on the bill is one of opposition.

The contributions of many small subcontractors are essential to the reliability and performance of Garrett designed equipment. Since the heart of the subject matter of the proposed subcontracting program is procurement management, we fear that it would interfere with the freedom of that choice which we believe to be necessary if we are to fulfill our contractural obligations.

Since its founding, the Garrett Corp. has followed a deliberate policy of maximum subcontracting to small business. The amount of our purchases placed with small firms is over 70 percent of total procurements. This would seem to disprove the assumption that the gage of small business participation in defense programs is in prime contract awards. We have never considered prime contract awards as an accurate measure of small business opportunity. Having conducted a successful voluntary program over the years, we are not convinced that it should be replaced by one of a more compulsive type.

The Department of Defense, in cooperation the SBA, has already established a defense subcontracting small business program. It is recent, but we believe it will prove successful. Certainly the results of the existing program should be carefully analyzed before a radically new plan is imposed. The DOD program requires contractor reporting on form DD 1140. It should be pointed out that the information requested on the form is adequate, but that the formula for computing the small business share (line 10) does not reflect the percentage of total purchases going to small firms.

The supporters of S. 836, in our opinion, seem to be directing the SBA into the role of a regulatory agency. We believe this power was never intended by the early supporters of SBA. Control over Federal procurement programs and Government suppliers would shift the emphasis of the administration's activities from helping the seller (small business), to controlling the buyer. We do not think this would be to the benefit of either the agency or procurement programs.

We therefore make a distinction between the two principles contained in section 8, opportunity for small business, and control of the buyer to insure this opportunity. We fully subscribe to the principle of opportunity, but we do not support the proposed control contained in the bill.

Of primary importance in procurement management is the association of engineering and purchasing decisions. The sophisticated parts, exotic materials, and technological advancements of today's aerospace industry requires this association for successful performance of purchasing responsibilities. It would be impossible for anyone in our industry to concern themselves with purchasing, and yet escape involvement in what are essentially technical matters. SBA involvement in purchasing awards, we believe, would also bring them into engineering decisions. This would also add to administrative costs and could cause schedule delays.

Our company's reputation is carried on every part bearing the Garrett nameplate. This name stands for reliability, performance, excellence. We alone have the responsibility. We do not think it can be shared.

The members of the Senate Banking and Currency Committee are no strangers to the complexity of free industrial enterprise. In the defense industry there are few activities that are more complex or have such varied responsibility as does purchasing. Purchasing activities can and do promote congressional policies, but our buyers must also deliver the suitable parts, services, and supplies. We doubt if efficient accomplishment of both would be possible within the framework of the proposed small business subcontracting program.

Yours very truly,

DENHAM S. SCOTT,
Assistant to the President.

INDUSTRIAL TRANSFORMER CORP.,
Gouldsboro, Pa., April 3, 1961.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: We are most anxious to voice our opinion regarding Small Business Administration bill S. 836 and to offer good logical reasons for our stand.

We are particularly opposed to sections 8 and 9 of this bill as they now read. Section 8 would allow Small Business Administration to enter into a domain which is already properly supervised by responsible Government agencies plus requiring additional burdens and expenses to be borne by Government in this regard.

Today's market is most competitive—when supply exceeds demand—no additional control of this nature is necessary, everyone must cut all costs to prepare a reasonable bid. Let the economy exercise its proper control and lessen the taxpayers burden by not supporting any unnecessary expenditures both direct and indirect by the Government.

Section 9 of this bill would not offer benefits to the major portion of the small business concerns but to a very small group which could secure this information without the additional burden involved in preparing synopsis. This is waste.

We respectfully request your action in deleting sections 8 and 9 from bill S. 836.

Very truly yours,

D. ANDER, *President.*

KIMBERLY-CLARK CORP.,
Neenah, Wis., April 3, 1961.

Hon. WILLIAM PROXMIRE,
Senate Office Building,
Washington, D.C.

DEAR SENATOR PROXMIRE: Kimberly-Clark appreciates this opportunity to present its views on S. 836, a bill to amend the Small Business Act.

This legislation was brought to our attention by business associations, and the opinions offered are based upon a study of information and material gathered which is pertinent to the bill.

Inasmuch as we are one of the Nation's larger firms and do almost no business with the departments affected by this legislation, our interest in it is directly related to America's national defense.

While we appreciate the problems of small business and certainly condone any effort that will give them a larger share of the procurement dollar, we fail to see how S. 836 will accomplish this purpose.

In examining the provisions of section 8, which is the key to the legislative power in the bill, we feel that the introduction of another Federal agency in the procurement picture cannot help but make the problems more difficult, delay contract awards, increase the cost, and damage the defense effort.

We see great danger in awarding this almost unlimited authority to a Federal agency that is not responsible for the end result. While the Department of Defense is charged with the security of the Nation, the Small Business Administration would have a major role in the subcontracting areas that contribute to the final product.

In stepping into the subcontract areas of defense procurement, the SBA will necessarily disrupt the normal buyer-seller relationship that currently exists.

From this present relationship through which larger firms buy quality parts from smaller firms, the Nation is getting high reliability in weapons systems.

In observing the defense procurement picture, we have noticed many critics of the present DOD procurement program asking that a greater percentage of contracts be awarded on an "advertised bid" basis.

In our opinion, advertised bidding for defense contracts could be a most damaging blow to our defense effort. We view S. 836 as a step toward legislatively forcing the Department of Defense to increase this percentage of contracts offered through advertising.

While in many cases, advertised bidding is a cheaper method of procurement, today's complex weapons systems demand greater reliability than advertising can guarantee. The successful bidder on an advertised award may not be the most qualified supplier. Further, he may or may not truly have the technical know-how to produce the product. All he has is the lowest price. Even detailed specifications cannot provide a guarantee of adequate quality of goods purchased. The buyer must know the supplier has the knowledge to execute the requirements of the contract. There are limitless examples, not only within the Department of Defense but within the operation of private enterprise, where time and money have been wasted because it was thought the person offering the lowest price might produce a usable product.

Should his parts fail in a major weapons system, the system necessarily fails and to say a little money, the Government has lost perhaps millions. To project the point one step further, if the manufacturer fails on the production end, it means delays and ultimately greater cost to the Government.

Kimberly-Clark has long been a friend of small business. It was a small business itself once, and knows firsthand the problems of surviving in today's highly competitive world.

However, it would appear that S. 836 will not truly help small business, rather will work a genuine hardship on both small and large firms, and have an adverse effect on America's national defense.

We therefore oppose this legislation for the foregoing reasons.

Sincerely,

LEONARD E. PASEK.

SPECIALTIES, INC.,
Syosset, Long Island, N.Y., March 22, 1961.

Senator JOHN SPARKMAN,
Chairman, Select Committee on Small Business,
U.S. Senate, Washington, D.C.

DEAR SENATOR SPARKMAN: Your staff report of March 18, 1961 (which, incidentally, I appreciate receiving from your office each week), contains the information that the record on S. 836 is to be left open until April 1. As you have long been our champion, I am sure that many small businessmen like myself have communicated to you their concern over many of the proposed revisions to the Small Business Act. We are fearful that, instead of becoming the beneficiaries of the additional business that Senator Proxmire seems to feel will come our way as a result of this legislation, we are more likely to become the casualties of an increased bureaucracy.

Section 8 of S. 836 would ask us, in effect, to serve two masters. At the present time there is no question where our responsibility lies. In working with and for the prime contractors who are our customers, we are indirectly working for the Department of Defense and the limitations, requirements, and regulations imposed at source naturally extend chainwise to us. Small Business is ill prepared to readily operate under still further controls that will conceivably result from an entirely new SBA program nor is it equipped to handle an additional load of paperwork and reporting. We are trying our best to operate economically, and staff additions to handle SBA requirements over and above those for which we will continue to be indirectly responsible to DOD will only add unnecessarily to our overhead burdens.

Many of us who specialize in self-financed, proprietary developments that are offered to the prime contractors have spent considerable time and money in proving our right to be an established source of reliable, useful hardware, and we have been able to set up relationships with our customers which operate with a minimum of administrative detail and expense but with a maximum of production, delivery, and performance efficiency.

Section 8 of S. 836 would now give SBA the authority to, among other things, stick its exploratory nose into a reasonably smooth picture which could very

possibly mean that we would have to start all over again to justify our existence and prove our reliability. Our financial pictures are not geared to readily absorb periods of low productivity and we just can't afford to be in the middle of a bureaucratic snarl while SBA completes the study that would be necessary to its new authority, decides on the program it wants to establish, and staffs itself to handle it.

This is not an entirely selfish attitude. What happens at the subcontract level has a direct effect on prime productivity and the responsible fulfillment of the requirements of the Department of Defense. To give SBA authority over the Department of Defense, the Atomic Energy Commission and the General Services Administration at the subcontract level seems to be a case of the tail wagging the dog and is certainly no more in the national interest than in ours.

Senator Proxmire means well, I am sure, and all of us are grateful for the support and assistance that SBA has given us, but please don't kill us with well-intentioned kindness. We should like to feel that even though we are small businessmen, we are businessmen nonetheless. Extending SBA's authority to enfold us in its protective arms is neither flattering nor, I think, in the best traditions of our free enterprise system. We can, in effect, achieve a socialistic state by leaving the sources of production in private hands while at the same time regulating them by law to such an extent that they are no longer free nor can they be enterprising.

Apparently the initial intent of the amendment to the Small Business Act was to see that small business would have adequate access to reasonable amounts of capital. This is one of the more fruitful areas in which Congress can constructively help some small businesses without discriminating against anyone else. However, the conditions of section 8 of S. 836 seem to be completely unnecessary and in nobody's best interests and we earnestly urge you and your colleagues to prevent the enactment of this dangerous and wasteful legislation.

Sincerely,

STEPHEN A. MCCLELLAN,
President.

TRESCO, INC.,
Philadelphia, Pa., April 3, 1961.

Subject: Senate bill 836.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: We understand, that although we were unable to attend the hearings on subject Senate bill conducted by the Committee on Banking and Currency, the record of these hearings will remain open to permit written statements to be introduced into the record.

Although the bill is not entirely objectionable, the ramifications of new subsection (d)(2) to section 8, and subsection (e) to section 8 of the Small Business Act, seriously concerns us. We feel that as a small business concern, employing approximately 170 people, we can appropriately comment on these subsections.

They grant much authority to the Small Business Administration but do not appear to give any responsibilities to it. In the conduct of business we would be subject to the SBA as well as the Department of Defense. In spite of its intention to enable small business concerns to be fairly considered as suppliers and subcontractors, we feel that many small business concerns would be discouraged from participating in a program in which they are subject to two separate agencies and yet the responsibility for the defense efforts lies with the Department of Defense alone.

Under our free enterprise system, every business concern has the opportunity to bid on contracts and is considered when it is determined that it is capable of supplying the required material in the most efficient manner and with maximum reliability. We feel that this is still the best and fairest method of supplier selection.

The Department of Defense is best qualified to determine the sources of its supplies, particularly when the very existence of our country depends on the reliability of those supplies and their immediate delivery.

The additional reporting requirements would tend to delay and increase the cost of the defense effort, without realizing any benefits from this duplication.

Small business wants its rightful share of Government business; however, in our opinion, the above-mentioned sections would not help small business and in

fact would cause more harm than good. We therefore respectfully request that these two sections be deleted from Senate bill 836.

Very truly yours,

S. H. GROSSMAN, *Vice President.*

Senator PROXMIRE. The committee will stand in recess. These hearings will end as of now, but the record will be held open for 3 weeks.

(Whereupon, at 12:55 p.m., the committee recessed.)

SMALL BUSINESS ACT AMENDMENTS OF 1961

MONDAY, APRIL 24, 1961

U. S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
SUBCOMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to call, in room 5302, New Senate Office Building, at 10:10 a.m., Senator William Proxmire (chairman of the subcommittee) presiding.

Present: Senators Proxmire, Sparkman, Neuberger, and Bennett.

Senator PROXMIRE. The subcommittee will come to order.

Before we proceed with the hearings this morning, we have received a further report from the Small Business Administration on S. 836, dated April 6, 1961.

Attached to the report is an amended draft bill prepared by the SBA as a result of discussions in our earlier hearings on this legislation.

This revised bill was sent to the Department of Defense and the General Services Administration for comment, and the replies of those agencies have been received.

The SBA report, the amended draft bill, and the reports of the Department of Defense and General Services Administration on the draft bill, without objection, will go in the record at this point.

(The material referred to follows:)

SMALL BUSINESS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., April 6, 1961.

Re S. 836, to amend the Small Business Act, and for other purposes.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR SENATOR ROBERTSON: During the course of the hearings held by Senator Proxmire March 15 through 17, 1961, on S. 836, a bill to amend the Small Business Act, and for other purposes, certain questions were raised both by committee members and by certain witnesses which suggested that it would be useful for me to submit additional information and comments to your committee. This letter is to amend and supplement the testimony given by me before Senator Proxmire and the other committee members on March 15, 1961. It is intended to be a substitute for my report dated March 14, 1961, on S. 836.

In addition, I wish to call to your attention those portions of this report which deal with sections 6, 7, and 8 of the bill. These recommendations are supported by the Department of Defense, the General Services Administration, and the Small Business Administration. They represent the Administration's position on these sections.

SECTION 3

Section 3 of the bill amends subsection 4(c) of the Small Business Act in two respects. First, it increases from $975 million to $1,050 million the total amount in which funds are authorized to be appropriated to a revolving fund in the

Treasury for the use of the Small Business Administration. Second, it increases from $575 million to $650 million the amount of the revolving fund which may be outstanding at any one time for the purpose of making business loans pursuant to section 7(a) of the Small Business Act.

According to projections made early this fiscal year of probable business loan activities, the existing authorization of $575 million appeared adequate to meet the needs of the program through the 1962 fiscal year, and my earlier report and testimony were based on that projection. Subsequent developments cause me to revise my previous recommendations.

The difficulties involved in predicting future activities in the business loan and disaster loan programs suggest the desirability of a more extensive revision of subsection 4(c) than that effected by section 3 of the bill. The subsection provides, in effect, that no more than $725 million of the total authorization of $975 million may be used for the exercise of the functions authorized under the Small Business Act and that no more than $250 million of such total authorization may be used for the exercise of the functions of SBA under the Small Business Investment Act of 1958. With respect to the latter act, the subsection imposes no further restrictions. Thus the $250 million authorization may be apportioned as needed to furnish financial assistance to small business investment companies, to make loans to State and local development companies, or to carry out any of the other duties imposed upon SBA by that act.

Subsection 4(c) does not permit such flexibility in the utilization of the $725 million authorized under the Small Business Act. Instead, the subsection establishes an individual dollar maximum of $575 million for the business loan program; there is a limitation of $125 million on the disaster loan program and a limitation of $25 million on the prime contract program.

These three dollar ceilings have a limited usefulness; and, in contrast, since we have no reliable means of predicting future lending activity, they present unnecessary administrative difficulties. For example, if the demands of the disaster loan program should at any time exceed the dollar ceiling established for it, no recourse could be had in such emergency to the unused prime contract authorization or to any surplus which might be available in the business loan authorization. Additional capital could not be obtained for the disaster loan program unless and until the dollar ceiling governing it was increased by amendment to subsection 4(c).

Accordingly, I recommend that the three individual dollar maximums be eliminated, thereby giving SBA flexibility under the Small Business Act similar to that which it presently enjoys under the Small Business Investment Act of 1958. At the same time, the total amount of money authorized for the exercise of the three described functions of SBA under the Small Business Act should be increased.

Since the submission of my report of March 14 and my testimony of March 15 on the proposed change in the limitation on business loans outstanding; I have had an opportunity to give further study to the SBA business lending operation. It is my understanding that the length of time taken to complete the processing of applications has been a significant deterrent to potential small business applicants. As a first step and partial solution to the problem of making this program more effective, I have increased the authority of regional directors to approve business loans. This action will permit the decision to be made in field offices on at least 80 percent of such applications and will speed up the processing of loan applications. I am sure that this action will be welcomed by small business.

We are focusing our attention now on other phases of the operation which have contributed to the excessive time requirement, and I expect to be able to take other actions which will simplify further the work of processing applications and will also expedite the subsequent closing of the approved loan.

As SBA is able to improve its service to small business, the demands upon it undoubtedly will increase. As an indication of a probable trend, business loan applicaitons filed in March totaled 1,332, a new record. The previous high was 1,099, recorded in May 1958. Inquiries about the business loan program are continuing at a record pace and it now appears that the previous total estimate of loan applications to be filed during the current fiscal year will be exceeded. Because of these developments, I have found it necessary to reconsider my previous recommendations on section 3 of S. 836.

I believe now that adequate authorization should be provided for a possible rate of at least 1,000 business loan applications per month for the fiscal year

1962, as compared to the previous Administration's estimate of 900 per month. Also, I anticipate that other actions we are considering will result in a reduction in the percentage of withdrawals and cancellations and will increase the proportion of applications approved. Based on these assumptions, an increase of about $150 million would be required to assure adequate authority through June 30, 1962. This would require an increase in the existing separate limitation for business loans from $575 million to $725 million.

The increase of the above amount, however, would provide for only 1 year, and it probably would be necessary to request further changes at the next session. In order to avoid frequent requests of this nature and to assure that SBA will be able to meet the demands upon it without possible interruption, I recommend that the business loan authorization be increased by $525 million to a total of $1.1 billion. This would provide for business loan needs for about 4 years based on the assumptions used in making the projection for the fiscal year 1962. This longer range approach is consistent with recommendations already made by the President for other programs.

I also urge that the recommendation to combine the three separate limitations for business and disaster loans and the prime contract program be adopted with appropriate changes in amounts as follows: Total fund, $1,500 million; total to be outstanding at any one time for purposes enumerated in sections 7(a), 7(b), and 8(c) of this act, $1,250 million; total permitted to be outstanding for the purposes set forth in the Small Business Investment Act, $250 million.

To accomplish these ends I suggest that, in lieu of its present provisions, section 3 of the bill amend subsection 4(c) of the act to read as follows:

"The Administration is authorized to obtain money from the Treasury of the United States for use in the performance of the powers and duties granted to or imposed upon it by law, not to exceed a total of $1,500,000,000 outstanding at any one time. For this purpose appropriations not to exceed $1,500,000,000 are hereby authorized to be made to a revolving fund in the Treasury. Advances shall be made to the Administration from the revolving fund when requested by the Administration. This revolving fund shall be used for the purposes enumerated subsequently in sections 7(a), 7(b) and 8(a) of this Act and in the exercise of the functions of the Administration under the Small Business Investment Act of 1958. Not to exceed an aggregate of $1,250,000,000 shall be outstanding at any one time for the purposes subsequently enumerated in sections 7(a), 7(b) and 8(a) of this Act. Not to exceed an aggregate of $250,000,000 shall be outstanding at any one time for the exercise of the functions of the Administration under the Small Business Investment Act of 1958. The Administration shall pay into miscellaneous receipts of the Treasury, at the close of each fiscal year, interest on the net amount of the cash disbursements from such advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities."

SECTION 4

Section 4 of the bill adds a new subsection to section 5 of the Small Business Act. In substance this new subsection authorizes the Administration to make prepayments of rentals on safety deposits boxes used by it for the safeguarding of instruments and other documents held as security for loans made to small business concerns and others.

SBA commonly accepts bearer bonds, stock certificates endorsed in blank and other kinds of readily negotiable instruments as collateral on loans made pursuant to section 7 of the act. Ordinary care requires that field offices of the agency should, on receipt of such documents from borrowers, retain them in safety deposit boxes. Such boxes are usually rented on an annual basis and, with few exceptions, banks demand payment in advance.

By letter of June 3, 1955, SBA was notified by Mr. Frank H. Weitzel, Assistant Comptroller General of the United States, that section 3648 of the Revised Statutes prohibits such prepayments. The statute cited by him provides, in part, that "No advance of public money shall be made in any case unless authorized by the appropriation concerned or other law." Consequently field offices have been able to use safety deposit boxes only by obtaining the necessary funds from employees who, at the end of the rental period, claim reimbursement from SBA.

Section 4 of the bill remedies this situation by providing that section 3648 of the Revised Statutes shall not apply to prepayments of rentals made by SBA on safety deposit boxes.

SECTION 5

Subsections 5(a)(1) and 5(a)(2) of the bill place the reports which the Administration is required to file, pursuant to subsections 10(a) and 10(b) of the act, on an annual basis instead of a semiannual basis. Subsection 10(a) of the act provides that the Administration shall make a report every 6 months of operations under the act to the President, the President of the Senate and the Speaker of the House of Representatives, containing the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved, and containing such other information, comments and recommendations as the Administration may deem appropriate.

Subsection 10(b) of the act provides that, on June 30 and December 31 of each year, the Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business, and the House Select Committee To Conduct a Study and Investigation of the Problems of Small Business, showing as accurately as possible for each such period the amount of the funds appropriated to the Administration that it has expended in the conduct of each of its principal activities such as lending, procurements, contracting, and providing technical and managerial aids.

Under existing law, therefore, SBA must submit two reports every 6 months concerning its operations. These requirements were laid down when SBA was initiated as a temporary agency of the Government to conduct programs, for the assistance of small business, which were considered to be experimental and which were generally expected to be of limited duration. The principal reason for requiring reports at such short intervals was to furnish the President and Congress with information essential to a determination of the recurring question whether the programs should be continued.

With the establishment of SBA as a permanent agency of the Government, the need for such frequent reports has been substantially lessened. In view of this, as well as the unnecessary expense involved in preparing and issuing two reports every 6 months, it is believed that SBA should, like virtually all other permanent agencies, report on an annual basis. Under the provisions of subsections 5(a)(1) and 5(a)(2) of the bill, both reports are to be made as of December 31 of each year.

Subsection 5(a)(1) of the bill has the further effect of eliminating the provisions of existing law (section 106(b) of the Reconstruction Finance Corporation Liquidation Act and Reorganization Plan No. 1 of 1957) requiring SBA to make quarterly reports to the Congress respecting the progress of SBA in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation. This subsection of the bill provides that such information, instead of being submitted in separate reports on a quarterly basis, shall be included in the annual report to be filed by SBA pursuant to the amended subsection 10(a) of the act. The quarterly reports appear to serve no useful purpose and their continuance would entail unnecessary expense to the Government. Accordingly, I concur with this provision of the bill.

Subsection 5(a)(3) of the bill deals with subsection 10(c) of the act. Under the provisions of the latter, the Attorney General is directed to make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power "in the course of the administration of this Act." The quoted phrase suggests that the Attorney General must exercise special vigilance over the operations of SBA to detect and prevent violations of the law. Such, of course, was not the intent. Subsection 5(a)(3) of the bill eliminates the misleading phrase and revises the language of subsection 10(c) to make it clear that the surveys of the Attorney General are to cover the activities of all agencies of the Government. I recommend this change.

I understand, however, that the Department of Justice objects as "both unnecessary and inadvisable" to that part of the proposed amendment of section 10(c) which would provide that the Administrator may request the Attorney General to make supplemental surveys and reports on any particular activities of the Government which may affect small business. According to the Department, under existing relationships between Government agencies, the agencies can and do request the Department to look into Government practices that may have anticompetitive effects. These requests are accommodated to the extent possible consistent with the availability of manpower and funds. The Department also

states that this part of the proposed amendment "might seriously prejudice the law-enforcement functions of the Antitrust Division of the Department." Under the circumstances I recommend that subsection 5(a)(3) be revised to read as follows:

"(3) by striking out subsection (c) and inserting in lieu thereof the following:

"'(c) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys of any activity of the Government which may affect small business, for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, promote undue concentration of economic power, or otherwise injure small business. The Attorney General shall submit to the Congress and the President, at such times as he deems desirable, reports setting forth the results of such surveys and including such recommendations he may deem desirable.'"

Subsection 5(b) of the bill amends subsection 708(e) of the Defense Production Act of 1950 to provide that the surveys which subsection 708(e) directs the Attorney General to make, or request the Federal Trade Commission to make for him (for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of power in the course of the administration of the Defense Production Act of 1950) shall include studies of the voluntary agreements and programs authorized by section 708 of the Defense Production Act of 1950. Subsection 5(b) of the bill also provides that the results of the studies of voluntary agreements and programs authorized by section 708 shall be set forth in reports to be submitted by the Attorney General to the Congress and the President at least once every 3 months. I recommend this revision.

SECTION 6

Section 6 of the bill amends the declaration of policy laid down by Congress in subsection 2(a) of the act to state, in substance, that small business is entitled to a fair proportion of subcontracts as well as prime contracts made for the procurement of property and services for the Government. I favor this amendment as a reaffirmation of the desires of the Congress.

SECTION 7

Taken together, the amendments to sections 8(b)(8) and 8(b)(11) embodied in section 7 of the bill authorizes SBA to obtain procurement records for review and to make studies of the procurement process at all stages thereof to insure implementation of congressional policies respecting small business. The procurement agencies have been entirely cooperative in these matters. SBA has encountered no difficulty in obtaining information concerning specific contracts or the procurement process generally. Hence, I see no need for legislation on this subject and therefore do not recommend the adoption of this section.

The language of section 7(1) of the bill may be interpreted as authorizing SBA to dictate to the procuring agencies their record-keeping requirements. If it is determined by the committee that legislation on this subject is necessary, to avoid the foregoing interpretation I recommend that section 7(1) be amended to read as follows:

"(1) by inserting in pragraph (8) before the word 'concerning' the following: 'and available or reasonably obtainable records'; and".

SECTION 8

Section 8 of the bill directs the SBA Administrator after consultation with the Administrator of General Service, Assistant Secretary of Defense (supply and logistics) and the Chairman of the Atomic Energy Commission, to promulgate a small business subcontracting program. The program is to have three objectives: (1) to enable small concerns to be considered fairly as subcontractors and suppliers to Government prime and subcontractors; (2) to insure that the latter concerns will consult with SBA when so requested; and (3) to enable SBA to obtain from Government procurement agencies data concerning subcontracting.

All Government procurement contracts in excess of $1 million and subcontracts thereunder in excess of $500,000, exclusive of contracts and subcontracts to be performed entirely outside of the United States and its territories, are to

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require the contractor or subcontractor concerned to conform to this small business subcontracting program. In addition, SBA is to include in its reports to the President and to the Congress information and recommendations concerning this subcontracting program.

The small business share of Government contracts has continued to erode. Procurement agencies have advised on numerous occasions that the increasing complexity of Government requirements preclude significant reversal of this trend; that small concerns must look increasingly to the role of subcontractor. It appears advisable, therefore, to enact legislation to provide a statutory basis for an effective subcontracting program.

The statutory requirement should not be inflexible. It should permit adaptability to varying circumstances and conditions. For this reason, in a letter of May 31, 1959, to you commenting on a committee print of a proposed bill, this Agency recommended that in lieu of extending the joint determination setaside program to subcontracts, the subcontracting legislation should prescribe the minimum standards for the program to be followed by the larger prime and subcontractors.

The aims of section 8 of S. 3689, 86th Congress, 2d session, were consistent with these recommendations and you were so advised by this agency's letter of June 24, 1960. By amendment, the Senate substituted the provisions of S. 3689 for H.R. 11207, 86th Congress, 2d session. However, H.R. 11207 was not enacted.

Certain members of industry have raised objections to section 8 of S. 3689. Many of these objections, in our opinion, were predicated either on a misinterpretation of the provisions of section 8 or a misconception of the authority SBA would exercise if the section was enacted. Section 8 of S. 836 is a revised version of section 8 of S. 3689, modified to meet certain of these objections.

As we have indicated in the past, SBA is in accord with the aims of section 8 of S. 836. I am aware, however, that a variety of objections to this revised legislation still persist. The Department of Defense and the General Services Administration have indicated that, in their view, placing the promulgation authority in SBA is an objectionable diminution of their authority (without any commensurate curtailment of their responsibility) and will inject unforeseeable complexities in their procurement mission. They urge, among other things, that while there is a subcontracting program which is a product of a joint cooperative effort on the part of the Small Business Administration, the Department of Defense and the General Services Administration, their present authority to issue regulations be continued unimpaired.

I am, therefore, submitting the following redraft of section 8 of S. 836 prepared by the Department of Defense, the General Services Administration and the Small Business Administration. Enactment of this proposal is recommended by these agencies. In my view it would carry out the aim of the Congress and at the same time meet the needs of both SBA and the procurement agencies. Revised section 8 makes three basic changes in section 8 of the bill:

I am, therefore, submitting the following redraft of section 8 of S. 836 prepared eated in section 8 of the bill is developed cooperatively by SBA, GSA, and the Department of Defense;

(2) thereafter the Defense Department and GSA will issue regulations to implement the small business subcontracting program and such other regulations not inconsistent with the small business subcontracting program as they deem necessary or desirable to effectuate their functions and responsibilities; and

(3) the small business subcontracting program will not authorize SBA to prescribe the extent to which any contractor shall subcontract or specify the business concerns to which subcontracts shall be granted, or vest in SBA authority to interfere in the administration of individual contracts.

To accomplish these aims section 8 should be revised to read as follows:

"SEC. 8. Section 8 of the Act is amended by adding at the end thereof a new subsection as follows:

"'(d)(1) Within ninety days after the effective date of this subsection, the Administrator, the Secretary of Defense and the Administrator of General Services shall cooperatively develop a Small Business Subcontracting Program which shall contain such provisions as may be appropriate to (A) enable small business concerns to be considered fairly a subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcon-

tractors under Government procurement contacts, (B) insure that such prime contractors and subcontractors will consult through the appropriate procuring agency with the Administration when requested by the Administration, and (C) enable the Administration to obtain from any Government procurement agency such available or reasonably obtainable information and records concerning subcontracting by its prime contractors and their subcontractors as the Administration may deem necessary, *Provided, however*, That these programs shall not authorize the Administration to (i) prescribe the extent to which any contractor or subcontractor shall subcontract, (ii) specify the business concerns to which subcontracts shall be granted, or (iii) vest in the Administration authority respecting the administration of individual prime contracts or subcontracts. Thereafter, the Secretary of Defense and the Administrator of General Services each shall issue regulations implementing the program as developed. In addition, the Administrator of General Services and the Secretary of Defense may issue such other regulations concerning subcontracting not inconsistent with the Small Business Subcontracting Program, as they may each deem necessary or appropriate to effectuate their functions and responsibilities.

"'(2) Every contract for property or services (including but not limited to contracts for research and development, maintenance, repair and construction) but excluding contracts to be performed entirely outside of the United States or its territories, in excess of $1,000,000 made by a Government department or agency which, in the opinion of the procuring agency, offer substantial subcontracting possibilities shall require the contractor to conform to the Small Business Subcontracting Program promulgated under this subsection (d), and to insert in all subcontracts and purchase orders in excess of $500,000 which offer substantial subcontracting possibilities a provision requiring the subcontractor or supplier to conform to such Small Business Subcontracting Program.

"'(3) The Administration shall include in any report filed under section 10(b) of this Act information, and such recommendations as it may deem appropriate, with respect to the administration of the Small Business Subcontracting Program established under this subsection (d).'"

In my opinion, the revised section 8 will be a sound legislative foundation for future subcontracting programs. Accordingly, I strongly recommend the adoption of revised section 8.

SECTION 9

Section 9 of the bill requires the Secretary of Commerce to publicize in the "United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales and Contract Awards," all defense procurement actions of $10,000 or more and all civilian procurement actions of $5,000 or more. Certain appropriate exceptions are made.

I am informed that the Department of Defense and the General Services Administration have adopted regulations which will accomplish the objective of section 9. I am also informed that, after experience gained with the regulations, conditions may be found which indicate the need for a change. They feel that this possible need for changes in or deviations from the regulations suggest the desirability of continuing to handle this problem by regulation rather than legislation.

While I have no objection to the enactment of section 9 of the bill, since the procurement agencies plan to conform to its requirements, the section does not appear to be necessary. For this reason I do not recommend its adoption.

To avoid the possibility that section 9 will require publicizing actions when publicity is unreasonable or unnecessary I recommend that if the section is enacted it be amended by adding at the end a 10th exception reading as follows: ", or (10) for which it is determined in writing by the procuring agency that advance publicity is neither appropriate or reasonable."

I also recommend that the words "property and services (including but not limited to maintenance, repair, and construction)" be substituted for the words "supplies and services" in line 24 on page 6. This suggestion is designed to conform the language of section 9 to the language of the Small Business Act.

SECTION 10

Section 10 of the bill effects three changes in the grant program embodied in subsection 7(d) of the act:

(1) SBA is authorized to make grants to corporations formed for the purpose by two or more of the State governments, colleges, schools, etc., listed in subsection 7(d).

(2) SBA is authorized to require as a condition to any particular grant that an additional amount, not exceeding the amount of such grant, be provided from sources other than SBA to assist in carrying out the purposes for which such grant is made.

(3) Whenever SBA makes a grant to be utilized for the purpose of providing counseling services to individual small business enterprises, it must require that an additional amount, equal to the amount of such grant, be provided from sources other than SBA to assist the grantee in providing such counseling services.

Funds to carry out the grant program authorized by section 7(d) of the act were made available by the Congress for fiscal years 1959 and 1960. No funds were appropriated for this purpose during 1961. SBA currently is engaged in an evaluation of the grant program to determine if funds for fiscal 1962 should be requested of the Congress. It is anticipated that this review will be completed in the near future. Notwithstanding the pendency of this review and recognizing that there may be differences in opinion as to the utility of section 7(d) of the act, I recommend that the Congress consider amending section 7(d) to improve the basic legislation authorizing the grant program. I also recommend the changes, No. 1, 2, and 3, listed above and incorporated in section 10 of the bill.

Certain other changes to section 7(d) are recommended. The present limitation of one grant within any one State in any one year not to exceed an aggregate amount of $40,000, should be modified to authorize any number of grants within any one State so long as the total SBA contribution does not exceed $40,000 during any one year. SBA should be authorized, subject to the availability of funds, to increase the amount of any grant for good cause, so long as the total amount does not exceed the $40,000 limitation set out above.

It should be made clear that SBA is authorized to recommend topics for study to grant applicants, when appropriate, so that the grant funds can be used with maximum efficiency to provide small business with needed information. It also should be made clear that SBA may define what is meant by additional amounts to be provided from sources other than SBA to assist in carrying out the purposes of a grant.

To accomplish these aims I suggest that in lieu of its present provision, section 10 of the bill amend subsection 7(d) of the act to read as follows:

"SEC. 10. Section 7(d) of the Act is amended to read as follows:

"'(d) The Administration also is empowered to make grants to any State government, or any agency thereof, State-chartered development credit or finance corporation, land-grant colleges and universities, colleges and schools of business, engineering, commerce, or agriculture, or corporation formed by two or more of the entities hereinabove described which are eligible to receive such grants, for studies, research and counseling concerning the managing, financing, and operation of small business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of section 8(b)(1) by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. The Administrator may recommend to grant applicants particular studies or research which are to be financed by such grants. The total of all grants (including amendments and modifications thereof) made under this subsection within any one State in any one year shall not exceed $40,000. The Administration may require, as a condition to any grant (or amendment or modification thereof) made under this subsection, that an additional amount not exceeding the amount of such grant be provided from sources other than the Administration to assist in carrying out the purposes for which such grant is made: *Provided*, That if such grant or any part thereof is to be utilized for the purpose of providing counseling services to individual small business enterprises the Administration shall require that such additional amount be provided and in an amount which is equal to the amount of such grant. What constitutes such additional amount may be defined by the Administration.'"

SECTION 11

Section 11 of the bill effects an indefinite extension of the authority of SBA to make loans to State and local development companies for the construction, con-

version or expansion of plants to be occupied by identifiable small business concerns. This authority, embodied in section 502 of the Small Business Investment Act of 1958, presently is due to expire on June 30, 1961. I fully concur that the program should be continued to meet the needs of small businesses for production and distribution facilities.

It is believed that the loan program authorized by section 502 can be of material assistance not only to strengthen numerous small business concerns but, equally important, to strengthen the economy of the communities in which they are located. Loans to local development companies for the described purposes can be expected to play a significant role in the efforts of the Federal Government to rehabilitate the depressed areas of the country.

Because the program established by section 502 is still in a developmental phase and because the proper functions and responsibilities of State development companies financed under Title V of this Act still are under study, I do not recommend an indefinite extension of the section 502 authority. Instead, I suggest that the present expiration date be extended to June 30, 1965.

For your convenience we are submitting a redraft of S. 836 incorporating the recommendations contained in this report. The draft bill also is submitted in response to your request made to Department of Defense officials during the hearing on March 17 that such a bill be submitted to your committee. We have been advised by the Department of Defense and the General Services Administration that those agencies recommend the enactment of this draft bill.

The Bureau of the Budget has advised that there is no objection from the standpoint of the administration's program to the submission of this report.

Sincerely yours,

JOHN E. HORNE,
Administrator.

Enclosure.

A BILL To amend the Small Business Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Act Amendments of 1961".

SEC. 2. As used in this Act, unless otherwise indicated, references to "the Act" are to the Small Business Act, approved July 18, 1958 (72 Stat. 384), as amended by the Small Business Investment Act of 1958, approved August 21, 1958 (72 Stat. 689), and Public Law 86–367 (73 Stat. 647).

SEC. 3. Section 4 of the Act is amended by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The Administration is authorized to obtain money from the Treasury of the United States for use in the performance of the powers and duties granted to or imposed upon it by law, not to exceed a total of $1,500,000,000 outstanding at any one time. For this purpose appropriations not to exceed $1,500,000,000 are hereby authorized to be made to a revolving fund in the Treasury. Advances shall be made to the Administration from the revolving fund when requested by the Administration. This revolving fund shall be used for the purposes enumerated subsequently in sections 7(a), 7(b) and 8(a) of this Act and in the exercise of the functions of the Administration under the Small Business Investment Act of 1958. Not to exceed an aggregate of $1,250,000,000 shall be outstanding at any one time for the purposes subsequently enumerated in sections 7(a), 7(b) and 8(a) of this Act. Not to exceed an aggregate of $250,000,000 shall be outstanding at any one time for the exercise of the functions of the Administration under the Small Business Investment Act of 1958. The Administration shall pay into miscellaneous receipts of the Treasury, at the close of each fiscal year, interest on the net amount of the cash disbursements from such advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities."

SEC. 4. Section 5 of the Act is amended by adding at the end thereof a new subsection as follows:

"(d) Section 3648 of the Revised Statutes (31 U.S.C. 529) shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents."

SEC. 5. (a) Section 10 of the Act is amended—

(1) by striking out subsection (a) and inserting in lieu thereof the following:

"(a) The Administration shall make a report on December 31 of each year of operations under this Act to the President, the President of the Senate, and the Speaker of the House of Representatives. Such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved, and such report shall include information on the progress of the Administration in liquidating the assets and winding up the affairs of the "Reconstruction Finance Corporation, and such other information and such comments and recommendations as the Administration may deem appropriate. The requirement contained in this subsection with respect to the inclusion of information respecting the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation in such report shall be in lieu of any requirement, pursuant to section 106(b) of the Reconstruction Finance Corporation Liquidation Act, and Reorganization Plan Numbered 1 of 1957, that progress reports with respect to such liquidation of winding up of affairs by the Administration be made to the Congress on a quarterly basis.";

(2) by striking out "June 30 and" from subsection (b); and

(3) by striking out subsection (c) and inserting in lieu thereof the following:

"(c) The Attorney General is directed to make, or request the Federal Trade Commission to make for him, surveys of any activity of the Government which may affect small business, for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, promote undue concentration of economic power, or otherwise injure small business. The Attorney General shall submit to the Congress and the President, "at such times as he deems desirable, reports setting forth the results of such surveys and including such recommendations as he may deem desirable."

(b) The second and third sentences of subsection (e) of section 708 of the Defense Production Act of 1950 are amended to read as follows: "Such surveys shall include studies of the voluntary agreements and programs authorized by this section. The Attorney General shall submit to the Congress and the President at least once every three months reports setting forth the results of such studies of voluntary agreements and programs authorized by this section."

SEC. 6. The fifth sentence of section 2(a) of the Act is amended by inserting after "contracts", each place the term appears, the following: "or subcontracts".

SEC. 7. Section 8 of the Act is amended by adding at the end thereof a new subsection as follows:

"(d)(1) Within ninety days after the effective date of this subsection, the Administrator, the Secretary of Defense and the Administrator of General Services shall cooperatively develop a Small Business Subcontracting Program which shall contain such provisions as may be appropriate to (A) enable small business concerns to be considered fairly as subcontratcors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, (B) insure that such prime contractors and subcontractors will consult through the appropriate procuring agency with the Administration when requested by the Administration, and (C) enable the Administration to obtain from any Government procurement agency such available or reasonable obtainable information and records concerning subcontracting by its prime contractors and their subcontractors as the Administration may deem necessary: *Provided, however*, That these programs shall not authorize the Administration to (i) prescribe the extent to which any contractor or subcontractor shall subcontract, (ii) specify the business concerns to which subcontracts shall be granted, or (iii) vest in the Administration authority respecting the administration of individual prime contracts or subcontracts. Thereafter, the Secretary of Defense and the Administrator of General Services each shall issue regulations implementing the program as developed. In addition, the Administrator of General Services and the Secretary of Defense may issue such other regulations concerning subcontracting not inconsistent with the Small Business Subcontracting Program, as they may each deem necessary or appropriate to effectuate their functions and responsibilities.

"(2) Every contract for property or services (including but not limited to contracts for research and development, maintenance, repair and construction) but excluding contracts to be performed entirely outside of the United States and its territories, in excess of $1,000,000 made by a Government department or agency which, in the opinion of the procuring agency, offer substantial sub-

contracting possibilities shall require the contractor to conform to the Small Business Subcontracting Program promulgated under this subsection (d), and to insert in all subcontracts and purchase orders in excess of $500,000 which offer substantial subcontracting possibilities a provision requiring the subcontractor or supplier to conform to such Small Business Subcontracting Program.

"(3) The Administration shall include in any report filed under section 10(b) of this Act information, and such recommendations as it may deem appropriate, with respect to the administration of the Small Business Subcontracting Program established under this subsection (d)."

SEC. 8. Section 7(d) of the Act is amended to read as follows:

"(d) The Administration also is empowered to make grants to any State government, or any agency thereof, State-chartered development credit or finance corporation, land-grant colleges and universities, colleges and schools of business, engineering, commerce, or agriculture, or corporation formed by two or more of the entities hereinabove described which are eligible to receive such grants, for studies, research and counseling concerning the managing, financing, and operation of small business enterprises and technical and statistical information necessary thereto in order to carry out the purposes of section 8(b)(1) by coordinating such information with existing information facilities within the State and by making such information available to State and local agencies. The Administrator may recommend to grant applicants particular studies or research which are to be financed by such grants. The total of all grants (including amendments and modifications thereof) made under this subsection within any one State in any one year shall not exceed $40,000. The Administration may require, as a condition to any grant (or amendment or modification thereof) made under this subsection, that an additional amount not exceeding the amount of such grant be provided from sources other than the Administration to assist in carrying out the purposes for which such grant is made: Provided, that if such grant or any part thereof is to be utilized for the purpose of providing counseling services to individual small business enterprises the Administration shall require that such additional amount be provided and in an amount which is equal to the amount of such grant. What constitutes such additional amount may be defined by the Administration."

SEC. 9. Paragraph (6) of section 502 of the Small Business Investment Act of 1958 is amended by striking out "June 30, 1961" and inserting in lieu thereof "June 30, 1965".

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, D.C., April 14, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate.

DEAR MR. CHAIRMAN: Mr. Hale of your staff requested the views of this Department with respect to the revision to S. 836, 87th Congress, a bill to amend the Small Business Act, and for other purposes, recommended by the Administrator of Small Business.

The Administrator's substitute report on S. 836 had attached a complete revision of the bill, enactment of which was recommended. This Department participated in the development of this complete revision and, as is indicated in the Administrator's report, recommends enactment of such a revised bill. If revised in accordance with the foregoing, the bill would be acceptable to, and have the support of, this Department.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

CYRUS R. VANCE.

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., April 17, 1961.

Hon. A. WILLIS ROBERTSON,
Chairman, Committee on Banking and Currency,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: By letter dated April 7, 1961, Mr. Matthew Hale, chief of staff of your committee, transmitted to us a copy of a revision of the pro-

posed amendment to section 8 of the Small Business Act, which had been submitted to your committee by the Administrator of the Small Business Administration in a letter dated April 6, 1961, in connection with S. 836. Mr. Hale requested that we furnish you with our views on this revision.

As indicated in the letter from the Administrator of the Small Business Administration, this revision of the proposed amendment to section 8 of the Small Business Act is satisfactory to the General Services Administration, and its enactment will be supported by this agency.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

JOHN L. MOORE, *Administrator.*

Senator PROXMIRE. The purpose of this hearing is to give the subcommittee an opportunity to hear from the Administrator of the SBA the reason for the change in request in authorization of funds for your agency, Mr. Horne. At least, that is the principal reason why I wanted you to come back and appear before us.

For my own part I want to have the need for additional funds clearly shown. As you recall, the bill originally provided for a $75 million authorization. In the letter that you wrote on March 14, 1961, commenting on S. 836, you stated that "according to our projection of probable business loan activities, the existing authorization of $75 million appears adequate to meet the needs of the program through the 1962 fiscal year." This puzzled me a great deal, because the SBA had previously come up and asked for $150 million. We believed we were being pretty Spartan in cutting them down to $75 million.

Later, on April 6, 1961, you stated that "subsequent developments cause me to revise my previous recommendations." You are now indicating you need an increase of $150 million for the regular business loan program. To cover this and also to avoid frequent requests from Congress, you recommend that the authority be increased by $525 million to assure that SBA will be able to meet its needs through fiscal 1965.

Frankly, I am inclined to rely on the March 14 recommendations. If we will need any money for this bill, I hope you will build your case on the full SBA record and not simply on the record of the past few months.

Your first letter leads me to believe no additional authorization might be required providing we gave you the flexibility you requested in your first letter so that you would be able to use all of the funds available, rather than have them in airtight compartments.

I know that the projection of need as used by the SBA is at best a guess and, from our experience in the past, the guess is heavily weighed in the direction of asking for more money than will be needed.

However, if SBA can show that it has been sufficiently successful in supplying capital to small business and helping this country recover from this recession; if it can show that it has helped create jobs; if it can show that it has helped the economy grow; then I will consider supporting the necessary increase. I want the need to be clearly shown.

STATEMENT OF JOHN E. HORNE, ADMINISTRATOR; ACCOMPANIED BY C. R. LANMAN, DEPUTY ADMINISTRATOR FOR FINANCIAL ASSISTANCE; K. L. HANNA, ASSISTANT ADMINISTRATOR (CONTROLLER); AND IRVING MANESS, DEPUTY ADMINISTRATOR FOR PROCUREMENT AND TECHNICAL ASSISTANCE, SMALL BUSINESS ADMINISTRATION—Resumed

Mr. HORNE. If it is all right with the chairman, I should like to read a statement which I believe will throw some light on the situation as it was when I came to the agency and some of the changes that have taken place that in my opinion justify this revision of the original letter. May I do so, Mr. Chairman?

Senator PROXMIRE. Yes, I wish you would.

Mr. HORNE. I may in doing so, Mr. Chairman, repeat one or two of the points that you have indicated in your opening statement.

Section 3 of the bill amends subsection 4(c) of the Small Business Act in two respects. First, it increases from $975 million to $1,050 million the total amount in which funds are authorized to be appropriated to a revolving fund in the Treasury for the use of the Small Business Administration. Second, it increases from $575 million to $650 million the amount of the revolving fund which may be outstanding at any one time for the purpose of making business loans pursuant to section 7(a) of the Small Business Act.

In the first report, as the chairman has stated, I stated that, although the existing authorization appears adequate to meet the needs of the business loan program through the 1962 fiscal year, I would welcome the proposed increase of $75 million as a reserve against unforeseeable contingencies. In the second report, however, that is, my second letter of April 6, I state (1) that an increase of $150 million, rather than $75 million, is desirable to assure adequate authority for the business loan program during the 1962 fiscal year; and (2) that the business loan authorization should be increased by $525 million, to a total of $1.1 billion, in order to meet expected requirements over a period of approximately 4 years. I will treat each of these points separately.

Consideration should be given to the experiences and actions of the Small Business Administration, in the years immediately preceding my appointment as Administrator, in order to obtain a full understanding of the position taken by me in the first report. In each year, from the inception of SBA in 1953, the number of business loan applications accepted increased as compared to the previous year; and, during the fiscal year 1959, a total of 10,213 applications were received. With this record the budget estimate for the fiscal year 1961, which was developed late in the calendar year 1959, anticipated a total of 10,800 applications for the fiscal year 1960 and 13,200 for the fiscal year 1961. A translation of these estimates of application volume into approved loans indicated a need by the close of the fiscal year 1961 of an authorization of at least $656 million, as compared to the existing authorization of $575 million. This actually means a need for $81 million for projected applications and a reserve of $69 million. The 1961 budget, therefore, anticipated that a request would be made for an increase of $150 million to raise the total authorization to $725 million, and this request was formally transmitted to the Congress in March 1960.

The record also reveals that the actual experience of SBA during the fiscal year 1960 did not come up to expectations. When Mr. Philip McCallum who was then Administrator appeared before the House Banking and Currency Committee in May 1960, he revised his estimates of business loan application volume from 10,800 to 8,200 for the fiscal year 1960. (The actual total for 1960 was 8,331). He also pointed out that even if the projected volume of 13,200 applications were received during the fiscal year 1961, an increase of only $8 million would be required in the business loan authorization. He recommended, however, that the Congress increase the authorization—he did not specify the amount—in order to give SBA more flexibility to meet unanticipated increases in volume. As you will recall, no final action was taken by the Congress on this item, although both the House and the Senate passed bills providing for increases.

The original budget estimate for the fiscal year 1962, as developed by the previous administration last fall, again revised the estimates of volume and projected an estimate for the fiscal year 1961 of only 9,600 as compared to the previous estimate of 13,200, and it estimated 10,800 applications for the fiscal year 1962. The lowering of these estimates, of course, modified the previous estimate of authorization requirements and, in fact, it indicated that there would be a balance of $55.6 million remaining in the authorization at the end of the fiscal year 1962. This was the background and the situation when I assumed my present position on February 6, 1961.

The first report was submitted on March 14 after I had been in office for approximately 6 weeks. Although I recognized when I assumed this responsibility that steps needed to be taken to improve the procedures, attitudes, and policies of SBA in order to meet the needs of small business, I had not been able to take other than some general actions directed toward improving the climate and atmosphere in our field offices in their dealings with small businesses. Further, my new Deputy for Financial Assistance, Mr. C. R. Lanman, was not sworn in until March 8 and, obviously, he had not had sufficient time to make any major changes. Also, the application volume in February remained at approximately the same level as January although there was a tremendous increase in inquiries pertaining to business loans during that month. The rate of receipt of applications accelerated greatly during the first part of March but, since March typically had been a large month, this was not unexpected. Consequently, I didn't feel that I had a firm base on which to project any other estimate and could only recommend that the increase of $75 million proposed in S. 836 be adopted in order to give us some flexibility in the event the workload increased above the level projected in the budget.

However, in March, 1,332 business loan applications were received, the highest volume of any month in the history of SBA. We didn't know this, of course, until the end of the month. Further, inquiries rose even above the February level, contrary to past experience. This indicates that April receipts will probably be higher than any previous April on record.

This increase is probably due in part to the interest displayed by the President in the problems of small business. In all likelihood, it

also stems somewhat from our efforts to make the Small Business Administration programs better known to the public, and I certainly have attempted to instill in our field personnel a desire to give sympathetic assistance to every small businessman who calls upon us.

I now believe that the business loan program will level off at a higher plane than at any time in SBA's brief history. Actions which we have taken plus some improvements we contemplate for the future, will result in wider interest in our loan program on the part of small businessmen. One significant deterrent to a small business concern seeking credit has been the length of time it has required from the date the applicant first approaches SBA until the date he receives the decision and then, subsequently receives the requested money. In order to speed up this process we have delegated increased authority to regional offices to take final action on loan applications. We plan to extend similar authority to branch offices. This will tend to reduce the paperwork, and will doubtless reduce the time factor. There have been certain requirements with respect to collateral which we believe can be relaxed and simplified—this will be particularly true on small loans—without jeopardizing the Government's position. Actions in this direction would also help to simplify and reduce the time required for the closing and disbursement of such loans. We lowered the interest rate to 4 percent on business and development company loans in areas of substantial labor surplus, and we made some changes in size definitions in such areas. We are studying other phases of the business loan program and anticipate that further improvements can be made.

After reviewing these developments, it appears to us that our previous recommendation to the committee had been inadequate and should be amended. Although it is very difficult, as you know, to forecast the impact of all these items on small business, it appeared to us that a forecast of an application volume of 12,000 applications for the fiscal year 1962 would not be unreasonable. It also appears now that the previous estimate of 9,600 applications for the current year will be exceeded by several hundred. Further, I believe that the changes discussed above will not only result in an increase in volume but will decrease the number of withdrawals and reduce the number of cancellations of loans approved. Viewed from this new standpoint, it seems that a total authorization of $668.2 million will be required to meet the needs of the business loan program through the fiscal year 1962. Accordingly in rounded numbers, we should have an increase of approximately $100 million over our existing authority for business loans. If it is the desire of the Congress to authorize at this time only an amount required to carry us through 1962, then I would recommend an increase of $150 million to take care of the $100 million mentioned above, to give us some reserve to meet a volume which very possibly could exceed that which we have estimated. Such an estimate was included in my second report.

The second report also recommended that the business loan authorization be increased in an amount sufficient to last for 4 years, rather than for the fiscal year 1962 only. Since SBA is required each year to appear before the Appropriations Committee to justify any increase to the revolving fund, it occurred to us that the Congress might prefer to adopt a longer range approach from the standpoint of authorization. This, of course, would tend to reduce the amount of

work imposed on the Congress each year by eliminating the additional legislation required to adjust the business loan authorization. Consequently, we projected the same level of activity mentioned above for the year 1962 for a period of 4 years; and, on the basis of this projection, it appeared that an authorization of $962 million would be needed to operate the program through the fiscal year 1965. If, however, the application volume should rise to 13,200 per year, or 10 percent above the level estimated for 1962, a total of approximately $1,050 million would be required by 1965. Since this latter estimate does not appear too unlikely, I recommend that a total of $1.1 billion be authorized for business loans.

Mr. Chairman, that briefly is a résumé of the experience of the previous administration, an explanation as to why I proposed my first figures to you in March and why now, in view of these developments that have taken place, I changed my recommendation and asked for an increase in the authorization over my previous estimate.

Senator PROXMIRE. Fine.

Mr. Sparkman, do you have any questions?

Senator SPARKMAN. No; I have no questions. It seems to me he has given a very clear statement.

Senator PROXMIRE. Mrs. Neuberger?

Senator NEUBERGER. No, sir.

Senator PROXMIRE. You wanted to stop here rather than go ahead with your statement, and I think that is wise, in view of the fact that we can confine this part of our discussion to the authorization.

Mr. HORNE. For the benefit of the chairman and other members, I did outline, in the remainder of the proposed statement—which I would be glad to make or cut off here—the differences between my first and second report.

Senator PROXMIRE. No; I think you can put that right in the record.

(The balance of the statement follows:)

SECTION 4

Section 4 of the bill authorizes SBA to make prepayments of rentals on safety deposit boxes. In both reports, I recommended enactment of this proposal.

SECTION 5

The only differences in the two reports relating to this section of the bill are to be found in the discussion of subsection 5(a)(3) and subsection 5(b).

Subsection 5(a)(3) of the bill deals with subsection 10(c) of the act. Under the provisions of the latter, the Attorney General is directed to make surveys for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power "in the course of the administration of this act." The quoted phrase suggests that the Attorney General must exercise special vigilance over the operations of SBA to detect and prevent violations of the law. Such, of course, was not the intent. The misleading phrase is eliminated by subsection 5(a)(3) of the bill, which revises the language of subsection 10(c) of the act to make it clear that the surveys of the Attorney General are to cover the activities of all agencies of the Government.

In the first report I stated that, instead of the revision proposed by subsection 5(a)(3) of the bill, I would prefer to see subsection 10(c) of the act eliminated entirely. Upon further consideration I recommended, in the second report, that the revision be enacted subject to certain changes desired by the Department of Justice.

Subsection 5(b) of the bill amends subsection 708(e) of the Defense Production Act of 1950. Under the existing provisions of the latter subsection, the

Attorney General is required to make surveys of possible anticompetitive tendencies in Defense Production Act programs, including voluntary agreements which are continued in force under that act subject to his approval. A report as to such surveys must be made by the Attorney General every 3 months to the Congress and the President. The effect of subsection 5(b) of the bill would be to eliminate the quarterly reports insofar as anticompetitive tendencies are concerned. Such reports would be obligatory only with respect to voluntary agreements and programs.

In the first report I stated that I would defer to the views of the Attorney General respecting the merits of subsection 5(b) of the bill. In the second report, after learning that the Attorney General favored the subsection, I recommended its enactment.

SECTION 6

Section 6 of the bill amends the declaration of policy laid down by Congress in subsection 2(a) of the act to state, in substance, that small business is entitled to a fair proportion of subcontracts as well as prime contracts made for the procurement of property and services for the Government. In both reports I recommended enactment of this proposal.

SECTION 7

Taken together, the amendments to sections 8(b)(8) and 8(b)(11) embodied in section 7 of the bill authorizes SBA to obtain procurement records for review and to make studies of the procurement process at all stages thereof to insure implementation of congressional policies respecting small business. In both reports I stated that enactment of this proposal appears unnecessary, since SBA has encountered no difficulty in obtaining information on such matters from the procurement agencies.

SECTION 8

Section 8 of the bill directs the SBA Administrator after consultation with the Administrator of General Services, Assistant Secretary of Defense (Supply and Logistics) and the Chairman of the Atomic Energy Commission, to promulgate a small business subcontracting program. The program is to have three objectives: (1) To enable small concerns to be considered fairly as subcontractors and suppliers to Government prime and subcontractors; (2) to insure that the latter concerns will consult with SBA when so requested; and (3) to enable SBA to obtain from Government procurement agencies data concerning subcontracting.

All Government procurement contracts in excess of $1 million and subcontracts thereunder in excess of $500,000, exclusive of contracts and subcontracts to be performed entirely outside the United States and its territories, are to require the contractor or subcontractor concerned to conform to this small business subcontracting program. In addition, SBA is to include in its reports to the President and to the Congress information and recommendations concerning this program.

The first report called for a program to be developed cooperatively by SBA, DOD, and GSA. I recommended a provision, however, permitting the latter agencies to act independently in the event they could not reach agreement with SBA. The revised proposal contained in the second report eliminates this recommendation. The small business subcontracting program contemplated by the second report must obtain the concurrence of SBA.

In all candor, if a program agreeable to SBA is not worked out, there is nothing to prevent the procurement agencies from unilaterally setting up and promulgating their own subcontracting programs. However, if the small business subcontracting program contemplated in the second report is adopted, with the concurrence of SBA, any regulations relating to subcontracting issued by DOD or GSA must be consistent with such program.

Another difference between the two reports is that in the first one the only objective of the program would have been to enable small concerns to be considered fairly as subcontractors and suppliers. In the second report, the objectives are the same as those in S. 836 except that the requirement that SBA obtain information and records concerning subcontracting is limited to those records which are available or reasonably obtainable. This suggested change from S. 836 is essentially one of clarification. It would merely prevent SBA from imposing record-keeping requirements.

In the first report I recommended that subcontracts over $1 million contain a provision requiring the subcontractor to conform to the subcontracting program. This differed from S. 836 which would apply the program to subcontracts over $500,000. The second report reverts to the $500,000 level although it does add the proviso that these subcontracts shall offer substantial subcontracting possibilities.

In my opinion this provision is desirable to eliminate the need for inserting a requirement for adherence to the subcontracting program in contracts that do not lend themselves to such program.

The second report restores in slightly revised language the limitations on the subcontracting program contained in S. 836 but not contained in the first report. An additional limitation is added; i.e., that SBA cannot exercise authority respecting the administration of individual prime or subcontracts.

SECTION 9

Section 9 of the bill requires the Secretary of Commerce to publicize, in the U.S. Department of Commerce Synopsis of the U.S. Government Proposed Procurements, Sales, and Contract Awards, all defense procurement actions of $10,000 or more and all civilian procurement actions of $5,000 or more. Certain appropriate exceptions are made.

In both reports I indicated that this provision does not seem necessary. The subcommittee doubtless knows that, since the submission of the first report, DOD and GSA have issue regulations which accomplish the purposes of this section of the chairman's bill.

SECTION 10

Section 10 of the bill effects a number of changes in the grant program embodied in section 7(d) of the act. In the first report I stated that one of these amendments authorized SBA to make grants to be utilized by the grantees for the purpose of providing counseling services to individual small business enterprises; and I indicated that there was doubt whether grants could be made for such purposes under existing law.

By letter addressed to me on March 20, 1961, Senator Fulbright took exception to this interpretation of subsection 7(d). The authorities cited by him convinced me that there is no reason to doubt the power of SBA under the present provisions of subsection 7(d) to make grants for the described counseling purposes. In preparing the second report, I revised the earlier discussion of section 10 to eliminate the comments questioned by the Senator.

SECTION 11

Section 11 of the bill effects an indefinite extension of the authority of SBA to make loans to local development companies for the construction, conversion, or expansion of plants to be occupied by identifiable small business concerns. This authority, embodied in section 502 of the Small Business Investment Act of 1958, is due to expire on June 30, 1961. However, the Senate, in agreement with the House, has employed the vehicle of S. 1 to make this lending authority permanent.

Mr. HORNE. We were able to bring about some further changes in the original position taken by SBA, DOD, and GSA on other parts of the bill.

Senator PROXMIRE. Mr. Horne, supposing the three limitations, that is, the regular business loans, the disaster loans, and the prime contract loans, are ended and it is possible for you to use all of these funds, would not this modify your position?

Mr. HORNE. Well, Mr. Chairman, that would give us, of course, more flexibility and we could possibly get by with some less authorization than would otherwise be the case. I don't know how much, frankly——

Senator PROXMIRE. You would not want to, I presume, have a reserve for disaster loans in the event that some unforeseen development occurred, divide that by administration?

Mr. HORNE. If you lumped them all together and did away with these present limitations, then, of course, if we had an unusual number of disaster loans, and we have a sufficient reserve working across the board, we could draw on that reserve for the disaster loan programs.

Senator PROXMIRE. I see. That would not modify your request. You still feel that you would have to ask for $150 million, if you only have an authorization for the coming fiscal year, and $575 million additional for the 4 years?

Mr. HORNE. Based on the results of what we have already done, that is, the increased activity, increased interest expressed, increased inquiries, increased loan applications, I think the $150 million, Mr. Chairman, is a fairly conservative figure.

If we eliminated these limitations on each of these three activities, we might possibly get by with a figure that would provide a less reserve. There is just no way to pinpoint exactly what the balance of the year may bring. Frankly, I think it would be safer to have the authorization of $150 million.

Senator PROXMIRE. It seems to me that you are placing a lot of emphasis on very, very limited experience. There has been a step-up and it is evident, over the past few weeks, but after all, you have a sweep of nearly 10 years in this SBA operation. It seems to me that to base your request for the coming fiscal year, and certainly over the next 4 years, on only the last few weeks is to ignore the greater experience for a very limited and brief experience.

I am inclined to think your letter of March 14 suggesting no increased authorization is necessary still has a great deal of merit, especially in view of the fact you only give two reasons, as I see, why you think your need might increase. One is because of the shorter time you say it will now take to make a loan under prompter administration and, second, because your interest rate, you say, will be lower. As far as the second argument is concerned, I presume that the Federal Reserve Board is still cooperating with the administration in trying to follow a policy of increasing the money supply and reducing interest rates, so that all interest rates would tend to drop, and the real advantage in SBA lower interest rates would thereby diminish.

Mr. HORNE. You see, Mr. Chairman, the lowering of interest rates has not as yet had time to take much effect. We don't know what its total impact is going to be. We do know, though, that we have already had more loan applications in March than any other single month. We also know we have more inquiries about loans. If these inquiries are translated into loan applications in April and in the succeeding months——

Senator PROXMIRE. This is all on loan applications. It is not on the basis of evaluating the loan applications.

Mr. HORNE. But then if the percentages of approval should remain the same, the very fact that we have had an increase in loan applications means we are going to have a step-up in approvals. Mr. Lanman has made some projections on this, and based on some things we have already done and some other things he plans, he believes our percentage of loan applications will be increased rather than lowered. But even if they stay the same, the fact that we have had so many more applications come in already means more loans will be made.

(The table referred to follows:)

Estimated use of business loan authority

[Dollars in millions]

	Estimate, 1961	Estimate, 1962	Estimate, 1963	Estimate, 1964	Estimate, 1965
On basis of 1,000 applications per month for 1962 and subsequent years:					
Loans and commitments outstanding start of year	$442.3	$502.8	$668.2	$792.6	$874.3
Net commitments made during year	156.6	289.4	289.4	289.4	289.4
Total	598.9	792.2	957.6	1,082.0	1,163.7
Repayments during year	96.1	124.0	165.0	207.7	201.6
Loans and commitments outstanding, end of year	502.8	668.2	792.6	874.3	962.1
On basis of 1,100 applications per month for 1962 and subsequent years:					
Loans and commitments outstanding start of year	442.3	502.8	695.9	844.7	946.
Net commitments made during year	156.6	318.1	318.1	318.1	318.1
Total	598.9	820.9	1,014.0	1,162.8	1,264.5
Repayments during year	96.1	125.0	169.3	216.4	214.7
Loans and commitments outstanding, end of year	502.8	695.9	844.7	946.4	1,049.8

In addition to number of applications per month, calculations for 1962 and subsequent years are based on following factors:

Withdrawals of applications, 5 percent of applications received.
Approvals, 60 percent of net applications received.
Cancellations, 6 percent of loans approved.
Average size, SBA share, $45,000.
Repayment period, 6½ years.

Prepared by: Office of Controller, Budget and Reports Division, Small Business Administration, Apr. 11, 1961.

Mr. HORNE. Also I should like to point out one thing, talking about the history of the applications in SBA. In 1955 the increase over the preceding year was 44 percent. In 1956 the increase over the preceding year was 23 percent. In 1957 the increase was 68 percent. In 1958 the increase was 15 percent. In 1959 the increase was 29 percent. Now, and this is probably one reason that caused Mr. McCallum to have to revise his figures so extensively, in 1960 there was a decrease for the first time; 18 percent. As was brought out in other hearings I think it was clear that the letter Mr. Barnes sent to the field offices telling the regional directors to trim their sails was responsible for their decrease of 18 percent. However, in 1961 the increase occurred again 15 percent over the 1960 figures, and in 1962——

Senator PROXMIRE. I want to be sure now whether these are loans or loan applications.

Mr. HORNE. These are applications received. Now if you want the figures for applications approved, I could read them to you, too.

Senator PROXMIRE. But what I am getting at is this: I can see why, with a new administration, with the President saying he thinks the SBA should be more aggressive, with a feeling that Democrats are perhaps a little more generous, that there might be an increase in applications. But there also might be an increase in the proportion of applications that are refused and a decrease in the proportion of applications that are approved and there might not be such a significant increase in the approval of loans, which is the important factor, is it not?

Mr. HORNE. I don't anticipate that the percentage of applications that are approved will decrease. I think rather it may very well increase.

Senator PROXMIRE. Do you have any study of how this has developed in recessions? Do you not have a pattern of having the loans that are requested during recession periods like the present rejected by SBA in a higher proportion?

Mr. HORNE. The record that we have, Senator, would run like this: the loans approved percentagewise, in 1958, for example, were 59.6 percent. The agency approved 59.6 percent—that was a recession year—of the loan applications received. It hasn't always been that high, but in 1958, as I say, the percentage approved of those received was 59.6 percent. In 1960 it dropped. The approvals ran 48.2 percent.

Senator PROXMIRE. Do you have the figures in 1954 and 1958?

Mr. HORNE. In 1954 the approvals were only 38.5 percent.

Senator PROXMIRE. Another recession year.

Mr. HORNE. The 1955 rate was 36.1 percent; 1956 was 56.9 percent; 1957 was 58.7 percent; 1958, as I have just said, was 59.6; 1959 was 57.4 percent; 1960 is 48.2 percent. The cumulative over these years, 53.7 percent.

Now, as I have indicated, checking with Mr. Lanman and checking the record in the past, we do not anticipate a lowering of the percentage of loan applications received.

Senator PROXMIRE. You do not anticipate a lowering of the percentage of loan applications approved?

Mr. HORNE. Yes, approved. We do not anticipate——

Senator PROXMIRE. Have you had any opportunity at all to evaluate these loans?

Mr. HORNE. No, sir, we have not had sufficient time yet, except we believe, based on what we have done—and all we can do is project—that the percentage of loans received that are approved will actually be greater.

Senator PROXMIRE. You have given us the number of loans, have you not?

Mr. HORNE. Yes.

Senator PROXMIRE. How about the dollar amount of loans that is being requested? Do you have any figure on that?

Mr. HANNA. Of loans approved per year?

Senator PROXMIRE. It would seem to me a more pertinent statistic than the number. You might have many small requests coming in and the total amount might even be smaller.

Mr. HANNA. Senator, in 1960—that is the year in which the rate fell off—the total loans approved were $168 million. In 1959 they were $267 million; 1958, $195 million—these are rounded figures—1957, $159 million; 1956, $81 million; 1955, $55 million; 1954, $28 million.

Senator PROXMIRE. It would be more helpful, I think, if you could give us a picture, if you have it, of the average loan amount.

Mr. HANNA. The average size of loan?

Senator PROXMIRE. Has that tended to increase, or dropped?

Mr. HANNA. That has tended to increase over the years. At the present time the total loan is running $47,000, and that is on the cumulative basis. The current year it is $48,813. And this, I believe,

has been the general picture year by year, the average size has tended to increase somewhat.

Senator PROXMIRE. And has bank participation tended to increase?

Mr. HANNA. Dollar amount?

Senator PROXMIRE. Yes.

Mr. HANNA. The cumulative average—and this is only on participation loans—of SBA's participation has been 77.8 percent. In other words, the banks' share has been 22.2 percent. However, as compared to the 77 percentage, in 1960 the SBA proportion was 79.2 percent. In 1959 it was 78.7 percent. In 1958 it was 77.2 percent.

Senator PROXMIRE. In other words, the banks seem to be participating less and less.

Mr. HANNA. Almost the same.

Senator PROXMIRE. Well, 77, 78, 79.

Mr. HANNA. As a matter of fact, the first 9 months of this fiscal year was 80.3 percent.

Senator PROXMIRE. That is the same trend, you see.

Do you think there has been any influence on the number of applications by the attitude of banks in regard to participation?

Mr. HORNE. I don't think so, Senator. There may very well have been, but I doubt it.

Senator PROXMIRE. What has been their attitude? Is the attitude, you think, more encouraging to participation in small business loans?

Mr. HORNE. I think it is more encouraging, plus the boost we have given the program.

Senator PROXMIRE. In view of the fact the participation rate has been dropping, it would appear it has not been encouraging.

Mr. HORNE. Maybe I misunderstood you. I thought you were referring to why the small business applicants themselves have come in in greater numbers. I think they have come in in greater numbers because of the steps we have taken to make our services wider known and because of the interest that has been expressed by the President himself in small business. Now, as to why the banks' share has fallen off slightly in its dollar participation, I don't know how to account for that.

Mr. Lanman, do you have any ideas on that? It has, as you have indicated, fallen off slightly.

Mr. LANMAN. The only reason that I could guess would be that over the period that we are reviewing, their money has been relatively tight, and banks will tend, if they came in at all, to come in for the minimum amount, which is 10 percent.

Senator PROXMIRE. Now that money is less tight, I hope participations are going to get less tight after a while.

Mr. LANMAN. Presumably it will get better.

Senator PROXMIRE. There should be more bank participation?

Mr. LANMAN. Yes.

Senator PROXMIRE. This should be a fact that it would tend to relieve the pressure on SBA for coming up with quite as much.

Mr. HORNE. That is proper, but keep in mind two things, Senator; I am sure you will: In the first place, we are not sure we are going to increase the bank participation. Secondly, even if the bank should come in, I am not at all sure but what that will bring in additional applicants.

Senator PROXMIRE. Well, the very fact that the banks have more funds to loan, it would seem to me, it should tend to make the pressure on SBA less. After all, the natural thing for a small business to do is to go to its local bank, and he is encouraged to do it—we want him to do it—and as their loanable funds increase, the need for relying on SBA declines. One of the great purposes of SBA, as I understand it, is to provide loans to firms that cannot secure funds from the commercial facilities.

Mr. HORNE. Of course, the percentage of bank participation, while it has varied somewhat, has been fairly constant, and also, as I have just said, if we increase bank participation, if banks show greater interest in and help to promote the program, I am not sure that that itself, is not going to help bring in more applications. All, of course, you can do is weight all these different factors. If the increased bank participation comes about and that should, in turn, result in increased number of people coming in for loans, which is possible, then the slight increase that we might expect in bank participation, taking the very best year in the past, could very well not be sufficient to offset by any manner of means the increase in number of applications we may have.

Senator PROXMIRE. In view of the fact that Congress can choose to follow a policy of having a little shorter rein, why would it not be a wise idea to hold up additional authorization till, say, January of 1962?

Meanwhile, you would have an opportunity to study the effect of eliminating these limitations you have of the three funds so you would have greater flexibility. Also, you would have an opportunity to evaluate the meaning of these additional applications in terms of how many are approved and of additional participation with a less tight money market.

What would be the effect on your agency if Congress should follow that policy, keeping in mind all the time, of course, that the sentiment in Congress is to encourage SBA and to in no sense prevent the legitimate small business loan from being made? In your judgment could this prevent any significant number of legitimate loans to be made to small business?

Mr. HORNE. Are you referring to the recommendation wherein I suggest the possibility of projecting it for a 4-year period, or are you talking about this——

Senator PROXMIRE. Supposing we do not pass this bill, supposing there is no authorization until January of 1962?

Mr. HORNE. I think psychologically, Senator, if there is no increased authorization at all, it would have an adverse effect. I think also we might very well reach a point where we are bursting at the seams, so to speak, and I would like to ask Mr. Hanna, who has the figures here at his command——

Senator PROXMIRE. Why would it have an adverse effect psychologically? If the interest rates are lower and the attitude of the local small business agency is that they are happy to make any loan that is legitimate and proper and desirable, why would the fact that Congress has desired to maintain the authorization have any effect on any businessman who is interested in getting a small business loan?

Mr. HORNE. I think it could very well be an inference nationwide that we have talked idly a great deal about small business, about improving its standards, I know that throughout the agency we have stepped up considerably our efforts to make our services known, and then I am afraid that if Congress took no action whatsoever, that it simply could have, as I say, an adverse effect psychologically. But something perhaps even more pertinent than that is whether or not we would burst at the seams and not be able to meet our commitments.

Senator PROXMIRE. Yes, I want to come to that in a minute, but first I want to make sure I understand your psychological effect. I am wondering what that would be, because as far as the psychological effect, the person who is important is the small businessman who wants his loan, and you think failing to read in the newspaper that the Congress has stepped up the small business authorization would persuade some small businessmen who otherwise would want a loan from going in and asking for one?

Mr. HORNE. Of course, it is a matter of opinion, Senator. There is no way to weigh what effect it might have. I could be mistaken in my belief. I think, though, it would have an adverse effect. We don't know how it would be interpreted in the mind of the fellow who might read it.

Senator PROXMIRE. Of course, you have had a great deal of experience with this. My own limited experience in Wisconsin is that these people will come in and ask for the loan if they find that the local office is sympathetic and understanding and if they know of other people who have had success in getting small business loans and they have worked out well. Whether Congress acts or fails to act on authorizing substantial additional money does not affect the attitude of the individual small businessman in my judgment.

Now let us see about the bursting at the seams of this.

Mr. HORNE. If I could just make one other point I don't know to what extent the regional operator, loan examiner, would be affected. I am not sure but what there would be some adverse effect there.

Senator PROXMIRE. Supposing we in Congress take this attitude: We are anxious to cooperate as much as possible on the record; we want the SBA to be able to come in and show us that they need the money. To approve additional authorization we want an SBA record of making good, sound loans that have been helpful to our economy and a showing that can demonstrate it. If this were Congress' attitude it would seem to me that the attitude of the employees out in the field offices would be: "We want to make every good loan we can make. It is right and desirable from the standpoint of the economy and it also is the kind of thing Congress is asking, so they have a record in knowing they should go ahead and increase authorization. This is just a possible reaction.

Go ahead.

Senator NEUBERGER. Mr. Chairman, could I ask a question? I do not follow this. All the projections on this sheet we have concern the approval, cancellation, repayment period, and the report of the amount loaned, but nowhere is there anything about the repayment itself. I mean, what is the record, since I am not familiar with this at all? It seems to me that is an important thing. You were just now talking

about sound loans. When discussing appropriations do we not have to keep in consideration the amount of repayment?

Senator PROXMIRE. Oh, indeed. That was one of the questions that I asked. I asked that they work this up for me so that we would have a notion of whether or not the loans that have been made years ago and were coming back and being repaid would not help to relieve the pressure on additional authorization. But, as I guess was indicated to you, there is additional information on this sheet, and you gentlemen give the record the SBA has had over the years. I understand it is rather thorough.

Senator NEUBERGER. I was looking at the end, the projection for 1962, and I just noticed there was nothing about the percentage of repayments. It seemed to me that that determined the amount of money in the revolving fund.

Senator PROXMIRE. It has a substantial effect on it.

Can you give us your answer on the record of your repayment?

Mr. HANNA. Would you like me to give you the projections first, Mr. Chairman, with respect to your first question as to our situation next January 1? We estimate that we would have approximately $72 million uncommitted in the business loan authorization as of——

Senator PROXMIRE. Wait a minute. I want to make sure that you are now going to talk about the repayment situation. You say you prefer to talk about that later?

Mr. HANNA. Yes, sir.

Senator PROXMIRE. All right, go ahead.

Mr. HANNA. This is going back to your initial question as to whether we would be bursting at the seams before Congress had an opportunity to act. Our estimate is we would have $72 million loans uncommitted on June 30th of this year. Our forecast for next year is that we would use $166 million. Now, if that use were projected at a level rate during the course of the year, it would indicate that we would need approximately $83 million by the close of the current calendar year, by December 31, as compared to having $72 million.

Senator PROXMIRE. This assumes that you have flexibility in your various funds?

Mr. HANNA. No, sir, I am speaking only with respect to the $575 million and the forecast of $150 million for next year.

Senator PROXMIRE. You have to make a case on that, because you have to assume the law is going to remain the same. But let us address ourselves to the possibility, which I think may be very good, that Congress may decide to give you more flexibility so you can use all of these funds.

Mr. HANNA. I was just attempting to point out it is quite conceivable we could run out of business loan funds before January 1 in the event Congress didn't take any action.

Senator PROXMIRE. I understand. On the other hand, if you were able to use these other funds, perhaps you would not be in that position.

Mr. HANNA. That is correct.

Senator NEUBERGER. Mr. Chairman, I still am not clear, even after I have read this. Take that first column on this sheet.

Mr. HANNA. Yes, ma'am.

Senator NEUBERGER. "Estimate 1961." It says, "Net commitments made during year, $156.6 million. Repayments during year, $96 million." But what was the actual disbursement so we know what the percentage of repayment is over the commitments? This is, as I realize, a projection.

Mr. HANNA. The commitments represent new loans approved. Now, a commitment must be made against the business loan authorization at the time the loan is approved, not at the time the loan is actually disbursed. So when we are talking of commitment we are speaking only of approvals at this stage.

The second item does represent repayments of principal, which, of course, do go back to the revolving fund and tend to increase the business loan authorization available.

Senator NEUBERGER. But is it repayment of $96 million out of $156 million?

Mr. HANNA. No, ma'am, those are total repayments against loans previously made.

Senator BENNETT. Of the $442 million, which is the first figure there.

Mr. HANNA. There are $442 million outstanding at the beginning, loans made in previous years.

Senator NEUBERGER. I guess to get the answer I am looking for I take this 6 percent of loans approved that are not consummated. Is that it? Somewhere in here I see a missing link that I do not follow.

Senator PROXMIRE. Senator Neuberger, what you are driving at is what proportion of loans made by the SBA are repaid, or how much they lose because the loans go bad?

Senator NEUBERGER. No, I was not even thinking of that. There seems to me to be a discrepancy between $156 million and the $96 million. Is that an average?

Mr. HANNA. Senator, in making the projection we take first the net commitments made during the year, those are new loans that are being approved.

Senator NEUBERGER. I understand.

Mr. HANNA. Now, with respect to repayments, we have attempted to determine when the various loans were disbursed and estimated the projected amount of repayments against principal which would have been received in each of the fiscal years. Now, the 96.1 million represents our estimate of the proportion of the total of $442 million, plus the $156 million, that that would be coming back during the fiscal year 1961.

Senator NEUBERGER. Oh, I see. Fine. Thank you.

Senator BENNETT. Mr. Horne, while you are on the repayment subject, could you tell me why you estimate that your repayments will drop off in 1965 in spite of the fact that you expect a substantial increase in your outstanding commitment?

Senator PROXMIRE. I was going to ask the same question. It is a good question.

Mr. HANNA. Yes, sir. That ties back into the dropoff in loans approved in 1960 and our forecast or projection on repayments in each of these years, and then thereafter we will pick up again.

Senator BENNETT. You are saying this is so, then, because in 1960 you made fewer loans and that therefore there will be fewer loans coming due for final payment in 1965?

Mr. HANNA. Yes, sir.

Mr. HORNE. 1960, Senator, was the only year in the history of the agency in which the applications that were accepted and the applications that were approved showed a drop. Otherwise there has been a gradual increase, in some cases quite large.

Senator BENNETT. This explains it. You do not have the 1960 figures on here, so there is nothing that we have for comparison.

Mr. HORNE. Yes.

Senator PROXMIRE. Let me just go back to your bursting-at-the-seams argument and say what are the assumptions again that you make, that you might be $81 million short by the end of this calendar year if we make no further authorization in the capital loan fund?

Mr. HANNA. Mr. Chairman, if you will note from the statement which you have before you, we estimate that we would have, at the close of the fiscal year 1962, total loans and commitments outstanding of $668 million. We estimated at the close of 1961 we would have $502 million, or an increase in loans and commitments outstanding of $166 million. Now, assuming that this increase would be level during the year, that would indicate that we would need about $86 million for the first 6 months of the fiscal year, so that adding the $86 to the $502 would bring you up to $588 million as compared to our present authorization of $575 million.

Senator PROXMIRE. So that you would be the difference between $575 and $588, or $13 million short?

Mr. HANNA. Yes.

Senator PROXMIRE. And that assumes a thousand applications?

Mr. HANNA. Yes.

Senator PROXMIRE. And it assumes the same rate of approval of applications? The approval is the important thing.

Mr. HANNA. It assumes the rate of 60 percent of the approvals. That is one of the assumptions.

Senator PROXMIRE. I see, which is a little more than your average.

Mr. HANNA. Than the experience has been up until—well, in 1958, I believe it was, it ran 59.6 percent.

Senator PROXMIRE. Are all these assumptions you have at the bottom a little bit on the conservative side in the sense that they would tend to justify needing more money?

Mr. HANNA. They are on the conservative side. They represent a projection of what is thought will actually materialize.

Senator PROXMIRE. In other words, 60 percent of net applications received approved would be higher than your experience?

Mr. HANNA. On a cumulative basis, yes, sir.

Senator PROXMIRE. And 5 percent of applications received withdrawn, would that also be higher?

Mr. HANNA. That would be higher, is that right?

Senator BENNETT. Higher, or lower?

Mr. HANNA. I am sorry, it would be lower than the experience has been.

Senator PROXMIRE. And 6 percent of loans canceled?

Mr. HANNA. Yes, sir.

Senator PROXMIRE. That would be what? That would be lower?

Mr. HANNA. That would be lower.

Senator PROXMIRE. And your average size loan of $45,000, that would be——

Mr. HANNA. That is higher. It is running close to $43,000 this year and $41,000 previously.

Senator PROXMIRE. And that repayment period is longer, is it not, in average?

Mr. HANNA. Yes, sir, in the average.

Senator PROXMIRE. So that every one of your assumptions that you make including the amounts of loans at a thousand, would tend to overstate your need based on experience in order to justify your basis for being $13 million over at the end of the calendar year?

Mr. HANNA. Mr. Chairman, with respect to the repayment part, the average repayment is running about 6 years on the business loans, but we have to consider, too, that there is a certain lag and some of them are for a longer period of time. In using the repayment period of 6 years in our current forecast, we were running short during the current year, we have increased it to an average of 6½ years, which I think is more in line with probable actual repayments.

Senator BENNETT. While you are on that, Mr. Chairman—I came late—if all of these are liberalized a little to provide for contingencies, what about this thousand applications a month? Is that more than the agency has been receiving?

Mr. HORNE. That is more, Senator, than we have received in the past, but it is not as high as what we have already had in the month of March. We have had over 1,300 applications received in the month of March.

Senator PROXMIRE. Have you adjusted the month of March seasonally? Did you say the month of March is normally a high month?

Mr. HORNE. The highest we have had is 1,088.

Senator PROXMIRE. Was that in March?

Mr. HORNE. Yes.

Senator BENNETT. Just for my basic information, last year or the year before or the last 2 or 3 years, what kind of a figure can you give me to use as a comparison with the figure of 1,000? How have they been running in previous years?

Mr. HORNE. Senator, as you say, I had given these figures, but for your information I may just run off for them again.

Senator BENNETT. I apologize for asking you to do that.

Mr. HORNE. The record shows for each year since the SBA's inception the number of loan applications and the number of loans approved has increased, with the exception of 1960 when for the first time there was a drop. That drop was due to the action on the part of the Administrator giving instructions to the regional directors to trim their sails, so to speak, and to reduce the number of loans.

Senator BENNETT. That was 1959. I guess that is the highest you ever had.

Mr. HORNE. In 1959 we had 10,200 loan applications.

Senator BENNETT. About 850 a month?

Mr. HORNE. I guess so. Then in 1960 we had 8,333. That is the first year it dropped.

Senator BENNETT. 700 a month.

Mr. HORNE. Then in 1960 it went up again. No; it was an estimate of 9,600. Right now, though, based on the present rate, this 9,600 esti-

mate is not large enough. It is not adequate. We are going to have around 10,000.

Senator BENNETT. To come back again, you expect 10,000 this year?

Mr. HORNE. Yes, sir; for this fiscal year, which ends, of course, June 30. For the coming fiscal year we estimate around 12,000.

Senator PROXMIRE. You expect a 20-percent increase?

Mr. HORNE. Yes, sir. And, incidentally, that is not out of keeping at all with some of the increases. For example, in 1957 there was an increase of 58 percent over the previous year; in 1959 it was 29 percent; in 1956 it was 23 percent; and in 1961 the estimate is 15 percent—but it is going to be higher than that. The estimate is going to be higher than 15 percent, because the previous estimate by the previous administration of 9,600 is, in our opinion, going up to 10,000. So the increase, actually, from the 9,600 to around 10,000, will give you more than 15 percent.

Senator BENNETT. I hear rumors from back home that your people are out soliciting loans, not waiting for people to come in and make application, but they are out asking people to come in to make applications.

Mr. HORNE. I have not been aware of that, Senator. I am aware of the fact that we are making speeches where we are asked to do so, and we have been in touch with chambers of commerce and State and local development companies telling them of our programs. We have stepped up our dissemination of information as to what services this agency may offer. But I don't know of any instances in which we have actually gotten out and asked a man to come in to us and apply for a loan.

Senator BENNETT. You go and make a speech, you tell the development agencies, "We are here available for loans and we would like to come and make a speech to your people." Then you go out there and make a speech and say, "Please come and give us some loan business."

Mr. HORNE. Senator, I don't know of any such requests, and certainly I can say this for myself, I haven't asked for an opportunity to make a speech yet. I have many more invitations than I have been able to accept.

Senator BENNETT. But yet you said you were disseminating information to development agencies and chambers of commerce.

Mr. HORNE. As to what services are available. We don't ask them to come in and get our services; we don't ask them to let us come and appear before them to make talks.

Senator PROXMIRE. It seems to me this is very commendable, to let the American people, all the businessmen, know it. They ought to know what is available. I would agree they should not go out and solicit loans and have salesmen out looking for business, but at the same time I think they have an absolute duty to let all the small businessmen in the area know what is available and, frankly, I find in my State, I thing it is true in every State, that there are many small businessmen who don't understand this program and don't have an equal opportunity, therefore, to take advantage of it. I think there is a great difference between giving the information when you are asked to do it, as the Administrator has said that he and the people in the field have been doing, and going out to compete with the banks by aggressive salesman methods.

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Senator BENNETT. As I said at the beginning, these are rumors. But we see a situation in which they are projecting a great increase in the demand. We are not having an increase in the number of businesses that matches the increase of the demand, so somebody must be stirring it up.

Mr. HORNE. Part of our projection also relates to past experience, because, as I have indicated, past experience shows that in every year except 1960 the number of people applying for loans and number of people receiving loans has increased. So our projection is not entirely based on our own efforts but on the previous history.

Senator BENNETT. I am not saying this is something that has happened since the new administration came into office. I am just wondering why there should be an increase in the applications at a far greater rate than the increase in the number of businesses or the increase in the gross national product or by any other measure by which we could measure the need of credit help. I just have a little bit of a feeling if you could dig deep enough you would find that at some level of the agency, at least, there is a feeling of empire building, that "we have got to make a record; we have got to show that we are more useful; we have got to justify our request for an extra man" or some extra facilities, and the service goes on.

Mr. HORNE. I might add something to that. At least one of the congressional committees has been somewhat critical of small businesses not knowing what services are available. So to some extent, at least, we are not out of step with some of the suggestions we have received.

Also, I frankly have no way of knowing—it might be we could get the information—whether the loan applications, the stepup, is not somewhat due to the economic condition. And I have no way of knowing but what the applicants coming in the banks for financial assistance may have also gone up as well as that coming in to us.

Senator PROXMIRE. Is it also possible that there is a feeling that we have a new administration, a Democratic administration, an administration in which the President of the United States has taken a specific interest in this particular program and talked about it and a feeling on the part of the people, Republicans as well as Democrats, the Democrats are more generous——

Senator BENNETT. The people with money.

Senator PROXMIRE. The Democrats are more likely to be willing to approve these loans than maybe the previous administration.

Senator BENNETT. Has there been a substantial change in your rate of loan rejections?

Mr. HORNE. No, sir. We anticipate that we may not have as many loan rejections as we have had heretofore, but that would be due primarily, if it takes place, to some change in requirements so far as small loans are concerned. We have a feeling that applicants for small loans—$5,000, $10,000, $15,000, $20,000—that is, if their statements of profit and loss are good, if they have shown by management experience that they are qualified, and they are good citizens, we don't have to be so concerned about the collateral there as we would be with a larger loan.

Senator PROXMIRE. If I could interject at that point, I think that if these increases are in small loans, then your $45,000 figure is likely

to be bigger than necessary and your need for authorization is likely to be a great deal less.

Mr. HORNE. That is possible.

Senator PROXMIRE. If you have a thousand applications for loans that average around $30,000 or $35,000, you can easily handle that right through fiscal 1962.

Mr. HORNE. Of course, Senator, we don't know that that is going to take place, plus the added fact that you have $350,000 maximum—I don't know how long that has been in effect, but it hasn't been in effect throughout the life of the agency—which gives an opportunity for more people to come in and apply for larger loans.

Senator PROXMIRE. It was very useful to get an opinion down on this, to point out by the end of the calendar year you could need an additional $13 million on the first assumption of the 1,000 applications.

Now let us take, which I think is quite an extreme assumption, the second one of 1,100. What would be the figures you would need by the end of the calendar year? And this makes all of these very generous assumptions at the bottom.

Mr. HANNA. That would add another $13 or $14 million.

Senator PROXMIRE. Or it would be around $25 to $30 million more.

Senator BENNETT. How do you arrive at that when you show a figure of $695 million for the estimate for 1962 as against $668 million, which is $27 million more? Would you cut that in half?

Mr. HANNA. I cut that in half, sir.

Senator BENNETT. I see. All right.

Senator PROXMIRE. So that we take all of these generous assumptions here at the bottom and if we take what I feel and what perhaps Senator Bennet may also feel is a pretty substantial estimate of 1,000 applications, you would be $13 million short at the end of the year, $25 to $30 million short if you had 1,100 applications. With all that there is no consideration given to the flexibility which we may provide in the various funds, so that it would be possible to at least temporarily use money from the two other funds for the business loan funds.

Mr. HORNE. By the way, of course there is no way to estimate the disaster loans, and if something should take place while Congress is not in session, we would have no earthly way in the world to come to Congress for an increased authorization. Frankly, I would just feel better if I had some reserve in case these emergencies should arise.

Senator PROXMIRE. Let us take a look at the disaster loan fund. How much do you have in that? What is the margin you have there?

Mr. HANNA. At the end of March we had a balance of $68 million.

Senator PROXMIRE. What is the greatest amount that you ever used in any 1 year?

Mr. HANNA. It was approximately $40 million.

Senator PROXMIRE. Never used more than $40 million in disaster in any 1 full year?

Mr. HANNA. That is approximately correct. That was in 1955, I believe when we had the floods in New England.

Senator PROXMIRE. How about the prime contract?

Mr. HANNA. That has not been used.

Senator PROXMIRE. Not been used at all. How much is in that?

Mr. HANNA. $25 million.

Senator PROXMIRE. So if you take the worst year you have ever had—was what, $47 million?

Mr. HANNA. It was 1955 fiscal year, Senator, I believe.

Senator PROXMIRE. And how much of that was used?

Mr. HANNA. It was the fiscal year 1956 and $44 million was used.

Senator PROXMIRE. Out of an authorization of——

Mr. HANNA. $125 million.

Senator PROXMIRE. An authorization of $125 million.

Mr. HANNA. As a total disaster loan authorization.

Senator PROXMIRE. And you have $67 million left, something like that?

Mr. HANNA. Yes, sir.

Senator PROXMIRE. Unless we have a demand on this disaster fund worse than we have ever had you have an additional leeway there of at least $20 million.

Why has none of this $25 million in the prime contract fund ever been used?

Mr. HORNE. This involves, Senator, SBA taking a contract and then reletting it, perhaps to one person or to several people. Our certificate of competency program has helped somewhat in not having to make use of it, but probably the best purpose it has served is that the possibility is there if we have to exercise it, if we need to exercise it.

Senator PROXMIRE. Would the possibility be there to exercise it to anything like $25 million? Can you envision that kind of likelihood?

Mr. HORNE. One big contract could be that, or in excess.

Senator PROXMIRE. One big contract, for one small business?

Mr. HORNE. No; not for one small business, but for a group of small businesses.

Senator SPARKMAN. As a matter of fact, if I may interrupt, it is not primarily designed to assist in pooling arrangements?

Mr. HORNE. That is right, sir.

Senator SPARKMAN. And if some good-sized contract should come along that was easily capable of being handled by small businesses on a pooling basis, then instead of having each company come in and bid for a part, SBA would simply bid for the whole and then work out the arrangement with this pool.

Senator PROXMIRE. How long has this been available?

Mr. HORNE. It has been available ever since the Small Defense Plants Administration was established in 1951.

Senator SPARKMAN. And it has never been used?

Mr. HORNE. I don't recall that it was ever used in SDPA and it hasn't been used in SBA.

Senator PROXMIRE. I think it was available during——

Mr. HORNE. We did use part of this, by the way, under SDPA, taking several contracts and distributing them out. We did not have to use the whole $25 million.

Senator PROXMIRE. How long ago?

Mr. HORNE. SDPA was the latter part of 1951 and 1952. The name was changed to Small Business Administration in 1953.

Senator PROXMIRE. You have no real expectation of using that fund now, no plans?

Mr. HORNE. I have no immediate expectation, but I never know. I don't have anything staring me in the face right now, but we never

know when a situation would arise that we would want to use it. As Senator Sparkman has stated and I have said prior to his statement, the mere fact that we have it exercises a leverage which I think is an important factor.

Senator PROXMIRE. I would like to know more about that fund. It seems to me something that has been in effect so long and has then only been used once and that so long ago. Will you supply some information on that?

Mr. HORNE. I will be glad to. But as I emphasized, I think the main advantage is that it is available.

(The following was received for the record:)

PRIME CONTRACTS AUTHORITY

The Small Business Administration has considered its authority with respect to prime contracts under section 8(a) (1) of the Small Business Act, as amended, as an extraordinary authority to be utilized in periods of national emergency, as leverage, or as noted by Senator Sparkman during these hearings. Under the exercise of its prime contracting authority SBA would become a contractor and then would subcontract to small firms.

The legislative history of this prime contracting authority indicates that it should not be routinely exercised so as to place the Small Business Administration in the position of operating a procurement program; rather, than the agency's objective should be to persuade and assist Government procurement agencies to carry out the congressional mandate in support of small business concerns.

Implementation of its prime contract authority would require the creation within SBA of a procurement unit and a contract administration unit. It would be necessary for the agency, among other things, to issue invitations for bids and to negotiate contracts.

If the agency placed contracts, it would also have to process and determine termination claims arising from cancellations for cause as well as for convenience of the Government, disputes and appeals arising out of such disputes, and the multitude of related problems associated with an active procurement program. Such a program would result in duplication of the various contracting functions now performed by the Department of Defense, General Services Administration, and the other Government procurement agencies.

Prime contract authority was also provided to SBA predecessor agencies, i.e., the Smaller War Plants Corporation and Small Defense Plants Administration.

During World War II, the Smaller War Plants Corporation was empowered to enter into contracts with any Government procurement agency and to subcontract to small business. Under this authority SWPC undertook performance of 12 prime contracts valued at $35 million. However, SWPC's lending program far outstripped its prime contract program. SWPC loans totaled approximately $500 million.

During the Korean war crisis, the Small Defense Plants Administration was created by Congress by the 1951 amendment of the Defense Production Act of 1950. SDPA was the immediate predecessor to the Small Business Administration.

SDPA was also empowered to take prime contracts and subcontract its work to small plants. Under the Defense Production Act, SDPA was authorized revolving fund appropriations not to exceed $50 million for prime contracting; $1.5 million was appropriated for this purpose. Use of this revolving fund was restricted to cases of extreme hardship and seven prime contracts valued at $2.3 million were undertaken and work subcontracted to small plants.

SDPA did not possess lending authority. It could only recommend to the Reconstruction Finance Corporation that loans be made to small business concerns for defense and essential civilian purposes.

In advocating the creation of SDPA, Congressman Patman in hearings on H.R. 3871 (82d Cong.) stated with respect to the proposed prime contracts authority for the new agency:

"* * * it is not expected that the authority to act as a prime contractor will be frequently used. The chief effect of the provision may be to make the pro-

curement officers more conscious of the needs and capacities of small business, more willing to make use of the smaller plants and in general to make stronger effort to distribute military production more widely. The very existence of the power will have a salutary influence and lessen the need for its employment. This was the experience of the SWPC in the last war."

The Small Business Administration believes that it can render effective aid to small firms through a vigorous program to obtain for such concerns a larger share of the Government procurement dollar and by means of a lending program that can provide necessary financing for small contractors. Its prime contract authority is to be used as noted by Senator Sparkman during these hearings (on S. 836) and as set forth in the above quoted statement by Congressman Patman.

Senator PROXMIRE. You, yourself, suggested in your letter of March 14 it would be very helpful to your Administration if these funds could be pooled.

Mr. HORNE. Yes, sir.

Senator PROXMIRE. In view of the fact that the showing here is with what I regard as fairly extreme assumptions, or at least extremely generous assumptions, you are likely to need very little. Do you not really feel that the prospects of getting through calendar 1961 without any additional authorization would be excellent if you had this pooling?

Mr. HORNE. I can only say, Senator, what I have previously indicated. I think the lack of the reserve would leave us in a threatened position. We have no way of knowing what is going to take place. If I may say in a completely courteous manner, I am not of the opinion that our assumptions are extreme assumptions. I have checked them back and forth with our staff members on more than one occasion to make sure that we try to be at least fairly safe in our assumptions, and also I am of the opinion that if we should come out of this Congress with no increased authorization whatsoever—I am repeating what I said earlier—that it might very well be an assumption that we are giving lipservice more than we are backing up what the President has been saying and the efforts I have been making.

Senator PROXMIRE. Let us take a compromise position in between what you have asked, $150 million, and of not doing anything. Do you really feel that $150 million would be necessary? There is no showing here, even if you take the basis of 1,100 applications, that with an average size loan of $45,000 and 60 percent of applications received, that you would need anything like $150 million.

Mr. HORNE. I say in my statement that about $70 million of that would still be maintained as a reserve.

Senator PROXMIRE. In view of the fact that Congress has been so consistently responsive to this program, has always been willing both to authorize and appropriate everything that was needed, do you really think that a reserve of $70 million with the—I will not say "extreme," I will say "generous" assumptions you make is necessary? There has never been any hesitation as I know of by either party. It has always been nonpartisan in the constructive attitude toward your administration.

Mr. HORNE. That is right, sir.

Senator PROXMIRE. And I certainly cannot anticipate that Congress will be anything but willing to respond immediately when you make a showing. Why, then, do you have to have so much?

Mr. HORNE. I should think, Senator, that if the Congress decided to proceed with the $75 million recommended in S. 836 and give us the flexibility we recommend in the three programs, then we would not be threatened with, if I may repeat the term, "bursting at the seams" to the extent that we would if we did not get anything at all.

Senator PROXMIRE. Let me see. If Congress will what, again?

Mr. HORNE. If Congress will agree to the $75 million recommended in your bill and if we should then get the point we recommend, the flexibility of these program authorizations, it would seem we would be safe until Congress returns in calendar year 1962, and we could, if we needed more money before the end of fiscal year 1962, come back to Congress.

Senator PROXMIRE. Supposing you followed another course. This is only April; Congress will be in session probably for another 3 or 4 months and maybe until October. Supposing we postponed action on this bill for several months so we could have a better look at it. Do you think that would have some merit as far as you are concerned?

Mr. HORNE. I wouldn't see any merit to it. Of course, if the Congress makes that decision, we would abide by it very happily.

I might mention another point which I, frankly, hesitate to mention, and that is if you postpone the entire provision until then, you are also postponing other parts of the bill, I assume, unless you leave this out and proceed with the rest of your bill separately from this.

Senator PROXMIRE. Of course, I am so discouraged about the rest of the bill.

Mr. HORNE. That is the reason I hesitated to mention it.

Senator PROXMIRE. You can see why I can feel that that would not be such a great sacrifice.

Unless there are further questions on this——

Senator SPARKMAN. Mr. Chairman, as you point out, Congress has always been quite willing to go along and take care of whatever the needs may be. We need to remember that there are two stages to this thing. There is the authorization and then there is the appropriation. If we gave the SBA some leeway in the authorization, it does not mean that the appropriating committees would have to appropriate all of it. If they did not and if need developed early in the next session of Congress, it would be relatively easy to get it in a supplemental appropriation. But if it is not authorized, then we have to go through all of this and then wait for an appropriation, and this requires time. So I think we might have that in mind.

Mr. HORNE. I think that is a very excellent point, Senator. And the authorization is not the part that has any impact on the budget; it is the appropriation, of course, as you know better than I, that has the impact.

Senator SPARKMAN. I should just like to philosophize to this extent, too. I think as a whole SBA has done very well, in the years that it has been functioning, both it and its predecessor, the Small Defense Plants Administration. But there have been times when there is no question but what the clamps have been put on loans, and many small businesses throughout the country that really needed help were unable to get it. I am rather of the opinion that those restraints have been put on from time to time because of running up against the need of additional funds, not having it right then and perhaps not being will-

ing to ask for it. I think if we are going to render real service to the small business community we ought to have the means at hand at all times with which to render that service, so we will not have to be curtailing and relaxing and then curtailing and relaxing again.

I believe that the Small Business Administration, under the present administration, will be run on a sound basis, but I do not believe we ought to tie it down. I think we ought to give working room within which it could operate.

Senator PROXMIRE. I would say this in response, that I think that the authorization by this committee should serve a purpose, and I think the purpose should be to take a careful and thoughtful look to evaluate the program as it is moving along.

I think there are a number of significant departures that the Administrator of the SBA has suggested this morning. He envisions a step-up and a substantial step-up in the number of loans. He expects the size of the loan to be large, or larger than it has been in the past. He expects the number of years to be somewhat longer. Now, I think that it is wise, in my judgment, for this committee to be in a position where it can constantly observe this program, particularly if it is going to be stepped up to this extent.

I agree that we should do everything that we can to assist small business, but I think we should do it in a discriminating and thoughtful way, watching all along the line what is being done and being particularly careful that the maximum size of the loans which has been increased from, as you know, $250,000 to $350,000, does not tend to make this program a program of loans not to small business, but to larger-size business and the program which gets away from the concept of assisting people who are just unable because of their size to secure the capital they need.

For that reason I am a little bit inclined to feel that we should certainly provide for the SBA the funds that they need to grant every sound loan they can make, but at the same time watch this program carefully so we are sure it remains a small business program and not a program that is going to compete with the commercial banking industry in loaning to businesses of larger sums.

Senator BENNETT. Mr. Chairman, has anything been said in the hearings, either now or the last time they were held, which would indicate that the SBA has in mind liberalizing its bank participation program? That is another factor in this situation that could increase the use of money.

Mr. HORNE. Yes, Senator. The answer to your question is "Yes." We do have some things in mind as I pointed out, I believe, as you came in, that can very well result in more loan applications. And while the banks may be participating and we hope will be participating to a wider extent than they presently are, if that ensues which we believe it will, the number of people going to apply for and get loans, could also increase the amount that SBA is going to have to put out.

I would also like to point out something else, Mr. Chairman. As you say, we don't necessarily look on our activities now as outright competition with banks, because before a loan is approved by SBA, the applicant first has to go to a bank. And we have cases on record in which we have worked up a loan application for an applicant where the bank had previously turned him down, then after our work the

bank made the loan. So we are glad to work in cooperation with the bank. It isn't a question of trying to get their loans, it is a question of getting them to make more loans if they will and also to cooperate more widely with us.

And I would like also, if I may, to say this point again. I haven't checked the percentage figures, but I believe—I am repeating myself—that the projection of step-up which we have stated at this hearing is no greater percentagewise than the year prior to 1960 of the previous administration. There has been an increase of both loan applications and loans approved since the agency came into being until the definite action was taken in 1960 to curtail the services SBA was offering small businesses, and we don't anticipate, unless Congress has us do so, curtailing those services as long as we have the means with which to give those services.

Senator PROXMIRE. I understand that. What I was trying to get at was the need for the emphasis in this program on small business, genuinely small business. That needs to be constantly kept in mind. I have a feeling that there is a tendency for these programs to be used more and more by businesses that take the big loans and that can really, if they use their ingenuity, secure more assistance from the commercial banking industry than they do; although I do think that your statement was certainly correct that they do have to go to the bank first and get a turndown and also get as much participation as they can.

Mr. HORNE. I might also add that we will watch that very carefully. We don't want it to become an agency in which the small business person who needs a $5,000 or $10,000 loan isn't just as favorably treated.

Senator PROXMIRE. There is a feeling among a lot of small business people in my State, and I am sure around the country, that your small businesses are out of this program. This is not criticism of you or even the SBA in the past, but it is a feeling if you permit many $250,000 or $350,000 loans then this is a program not for the really small business but for the larger units. Sure, you have to get a turndown from the bank, but you know how that works, or can work.

Mr. HORNE. I would also like to say this, Senator. Congress, of course, has increased the limitation. I don't recall what SBA started off with in 1953 when its name was changed, or even what the limitation was in SDPA. I know it has been raised on one or two occasions up to $350,000, but there are times when $350,000 is not an exorbitant loan for a small business person. And, incidentally, there have been quite—I won't say "quite extensively," but more than one occasion when consideration has been given to increasing it to $500,000.

Senator PROXMIRE. That is true, if that is the will of Congress. Congress has decided $350,000 is fair. But I just feel that this should tend to be exceptional and as much as possible the concerns that require smaller loans should be the ones who take advantage of this program.

Senator SPARKMAN. Mr. Chairman, if I may say, if I remember correctly, the original loan limit was $200,000. It may have been even as low as $150,000. I contended that we ought to have an upper limit of $1 million, and at one time the Senate passed a loan limitation, if I recall, of $500,000. I think the $350,000 now grew out of the

compromise between the House and the Senate. One reason I said that the limitation ought to be $1 million was because it has been shown, time after time, that a small business cannot go into the securities market. No business looking for less than $1 million can afford to go to the securities market for it. That has been partly alleviated by the small business investment companies, so that probably there is no pull for such a high limit. Yet there are many small businesses that, in order to have the operating base that they ought to have, could very well use a $500,000 loan. So I do not think the $350,000 is out of line. I think certainly there will be a tendency to have more loans approaching that $350,000, which, of course, would increase the amount that you would be called upon to put out.

Senator PROXMIRE. The main purpose of the hearing this morning is to discuss what we have been discussing, but I would appreciate very much—and it might be useful to Senator Sparkman and Senator Bennett, too—if you could give us orally your views on the compromise proposal on section 8, which has been so controversial and which we felt quite strongly about.

Mr. HORNE. Senator, I have a statement which takes each section, section by section. I will either proceed in that way to give the statement, or I will just state generally that we have gotten a little closer. I don't want to mislead anyone. That is, when I say "we," I am talking about the Bureau of the Budget, of course, and I am talking about the Defense Department, and the General Services Administration. We are a little closer to S. 836 than we were when I appeared before this committee previously. We don't go as far as the committee has recommended.

I say in all good conscience that while I think the steps we have all agreed on were not as far as the committee has recommended, at least it is a step forward, at least it opens the door. At least, for the first time we have these procuring agencies agreeing that such legislation is needed although they are not agreeing that we need quite the powers that S. 836 would give.

So I believe progress has been made. While the progress is not as good as the committee would want, at least we have made progress. This is the first time, as I say, that the procuring agencies have gotten together agreeing that legislation would be helpful to enable us, to authorize us to get together in a true, real manner, consult among ourselves and develop cooperatively a subcontracting program.

Senator PROXMIRE. Supposing they disagree with you. As I understand, what we proposed is that the SBA promulgate a subcontracting program in consultation with GSA and Defense, and SBA has the final word. Now, what they came back with and what we found initially—at least, I found it—unacceptable, was that the three groups, SBA, Defense, and GSA promulgate the program together. If they disagree, then SBA is left out.

Now you come up with what is said to be a compromise in which the three promulgate the program together. There is no statement, no assertion about who has the final word. Presumably, if there is no agreement, GSA and Defense go ahead and issue directives on the basis of whatever program they wish to follow. Will you enlighten us on that?

Mr. HORNE. Senator, of course, a record would be made, but there would be no way to stop them; even if no legislation is enacted at all, there is still no way to stop them.

Senator PROXMIRE. What is the advantage in this so-called compromise over what we had before?

Mr. HORNE. I think it probably boils down to this: In the new wording in the new agreement there can be no doubt in anybody's mind at all but that we are in the program planning stage from its very inception. We are there at the time it gets underway.

Senator PROXMIRE. That was true in the proposal that they made when they came before us in March.

Mr. HORNE. Well, perhaps so. I think this ties it down a little bit better. We are consulted and we cooperatively develop such a program. There is no question about it, and we also, on the subcontracting program, go back to the committee's figure of $500,000.

In our original report, our original recommendation was that we would begin to develop a subcontracting program starting at the $1 million level. We now revert to the $500,000 level, which is in keeping with the committee's bill.

In all candor, if a program agreeable to SBA is not worked out, there is nothing to prevent the procurement agencies from unilaterally setting up and promulgating their own subcontracting programs. It simply would not be, though, a small business subcontracting program spelled with capital letters as contemplated by our participation in it or as contemplated by this legislation, but there would be nothing to prevent their moving with their own programs.

Senator PROXMIRE. You see, Defense and GSA are departments that are bigger and are departments that have so much responsibility anyway, especially in defense, that they would be likely to dominate in any event. You would be in a position where you know that they really have the aces. If you cannot come to an agreement, then you are the ones who are left out. So it seems to me that you have lost the real force that otherwise the SBA might have had.

Mr. HORNE. The truth remains that the other Government agencies concerned will not agree to support that part of the legislation.

Senator PROXMIRE. Was there any improvement in your ability to get information on subcontracts in the new language?

Mr. HORNE. Mr. Maness, who is Deputy Administrator for Procurement and Technical Assistance, has been working with the representatives of procuring agencies. His answer to that is affirmative.

Senator PROXMIRE. May I ask Mr. Maness to elaborate on that. Why is it better now?

Mr. MANESS. There has been a distinct cooperative spirit, Mr. Chairman, between the procurement agencies and our agency. They are willing to sit down and open their files. We are getting an opportunity to look at the subcontracting program. We are now in the discussion stage of establishing a new subcontracting program, and if the bill should pass, I firmly believe that we will have a greater opportunity to participate in the planning and programing of a subcontracting program.

Senator PROXMIRE. Is there anything in the wording of this new provision which would in your judgment improve your position?

Mr. MANESS. In the second report, Mr. Chairman, we indicate that the programs and planning will be cooperatively developed. I believe it means that we will sit down around the table and develop such programs. If we disagree with the DOD or GSA, the SBA's position will be known. We cannot prevent them from unilaterally issuing regulations which they have the responsibility to administer. However, we will be on record as not being able to establish a small business subcontracting program as desired by Congress.

Senator PROXMIRE. All right.

Mr. HORNE. Senator, I might go one step further and say that an added agreement also is that if the small business subcontracting program contemplated—in my scond letter—is adopted with the concurrence of SBA, any regulations relating to subcontracting or issued by the Defense Department or GSA must be consistent with such a program.

Now, you might say: Why wouldn't it have been consistent before you reached this added point of working together? Well, it, for all practical purposes, should have been, but now we have it tied down. There will be no regulation issued that could in the slightest way be at variance with the program that we work out among ourselves.
been talking about DOD and GSA.

Senator BENNETT. Was the AEC deliberately eliminated? You have been talking about DOD and GSA.

Mr. HORNE. No, not deliberately eliminated, Senator. We rather feel that in this new period of negotiation among ourselves since the Defense Department militarywise and the GSA civilians were the two largest, that if we could work out something here, we could have no real difficulty working out the others.

Senator BENNETT. The bill covers AEC as well as the other two, and in your discussion you do not——

Mr. HORNE. Of course, if the bill is approved by Congress, there would be no objection to AEC being contained, or anyone else being added if the committee desires.

Senator BENNETT. What about from their point of view? Has AEC given any indication to you that they prefer not to be involved in this program?

Mr. HORNE. They are working with us now. They have given no indication, no, sir.

Senator BENNETT. I am just curious, because in your statement you leave AEC out.

Mr. HORNE. The explanation I gave, Senator, is really the basis for it.

Senator BENNETT. You will get the two big ones in and then you will come around and talk to AEC afterward?

Mr. HORNE. Yes.

Senator PROXMIRE. With section 9, is the agreement that it ought to be out?

Mr. HORNE. We take the position that it really is unnecessary. I have one sentence here that I will read:

The subcommittee doubtless knows that, since the submission of the first report, DOD and GSA have issued regulations which accomplish the purposes of this section of the chairman's bill.

Senator PROXMIRE. Why not write it into law? It certainly would serve the small business community to know about these things and to require that they be known. We are willing to meet any reasonable exception they can offer to us.

Mr. HORNE. We have no objection to your doing so, sir.

Senator PROXMIRE. Any more questions?

Senator BENNETT. No.

Senator SPARKMAN. I would like to ask just this one question, and this has reference particularly to section 8 but relates to the bill as a whole to a certain degree. Do you feel that the substitute that you have proposed to us is the best that you can work out under the circumstances?

Mr. HORNE. I do, sir.

Senator SPARKMAN. And do you feel that it will enable you to do better service to small business toward the procurement of Government contracts?

Mr. HORNE. Yes, sir.

Senator SPARKMAN. Particularly in the field of subcontracting?

Mr. HORNE. Yes, sir.

Senator PROXMIRE. Thank you very much, sir.

In our earlier hearings, on page 82, a letter from Senator Fulbright on Mr. Horne's testimony of March 15 was inserted in the record.

We have an additional letter from Senator Fulbright, dated April 17, forwarding the comments of the SBA on the March 15 letter.

They will, without objection, go into the record.

(The letters referred to follow:)

U.S. SENATE,
April 17, 1961.

Hon. WILLIAM PROXMIRE,
Chairman, Subcommittee on Small Business, Committee on Banking and Currency, U.S. Senate.

DEAR SENATOR: I wrote you on March 20 regarding the testimony and report of the Small Business Administrator before your subcommittee, particularly referring to section 7(d) of the Small Business Act.

At the same time, I wrote the Administrator of the SBA and sent him a copy of my letter addressed to you.

You replied to me on March 22, stating that you were placing a copy of my letter and the enclosure in the printed record of your hearings.

I have now received a reply from Mr. Horne and if it is in order and the record has not yet been closed, I would appreciate your placing this letter in your record.

Sincerely yours,

J. W. FULBRIGHT.

SMALL BUSINESS ADMINISTRATION,
Washington, D.C., April 13, 1961.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: I wish to thank you for sending me a copy of the letter which you addressed on March 20, 1961, to Chairman Proxmire of the Subcommittee on Small Business, Senate Committee on Banking and Currency, concerning the authority of the Small Business Administration to finance management counseling for small business through the grant program established in section 7(d) of the Small Business Act.

After reviewing the authorities cited in your letter to the chairman, I am entirely satisfied that section 7(d) authorizes SBA to make grants for the purpose of providing management counseling to small business concerns. You may be sure that this provision of the act will be administered accordingly.

Moreover, the Bureau of the Budget has agreed to a revised report I have made to the chairman, Senator Robertson, which fully supports your position.

I am indebted to you for calling this matter to my attention.

Sincerely yours,

JOHN E. HORNE, *Administrator.*

Senator PROXMIRE. In the hearings of March 16, Dr. Woodruff was asked to supply some information for the subcommittee. (See p. 124.)

His reply has now been received and, without objection, will go in the record.

(The letter referred to follows:)

GEORGE WASHINGTON UNIVERSITY,
Washington, D.C., April 19, 1961.

Senator WILLIAM PROXMIRE,
New Senate Office Building, Washington, D.C.

DEAR SENATOR PROXMIRE: The question whether small firms are receiving proportionate defense contract business is unfortunately not amenable to a quick and simple answer.

At the present time, roughly a third of the persons working as employees in nonagricultural establishments are in manufacturing, and roughly half of the persons employed in manufacturing are employed in firms which would be classified as small. Thus, in terms of percentage of employment, about half of the manufacturing labor force is involved in small firms. On the other hand, less than half of the payroll comes from small firms, since rates of compensation are generally lower.

Furthermore, small firms contribute ony about 30 percent of the value added by manufacturers.

Based on payrolls and value added, the small firm sector would be getting its fair share if it received somewhat less than half of all procurements, and, based on employment, would be receiving its fair share if it got about half of all procurements from the manufacturing segment of the economy.

Therefore, a figure of 16 percent, which I understand to be the approximate volume of military procurement coming from the small business segment, would seem to be small in proportion to the contribution which the small manufacturing segment of the economy makes to the total economic picture.

Very truly yours,

A. M. WOODRUFF, *Dean.*

Senator PROXMIRE. Additional letters concerning this legislation have been received. Without objection, they will go into the record.

(The letters referred to follow:)

SUPERB METAL PRODUCTS, INC.,
Keansburg, N.J., April 21, 1961.

Subject: S. 836.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR: When we were aware that a hearing on S. 836 was scheduled for March 15, 1961, by the Committee on Banking and Currency, we sent a telegram to you requesting that the hearing be postponed in order to give time to present our views.

We understand that although the hearing was held as scheduled, the record of said hearing will remain open for a short time to permit written statements to be introduced into the record.

We do not object to the overall bill, but only to certain sections of the bill; namely, section 8 and section 9.

We object to new subsection (D)(1), section 8, and new subsection (E), section 8, as it would subject us to the Department of Defense and the Small Business Administration in the conduct of our business. Besides the Small Business Administration could require the Government procurement agency to obtain not only from prime contractors but also subcontractors.

We are small business and, as such, we do seek a small share of Government business. We do not believe that the above-mentioned sections would be of any advantage or help to small business; but on the other hand would seriously affect small business and do more harm than good.

We therefore most respectfully request that these two sections of S. 836 be deleted.

Very truly yours,

SUPERB METAL PRODUCTS, INC.,
WALTER R. WALL, *President.*

PROGRESSIVE TOOL CO.,
York, Pa., April 12, 1961.

Hon. WILLIAM PROXMIRE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR PROXMIRE: We were unable to attend the hearings which were held beginning March 15, 1961, on S. 836 conducted by the Committee on Banking and Currency. It is our understanding that the records of such hearings will remain open for a reasonable length of time, so that written statements may be introduced into the record.

We do not object to this bill toti, but are concerned with the ramifications of new subsection (d)(1) to section 8 of the Small Business Act, and to subsection (e) to section 8 of the act. A literal reading of new subsection (d)(1) seems to indicate that we would be subject to the Department of Defense and the Small Business Administration in the conduct of our business. Also the SBA could require the Government procurement agency to secure whatever information and records the SBA may deem necessary, not only from prime contractors but subcontractors in addition to present DOD reporting requirements. We feel the authority granted by this subsection to the SBA is almost unlimited, but does not seem to give SBA any responsibilities.

We therefor believe the new subsection (e) to section 8 seems to be a waste of time and will increase the costs in both the procurement agencies and the Commerce Department without receiving any benefits.

In our opinion the above-mentioned sections would not help small business, but would cause more harm than good.

We therefor respectfully request that these two sections be deleted from S. 836.

Very truly yours,

PROGRESSIVE TOOL CO.,
R. E. CHRONISTER, *General Manager.*

Senator PROXMIRE. The committee will stand adjourned.
(Whereupon, at 11:45 a.m., the committee was adjourned.)

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