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HEARINGS
BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON APPROPRIATIONS
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
SECOND SESSION

SUBCOMMITTEE ON MILITARY CONSTRUCTION APPROPRIATIONS

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CLARENCE D. LONG, Maryland
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ROBERT C. NICHOLAS III, *Staff Assistant*

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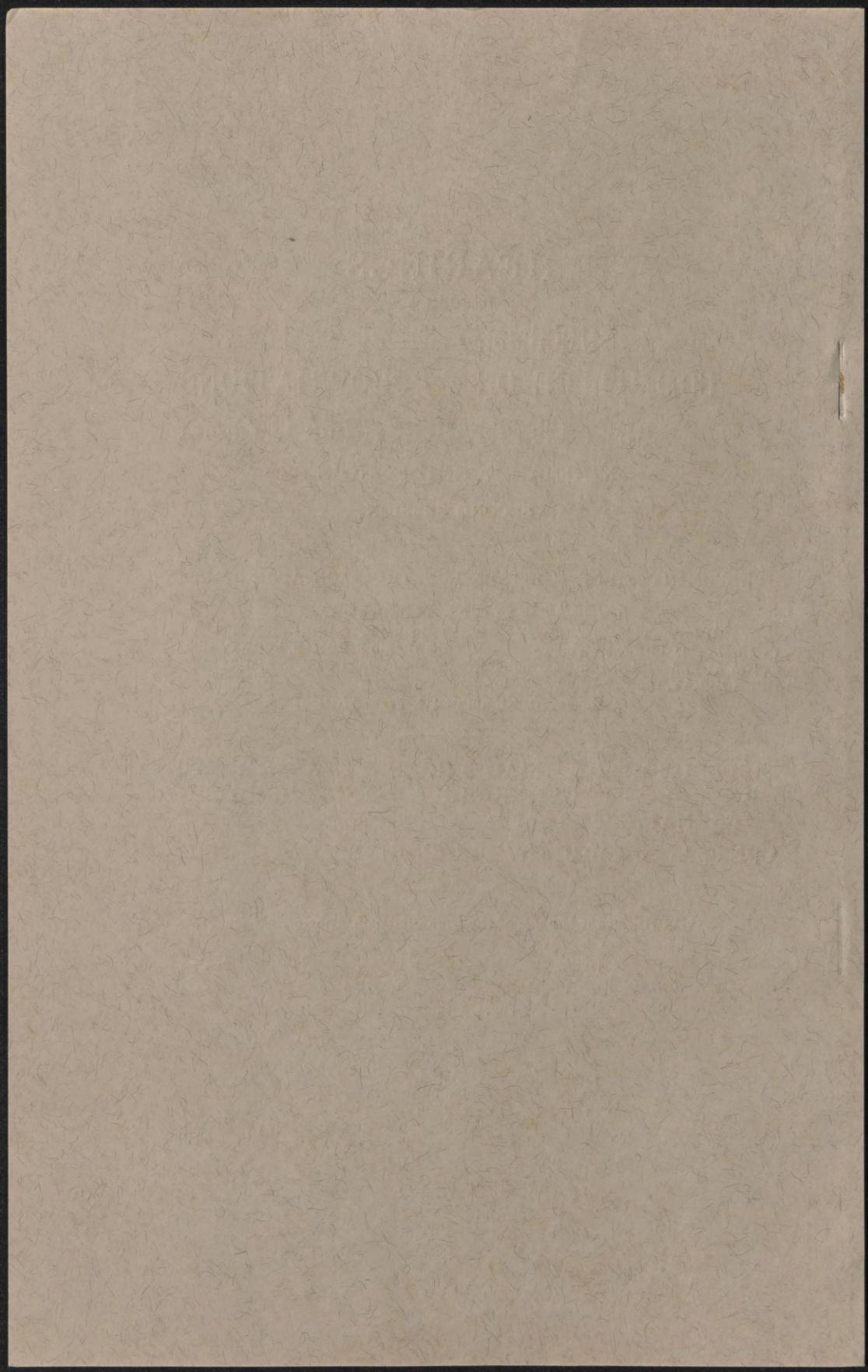
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U.S. GOVERNMENT PRINTING OFFICE

94-067 O

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DISPOSITION OF REAL PROPERTY ASSETS AT ABERDEEN PROVING GROUND AND EDGE- WOOD ARSENAL

WEDNESDAY, SEPTEMBER 27, 1972.

WITNESSES

U.S. ARMY

BRIG. GEN. R. E. McCONNELL, DIRECTOR OF INSTALLATIONS, DEPUTY CHIEF OF STAFF FOR LOGISTICS
P. W. JOHNSON, ACTING DEPUTY FOR INSTALLATIONS AND HOUSING, OFFICE, ASSISTANT SECRETARY OF THE ARMY (I&L)
W. M. LOCKWOOD, CHIEF, INSTALLATIONS MANAGEMENT DIVISION, OFFICE, DEPUTY CHIEF OF STAFF FOR LOGISTICS
COL. J. H. BOWMAN, CHIEF, REAL PROPERTY MANAGEMENT DIVISION, HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
COL. F. F. IRVING, ASSISTANT DIRECTOR, ATLANTIC DIVISION, CIVIL WORKS, OFFICE, CHIEF OF ENGINEERS
G. A. LOEW, EXECUTIVE ASSISTANT TO THE DISTRICT ENGINEER, U.S. ARMY ENGINEER DISTRICT, BALTIMORE
J. P. O'HAGAN, CHIEF, OPERATIONS DIVISION, U.S. ARMY ENGINEER DISTRICT, BALTIMORE
COL. C. M. SHADLE, DEPUTY FOR SUPPORT, HEADQUARTERS, U.S. ARMY ABERDEEN PROVING GROUNDS, MD.
LT. COL. N. J. ANDRE, INSTALLATIONS MANAGEMENT DIVISION, OFFICE, DEPUTY CHIEF OF STAFF FOR LOGISTICS
J. C. CHAPMAN, INSTALLATIONS MANAGEMENT DIVISION, OFFICE, DEPUTY CHIEF OF STAFF FOR LOGISTICS
MRS. O. M. CRANNO, REAL PROPERTY MANAGEMENT DIVISION, HEADQUARTERS, U.S. ARMY MATERIEL COMMAND

GENERAL SERVICES ADMINISTRATION

CURTIS A. ROOS, ACTING CHIEF, REAL PROPERTY DIVISION, PROPERTY MANAGEMENT AND DISPOSAL SERVICE
MINTON HOLLAND, ASSISTANT GENERAL COUNSEL FOR REAL ESTATE

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[The committee met at 10 a.m., Mr. Long of Maryland in the
chair.]

Mr. LONG. The committee will be in order.

OPENING STATEMENT BY HON. CLARENCE D. LONG

On behalf of the Military Construction Committee, I welcome you to this special hearing of the Military Construction Appropriations Subcommittee on the General Services Administration's proposals to declare 10,000 acres of Army-owned land at Aberdeen Proving Ground and Edgewood Arsenal, Md., excess to the needs of the Federal Government.

There are about 79,000 acres altogether at the two installations, although about half of that is under water.

On June 12 of this year, the GSA prepared a report recommending that 6,300 acres at Aberdeen Proving Ground be declared excess. Three days later GSA prepared a second report recommending that 3,600 acres of land at Edgewood be declared excess because of underutilization. These Army installations are contiguous; therefore, the Army is considering them as one area.

The Army has prepared a rebuttal to these reports, which is being forwarded to the Secretary of Defense for consideration. This rebuttal will be the subject of General McConnell's and Colonel Shadle's presentation today.

The committee has called this special hearing to examine, first, the implications of these two reports for the Army mission at Aberdeen and Edgewood; second, the Army's plans for future use of this land; third, the impact on employment at the two bases if the Army decides to release any of the land; and, fourth, the Federal Government's requirements for protection of wetlands, because a great part of this is

wetlands, some of the most beautiful and valuable wetland anywhere around, according to the GSA's own statements. I also feel we should consider the implications of private developers possibly taking over this land either now or eventually, the feasibility of the private developers doing this, and the feasibility of using this land as a dry land sludge dumping site for dredging from Baltimore Harbor. The latter question has come up because the State of Maryland has proposed that the 100 million cubic yards of sludge from dredging of the harbor and for maintenance dredging and deepening be dumped at Hart and Miller Islands in a water-dike area.

There is tremendous opposition to this. One proposal has been that instead of dumping this sludge at Hart-Miller, it be dumped on the excess land which is just a few miles away. We want to explore the feasibility of that here from many different points of view.

As we begin consideration of these questions, I want to emphasize that this hearing is an inquiry into possible future uses for the land, and that I do not support or endorse any specific concept or proposal.

I want to welcome the Federal, State and county officials who are here today, and I will introduce them in the order in which they will testify.

First, we have Brig. Gen. R. E. McConnell, Director of Installations in the Office of Deputy Chief of Staff for Logistics.

EXECUTIVE ORDER 11508 SURVEYS

Mr. JONAS. If the chairman will yield, I would like one thing on the record: Why did GSA initiate this matter? Normally they do not come into this kind of thing until after all other agencies of the Government have relinquished any right or claim to the property.

General McCONNELL. That is right.

Mr. JONES. How did GSA become involved?

General McCONNELL. This is part of the Executive Order 11508, the President's program, which directs GSA to make surveys on all Federal properties to see if there is not excess land that could be transferred.

Mr. JONAS. So this action was initiated by GSA rather than having been initiated by the Army?

General McCONNELL. Yes, sir. As I said, this is under Executive Order 11508.

Mr. JONAS. The Department of the Army has not declared this excess to its needs. In fact, it is resisting the effort of GSA to dispose of the property.

General McCONNELL. Sir, we have our position here which will indicate that there are portions of the GSA proposal that are acceptable to the Army, but not the total GSA proposal.

Mr. JONAS. I just wanted it made clear how this arose.

Mr. LONG. It has been my understanding that the Army opposes this.

Mr. JONAS. Certain aspects of it, sir.

STATEMENT OF BRIG. GEN. R. E. McCONNELL—ARMY DIRECTOR OF INSTALLATIONS

Mr. Chairman, I am Brigadier General McConnell, Director of Installations, Office, Deputy Chief of Staff for Logistics, Department of the Army.

I am here today at your request to discuss the Department of the Army's position concerning the General Services Administration Executive Order 11508 survey report of Aberdeen Proving Ground and Edgewood Arsenal area.

The GSA report recommended that approximately 9,202 acres at Aberdeen Proving Grounds and Edgewood Arsenal area be declared excess. Department of the Army has determined that approximately 2,903 acres can be declared excess subject to the availability of funds for relocating facilities; construction of fencing; and acceptance of various conditions on use and disposal of the excess acreage. As concerns the remaining 6,299 acres recommended for disposal by GSA, DA has determined that all such acreage must be retained to meet current and future requirements. In arriving at this determination, we have considered the installations mission, Reserve Components usage, mobilization requirements and contingency plans. Of the 2,903 acres, 1,896 acres are Carroll's Island and Grace's Quarters. The Army's position has been forwarded to the Office of the Secretary of Defense.

If GSA concurs with the Department of Defense (DOD) position on the excess recommendations, they will so advise the DOD and a report of excess will be prepared and processed. If GSA does not accept the DOD position they will forward the survey report with their recommendations to the Property Review Board. The Board will then review the GSA recommendations and the DOD position and make appropriate recommendations to the President.

Following the decision on this survey, a title 10, section 2662, report will be forwarded to the Congressional Armed Services Committees for clearance. Upon receipt of clearance from the committees the report of excess will be forwarded to GSA. Disposition of the property will then become the responsibility of GSA.

Colonel Shadle, the Deputy for Support, HQ, APG will present details of the survey and the DA position.

STATEMENT OF COLONEL SHADLE

Colonel SHADLE. Mr. Chairman, members of the committee, Aberdeen Proving Grounds is an Army Materiel Command installation located in the corridor northeast of Baltimore. It supports its own test and evaluation mission, as well as the multiple missions of 29 major tenants engaged in extensive research, development, testing, evaluation, production, troop training, air defense, Reserve components support and mobilization planning. The success of the varied and complex DOD missions requires exacting and skilled support which includes a widely diversified configuration of support facilities and real estate of considerable acreage. Of the 79,125 acres which make up the total of APG, 38,063 acres are under water.

GSA REAL PROPERTY SURVEY REPORTS AND ARMY COMMENTS

This briefing is in reply to the two real property survey reports prepared by GSA. The first dated June 12, 1972, pertains to the area which prior to July 1, 1971, comprised the main part of Aberdeen Proving Grounds.

AIRFIELDS

(GSA-APG No. 5) : It is recommended that further study should be given to consolidating the activities of the airfields at APG and Edgewood area.

Army position : Army concurs. A study is in process. At the present time there is one active Army airfield located at APG. The field at the Edgewood area is on license to the Maryland National Guard.

CARROLL'S ISLAND

(GSA-EA No. 1) : It is recommended that the entire 1896 acres comprising the Carroll's Island and Graces Quarters complex be reported as excess.

Army Position : Army concurs conditionally. Excessing of this area is based upon the relocation of test facilities to the Gunpowder Neck. It is estimated that the cost of relocation will be \$3.5 million. This area can be excessed providing a 2,600' diameter fenced exclusion area is placed around the Civil Defense Tower on Graces Quarters. Continued use of Government communications circuits to the Edgewood area is also required.

MAIN BASE—WESTERLY PORTION

(GSA-EA No. 3) : It is recommended that the westerly portion of the main base, comprising roughly the area west of 42d Street be reported as excess after relocation or disposal of material stored in the old warehouses. The accelerator facility should be retained. However, use of the radiation area should be discontinued. This area is comprised of 1,000 acres.

Army position : Army concurs conditionally. With the exception of the tandem accelerator there is no requirement to utilize this area for testing programs.

PROBLEMS WITH EXCESSING

There area, however, several problems associated with the excessing of part of all of these 1,000 acres.

The tandem accelerator, because of its radiation potential, must be fenced with a 1,000-foot radius exclusion area.

Although the Cockcroft-Walton facility is outside the area proposed for excessing, a potential radiation problem could exist were traffic control of Magnolia Road lost through excessing action. In this event, an additional exclusion area of 1,000 feet would be required.

Mr. LONG. They are still keeping the nuclear accelerator operating, are they not?

Colonel SHADLE. Yes, sir; there are two in that area.

Mr. LONG. I had a good deal to do with getting both there, so I do not want to have them eliminated or deactivated.

Colonel SHADLE. We are planning to use them, sir.

Third, 42d Street and the adjacent buildings are required as part of the Edgewood Arsenal's mission. Warehouses in the area can be disposed of should other storage facilities become available.

The \$500,000 radiation grid system must be removed.

White phosphorous contamination in the area must be eliminated.

Prior to excessing, it will be necessary to perform a detailed cost analysis to determine the feasibility of either relocating the main electrical substation located in the area along with other utilities systems or, retaining easements and other rights.

EDGEWOOD HOUSING AREAS

(GSA-EA No. 4): It is recommended that 5 tracts comprising in all an estimated 21.6 acres at the Edgewood housing areas be reporting as excess.

Army position: Army partially concurs. Tracts 2 and 4 are available for immediate excess. However, tracts 1 and 3 are required for military family housing recreation area, and tract 5 is required for expansion of the post trailer park. These are highly congested areas without the additional construction.

MAIN BASE, ABERDEEN

(GSA-APG No. 1): It is recommended that approximately 900 acres on the main base of APG be reported as excess immediately.

Army position: Army nonconcurr. The 700 acres between Maryland Boulevard and Aberdeen Road are extensively utilized by the Ordnance Center and School for Billeting, classroom training, and field training for a total of 62,000 man-hours annually. The land warfare laboratory also uses land and buildings in the areas, and no other suitable facilities are available on the installation for their activities. Additionally, the approved installation master plan includes a much-needed centralized logistics complex in the area. It should be mentioned that a portion of this area is presently contaminated with training mines planted over 20 years ago; three efforts at decontamination have failed to locate them all. Approximately one-half of this tract is occupied by 75 buildings, streets and utilities.

Mr. LONG. We are talking about the 900 acres on the main base.

Colonel SHADLE. Yes, sir. The 200 acres north and west of the Chesapeake Gardens housing are required for expansion of the housing area.

SPESUTIE ISLAND

(GSA-APG No. 2): It is recommended that the activities on Spesutie Island be relocated and the island be reported as excess as soon as practicable.

Mr. LONG. Do you have any unexploded shells there?

Colonel SHADLE. On Spesutie Island?

Mr. LONG. Yes, sir.

Colonel SHADLE. Yes, sir.

Mr. LONG. We want to go into that later.

Colonel SHADLE. Yes, sir.

Army position: Army nonconcurs, Spesutie Island is extensively utilized by the Ballistic Research Laboratories, the Land Warfare Laboratory and the Materiel Testing Directorate, APG. There are 113 buildings and allied facilities on 1,814 acres of land, BRL states that loss of their primary area of operations would result in having to relocate 5 major missions, and the transferring or releasing of approximately 900 employees.

POOLE'S ISLAND

(GSA-APG No. 3): It is recommended that Poole's Island of 200 acres be reported as excess.

Army position: Army non-concurs. Poole's Island falls within critical and essential safety zones required for long-range artillery testing by Ballistic Research Laboratories and Materiel Testing Directorate.

Mr. LONG. That is an important area because that is where the State is doing a great deal of open water overboard dumping of sludge from maintenance dredging. The question is whether this might be an area the State dumps the sludge on if they decide not to dump on Hart-Miller Island but expand further the operation now going on at Poole's Island. Although it is only 200 acres, that and contiguous areas are going to be a very important part of our inquiry.

UNEXPLODED AMMUNITION

Colonel SHADLE. Yes, sir. This island is heavily contaminated with ammunition up to 14'' projectiles. Loss of capability to fire on this island would result in a reduction of weapons research and development, ballistics research and development, artillery testing and tank armament systems and ammunition testing.

Mr. LONG. Are there unexploded shells?

Colonel SHADLE. Yes, sir. They have been put there since 1917 or 1918.

Mr. LONG. I want to raise the question whether this ruins the land for all time for anything else, for dumping and everything else, and when it might be safe to use such land for other purposes.

Colonel SHADLE. To our knowledge the fact that they are there does not ruin the land.

Mr. LONG. Why do you call it contaminated?

Colonel SHADLE. Contaminated is a general term meaning that there are high explosives in the area making it dangerous for a person to swim or picnic on the island at the present time.

General McCONNELL. He indicated that it does not ruin the land for our purposes.

Mr. LONG. Do all these unexploded shells mean that the land cannot be used for any other purpose? Declaring the land excess is then something of an exercise in futility.

Mr. JONAS. If the chairman will yield, is there any time at which an unexploded shell no longer constitutes a danger?

General McCONNELL. I would refer to my ordnance experts that are here from Aberdeen. We have had shells explode from World War I, for instance.

Mr. JONAS. You mean lately?

General McCONNELL. Not where anyone was injured.

Mr. JONAS. Is there any life to these shells? When will the danger period be over, if ever?

Colonel SHADLE. Sir, we technically really cannot answer that question. As late as recently, I should say—a year ago, for example—a shell fired from one of our artillery pieces was dug up in France by a farmer—and it exploded. The shell was fired in 1918. It detonated itself in 1972. As long as there is any semblance of explosive force left in that shell, the explosive force was much more stable years ago than it is today. We don't really know. Every once in a while we will plow a field in Aberdeen—and we use armored vehicles to do it—we will set off a shell that was dropped in 1918, 1919, 1940. Theoretically, we are unable to know the actual life of a high explosive shell.

Mr. JONAS. There is no point at which you are able to say there is no longer any danger.

Colonel SHADLE. No, sir.

Mr. LONG. Is it feasible to dig them out?

General McCONNELL. Yes, sir. We have had this accomplished. It is very expensive to do this per acre. It is something in the vicinity of \$5,000 an acre. There can never be a guarantee that it is going to be absolutely pure.

Mr. LONG. That is going to raise a real question—why declare it excess? It could be used for this dumping we are talking about. Maybe that is the only use you could make of it if the Army and the GSA proceeded with disposal. This dumping would pile a tremendous layer of sludge on top—as high as 18 or 20 feet.

General McCONNELL. Yes, sir.

Mr. JONAS. May I ask one other question? How does it happen that we have live ammunition in the soil at Aberdeen? Who fired them in? Was it during training?

General McCONNELL. Training, testing. It is a big testing installation. Of course, some of the shells do not explode. They are imbedded in the ground and do not fire.

Mr. JONAS. They are designed to explode on impact?

General McCONNELL. Yes, sir.

Mr. JONAS. But the ones that did not explode are the ones you are concerned with?

General McCONNELL. The duds, as we call them.

Mr. LONG. Have you kept an inventory of duds?

Colonel SHADLE. Yes, sir. We keep track of the date, hour, and ballistics characteristics of every shell we fire. We know where every one is.

Mr. LONG. How many are there?

Colonel SHADLE. I don't know. In 1918 and World War II, research records were not accurately kept.

Mr. LONG. You may not know the total number, but you know the number you counted.

Colonel SHADLE. I don't know, sir.

Mr. LONG. Can you find that out for us?

General McCONNELL. We will find out for the record.

[The information follows:]

The total number of duds at Aberdeen Proving Grounds and the Edgewood Arsenal area is about 5 million, including water areas. For land areas only, it is about 1 million.

Mr. LONG. Are you through with your statement?

Colonel SHADLE. No, sir. I have a few more comments on Poole's Island.

It is reasonable to anticipate problems in testing ammunition and weapons of future development on APG ranges because of greatly improved ballistics characteristics, such as increased range and height of flight path.

Mr. LONG. I might point out that one proposal is to use Gunpowder Neck as a disposal site. This is also part of the excessing, and we will want to know about the unexploded shell situation there, too.

Colonel SHADLE. Yes, sir.

GUNPOWDER NECK

(GSA-APG No. 4 GSA-EA No. 2): It is recommended that all the activities on the Gunpowder Neck area that are a part of APG be relocated and the property be reported as excess as soon as practicable. It is recommended that all the Gunpowder Neck range area used by Edgewood Arsenal comprising 1,934 acres of land be reported as excess.

Army position: Army nonconcur. The Gunpowder Neck area consisting of over 5,092 acres is extensively used by APG for testing of ammunition, and artillery and armored-vehicle/tank testing. Edgewood Arsenal will require part of this area to relocate testing facilities from the Carroll's Island/Graces Quarters area. Loss of this area will provoke that situation cited previously of reduction of testing missions involving 580 employees. Edgewood Arsenal will be forced to relocate test activities to other sites outside of the State. The Gunpowder Neck is heavily contaminated with explosives which have accumulated over a 50-year period.

SLUDGE DUMPING

Mr. LONG. Again I would like to know, assuming that the Army keeps Poole's Island, would it be possible to dump sludge on Gunpowder Neck without interfering with the Army mission?

Colonel SHADLE. I think some scheduling problems would be involved, sir.

Mr. LONG. I think we would like to ask a little later whether those could be worked out.

Colonel SHADLE. Yes, sir. This complex shows what is fired from the Powder Neck into this area.

The next chart is an active day in the testing program of the Aberdeen Proving Ground. These are the ranges that can be used on a given day. There are many, many ranges. I will not attempt to explain them.

Mr. LONG. This chart represents the actual use at one time or another.

Colonel SHADLE. They may not all be used simultaneously.

Mr. LONG. But this is a necessary use and without this use you would probably have to take your testing to some other part of the country.

Colonel SHADLE. That is correct.
The next chart, please.

LAUDERICK CREEK AREA

(GSA-EA No. 5): It is recommended that the entire Lauderick Creek area less the Nike sites be reported as excess. The two Nike sites occupy an area of 55 acres leaving approximately 1,450 acres to be reported. Access to the Nike sites should be retained.

Army position: Army nonconcur. The two Nike sites referred to are actually one Nike complex, comprising administration and housing, acquisition and launch facilities, and require line-of-sight control and a 1950-foot radius safety zone. The 1st Artillery Battalion states that loss of control of this area may require relocation of one firing battery of 134 military personnel.

SUMMARY

In summary, 2,903 acres of land within the Aberdeen Proving Ground complex can be declared excess; 6,299 acres proposed for excessing must be retained in order to successfully accomplish defense missions. Should Army's position be accepted, there will be no reduction or degradation of present missions, loss or transfer of personnel, or large expenditures of funds.

Should the total 9,202 acres of test ranges and training area be declared excess, the impact upon the missions of Aberdeen Proving Ground, Ballistics Research Laboratories, the ordnance center and school, and Edgewood Arsenal will be severe. It is estimated that eight major missions will be reduced or relocated, approximately 2,165 military and civilian personnel will have to be transferred or reduced from the force.

[The illustrations follow:]

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G.S.A. RECOMMENDED DISPOSAL

Mr. LONG. The GSA report on Aberdeen states that they want 3,900 acres of Aberdeen to be declared excess.

Colonel SHADLE. Yes, sir.

Mr. LONG. You feel that only 2,900 acres altogether of both bases can be excessed?

Colonel SHADLE. Yes.

Mr. LONG. You oppose declaration of any excess at Aberdeen?

Colonel SHADLE. Yes, sir.

Will you point to the 1,000 acres? Those two areas, that area and the two islands on the Edgewood side can be declared excess, along with two small parcels in the housing area.

Mr. LONG. What are the names of those according to the GSA reports?

Colonel SHADLE. Carroll Island, Grace's Quarters, and the large part we call Westwood area.

Mr. LONG. They are on good high land, of course?

Colonel SHADLE. No, sir.

Carroll Island, 55 acres of 1,286 acres is above the 8-foot contour. The engineers will tell us between the zero and 8-foot contour you cannot build. Only 55 acres of that large island are above 8 feet.

Grace's Quarters, of the 1,000-odd acres, 165 are above the 8-foot contour.

Mr. LONG. How much land is in the area that can be declared excess in Edgewood?

Colonel SHADLE. 1,896 acres.

Mr. LONG. Almost 2,000 acres?

Colonel SHADLE. Yes.

Mrs. HANSEN. Would the chairman yield?

Mr. LONG. Yes.

GSA CRITERIA FOR EXCESSING

Mrs. HANSEN. When GSA went into this business, what were their criteria for making this excess?

General McCONNELL. Ma'am, I think we have GSA representatives with us.

Mr. LONG. He is going to be the next witness.

General McCONNELL. I would rather have them indicate their plan for excessing.

Mr. LONG. I think we also want to know whether they consulted with the Army before they did this.

Of this 9,200 acres in the whole Aberdeen-Edgwood complex that the GSA wants to declare excess, how much does the Army concede could be declared excess?

General McCONNELL. 2,903 acres can be declared excess subject to certain restrictions: Availability of funds to relocate certain buildings, putting up some fences, and acceptance of various conditions on the use of these lands.

Mr. LONG. So a total of 2,900 acres in the two sections could be declared excess, and of that almost 2,000 acres in Edgewood Arsenal.

Colonel SHADLE. Yes; all of it is in the Edgewood area.

Mr. LONG. None of it is in the Aberdeen area.

Colonel SHADLE. No, sir. The majority of the land, sir—if I may point it out—that was excessed was in the former Edgewood area. We have stated that these hatched areas and outside of the post the housing areas we can declare excess. The remainder of the land, 6,000 plus acres, we feel are absolutely essential to our system.

Mr. LONG. Very good. Thank you very much, Colonel. Does that conclude your statement?

Colonel SHADLE. Yes.

STATEMENT OF CURTIS A. ROOS, REAL PROPERTY DIVISION, GENERAL SERVICES ADMINISTRATION

Mr. LONG. We want to hear next from Curtis A. Roos, Acting Chief, Real Property Division, Property Management and Disposal Service, GSA, who wrote the reports recommending that land at Aberdeen and Edgewood Arsenal be declared excess.

Mr. Roos.

Mr. Roos. Yes, sir. Thank you, Mr. Chairman.

I would like to be represented by counsel, if possible, Mr. Minton Holland, Assistant General Counsel for Real Estate.

Thank you, Mr. Chairman, I appreciate the opportunity to be present here. On instructions, I do not have a prepared statement.

Mr. CEDERBERG. On instructions from whom?

Mr. Roos. From my central office. I was informed that it was not necessary to have it.

Mr. LONG. The GSA does have its full official report, one for Aberdeen and the other for Edgewood, and that will go into the record.

[GSA survey reports minus addenda follow:]

EXECUTIVE ORDER 11508, REAL PROPERTY SURVEY OF ABERDEEN PROVING GROUND, ABERDEEN, Md.¹

PURPOSE

This survey of Aberdeen Proving Ground was conducted pursuant to Section 2(2) of Executive Order 11508, as implemented by Federal Property Management Regulation 101-47.8: Identification of Unneeded Federal Real Property. The field survey was made to identify and describe those areas within the facility surveyed which appear to be not utilized, underutilized, or are not being put to optimum use.

UTILIZATION

Aberdeen Proving Ground (APG) is a permanent U.S. Army Materiel Command Class II Government-owned and Government-operated installation. The basic mission performed at APG is as follows:

Plan, conduct, record, and report the results of engineering and other tests of weapons, weapon systems, rockets and guided missile systems, fire control, survey and target acquisition equipment, ammunition and components, other missions, combat vehicles, related automotive materiel, and other materiel as assigned; design, develop, procure, and issue ballistic and other test instrumentation as required by test plans, changes in test methodology or to improve operational effectiveness; compile requirements for, determine usage factors, procure, inspect, store, and issue armor plate required for tests by all United States Army Materiel Centers installations and activities; provide administrative and logistical support to the Department of the Army, Continental Army Command, Army Materiel Command, and other activities located at Aberdeen Proving Ground in accordance with AR 10-50, or as directed by USATECOM.

¹ GSA Inventory Control No. 210021355 on September 20, 1971, through June 1, 1972, by Curtis A. Roos, Property Management and Disposal Service, General Services Administration, June 12, 1972.

Although Aberdeen Proving Ground and Edgewood Arsenal have been placed under one command, separate reports are being submitted on each installation as they existed prior to the change on July 1, 1971.

There are a number of major tenant activities located at and receiving logistical support from APG, and also major higher headquarters that exercise mission control. These tenant activities are :

1. Hq.—U.S. Army Test and Evaluation Command.
2. U.S. Army Aberdeen Research and Development Center.
3. Joint Military Packaging Training Center.
4. U.S. Army Combat Development Command Maintenance Agency.
5. U.S. Army Land Warfare Laboratory.
6. U.S. Army Ordnance Center and School.
7. U.S. Army Small Arms Systems Agency.
8. U.S. Army Scientific and Technical Information Team—CONUS.

Each of these tenant activities have assigned missions, which, as their names indicate, are more specialized than the general mission statement quoted for the installation. As of April 30, 1972, total on-board civilian and military personnel were approximately 10,865.

Aberdeen Proving Ground comprises 71,293 acres of land including a tract of 244 acres near Churchville, Md., utilized for automotive testing. The automotive testing tract is an extremely hilly tract, with steep grades improved with small buildings and numerous test roads with varied surfacing. It is located about 12 miles from APG. The Churchville site is considered fully utilized and, considering the topography of the land, optimally utilized. A plot plan of the Churchville test site is attached as exhibit A.

Of the approximately 71,000 acres of land comprising the main reservation, about 36,734 acres are under water, and some 80 percent of the remaining land area is marshy, wooded terrain. The remainder of the reservation property, consisting of roughly 7,000 acres, is low-lying, flat to gently rolling country. Well situated areas with elevations ranging up to 75 feet above sea level exist in the northern sector of the reservation where the main building area is located.

The base is located on two peninsulas extending into Chesapeake Bay. The built-up area of the base comprises a portion of the largest peninsula referred to herein as Aberdeen Peninsula. Prior to the consolidation of the two posts under one command, APG also included an area on Gunpowder Neck Peninsula. Most of Gunpowder Neck, however was a part of the Edgewood Arsenal property.

Included within the post boundaries, as they originally existed, are Spesutie Island and Poole's Island. There are also marshy areas on the Aberdeen Peninsula proper that are labeled as islands on some maps. Those commonly noted include Monk's Island, and Poverty Island.

There is attached as exhibit B a 1" equals 3,000' scale map of Aberdeen Proving Grounds and Edgewood Arsenal. This is the smallest scale map available which depicts, with some detail, the entire area included within the Edgewood-Aberdeen reservation area. The entire Edgewood-Aberdeen reservation area is outlined in red. The land area of the original Edgewood facility has been outlined in blue so that the two areas can be better identified. Some joint use was made of portions of the Gunpowder Neck area outlined in blue by APG even before the two facilities came under one command.

Aberdeen Proving Grounds also includes a number of observation towers located mostly on the Eastern Shore of Maryland. They are depicted on exhibit B and the insert on exhibit B. These towers occupy but a small space on leased land with right of access thereto and are considered fully utilized.

As can be seen from the exhibits, vast areas of APG are unimproved and indeed much of it is in its natural state. Deer, wild turkey, and other wildlife, including waterfowl of all kinds indigenous to this area abound. Under prescribed conditions, some hunting by the public is permitted. During firing operations, the open Chesapeake Bay waters of the reservation are patrolled, otherwise private boats can use the waters. There is a great deal of beautiful shoreline on the base, excluding the marshy areas which also are interesting by reason of the waterfowl and other wildlife. Aberdeen and Edgewood together occupy an area approximately 18 miles long and averaging 5 miles wide of exceedingly beautiful land and water on the main axis of the Boston-Washington megalopolis.

The land acquisition cost of the facility is listed as \$4,401,000. Land and land improvements are \$27,256,800. The base has estimated the current replacement value of the land and land improvements at \$88,801,000.

The facility includes 1,143 buildings with a total of 7,501,788 square feet. The installation lists the acquisition cost of buildings and utilities at \$107,936,000 with an estimated current replacement value of \$150,001,500. It lists installed equipment as having an acquisition cost of \$105,767,988 with a current replacement value of \$139,613,744. The total cost, according to base personnel of the land and improvements, buildings and utilities, and installed equipment is \$240,861,388 with a current replacement value estimated at \$378,461,421.

In discussing specifically the utilization of APG, four areas of the installation will be separately treated. They are:

1. The Aberdeen Peninsula excepting Spesutie Island.
2. Spesutie Island.
3. Poole's Island.
4. Gunpowder Neck Area.

The Churchville test site and the range towers have been sufficiently discussed. They are considered to be fully utilized.

1. The Aberdeen Peninsula.

Except for some small buildings and improvements on Spesutie Island and some buildings and ground improvements on Gunpowder Neck, by far the greatest expenditure of funds have gone for the land, land improvements, and equipment on the eastern area of this main peninsula. Here are located most of the operational and training buildings, the production and research facilities, supply, storage, administrative housing and community support, recreational facilities, including a 9-hole and an 18-hole golf course, an airport, an atomic reactor, and vehicle test facilities. Here also large guns are emplaced to shoot to the southwest and over to Gunpowder Neck.

There can be no question but that the built-up areas are fully utilized and also utilized to their optimum within the meaning of Executive Order 11508. However, there are large areas in this peninsula that are not greatly improved that are used for such purposes as impact areas and ranges. Considering the amount of wasteland, the contamination of parts of the land, the investment in test facilities at the gun emplacements and the fact that the land is a wildlife habitat, it is reluctantly concluded that the range areas are being put to optimum use. However, it is going to be increasingly difficult to reach this result as criteria promulgated under the Executive order continue to be applied in the future. Although much of this area is marsh and water increasing population densities will put pressure on these lands because of their recreational potential.

There are areas of APG in the northeast sector, however, that are not being utilized, are underutilized, or are not being put to optimum use and should be reported as excess. These areas are outlined in green on Exhibit "D," which is a reduced composite map of sheets 1, 2, 3, and 4, of the general site maps of APG, depicting, as the key rings illustrate, the northeast portion of the installation.

First of all, the city of Aberdeen occupies about 67 acres of land under a lease agreement with the Department of the Army. This tract, which is fenced off from the remainder of the reservation by a chain-link fence by the city, is being developed into a park. This area is adjacent to the town of Aberdeen and is a portion of a larger area to the southwest which is grossly underutilized. This larger area comprising roughly 700 acres less the 67 acres leased to the city extends from the Pennsylvania Railroad right-of-way on the northwest, the Maryland Boulevard on the west and south, and Aberdeen Road on the east. There are some wood barracks and other buildings on the southern part of this tract which are unoccupied or seldom used. The area has been used to a very limited extent for training, but for all practical purposes, it can be said to be unused. The land is mostly open but with some woods. The land is at a higher elevation than most of the base. It is very desirable property.

There are areas of unused land between Aberdeen Road and the Northern Throughway, however, pending completion of the Museum presently under construction in this area, no finding is made at this time.

There are no definite plans for construction on the housing area off the Northern Throughway behind the existing Chesapeake Gardens housing area. A tract of approximately 200 acres in this area as shown on the map is unused. Some of this area is outleased for agricultural purposes.

Considerable thought has been given to the airports on Aberdeen Proving Grounds and Edgewood Arsenal. Both facilities appear to be underutilized and it is believed that studies should be undertaken looking toward the consolidation of the two facilities. The Maryland National Guard occupies the Edgewood Airport facilities. The APG Airport is used in conjunction with activities in the base.

Unfortunately, both airports are situated amongst other activities and cannot readily be severed from the base. It is beyond the competence of this review to determine which of the two airports is better equipped and situated to handle the flight activities for both bases. There was some indication during the survey that there is interest in utilizing the Aberdeen facilities for a public airport. However, the Edgewood facility was apparently better equipped for the National Guard's purposes. In any event, the maintenance of both facilities appeared an unnecessary expense.

2. Spesutie Island

This Island is connected to the south end of the built up area of the base by a causeway across Spesutie Narrows from Woodpecker Point. It is a beautiful island with high open land, some woods and some marsh and creek areas.

Undoubtedly, a great deal of money has been expended on Spesutie Island over the years for test facilities of various kinds. Most of the facilities and small buildings on the island are still used. However, the use of this property for this purpose does not represent the optimum use of the land. The activities on this island should be phased out as soon as practicable. In making this recommendation, it is recognized that much of the activity on Spesutie Island is tied into activities on the mainland of the base. It is roughly estimated that the island contains 900 acres of high land and approximately the same amount of marshland.

3. Poole's Island

Except for an observation tower, this island is unimproved. It consists of low-lying swampy land comprising about 200 acres. The island is said to be contaminated with duds. This island is grossly underutilized.

4. Gunpowder Neck

The area of Gunpowder Neck which comprises a portion of APG is a range area of mostly low land, but with considerable woods. There are few improvements of any consequence on the area, but there is a tank testing course and a movable tank target area occupying a large area of pampas-type terrain. This area is used for tank testing and is also an impact area for the large guns shooting from the east side of the Aberdeen Peninsula. This area is a wildlife habitat. It is underutilized, and we believe, to a greater extent, that the marshy impact areas on the APG mainland is not being utilized to its optimum.

EXCESS RECOMMENDATIONS

1. It is recommended that approximately 900 acres on the main base of APG, as shown in exhibit D, be reported as excess immediately.

2. It is recommended that the activities on Spesutie Island be relocated and the island reported as excess as soon as practicable. The island comprises approximately 1,800 acres. It is recognized that access to the island will have to be provided through the main base.

3. It is recommended that Poole's Island containing approximately 200 acres be reported as excess.

4. It is recommended that all of the activities on the Gunpowder Neck area that were a part of APG be relocated and the property reported as excess as soon as practicable. This represents an area very roughly estimated at containing 1,000 acres.

5. Further study should be given to consolidating the activities of the airports at APG and Edgewood Arsenal. The help of qualified airport personnel should be utilized in making the study.

Aerial photographs of Spesutie Island and Poole's Island are attached as exhibits F and G.

EXECUTIVE ORDER 11508, REAL PROPERTY SURVEY OF EDGEWOOD ARSENAL, EDGEWOOD, MD.¹

PURPOSE

This survey of the Edgewood Arsenal, Edgewood, Md., was conducted pursuant to section 2(2) of Executive Order 11508, as implemented by Federal Property Management Regulation 101-47.8: Identification of Unneeded Federal Real Property. The field survey was made to identify and describe those areas within the facility surveyed which appear to be not utilized, underutilized, or are not being put to optimum use.

¹ GSA Inventory Control No. 210020036 on Sept. 20, 1971, through June 8, 1972, by Curtis A. Roos, Property Management and Disposal Service, General Services Administration.

UTILIZATION

Edgewood Arsenal came under joint command with nearby Aberdeen Proving Grounds on July 1, 1971. However, to a great extent, the installation retains the mission it had prior to the consolidation. The current organization of Edgewood Arsenal is that of a commodity center for chemical agents and munitions and chemical and biological protective equipment and systems. In addition, other specific missions are to:

(a) Perform design, development, production, and maintenance engineering, and related quality assurance for assigned commodities.

(b) Perform national procurement for assigned commodities.

(c) Perform national industrial mobilization planning for assigned procurement items.

(d) Perform cataloging, standardization, new equipment training, design of pertinent training devices, and technical assistance to users for assigned commodities.

(e) Prepare research, development, test and evaluation (R.D.T. & E.) program proposals, budget estimates, and funding requests for those chemical items that meet joint requirements of the Army and either the Navy or the Air Force, or both, and for all chemical agents required within the Department of Defense and provide support to Air Force, Navy, Civil Defense, and other governmental agencies.

(f) Provide technical escort for and transfer and shipment of Department of the Army radiological material, all DOD chemical and biological agents, and assigned CB munitions and other hazardous items in accordance with technical standards prescribed by the Secretary of Agriculture and the Surgeon General of the U.S. Public Health Service. Perform explosive ordnance disposal procedures on items escorted when required to preclude an unacceptable dissemination of hazardous material.

(g) Control the disposal of radioactive material within DA.

(h) Develop program guidance on medical research jointly with the Army Medical Service for defensive aspects of chemical weapons and in implementing and evaluating technical aspects of the program.

(i) Exercise command jurisdiction over assigned installations and activities.

(j) Perform in-house fabrication of prototypes, preproduction evaluation quantities, and emergency production of limited quantities of assigned critical items to fill in supply gap until industry can meet the needs.

(k) Act as the DA licensee and control use and disposal of radioactive sources as prescribed by AR 700-63.

Edgewood Arsenal is being operated for these various missions, however, it is believed that significant areas are not used, fully used, or being put to their optimum use. In discussing the utilization of the installation, the eight areas as designated on exhibit A will be treated separately.

A. Atkisson Reservoir and Dam

This is the main source of water for the installation. As long as it is so utilized, it is considered fully utilized. There is no indication of an alternate source of water in the near future.

B. Carroll's Island and Grace's Quarters

Both of these areas are underutilized. There is some testing carried on at these locations, but such use does not justify retention of the property. Carroll's Island is largely unimproved with a few relatively small buildings. Considerable money has been expended in the design and construction of a series of concentric rings for performing various test with poison gas. This is not an optimum use of this land even assuming such tests are to be continued. Although there is some gas contamination in a large area of the island. It is not looked upon as a permanent deterrent to other use. Grace's Quarters, likewise, has been used for poison gas testing. It is underutilized except for an area on which a large tower is being built for civil defense.

C. Edgewood housing

There are five tracts outlined in red on exhibit A in the Edgewood housing areas that are not being utilized and for which there are no plans for future housing. Although these areas appear small on the small scale map they comprise roughly the following acreages as numbered on the map:

- Area 1 equals 6.5 acres.
- Area 2 equals 2.9 acres.
- Area 3 equals 2.5 acres.
- Area 4 equals 4.4 acres.
- Area 5 equals 5.3 acres.

These tracts are in desirable residential areas of single residences and garden-type apartments. Area 1 fronts on busy Maryland State Route 24, the main entrance road to the base, and into the town of Edgewood from U.S. 40 and Interstate 95. Area 2 is just off Route 24. Area 4 is relatively close to the main line of the Pennsylvania Railroad, which perhaps detracts from its use for residential property, but it is nevertheless a very desirable tract of land for other purposes. All tracts front on public streets.

D. Gunpowder Neck Range

In our report on Aberdeen Proving Grounds, we concluded that the portion of Gunpowder Neck used by APG for tank testing and an impact area did not justify retention of the lands. The use made of the portion of Gunpowder Neck formerly under the justification of the Arsenal is likewise underutilized. There is some testing and there is a pistol and rifle range in this area. These ranges can be relocated to Aberdeen Proving Grounds if necessary. Any use of these areas for testing or ranges is not considered an optimum use of scarce waterfront property.

E. Main post

Except for an accelerator facility, there is a large area comprising the westerly portion of the main base that is underutilized. Roughly, it comprises the area west of the secondary Magnolia Road entrance. The area is outlined in red on exhibit A. This area, roughly estimated to contain 1,000 acres, is improved with six large warehouses under lease to Bata Shoe Co., Inc., for storage. There are also a number of old tile warehouses in the area. They are mostly used for storage, although some are empty or used for other purposes. The buildings are old and trackage to many of them has been removed. However, the accelerator facility is situated in the midst of the warehouse area. In addition, the radiation area to the west of the facility is used in connection with certain test conducted by facility personnel involving radioactive materials. This area is only radioactive, however, at certain times. The south side of this tract fronts on the Gunpowder River with beautiful views of the river. There is a picnic area at Hog Point. Most of the area is wooded. It adjoins the Pennsylvania Railroad main line. The area directly to the east is an industrial area of Edgewood Arsenal.

F. Reservoir and access road

This area is fully utilized.

G. Van Bibber

This area, the Reservoir and Access Road and Atkisson Reservoir are considered fully utilized as long as water is obtained from the reservoir.

H. Landerick Creek area

It is considered that except for the Nike operation (the two areas are No. 10 on the reservation map), the entire Landerick Creek area is underutilized. Although there are small areas devoted to testing and research. Large areas are open and unimproved. The area considered underutilized, is outlined in red on the map.

EXCESS RECOMMENDATIONS

1. It is recommended that the entire area on exhibit A, comprising the Carroll's Island and Grace's Quarters area of the arsenal and comprising 1,896 acres (including water areas), be reported as excess.
2. It is recommended that all the Gunpowder Neck Range area of Edgewood Arsenal comprising 1,934 acres of land be reported as excess.
3. It is recommended that the westerly portion of the main base, comprising roughly the area west of 42d Street, be reported as excess after relocation or disposal of material stored in the old warehouses. The accelerator facility should be retained. However, the use of the radiation area should be discontinued. It is roughly estimated that this area compromises 1,000 acres.
4. It is recommended that five tracts comprising in all, an estimated 21.6 acres at the Edgewood housing areas be reported as excess.

5. It is recommended that the entire Landerick Creek area less the Nike sites be reported as excess. The two Nike sites occupy an area of 55 acres leaving approximately 1,450 acres to be reported. Access to the Nike sites should be retained.

Except for the tracts in the housing areas, which can be reported immediately, some planning and relocation are involved in the other areas. It should be possible, however, to report the Grace's Quarters and Carroll's Island properties excess in the reasonably near future.

It will be necessary to retain ground and an access road to the civil defense tower being constructed on Grace's Quarters.

Mr. CEDERBERG. You are saying that is substantially your statement.

Mr. ROOS. Yes, sir.

Mrs. HANSEN. Mr. Chairman, could the members have a copy of that report? It is not usual for the members to sit here in ignorance of the report.

Mr. LONG. Can you have some brought over so that the members could have them at this time?

Mr. ROOS. Yes, sir.

Mr. LONG. Very well, Mr. Roos, you may continue.

SURVEYS PURSUANT TO EXECUTIVE ORDER 11508

Mr. ROOS. I made this survey pursuant to Executive Order 11058 which was signed by the President on February 10, 1970. This order places on the various land holding agencies the responsibility to make a critical and continuous review of their real property holdings to determine if any property is not being utilized, is underutilized or is not being utilized to its optimum. The Executive order also places on GSA the responsibility to make a continuous survey of the Federal real property holdings of the various Federal agencies and to come up with recommendations—whether in the judgment of the Administrator of General Services Administration any property at the various installations is underutilized or not utilized to its optimum.

Accordingly the General Services Administration has been extremely busy since the signing of the Executive order in surveying military and civilian installations everywhere in the country to carry out the Executive order.

Mrs. HANSEN. Suppose the Congress in its wisdom deems to set aside land that is not to be used at all, do you go and survey land such as wilderness areas to discover whether they are underutilized?

Mr. ROOS. No, ma'am. Excluded from the Executive order are properties such as wilderness areas, national forests, and national parks.

Mrs. HANSEN. Thank you.

Mr. LONG. The gentlelady is chairman of the Appropriations Subcommittee on the Interior, so she asked the question with a certain authority.

Mr. ROOS. Yes, I realize that.

Mrs. HANSEN. I am curious as to what is going on.

Mr. ROOS. So accordingly we have, as I say, surveyed properties all over the country. My particular area is in the six-State area in the eastern part of the country which comprise the megalopolis of the East.

The properties surveyed extend from Delaware all the way down to Virginia Beach. I have been very active in surveying all of the proper-

ties along I-95 and the Philadelphia-Newport News axis. Most of these properties were acquired many, many years ago when property was comparatively cheap and waterfront property was not such a scarce commodity as it is now.

Beginning at Bainbridge Naval Station on the Susquehanna down through Aberdeen and Edgewood, all very desirable properties, we continue to Fort Meade, and the Agriculture Research Station at Beltsville. Then we have Belvoir, Quantico Marine Base, A. P. Hill; and in the Williamsburg and Norfolk area, Fort Eustis, Fort Monroe, Little Creek, Dam Neck, and Fort Story on the ocean. On the Potomac we have Indianhead and Dahlgren Naval Bases. All of these facilities have been surveyed in an attempt to come to some judgment whether these properties are being utilized in their entirety—to their optimum—if some are being underutilized, if some are not being utilized.

My conclusion and my judgment as the result of the survey of Aberdeen and Edgewood is that the properties which have been described here are either underutilized or not utilized to their optimum.

My recommendations went forward and will ultimately, I assume, go before the Property Review Board. The Executive order set up a Property Review Board and designated the members thereof. It is a high level review board.

GSA CRITERIA

Mr. LONG. It seemed to us, Mr. Roos, on reading your report that it was somewhat vague on criteria. That is one of the reasons why we welcome your being here today to explain what are the criteria for declaring that this land is underutilized or not utilized at all.

Mrs. HANSEN. May I ask a question prior to that?

Mr. LONG. Yes.

Mrs. HANSEN. You have these bases scattered throughout the Northeast and Southeast, as you mentioned, on valuable waterfront property. Is it your assumption that they are less useful as military bases than they would be for civilian uses of various categories? Is that one of your major criteria?

Mr. Roos. One of my major criteria is that some of these properties are on valuable waterfront property. They are not being intensively utilized. Therefore, this is not the optimum use of that property within the meaning of the Executive order.

Mrs. HANSEN. They could well be moved to other sections of the country.

Mr. Roos. Functions could be moved to other parts of the country, to less valuable land and consolidated.

Mr. LONG. Is one of the criteria here that we must fully develop our wetland and our waterfront properties so that every inch is used?

Mr. Roos. It is one of the considerations. The environmental factor is involved.

Mr. LONG. That is quite controversial.

Mr. Roos. I didn't mean development.

Mrs. HANSEN. It is my understanding that our estuarine areas should be saved for the purposes of the outdoors.

Mr. Roos. I meant we should study them in terms of the Executive order.

DETERMINATION OF OPTIMUM USE

Mr. CEDERBERG. Let me ask you a question here. How do you determine what optimum use is? The use today might not be the same as the use required during emergency conditions that could occur 5 or 10 years from today.

Let me say this; I think there are areas that can be legitimately and logically excessed.

You make an individual and independent judgment as a GSA representative. The military are charged with certain responsibilities in peacetime and wartime. They might say 10 years from now they require that particular piece of property. It was probably used heavily during World War II and the Korean conflict, and probably a great amount of research and firing has taken place and is taking place there.

How do you make that judgment and where do you get the expertise to make that judgment?

Mr. Roos. I do not have the expertise on long-range plans for the use of this military property. That is a consideration for the Property Review Board and the Office of Management and Budget.

Generally I look into the 5-year plan, the Military Construction Act proposal for the use of these properties and how well they are funded and make a judgment. We have criteria that have been prepared to implement the Executive order.

I agree with you that the concept of optimum use is a vague one and you have to use your best judgment.

Mr. CEDERBERG. You do not, obviously, expect that all the judgments you make are going to be the final determinations do you?

Mr. Roos. I expect I will be overruled from time to time; yes, sir. But I am utilizing my best judgment.

Mr. CEDERBERG. Nobody expects you to make other than your best judgment. That is your job. We are not here trying to say otherwise.

Mr. LONG. Mr. Roos, according to you, the Property Review Board also makes a judgment. I would have thought that they can only make a judgment if you give them the facts.

Mr. Roos. Yes, sir.

FACTUAL BASIS FOR RECOMMENDATIONS

Mr. LONG. I am wondering where you got the facts. Did you consult the Army?

Mr. Roos. Yes. They went with me when I went over the property and I asked what is this property being used for and what are your plans. I have seen all the maps on the uses made of the various areas.

Mr. LONG. You work with them?

General McCONNELL. Yes.

Mr. LONG. Did you get their projections for firing? You did get this all from the Army?

Mr. Roos. A great deal of it.

Mr. LONG. So the difference between you and the Army represents a difference of judgment based on the same set of facts which you are both familiar with; is that correct?

Mr. ROOS. Yes.

Mr. LONG. Do you agree, General McConnell?

General McCONNELL. Yes.

EXCESSING PROCEDURES

Mr. ROOS. Yes, based on the Executive order.

Mr. CEDERBERG. Let us assume that some excessing does take place here; to whom will you excess the land?

Mr. ROOS. The property will be reported to General Services Administration as excess, and then the Federal Property Act and a number of other acts come into play. We would first screen the properties among the Federal agencies to determine whether there is any further Federal requirement for the property. If there is no Federal requirement, a whole new body of law comes into play because it becomes surplus property. Then it is available to State and local bodies, for airport use, for a variety of public uses, at little or no cost. At the same time, we would, of course, have to work with the local public bodies, under the Inter-Governmental Cooperation Act, and the local zoning people. We would have to work with the Environmental Protection Agency and file statements if major actions take place.

Mr. CEDERBERG. What you are saying, essentially, is that once this procedure takes place, the basic law used now in the excessing of property takes over.

Mr. ROOS. Yes, sir.

Mr. LONG. What concerns a great many people in Harford County and in the State generally is this: Is there any chance when the Army declares this excess that this is going to be thrown open to commercial people for development and you will have a whole bunch of residential, commercial, and industrial uses made of this land, which is very valuable and well-located land?

Mr. ROOS. Let me say I do not know what will happen to the land. It will go through the various processes. Actually, the local people will have a great deal to say.

Mr. LONG. Suppose no other Federal agency wants it, then what happens?

Mr. ROOS. Then it becomes surplus.

The State is notified that the property is available for various uses, such as health, education, park and recreation, wildlife, conservation, airport use, a number of public uses.

Mr. LONG. You mentioned a great long list of possible uses, all of which sound good. What are the chances that this would be thrown open to commercial and industrial and residential use and destroy one of the biggest pieces of wetlands we have left along the Chesapeake?

Mr. ROOS. I cannot speculate on that, sir. The type of property and the nature of the property in my estimation makes it very likely that most of it would go for public purposes of one kind or another.

Mrs. HANSEN. There is that other possibility, however. Someplace along the line, if the State did not want it, if there is no airport wanting it, and no local authority wants it, it is surplus property.

Mr. ROOS. It comes to the end of the funnel, at which time if there is no application for the property, it does become available for public sale. That is the provision in the law.

ADEQUACY OF SURVEY

Mr. LONG. I have a statement here submitted to me which says this:

We understand that the GSA survey was haphazardly made, that is, the two men made a survey but failed to write a report thereon. The report was then made by a third person who made only a rather cursory examination of the installation.

Is that an accurate statement?

Mr. Roos. We had two people who went out there, and I was with them. So I do not think it was a cursory survey. I was with them for 2 days. It was intended that they were to write the report under my supervision. However, one man was transferred. The other quit the Government and went to another job. Accordingly I had to go back and do the survey myself. I have since been with the people at Fort Meade on a number of occasions.

Mr. LONG. So the person who wrote the report was out there?

Mr. Roos. The person who wrote the report was me, and I was out there on a number of occasions.

Mr. LONG. You spent 2 days on it?

Mr. Roos. No, sir. I spent possibly 5 days on it all together.

Mr. LONG. This is a pretty big hunk of real estate.

Mr. Roos. Yes. We flew over it, we drove over it as much as we could; we had briefings.

Mr. LONG. Briefings with the Army?

Mr. Roos. Briefings by the Army, various services and schools, and so forth.

EXPENSE OF RELOCATING ACTIVITIES

Mr. LONG. One of the things that could conceivably happen is that the Army might have to move some of its testing work to some other part of the country. Our Military Construction Subcommittee has put in a great many millions of dollars worth of installations and buildings there. Have you considered this as part of the economics of declaring this land excess? For example, relocating people on other land?

Mr. Roos. I realize it is a very important consideration. It is my judgment that a number of these test facilities and uses that are made of some of these facilities on Gunpowder Neck, for instance, are not used very often. It is my further judgment that there are various areas in Aberdeen Proving Ground itself below the airport where some of these activities could be placed. It might be that some long-range guns can't be used in that area anymore; I don't know. For the most part, if the problem is approached in an affirmative manner, there can be some consolidation of activities there and still carry on the same functions.

Mr. LONG. Without any great expense.

Mr. Roos. Without any great expense, yes, sir.

Mr. LONG. You did not contemplate in your report any movement or relocation of a substantial part of Aberdeen or Edgewood to some other part of the country.

Mr. Roos. No, sir. Actually, on Gunpowder Neck—I was there on Monday. There are very few improvements on the neck of any sizable value. You go through a large wooded area, then you come to small temporary buildings, some gun emplacements and so forth and so on.

Mr. LONG. General McConnell, do you want to comment on that, or does any of your staff want to comment on that?

General McCONNELL. Yes, sir; we have a statement on the effect, as we see it. Naturally, we will get some differences of opinion on the impact on Aberdeen. Should the total 9,000 acres be declared excess, the impact upon the missions of Aberdeen Proving Ground, the Ordnance Center and School and Edgewood Arsenal would be severe. It is estimated that eight major missions will have to be reduced or relocated, and approximately 1,365 military and civilian personnel will have to be transferred or reduced.

Mr. LONG. Transferred to where?

General McCONNELL. To another location.

Mr. LONG. Another State or another part of the country, not another location in the proving ground?

General McCONNELL. No, sir, outside of the proving ground and probably outside of the State.

Mr. LONG. Did you communicate that statement to Mr. Roos at the time he made the survey that in your opinion he was wrong in believing that you could declare the 9,200 acres excess with only minor relocations; that it would take major relocations to accomplish this excessing of the land?

General McCONNELL. Sir, at the time the survey is being made by Mr. Roos and GSA, we do not know what the conclusions and recommendations will be. They forward, after the survey is printed, a copy to us, and it is at that time that we address it and indicate the implications.

These implications are being forwarded with the Army position that was dispatched to the DOD just yesterday.

Mr. LONG. Can you have that made a part of this record?

General McCONNELL. It will be, sir.

[The information follows:]

The Department of the Army has determined that 2,903 acres may be declared excess subject to availability of funds for relocation of facilities and fencing of certain areas. It has also been determined that approximately 6,299 acres recommended for excessing are required to support current and mobilization requirements for Aberdeen Proving Ground and Edgewood Arsenal area.

Mr. LONG. How much money, General, would it cost to move these installations to accomplish the excessing that Mr. Roos and the GSA have proposed?

General McCONNELL. We do not have that as an absolute figure, sir. We can say that it would be a very significant amount from a military viewpoint, as this committee certainly appreciates.

Mr. LONG. Is it hundreds of millions or tens of millions?

General McCONNELL. It is in the millions. From a military construction viewpoint, particularly.

Mr. LONG. What is the value of this land potentially if it is declared excess?

Mr. Roos. I would not like to speculate. It has a substantial value. Various portions, like the Lauderick Creek area which is immediately adjacent the Pennsylvania Railroad, and the western area on the Pennsylvania Railroad, have a very high value.

Mr. CEDERBERG. Value for what?

Mr. Roos. Possible industrial purposes, from a strictly real estate appraiser's point of view.

Mr. JONAS. If the gentleman would yield, did the General put in the record a listing of the facilities that would have to be moved?

General McCONNELL. I might ask Colonel Shadle. Do we have a listing of the buildings and the type of facilities that would have to be moved?

Colonel SHADLE. Sir, these are in the basic very thick report that was submitted.

General McCONNELL. We will supply that for the record.

Mr. JONAS. If you can, put an estimated figure on what it would cost. At least you could list the major items that would have to be moved.

General McCONNELL. We will supply that for the record.

Mr. JONAS. Or rebuilt.

General McCONNELL. Yes, sir.

[The information follows:]

The following facilities would have to be relocated from the areas recommended for excessing as listed below:

AREA AFFECTED BY APG RECOMMENDATION NO. 1

- (a) Barracks (626 space billeting capacity) with supporting administration, supply facilities, etc.
- (b) Instrumental shop and classroom facilities.
- (c) Joint military packaging, training facility.
- (d) Ordnance center and school field training area.
- (e) Land warfare laboratory effluvia detection facility.
- (f) Low frequency radio direction finder and beacon, ADF approval. Phillips Army Airfield.
- (g) Human engineering laboratory outdoor testing facilities for evaluation of the advanced LAW weapons system and the body armor program.
- (h) Day nursery.
- (i) Special Services picnic and recreation area.
- (j) Roads, supporting utilities, etc., for above.

AREA AFFECTED BY APG RECOMMENDATION NO. 2

- (a) Vulnerability laboratory facilities, including altitude simulation facility, ranges, shops, etc.
- (b) Concepts analysis laboratory facilities, including electromagnetic propagation range, antenna test facility, optical telescope facilities, air-to-ground rocket ranges.
- (c) Large caliber firing position (utilize air space and impact areas described under APG No. 4).
- (d) Experimental ammunition assembly and storage facilities.
- (e) Physical dynamic test facility (high Mac number shock tubes), including blast measurement analysis laboratories.
- (f) Closed system accelerator facility.
- (g) Dual shock tube experimental facility.
- (h) Experimental explosive test facilities (shaped, charge, antiarmor, mine research, spall defense, body armor, focus blast).
- (i) Terminal ballistics facility, including basic blast test facility and test areas.
- (j) Instrumented explosive detonation pad.
- (k) Fuse test range.
- (l) Land warfare—laboratory support area.
- (m) Family housing (4 units).
- (n) Laboratories, shops, storage facilities, utilities, roads, and other items supporting above.

AREA AFFECTED BY APG RECOMMENDATION NO. 3

- (a) Long-range firing capability further discussed under APG recommendation No. 4.
- (b) Deep water fording testing.

AREA AFFECTED BY APG RECOMMENDATION NO. 4

- (a) All installation horizontal firing ranges with capability of from 15,000 to 30,000 meters, land and water, with firing stockades, observation towers, range instrumentation, etc.
- (b) Vertical firing range and recovery field with range support as above.
- (c) Armored vehicle systems and weapons firing facilities.
- (d) Vibration tests facilities.
- (e) Rocket sled for terminal ballistics effects.
- (f) Rocket testing facilities (JATO).
- (g) Assembly plant supporting rocket firing activities.
- (h) Firing impact areas.
- (i) Shops and laboratories for analyzing firing data and test items, storage facilities, utilities, roads, and other items supporting above.

AREA AFFECTED BY EA RECOMMENDATION NO. 1

- (a) Weapon instrumented grid facility.
- (b) Low velocity wind tunnel and scrubber.
- (c) Physical stress facility.
- (d) Test and administrative.

AREA AFFECTED BY EA RECOMMENDATION NO. 2

- (a) Hazardous items disposal area.
- (b) Edgewood Arsenal instrumented outdoor testing areas.
- (c) Shops, roads, utilities, etc. supporting above activities.

AREA AFFECTED BY EA RECOMMENDATION NO. 3

- (a) High-level controlled radiation area.
- (b) Main electric substation.
- (c) Permanent storage facilities.
- (d) Supporting roads, utilities, etc.

AREA AFFECTED BY EA RECOMMENDATION NO. 4

None.

AREA AFFECTED BY EA RECOMMENDATION NO. 5

- (a) Nike Hercules installation.
- (b) Flame range.

AREA FOR WHICH EXCESSING IS AGREED

Mrs. HANSEN. General McConnell, on the 2,903 acres on which you concur, how much expense is involved there?

General McCONNELL. That is the figure that we do not have exactly. Mrs. HANSEN. It is relatively low or relatively high?

General McCONNELL. I think from the viewpoint of the Military Construction Subcommittee it is relatively high. It is in the millions. I am sorry, of the 2,903, there is no personnel or military construction impact.

Mrs. HANSEN. So the controversial area is the 6,000 acres.

General McCONNELL. We do have some qualifications of certain buildings on the Edgewood side, and relocating some facilities.

Mrs. HANSEN. Such as?

General McCONNELL. About \$1,350,000 for Westwood only. I am sorry.

Mrs. HANSEN. It is your 6,299 acres on which you have the major costs and which would bring about the large change in personnel.

General McCONNELL. That is correct.

Mrs. HANSEN. Thank you.

Thank you, Mr. Chairman.

Mr. CEDERBERG. I would like to ask another question. Of the 2,900 acres that you are to excess, is some of this in the area near the railroad.

Mr. ROOS. Some is adjacent to the railroad, I believe.

Mr. LONG. I would like to see the map, showing this 2,900 acres, because since the Army and GSA agree on this, it looks like this is a pretty good candidate to declare excess. We want to know a great deal about this.

RESTRICTIONS

General McCONNELL. Would you indicate only those that the Army agrees to excess with certain restrictions? I would like to cover the restrictions.

Colonel SHADLE. The greatest restrictions are in the Westwood area where we have power substations and utilities. We also have the tandem accelerator located here.

Mr. LONG. Where is Route 40 from there?

Colonel SHADLE. Route 40 touches Aberdeen and then it comes out and goes like this.

Mr. CEDERBERG. Where is the railroad?

Colonel SHADLE. It is right here, sir, on the boundary.

Mr. LONG. That is the Pennsylvania Railroad?

Colonel SHADLE. Yes, sir.

Mr. LONG. That top piece of property is 1,000 acres?

Colonel SHADLE. Yes, sir.

Mr. LONG. That is high land.

Colonel SHADLE. Yes, sir.

Mr. LONG. That has quite a few buildings on it now.

Colonel SHADLE. It has old warehouses which can be demolished.

Mr. LONG. It has nothing on there that would be expensive to move.

Colonel SHADLE. It is an estimate that I would not like to be pinned on, but it is about \$1,400,000 to get out of the area. Moving the substation, utility lines, cleaning up the white phosphorus residue, removing the radioactive grid from this area.

Mr. LONG. The gentleman from North Carolina?

Mr. JONAS. Colonel, what is the distance along the railroad? How much adjoins the railroad?

Colonel SHADLE. Three miles, I would estimate, in this area.

Mr. JONAS. Three miles of railroad frontage?

Colonel SHADLE. Yes.

Mr. JONAS. No highways?

Colonel SHADLE. That is right.

Mr. JONAS. How far is it from Route 40?

Colonel SHADLE. Down Magnolia Road it is about 11½ miles.

Mr. LONG. What road goes to Route 40—Magnolia Road?

Colonel SHADLE. Yes. It is State or county.

Mr. LONG. That is 1,000 acres with about 3 miles of frontage. My guess is that once that is declared excess it will be hard to keep somebody from making commercial use of it because it is very valuable land inasmuch as it is on a railroad.

Colonel SHADLE. It is on a river, too, sir.

Mr. LONG. That does not make it less valuable.

Colonel SHADLE. No; it is on the riverfront here.

Mr. LONG. What is that piece down below there?

Colonel SHADLE. Graces Quarter. This is a civil defense tower. Gunpowder State Park is contiguous to it.

Mr. LONG. What would it cost to move buildings and people away from that?

Colonel SHADLE. From these two areas, sir, the arsenal has estimated \$3.5 million to move their test site from here to here. I guess there are some wooden buildings and nothing of great consequence.

Mr. LONG. The top one is Graces Quarters. What is the other one?

Colonel SHADLE. Carroll Island.

Mr. LONG. It would cost \$3½ million to move things out of there?

Colonel SHADLE. To move the test grid. There are no buildings of any particular import or power there. There is some power to the civil defense tower which would have to remain. There is no real problem.

SLUDGE DISPOSAL AREAS

Mr. LONG. I want to raise the question of whether it would be possible to dump sludge there.

General McCONNELL. We have a representative from the Baltimore District Engineers' Office.

Mr. LONG. This harbor sludge disposal is a tremendously important project, a very controversial one. As I said before, the proposal of the State now is to take the area in Baltimore County, several miles to the south of here, carve out an area of about 1,100 acres on these two islands—the islands themselves are small so this would extend out into the water—and pour about 50 million cubic yards of maintenance sludge, and then later on expand this to 2,000 acres of deepening sludge. This sludge is full of all kinds of poisons. The general feeling is that it would ruin that part of the bay. We have heard experts say so, although there are others who say not.

I want to know what the feasibility would be of dumping it instead up here. Even with the 2,000 acres at Hart-Miller Island it will not take care of future needs to dredge out all these rivers and estuaries in the upper bay which have been silted and loaded up with sludge. Carroll Island-Grace's Quarter is the area which the Army to a limited degree agrees with GSA can be declared excess. It then becomes very pertinent to ask whether this could be used for dumping of sludge, whether there would be objections to it, and so on.

Mrs. HANSEN. He is talking about sludge, which I assume is "spoils" in the West. Is that correct?

General McCONNELL. Yes.

COMPOSITION OF SPOIL

Mrs. HANSEN. What is the composition of the sludge here? Is it sand or junk?

General McCONNELL. Mrs. Hansen, I would have to get some kind of a technical report on what is at the bottom here.

Mr. LOEW. I am Gary Loew. I represent the Baltimore Engineer today. To answer your question, the sludge is composed of spoils.

Mrs. HANSEN. Is it sand, marshland, fill from marshlands and what have you? I think you realize all over the United States the problem with spoils is becoming very controversial. Some areas want it for beaches. Other areas do not want it at all because it interrupts the wildlife and waterfowl.

General McConnell has been in these arguments before. That is the reason I ask this. The type of spoil makes a difference as to where you put it.

Mr. LOEW. In this instance the predominant amount of spoils involved would come from the Baltimore Harbor area which consists of the uppermost layer, a heavily contaminated industrially contaminated sludge. If you also included the spoil involved in deepening Baltimore Harbor, should that take place, then you also would get down into a lower layer of geologically old material which is primarily clay and a zinc-richness area. Neither type is acceptable for beaches.

Mr. LONG. That is just terrible stuff. That is all there is to it. It is poison.

Mrs. HANSEN. I wanted to get to the bottom of it because that is literally the truth. You get this terrible controversy going on. I think people are right to be concerned about where you are dumping this stuff.

Mr. LONG. It is loaded with poisons. It would be many feet deep. The proposal is 2,000 acres 18 feet deep. What is the acreage here in these areas?

Mr. LOEW. 1896.

Mr. LONG. That is about 2,000 acres, about the same as the Hart-Miller Island area. That would mean piling it 18 to 20 feet deep with sludge. It would rule out wildlife in those areas.

Mr. CEDERBERG. If you did use one of those for spoils what would the impact on the State park be?

BALTIMORE HARBOR AND CHANNEL DREDGING

Mr. LOEW. Perhaps it would be better to address myself to the question by explaining the total possible impact since that is under investigation at this time. The reason it is under investigation is because the Baltimore District Engineer has two concerns. One is that there is a proposed deepening of Baltimore Harbor and Channel which would deepen the channels from the mouth of the Chesapeake Bay to the Baltimore Harbor to a depth of 6 feet. That project has been receiving preliminary study and now is under review by the Office of Management and Budget.

If this were to take place there would be about 50 million cubic yards of material to be disposed of in Maryland, which would need to go into a containment area of some sort.

The responsibility for providing that containment area rests with the State of Maryland.

Mr. LONG. Are you talking about maintenance dredging or deepening?

Mr. LOEW. Deepening.

Mr. LONG. That is piled on 50 million cubic yards of maintenance dredging which would have to take place in any case, so it is 100 million cubic yards altogether.

Mr. LOEW. That is right. In addition to the deepening project, regardless of whether this took place, there is annual maintenance dredging in this area which amounts to about 2 million cubic yards a year and which, I might add, the State is having more and more difficult time to find an acceptable place to put it. A containment area of some sort is necessary in any case. This brings the district engineer's second involvement into play, which is the site containment area proposed by the State for Hart-Miller Island.

HART-MILLER ISLAND SPOIL AREA

The State has applied to the Baltimore district engineer for a permit for this containment area. We held a public hearing back on the 25th of August, I believe, to solicit comment on this application by the State where the chairman was present.

One of the items mentioned very strongly, as indicated, is that there is much opposition to the proposed containment area at Miller-Hart Island. An area strongly mentioned which we considered as an alternative would be the area which might be declared excess around the Aberdeen-Edgewood complex.

In the investigation of this permit application the district engineer has to prepare an environmental impact statement. Part of the preparation of this impact statement is to investigate all alternatives thoroughly.

Mrs. HANSEN. Suppose you dumped your sludge on this excess property?

Mr. LONG. Colonel Shadle, I think the gentlelady from Washington would be interested in having you point out where the State at present proposes to dump this sludge and where my inquiry was directed, if the Army and GSA got agreement to declare that 2,900 acres excess.

Colonel SHADLE. Hart-Miller Island is right here, a very small area. The proposal is possibly to put it in these two areas here.

Mrs. HANSEN. After you get that sludge there, of what use are these islands, this excess land?

Mr. LOEW. That would come out more thoroughly in an impact statement. Essentially during the period that the spoil is being dumped into this area there would be no use available.

Mr. LONG. That would be a period of some 25 years?

Mr. LOEW. That is right.

Mr. LONG. You would not be able to use it for anything during that 25 years.

Mr. LOEW. After that time it would be possible, I presume, to cover it with an acceptable material and make some sort of a recreation area out of it. However, you have to realize it would be about 20 to 30 feet

higher than it is now. It would be a very large, deep area which would be created.

Mr. LONG. How much higher? You said 20 to 30 feet?

Mr. LOEW. Yes.

Mr. LONG. When I said 20 feet that was the lower number of feet.

Mr. LOEW. Yes. Consideration is that the Hart-Miller Island, the dikes are 15 feet high and there is also a 15-foot depth of water around a great portion of that. The total depth for the total acreage, about 2,000 acres, would be about 30 feet. That would be the consideration.

USE OF EXCESS LAND FOR SPOIL AREA

Since this came up at the public hearing and also since GSA's report was made available, the possibility of using these areas comes in alternatives which need to be investigated.

The investigation is underway now but to summarize it briefly, the items we could speak on, to give you an idea, involve two concerns. One would be an economic concern. The second would be an environmental concern.

The economic concern comes from moving the proposed spoils area northward an extra distance. Since the majority of the dredged material involved would come from the Baltimore Harbor area it would need to be transported farther prior to disposal.

In a brief review we have indicated the Baltimore Harbor project would be increased some 15 percent, or \$10 million.

For the annual maintenance dredging, the maintenance cost would increase something greater than 15 percent to those people doing the dredging because the volume involved is smaller each year.

ENVIRONMENTAL IMPACT

The second consideration would be the environmental consideration. In this case we have a number of considerations. Primarily they are that the area mentioned is a relatively undisturbed wetlands area. Only a small portion is greater than the 8-foot contour. A large portion of it is just shallow, inlets, and so forth. The environmental aspects in either area would have to be clearly investigated.

Mr. LONG. Do you propose to make those environmental studies?

Mr. LOEW. Yes, sir, in conjunction with the preparation of the impact statement.

Mr. LONG. Whom do you propose to consult in taking this into account?

Mr. LOEW. In addition to our own staff we would consult all other interested agencies—Environmental Protection Agency—

Mr. LONG. Have you already consulted them?

Mr. LOEW. They received a copy of the public notice.

Mr. LONG. That is all?

Mr. LOEW. Concerning the impact statement there has been no formal coordination.

Mr. LONG. When I called them to get them to come to this meeting they displayed no interest at all. They said they had nobody who knew anything about it. We had to mention a couple of their staff who did know something about it and pin them down to the point

of getting them to come to this meeting. I would guess you will have to do a lot more to get the Environmental Protection Agency to take an interest in this very important problem than you have done so far.

Mr. LOEW. Their prime input comes about when we furnish them a copy of the draft statement and request their comments.

Mr. LONG. Could we get the personnel moving costs, General? How many men would have to be moved, how much per man if the GSA were able to get the entire request?

General McCONNELL. Based on the GSA request; yes.

Mr. LONG. Do you have an estimate now? You said about 2,000 men.

General McCONNELL. About 1,365 military and civilian would have to be transferred or reduced.

Mr. LONG. Is that not a real figure or is this a sort of scare figure?

General McCONNELL. This is our best estimate at this time. For the record I would like to have this figure reviewed.

Mr. LONG. It is not a solid figure, then?

General McCONNELL. Not an absolutely solid figure at this point.

Mr. LONG. We want to get to our other witnesses. If you have completed your statement, Mr. Roos—

Mr. HOLLAND. The survey report in the procedure is only the first step. GSA now is very much interested in everything that the Army has to say about this property. The full agency consideration has not been given to it until we hear from the Army and this committee.

Mr. LONG. This is all in a very early stage.

Mr. HOLLAND. That is right.

Mr. LONG. That is the time to investigate.

STATEMENT OF EDWIN POWELL, MARYLAND STATE PLANNING

Mr. Edwin Powell, deputy secretary of Maryland Department of State Planning. I will ask him to come forward. I hope we can make the statement brief because we have quite a few witnesses and we want to give them all a chance.

Please proceed, Mr. Powell.

Mr. POWELL. I am from the Maryland Department of State Planning. I want to thank you for the opportunity which has been afforded to the State to speak on this matter. I would like to start by making clear three points:

First, the State has received no formal or official notice that any of the land at Edgewood Arsenal or Aberdeen Proving Ground is to be declared surplus. Hence, anything that the State may be thinking at this time about how it would use this land and what its reaction to it would be, its excessing, must be recognized as early contingency planning in order that we may be prepared and as ready as possible to face whatever decisions are ultimately made by the Federal Government.

Second, we recognize that surplusage any sizable amount of this property may have both beneficial and harmful effects on the State. As a result it is premature for the State to have any concrete position or recommendations until we know precisely what areas are determined to be declared surplus and can complete detailed analyses with respect to those specific areas.

Lastly, if surplus, the State will have a definite interest in the future ownership and use of all parcels of this land, regardless of what their ultimate determination is. We intend to participate very actively in any way we can in the determination of that.

Mr. LONG. Does the State propose to bid for the land?

Mr. POWELL. We anticipate we will. I will describe what we have done and are doing in a minute or two.

COMPREHENSIVE DEVELOPMENT PLAN

I would like to go now into what we have done with respect to these parcels. Over the last several years Maryland has done a great deal of planning and studying of the value and characteristics of these installations and lands they occupy. The Maryland Department of State Planning is preparing what is called a comprehensive State development plan. This is a very complex task and will be a very comprehensive document when we complete it. Because of this we have chosen to prepare this plan on a building block method. Some of those building blocks relate directly to the Aberdeen-Edgewood matter we are discussing here today.

DEFENSE EMPLOYMENT IN HARFORD COUNTY

In 1970 we published this document which is entitled "Report on National Defense-Related Employment in Maryland." This document set forth by county both direct Defense Department employment and employment generated by prime defense contractors in the State and assessed the vulnerability of each county to reductions in Federal defense spending.

Two days ago we published this updated document which is entitled "National Defense Spending and Employment in Maryland, 1965-1971." This not only updated and refined our earlier figures but it addressed new areas. Harford County would be quite vulnerable to defense cutbacks.

In addition to those economic and labor-oriented studies we are in the midst of a long-range comprehensive outdoor recreation and open space—

Mr. LONG. Where did you get the idea that Harford County would be vulnerable?

Mr. POWELL. Our figures showed approximately 21 percent of the employment in the State is either direct Defense Department employment or is the result of defense contractors.

Mr. LONG. From that point of view I agree. What about the danger of it? How imminent is the danger?

Mr. POWELL. We didn't address it from that standpoint. We did it as a comparison not only of the percentage of employment but also the overall level and size of other types of industries. In other words, the number of people employed in Harford County in defense-oriented jobs is around 11,000, if that employment was reduced—

Mr. LONG. I agree it would be bad for Harford County. I am concerned about how likely this is to occur.

Mr. POWELL. We don't have figures available on that.

Mr. LONG. This committee and the Defense Department have put about a third of a billion dollars into this area, about \$380 million, an

enormous sum of money. Is this very likely to be moved? Do you have a statement on this, General?

General McCONNELL. We have no indication of imminence, either. I think this is one of those "What if this were to happen?" sorts of things.

Mr. LONG. If we had any idea this would be closed down and moved elsewhere this committee should be warned about it. We would have been wasting a lot of the Government's money.

Mr. POWELL. Perhaps your questioning is sort of along the line of why did you perform such a study. We try to stay ahead of as many things as we possibly can. It is quite obvious that in many sections of the State the direct Federal employment and prime contract employment constitutes a major economic factor. We became concerned about this back in the period around late 1968 and early 1969.

Mr. LONG. We are wandering a little afield, Mr. Powell.

Mr. POWELL. I was trying to answer your question.

Mr. LONG. I was a little alarmed at what you said because I misinterpreted what you meant by "vulnerable." Let us get back to this question.

Mr. POWELL. Very well.

STATE RECREATION AND OUTDOOR PLAN

The next area of consideration that we have done in our long-range planning is a comprehensive outdoor recreation and open space plan for the State. Phase 1 of this plan, which we call the concept plan, was published in 1970. Phase 2, which is the actual plan of how we feel various parcels of real estate should be utilized, is presently at the printers. Phase 3, which was the implementation program describing what lands we wish to acquire and develop, is presently in draft form.

Mr. CEDERBERG. Off the record.

[Discussion held off the record.]

SLUDGE DISPOSAL

Mr. LONG. Has the Maryland Department of State Planning considered these pieces of land as a site for dumping of the sludge?

Mr. POWELL. No.

Mr. LONG. Have you thought about it at all?

Mr. POWELL. Some.

Mr. LONG. When this study was originally made to dump sludge on Hart-Miller Island was there no idea this land would be declared excess?

Mr. POWELL. That is correct.

Mr. LONG. Now there is agreement between the Army and GSA that about 2,900 acres could be declared excess, so this becomes an important question. Do you propose now to study this question?

Mr. POWELL. I don't think so. In the first place, Carroll's Island is one of the most ideal prime ecological areas in the entire United States. We have the evidence of some environmental studies which have been made there. Analysis has shown there are 13 species of mammals, 182 species of birds, 25 species of reptiles and amphibians, and so forth on Carroll's Island. Some of these are particularly critical species of wildlife.

Mr. LONG. Have you made a similar analysis of the Hart-Miller complex?

Mr. POWELL. No, we have not.

Mr. LONG. I agree with Carroll's Island, but the Hart-Miller complex is also one of the most important areas in the United States.

Mr. POWELL. That may be correct. It is the Governor's recommendation, on the basis of very concerted discussions with his secretary of natural resources and his secretary of planning, that we go ahead with the Hart-Miller proposal.

Mr. LONG. So your mind is closed, in other words, at this point. The Governor says you will do this and you are not entertaining other proposals?

Mr. POWELL. Let me put it in a slightly different connotation. It is only now that the alternative of Carroll's Island has come up.

Mr. LONG. Not just Carroll's but several other places.

STATE PARK PLANNING

Mr. POWELL. Let me complete my statement, please. Carroll's Island is being looked upon very strongly by our department of natural resources as a wildlife area because of its characteristics. The Graces Quarters area abuts directly against the State park known as Gunpowder State Park and it would be an appropriate extension of that park. Therefore, we have two very strong factors favoring the retention of those two parcels which are the principal ones we are talking about with respect to the dumping of sludge.

Mr. LONG. Keep in mind that is a relatively uninhabited area whereas the area where you propose to dump 100 million cubic yards is a thickly inhabited area, loaded with thousands of sports people, sports boats, and so on, a recreation area for around 60,000 people.

Mr. JONAS. Where is it on that map?

Mr. LONG. It is not on that map. It was shown on a previous map.

Mr. JONAS. How does this Hart-Miller Island compare with the ones we are talking about now with respect to wildlife?

Mr. POWELL. Considerably less.

Mr. LONG. There is not much on it because the islands are very small. What the people object to is that the dumping spoils area will be around 2,000 yards. Hart-Miller is only around 130 acres, the two put together. They will take a huge part of the bay and just fill that up with this poisonous sludge.

DISPOSITION OF SPOIL

Mr. JONAS. Where do the people live that you are talking about?

Mr. LONG. Throughout this area I am pointing out on the map. About 60,000 people live in here. This is close to Baltimore City. It is one of the most beautiful recreational areas you have ever seen. Properties are very valuable. It is one of the few places in the United States I have seen where middle-income people can live and live beautifully. This will really threaten the entire area.

However, this area up here near the bases is relatively isolated compared to the other. Apparently the State has neglected the threat

to the fish, clams, oysters, crabs, and so on. This is an important part of that bay.

Mr. POWELL. If I understand what the experts say, they are going to dike this sludge material in such a fashion that it will not have an adverse effect on the surrounding waters. Is that correct, Mr. Loew?

Mr. LOEW. That is correct.

Mr. LONG. That is a highly controversial and disputed matter. We have had plenty of experts pointing that out.

All I am asking now is not for judgments from you but simply to find out what the State is looking at, whether the State proposes to investigate this or whether its mind is closed to the possibilities here.

Mr. POWELL. I do not think until a final determination has been made the State's mind is ever closed on any subject. As I pointed out at the outset, we have had no formal notification concerning the availability of these two islands or any other portion of Edgewood Arsenal or Aberdeen Proving Ground.

PLANNING FOR USE OF EXCESS PROPERTIES

Mr. LONG. Can you say any studies will be made of these or other land sites?

Mr. POWELL. I know studies already have been initiated with respect to all of the land that the General Services Administration has proposed as being excess at Edgewood and Aberdeen.

Mr. LONG. You have made these studies?

Mr. POWELL. We have initiated those studies.

Mr. LONG. When do you propose to have a report?

Mr. POWELL. We anticipate we may have indications of potential use in about 60 days. The Governor and the Secretary of Planning have just sent out letters to all State and local agencies to determine their potential interest in the lands we understand are under consideration.

Mr. LONG. Thank you very much, Mr. Powell.

Mr. POWELL. If I might make another point.

Mr. LONG. Please make it quickly because we have two other witnesses.

Mr. POWELL. This is an important point from the State's viewpoint, and that is that the procedure Mr. Rose described which the General Services Administration follows with respect to the notification of the availability of these lands is a procedure which we find is almost designed to create confusion and to eliminate the possibility of systematic planning for how you want to utilize these available properties.

Our office handles—

Mr. LONG. The State is highly critical of the GSA report and its procedures?

DISORDERS CREATED BY EXCESSING PROCEDURES

Mr. POWELL. Not the GSA report. I am basically critical of the law. The way the law reads is that after a piece of property has been declared excess it is then circulated among other Federal departments

to determine their desirability for use. If this land is not taken up by some other Federal agency then it is made available to State and sub-State governments for the types of uses that Mr. Rose described.

They usually do this and the State learns about it only at that formal point where it has been declared surplus; whereas local agencies and those agencies trying to grab this surplus property have frequently known about it for 2 or maybe 3 years.

Moreover—

Mr. LONG. Why is that? The State has just as good ears and eyes as local authorities.

Mr. POWELL. They don't necessarily find out about this. I can cite three examples that have just occurred in the last 8 months.

Mr. LONG. You mean the State is not as alert as the local people are?

Mr. POWELL. That perhaps is so. The various elements of the State tend to vie among themselves and the local governments tend to vie within themselves.

Moreover, when the GSA notifies these agencies of these procedures they do it with a shotgun effect and they notify various agencies of government simultaneously.

What we have been attempting to do since last fall is to cause the GSA to notify the Governor first and let the Governor of the State make his determinations as to how this property should be utilized within his State.

We find that the law prescribes that if a county or local government wishes to utilize a piece of surplus property for a particular purpose it then goes to the counterpart Federal agency for the purpose it is to use it. In other words, if someone wants to put a hospital on a piece of land it goes to the Department of HEW and files an application. HEW, in turn, approves or disapproves that application. It does not come through the central State government.

Then GSA is in the position frequently of trying to adjudicate between the recommendations of several Federal agencies for the disposition of this land to State or local governments, and except by initiative on the part of the Governor and his office the Governor and the executive department of the State can be cut out of this determination process.

My plea is that the Governor of Maryland be kept informed.

Mr. LONG. Is this a matter of law or just a matter of administrative practice?

Mr. POWELL. The law states that these applications go up bilaterally from an interested governmental agency within the State to its counterpart Federal agency.

Mr. LONG. There is nothing about GSA procedure which prevents GSA from notifying the Governor very early in this business, is there?

Mr. POWELL. Yes, except that the GSA also notifies other agencies within the State.

Mr. LONG. The Governor should know about it before local areas?

Mr. POWELL. I think so.

Mr. LONG. I would certainly not argue that the Governor ought to hear about it last, but I don't know why all the agencies can't hear about it at the same time. I would have to disagree with you.

Thank you very much for your testimony, Mr. Powell.

STATEMENT OF GEORGE DANIELS, PLANNING AND ZONING,
HARTFORD COUNTY, MD.

Mr. LONG. Next is Mr. George Daniels, acting director of planning and zoning, Hartford County, Md. Mr. Daniels, I hope you can keep your remarks down to about 5 minutes or so.

Mr. DANIELS. The county commissioners of Hartford County want to thank you for giving us this opportunity to present our views. We had a special meeting after the board meeting yesterday to discuss this specification. They wanted me to convey these views to this committee.

Mr. LONG. Very good.

REDUCTION OF MILITARY EMPLOYMENT OPPOSED

Mr. DANIELS. The county is not interested in a reduction of the military employment in this area because it will have adverse economic effect.

Mr. LONG. That is right.

COUNTY CONTROL OF DEVELOPMENT

Mr. DANIELS. In case the land becomes available the county commissioners would like to take the position which I will read: No. 1, the areas south of I-95 between Havre de Grace and Joppatowne have witnessed tremendous urban growth in the last few years. In view of limitations set on land use because of topographical conditions, any further development of this corridor should be very carefully planned. There is a need for preservation of the Bay area, wetlands and marshes. The Bay, as a natural resource, and the adjoining lands as a wildlife preserve and bird sanctuary has been emphasized in a number of special studies.

Ever since the military had established in this area, the county has been deprived of the necessary tax revenue. If the lands are declared surplus it is the county which should get the first right of use rather than any Federal or State agency. It is the local body which is primarily concerned with the planning and development of this area. It is contiguous to our county area.

Number three, the county would use this land mostly as open space recreational use and for any institutional use such as schools and educational centers which are much needed for the expanding population of this area. There is already a great shortage of school capacity and community facilities in this area which needs to be met on a planned basis.

Mr. LONG. Thank you, Mr. Daniels. So the commissioners are not opposing the excessing of this land. They simply want to be sure that this will not result in any loss of employment at the Aberdeen-Edgewood complex and to be sure that the county would have control over the use of this land so it would be made available for recreational and other use and not thrown open to industrial or residential use. The county already is heavily over-burdened in these aspects. Is that it?

Mr. DANIELS. Yes.

Mr. LONG. Thank you, Mr. Daniels.

STATEMENT OF ANDREW BRISTOW, CHIEF ENGINEER, HARTFORD COUNTY

Next, Mr. Bristow, Andrew Bristow, chief engineer, Hartford County Metropolitan Commission, who will make brief remarks and will be available to answer questions on the water and sewage facilities.

It is a pleasure to have you here.

Mr. BRISTOW. Thank you. The Hartford County Metropolitan Commission, responsible for the water and sanitary sewage, has authorized me to make a brief statement here to the effect that in the past historically over a number of years there has been a great deal of mutual cooperation between the county agency and the installation. This cooperation has resulted in a number of transfers of property and real estate affecting the production of waste water. The commission wants a statement put in the record that it does not want to have anything done here which would affect the mission of the Aberdeen Proving Ground installation.

That is as brief as I can make my statement. If there are questions I will be glad to answer them.

Mr. LONG. I certainly subscribe to your statement. We want to keep the Edgewood-Aberdeen complex going in the future, as it has in the past. I will fight as hard as I can to do that.

Do you have any opinions on the use of this area for possible sludge dumping?

ON BASE WATER WELL FIELD FOR AREA

Mr. BRISTOW. I am not qualified to speak to that. I do say that we are using a large area of the real estate of the proving ground for a well field where we are supplying most of the water in the area from this well field. This has been granted to us on lease. We have recently purchased, through the process previously described, 68 acres for a Sod Run sewage treatment plant facility, the principal means of disposing waste water from the populated areas of the county. We would hope we could continue working with this installation in the future because of the cooperation which has been extended to us in the past.

Mr. LONG. Is there any feeling, General McConnell, this would not be possible?

General McCONNELL. No feeling at all as far as we are concerned that this is not possible.

Mr. LONG. You would expect continued cooperation?

General McCONNELL. Yes.

Mr. BRISTOW. It has been exemplary.

Mr. LONG. Thank you very much.

STATEMENT OF GEORGE PENCE, ENVIRONMENTAL PROTECTION AGENCY, REGION 3

Mr. George Pence, Environmental Protection Agency, Region 3, Office Philadelphia.

Mr. PENCE. This is Jan Valcek, Office of Legislation.

EPA JURISDICTION

I do not have a prepared statement, Mr. Chairman. I would like to make a general comment. The Environmental Protection Agency does not have primary responsibility for Federal programs affecting land use management and development in the coastal zones or wetland areas under existing authorities. Nevertheless, the Environmental Protection Agency does have important responsibilities relating to the protection of the estuaries and other aspects of coastal zone management. Specifically, whenever a development activity in a coastal and estuarian zone is to be carried out with Federal assistance or through a Federal license or permit and that activity would have a significant impact upon the environment, the responsible agency is required to prepare a statement of environmental impact pursuant to the National Environmental Policy Act of 1969, and the Environmental Protection Agency regularly reviews such statements to determine whether or not adequate provisions have been made for the protection of the environment.

Mr. LONG. Thank you.

DRY LAND DISPOSAL FAVORED BY EPA

What is your position on dry land disposal of harbor fill versus the water dike area? I have understood they have said in the past they are insisting on dry land disposal in the future. Are you still firm on this?

Mr. PENCE. I believe so, sir. It would depend to a certain extent on the particular characteristics in each case.

Mr. LONG. But other things being equal you would favor dry land disposal?

Mr. PENCE. Yes, sir.

Mr. LONG. What environmental standards would the EPA set for use of this land? In reviewing the environmental impact would you eliminate any uses from environmental point of view?

Mr. PENCE. No, sir. One of the responsibilities we have is that the environmental impact statement must contain viable alternatives and discussions of their environmental impact.

TIMING OF EPA REVIEW

Mr. LONG. Is the EPA reviewing the proposal of the State to dump these 100 million cubic yards of poisonous sludge in the Hart-Miller Islands area?

Mr. PENCE. We are not currently reviewing it officially. We naturally have some information and we will work closely with the Corps of Engineers in Baltimore on this.

Mr. LONG. Why are you not working on it officially? It is being reviewed currently by the Corps of Engineers. This is mostly water; 90 percent of this is right out in the water.

Mr. PENCE. I don't mean to infer by that that we are ignoring it or in any way do not care about it or anything to that effect. In saying we are not looking at it officially, we have not received the draft en-

vironmental impact statement from the Corps of Engineers on this project. We do have—

Mr. LONG. Do you expect to get one?

Mr. PENCE. Yes, I would expect to get one.

Mr. LONG. When?

Mr. PENCE. I have no idea, sir.

Mr. LONG. Has the EPA reviewed the GSA report with an eye toward the wildlife and ecology of the area?

Mr. PENCE. We have never seen the GSA report.

Mr. LONG. It is now here. We have a copy of it and we will turn it over to you.

Can we rely on your now reviewing this from that point of view?

Mr. PENCE. I think it is somewhat premature. Certainly we can review it. I think it is somewhat premature in that there has not been any determination on how much of it will be available as excess or surplus property.

Mr. LONG. GSA has made its recommendation. The Army has itself conceded about a third of it could be excessed. I would think an important part of both the GSA final recommendation and that of Property Review Board would have to have the environmental impact information.

Mr. PENCE. I believe that the gentleman from GSA did say they perhaps would file an environmental impact statement as part of the property review proceeding.

Mr. LONG. You will take that and examine it carefully?

Mr. PENCE. Yes.

Mr. LONG. Will you give quick action to that?

Mr. PENCE. Yes, sir.

Mr. LONG. Thank you very much, Mr. Pence. I appreciate your coming.

Mr. Frank Byron, principal engineer, Maryland Department of General Services.

STATEMENT OF FRANK BYRON, CHIEF ENGINEER, MARYLAND DEPARTMENT OF GENERAL SERVICES

Mr. BYRON. Secretary Lewis has authorized me to make the following brief statement. The Maryland Department of General Services is responsible for implementing capital improvement program for the State. Our knowledge of the possible disposal of federally owned land at Aberdeen-Edgewood is limited to an article which appeared in the Baltimore paper. No consideration has been given to its possible utilization as a site for disposal of dredge material from the Baltimore Harbor pending more formal and specific information on the matter.

Thank you.

Mr. LONG. Do you take this proposal seriously, Mr. Byron?

Mr. BYRON. Yes, sir; and we intend to look into it.

Mr. LONG. You now have an official copy of the report. We will turn that over to you. Can we count on you then to review that systematically?

Mr. BYRON. Yes, sir.

Mr. LONG. Will you have some questions we can then address to the GSA?

Mr. BYRON. Yes, sir.

STATEMENT OF WILLIAM K. DEAN

Mr. LONG. Mr. William K. Kean, head of William K. Dean Associates, Consulting Engineers, Bel Air, Md.

Mr. DEAN. I had better say I am a private citizen, a resident of Maryland and Harford County and do not represent the county or the State.

Mr. LONG. You are a consulting engineer?

Mr. DEAN. We are consulting engineers located in Bel Air, Harford County. My interest in these proceedings is only that an idea was proposed by me to several people, including yourself, last May. You have a letter of mine which details that idea.

At that time I had no idea that Federal land would be available for the accomplishment of that plan so soon. I did anticipate it would become available where it has become available and that more will become available at that location.

Mr. LONG. I have here a very thoughtful detailed letter which you sent me on May 16. I will ask that it be inserted in the record.

[The letter referred to follows:]

WILLIAM K. DEAN ASSOCIATES,
Bel Air, Md., May 16, 1972.

Congressman CLARENCE D. LONG,
Washington, D.C.

DEAR CONGRESSMAN LONG: During our conversation Monday, May 8, 1972, you asked that I put my expressed thoughts on a Maryland solid waste plan in writing. This is an attempt at a brief outline of the plan.

* * * * *

The estimated 100 million cubic yards of spoil to be dredged from the bay channel plus an estimated 25 million cubic yards to be dredged from the inner harbor represent a useful resource which should not be wasted. If this spoil were mixed with the 800 tons per day of sewage sludge from the city of Baltimore alone, it would result in an organically rich material, excellent for use as cover for the more than 1,000 tons per day of refuse from the city of Baltimore. This is exactly the procedure being followed at the Anacostia landfill near Bladensburg. The State health department has checked this landfill for many months and has expressed satisfaction with its operation.

Of course the sewage sludge and refuse problems are not confined to Baltimore City and, if landfill area can be found which meets the criteria of isolation and insulation from habitation, economy of transport and reasonable land cost or rental, the growing problem of solid waste disposal for two-thirds of the population of Maryland could find solution.

Ideally situated for the purpose are the more than 25,000 acres of the Aberdeen Proving Grounds which do not appear to be serving a useful purpose and which are elevated above the marshes or wetlands. This land is quite far removed from habitation, is protected on the west by distance and by prevailing westerly winds, and on the east by a 32,000-acre restricted buffer zone of water.

It can be reached by direct rail line from Washington and Baltimore, by economical barge transport from every county on the bay, and by transfer truck from Baltimore County, Harford County, and Cecil County.

You specifically mentioned the problem of the presence of unexploded ordnance on the land and waters of the Proving Ground. This menace should be removed no matter what the future use of the area might be. This would provide the Army Engineer Corps a project high in benefit-to-cost ratio.

The to-be-expected outcry against the presence of a dump can be minimized in advance if regulation of the entire installation is placed in the hands of the U.S. Public Health Service. The Public Health Service, Office of Solid Wastes, as a prime tenant of the proving ground, could thus establish a permanent east coast research and training facility where the manufacturers of solid waste incineration, composting, compacting, and recycling equipment could construct and demonstrate their products under full-scale conditions, and under strict surveillance regarding land, air, and water pollution.

Public works personnel, public health officials, educators and engineers could be trained at the new facility—instead of at the entirely inadequate Robert Taft School in Cincinnati. Buildings may become available at the proving ground for laboratories, classrooms, and housing as military-related operations wind down or relocate.

As a subtenant of the U.S. Public Health Service, the Maryland Environmental Service would operate the solid waste transport and the disposal area of the facility. It is possible that Federal grants for demonstration purposes could be obtained to help establish and operate this phase.

Initially, the Maryland Environmental Service could offer the solid waste acceptance service on a contract basis to the city of Baltimore. Haulage from the city to the proving ground would probably be most practical by means of rail. Spur tracks of the Pennsylvania Railroad penetrate both the Edgewood Arsenal area and as far as Michaelsville on the Aberdeen Peninsula.

Solid waste studies are now underway for all Maryland counties. It is predicted that the majority of these studies will conclude with an estimate of the year when landfill area and landfill cover material will be exhausted and other disposal means, probably incineration, must be used. The resultant myriad small incinerators scattered over the State would be an economic and pollutional catastrophe. Despite the claims of the manufacturers and a few consulting engineers, the fact remains that incineration is among the least desirable and most expensive waste reduction methods.

As each county with access to the Chesapeake Bay finds itself approaching landfill area depletion, the economic feasibility of solid waste removal by marine transport by the Maryland Environmental Service could be weighed against any available alternative. Since properly conducted landfill disposal typically averages about \$2.50 per ton as compared to about \$7.50 per ton for incineration, and since marine transport is highly economical, it is easy to foresee a sizeable waste transport fleet within one or two decades.

The use of the sanitary landfill process for solid waste disposal is only practicable when adequate cover material is readily available. During the next 10 years, 125 million cubic yards of silt and sediment is expected to be dredged from the bay and harbor bottoms. Enriching this spoil with sewage sludge from Baltimore and elsewhere would provide excellent daily and final cover for restoring the filled land to use for agriculture, recreation, or other beneficial use.

However, other exciting possibilities also exist. One of these is the production of highly compressed blocks of refuse. The Tezuka Kosan Co. of Tokyo has developed a process for compacting refuse into 5-foot cubes weighing 3 to 5 tons each. Literature from this company claims that the cubic bales, after being bound with wire netting and dipped in hot asphalt, are excellent for foundation blocks and under water, to form shoreline stabilization walls. The Tezuka Co. further claims that such a plant would cost about one-third the cost of a similar capacity incinerator and would be free of air pollution. The use of these blocks to stabilize the shores of the Chesapeake Bay would be a tremendous benefit to Maryland. This process and others could be investigated by the U.S. Public Health Service at the proposed research facility.

Although the implementation of the plan which I have outlined will pose difficult engineering problems and formidable administrative and political problems, Maryland is singularly fortunate to have the potential for the solution to the solid waste problem, a potential which other States do not possess.

I came to you with my thoughts on this matter because your concern for environmental problems and for the economy of the area are well recognized. Until now, your efforts to maintain activity and employment at the military installations have been highly successful. However, conditions beyond your control may cause military-related use of these facilities to decline drastically. Private interests may acquire this property, housing development may result, and instead of a beneficial industry dedicated to solving environmental problems, the problems would be compounded and this opportunity lost forever.

I wish to thank you for the pleasant interview you granted me last week in your Washington office. Thank you also for your kind letter expressing interest in the plan which I presented.

Very truly yours,

WILLIAM K. DEAN ASSOCIATES,
WILLIAM K. DEAN, P.E.

RECONDITIONING OF SPOIL

Mr. DEAN. We have been looking at the disposal of dredgings from the harbor and the bay in the inner harbor as a problem. Indeed it is unless you look at it from another standpoint. It is quite a valuable asset. I have not seen the chemical—

Mr. LONG. Sludge is a valuable asset?

Mr. DEAN. Right, bottom dredgings. I have not seen a chemical assay of this and I would like to see it. It would serve beautifully if it were reconditioned.

The bottom dredgings no doubt need aeration and restoration of organics. If this happened they would serve as a great benefit to the State of Maryland for the disposal of solid wastes, as a cover material.

SOLID WASTE DISPOSAL

At the present time the only really efficient means of disposal of solid waste is sanitary landfill by comparing costs at the present time on the order of \$2.50 per ton for landfill and \$7.30, let us say, for incineration. Therefore, at the present time landfill is, for Maryland and everywhere else, the best method. There is the great problem of the solid wastes. In the city of Baltimore alone they would like to find some method of getting rid of 1,000 tons a day of solid waste.

In the last year alone I believe they have authorized expenditures of \$20 million for reconditioning of an incinerator and construction of another incinerator.

I say 1,000 tons a day. They manufacture approximately 24,000 tons per day in the city of Baltimore alone. It is a huge problem all around the bay and all through central Maryland. Baltimore County is not without this problem. Harford County itself has this problem.

USE OF ARMY LAND FOR LAND FILL

The cheapest form of transportation is barge. This can be either type of barge. As far as the areas of Aberdeen Peninsula, I cannot comment on this. This is ideally located and it does not need to pass out of the hands of the Army to be used for this purpose. It can stay and be leased and the land can be improved. The land will be there if we have additional national emergencies.

Mr. LONG. What would be the feasibility of that? Can you comment on the possibility of dumping this sludge there, even if the land is never declared excess, in conjunction with the schedules of the Army?

General McCONNELL. I feel if the Army can declare it excess, as we have indicated in response to the GSA recommendation, the route we would follow is to excess it and not get into the business of landlord for this type of operation.

Mr. LONG. In other words, the Army would not want to be involved in a project of this sort?

General McCONNELL. I think that states our position.

Mr. LONG. For example, this Gunpowder Neck area, which you do not want to declare excess?

General McCONNELL. That is right.

Mr. LONG. Would you consider at all the possibility of allowing that to be used as a place for dumping sludge?

General McCONNELL. Certainly we would consider it but as far as Gunpowder Neck is concerned we feel we have the requirements now that justify Army retention for Army purposes.

Mr. LONG. It is a firing range. Does it really matter whether it is sludge? Would this have adverse effects on the mission of the two installations?

General McCONNELL. We would have to look into the details of what the proposal is.

Mr. LONG. Will you look into that and let us know? Can we get a report on the possibilities involved?

General McCONNELL. We will certainly supply details on what they are proposing as a type of sludge deposit.

Mr. LONG. I think there has been a failure here on the part of various areas of government to try to get together on this.

Do you want to complete your statement, Mr. Dean?

Mr. DEAN. Yes, sir. I feel the areas which may be available now, or may become available immediately, may not be the exact areas you will want to use for this purpose. However, I feel time is on our side. With a winding down of hostilities and public opinion against war in general there will be an opinion to give up these lands and we will not have them for military purposes when we need them. This process can make this land more valuable for any purpose and keep it in the hands of the military if they wish.

Mr. LONG. So you feel this would serve two purposes—first, to provide a place for the dumping of sludge, and, second, for keeping it in the hands of the military because it would provide a use for it despite what GSA claims, that this is no longer needed?

Mr. DEAN. It would likely provide a fine blanket over these unexploded projectiles, white phosphorus, and so on, to make it safe for all time.

Mr. LONG. We don't know what will happen in the future. While GSA claims the Army does not need it right now, they have no idea what will happen in the future. Nobody knows.

Mr. DEAN. That is right.

Mr. LONG. This is a valuable proving ground into which we have put tremendous sums of money.

Mr. DEAN. I am not an explosives expert but I believe if an explosion occurred 20 to 30 feet underground you would have much less of an impact than if it occurred on the surface.

Mr. LONG. Further comment, General?

General McCONNELL. Just a general comment that we would consider a proposal. In general, I would state that the Army would prefer to have it excessed.

Mr. LONG. If the Army insists on keeping it intact or giving it up completely, we could have a problem. I would hope the Army would take a venturesome viewpoint on this and try to solve both problems—retention of missions and spoil disposal. This will relieve the pressure on you to get rid of this land. Otherwise, sooner or later, you will find this same pressure from GSA hitting you again.

General McCONNELL. The Army does have an active policy of joint usage with other agencies. In conformance with this policy, we would be glad to look at a proposal.

Mr. JONAS. Off the record.

[Discussion held off the record.]

Mr. LONG. I thank you for your imaginative proposals, Mr. Dean. I want to insert in the record a letter from URS Matrix of Essex, Md., on this question of excess land use.

[The letter follows:]

URC MATRIX,
September 22, 1972.

Hon. CLARENCE D. LONG,
U.S. House of Representatives,
Longworth Building,
Washington, D.C.

DEAR DR. LONG: The following summarizes the results of my investigation of the advantages and disadvantages of spoil disposal on the Aberdeen-Edgewood site. Since I am not personally familiar with the site, and data on the site is relatively sparse, I feel the best information I can give is related to the Aberdeen-Edgewood site in its generalized configuration as a military base as well as its description as a valuable wetlands area. As such, I have made certain assumptions as to the character of the area which are subject to additional verification not permitted by the time frame you are required to meet.

ADVANTAGES OF THE SITE AS A SPOIL DISPOSAL AREA

1. Possible decreased diking and sand dredging costs could offset the increased cost of transportation (additional average distance of +10 miles greater than Hart-Miller site).
2. The large surface area potentially available could yield faster consolidation times, hence quicker return of value due to land recovery.
3. The large area may also reduce odor problems due to more rapid stabilization and increased aerobic contact.
4. There is a possibility of ultimate use as a park site in conjunction with the contiguous Susquehanna National Wildlife Refuge area.
5. A net increase in valuable wetlands area could possibly occur if the spoil could be rendered passive and dependent on the feasibility of low-level diking techniques.

DISADVANTAGES OF THE SITE AS A SPOIL DISPOSAL SITE

1. There is potential damage to valuable (albeit not quantitatively assessed) wetlands area.
2. There is questionable access to the site, if future land recovery is contemplated, due to the interspersed military complex.
3. There is also a potential safety hazard due to interaction with the ordnance test range if subsequent land recovery is contemplated.
4. The possible existence of unexploded ordnance is a potential safety hazard both during the spoil disposal period and the land recovery phase.
5. The cost of clearing the area of unexploded ordnance is reported to be very high and total recovery of all such devices is not considered feasible.

Colonel Scheuler of the Pentagon indicated that the site presently comprises 40,000 acres which are designated as ordnance impact—36,000 acres are underwater and the remaining 4,000 acres are above water. Precise information concerning the placement of the unexploded ordnance areas can be obtained from Mr. Paulick of the Aberdeen-Edgewood facility. Colonel Scheuler can be reached at the following telephone number—202-697-2351.

EXAMPLES OF AREAS WHERE DIKING HAS BEEN USED

Location	Condition	Results
1. Delaware Bay.....	Complete.....	Successful.
2. San Diego Bay.....	do.....	Do.
3. Norfolk (Crane Island).....	In transition.....	Questionable.
4. Denver Airport.....	(1).....	Unsuccessful.

¹ Rocky Mountain Arsenal—site rejected due to unexploded ordnance and prohibitive ordnance recovery problems.

Detailed information about the sites used as spoil disposal areas can be obtained from Mr. Leo Tobias, Corps of Engineers at the Forrestal Building in Washington or from Mr. Ernst Hall of EPA, telephone number 703-522-0146.

Please do not hesitate to contact me if you would like amplification on the above or other related problems.

The problem of ultimate disposal of harbor dredge spoil is of major importance to the Chesapeake Bay. Obviously we must do something with the material which is a natural byproduct of the commercial exploitation of the bay. Your efforts to find a beneficial use for the spoil and in searching for an optimal site from an environmental impact standpoint are extremely useful and vitally necessary.

Respectfully,

HARRY L. LOATS,
Staff Scientist, URS/Matria.

Mr. LONG. I have a number of questions here for the General Services Administration. Some of these duplicate questions which were already given. If there are new questions I hope you would answer them for the record.

I also have some questions for the Army. Many of these have been asked but if any are additional to those I hope you will answer them.

This concludes our meeting. I am proud of the fact we are through so soon after 12.

Thank you, General. You have been very helpful.

What uses does the Army have for the various parcels of land at this time?

ARMY USES FOR LAND

General McCONNELL. The Army has the following parcels of land:

(a) Nine hundred acres on the main base at APG are used by the Ordnance center and school for billeting, classroom training and field training of 62,000 man-hours annually. The Land Warfare Laboratory has a laboratory located here which is assigned a task involving detection of explosives, narcotics and other vapors; 200 of these 900 acres are presently leased for agriculture purposes.

(b) Spesutie Island of 1814 acres is the primary area of operations for the Ballistic Research Labs, the Land Warfare Labs and Materiel Test Directorate, APG. There are 113 buildings and allied facilities, including extensive utilities systems located in support of ballistic research, vulnerability research, artillery and ammunition research. There are precision instrument shops, altitude simulation labs, peep sight range, maintenance shops, a special nuclear vulnerability branch, and blast and fragmentation labs. There are also firing points for long range testing located on Spesutie Island.

(c) Pooles Island has only range towers located on it. The area is specifically a safety zone and target point. It is critical to the firing programs.

(d) Gunpowder Neck area is the principal test area for tank/armored vehicles, for vibration testing, vertical firing and impact areas for APG, Spesutie Island ranges. Edgewood Arsenal utilizes areas of the neck for technical escort test areas and munitions disposal sites. The 5,092 acres are necessary in their entirety in order to assure complete safety of operations.

(e) Lauderich Creek area is the site of a Nike Hercules Missile complex which is an integral part of the east coast air defense system. Located here are administration and housing, acquisition, and launch facilities and a critical 1,090-foot safety/security zone.

(f) Two parcels of land contiguous to the military housing complex are used primarily for playgrounds, parking areas, and buffer areas in an already highly congested area.

FUTURE USES

Mr. LONG. What future uses does the Army have planned for this land?

General McCONNELL. The Army has the following uses planned for this land:

(a) Nine hundred acres on the main base will be required in the future for classroom and field training by the Ordnance Center and School. It is projected that more than 62,000 man-hours of training will be involved. Any requirement for mobilization will greatly increase the requirement. The installation master plan includes a centralized logistics complex in this area; 200 of the 900 acres will be required for expansion of family housing.

(b) There is no change in use projected for Spesutie Island. In the event of mobilization, current research and development programs will be stepped up.

(c) Future use of Pooles Island is the same as current use.

(d) Gunpowder Neck will continue to be used for ranges and test sites as stated in the previous answer. In addition, it is contemplated that those test grids and facilities located on Carrolls Island will be moved to Gunpowder Neck.

(e) Lauderich Creek area will be required in the future for the missile complex now located there.

(f) It is planned to develop two parcels of land contiguous to the Edgewood housing area into formal sports/recreation areas. A third parcel will be used for expansion of the post trailer park which is now completely utilized with a waiting list in effect.

IMPACT OF EXCESSING

Mr. LONG. For each parcel of land—if that parcel is “excessed” what would the impact be in terms of (a) jobs lost (b) missions discontinued or transferred (c) need for new construction elsewhere to accommodate missions and (d) service contracts by local firms?

General McCONNELL. (a) Job losses: (1) 900 acres on main base: No job loss, however, approximately 555 military students and instructors would not be accommodated at the Ordnance School.

(2) Spesutie Island: 100 jobs lost or transferred.

(3) Pooles Island: If loss causes reduction of long range firing 580 personnel would be lost or transferred.

(4) Gunpowder Neck: If lost the same 580 personnel would be effected as stated in 3.

(5) Lauderich Creek Area: 134 military personnel transferred.

(6) Housing area tracts: No personnel loss.

(7) Carrolls Island/Graces Quarters/West wood areas: No personnel loss.

(b) Missions discontinued or transferred. (1) 900 acres on main base: The Ordnance School would be forced to reduce student load in NCO course and equipment maintenance courses.

(2) Spesutie Island: Ballistic Research Laboratories would not transfer any complete missions, but some testing functions would have to be transferred elsewhere.

(3) Pooler Island: (a) Of the mission stated above ballistic and weapons research and development would be effected.

(b) Long range test firing by APG test activities would be effected.

(4) Gunpowder Neck: (a) Artillery testing and automotive tank systems testing would be effected.

(b) Edgewood Arsenal testing would be affected.

(c) Training and activities of Technical Escort Personnel would be effected.

(5) Lauderich Creek: The air defense mission would be affected.

(6) Housing area tracts: No mission effect. Severe congestion would result if additional building is permitted.

(7) Carrolls Island/Graces Quarters: Chemical test grids must be moved to Gunpowder Neck.

(8) West wood area: No mission effect.

(c) Need for new construction elsewhere to accommodate mission.

(1) Nine hundred acres at APG: (a) New training area would be required as would classrooms. (b) It would be necessary to find other land for a planned logistics complex and for future family housing.

(2) Spesutie Island: New laboratories and allied facilities would have to be constructed. BRL calculates 30 million dollars would be needed.

(3) Poole Island: Loss of long range firing facilities will require a new range complex to be constructed at some selected point in the United States. Cost is unknown but considered very high. (Several millions of dollars.)

(4) Gunpowder Neck: Ranges and test facilities would have to be constructed at some military installation. (Cost would be in millions of dollars).

(5) Lauderich Creek area: Cost would be that of moving a Nike Hercules Missile complex. Actual dollar figures are not available, but cost would be several million dollars to construct a new complex.

(6) Housing area tracts: No construction involved.

(7) Carrolls Island/Graces Quarters: Cost would be approximately \$3.5 million to move test facilities to Gunpowder Neck.

(8) West wood area: Cost would be in excess of \$1.5 million to move utilities systems from the area. An alternate solution is to retain easements and leave systems in place.

(d) Service contracts: It is not practical to show service contracts by parcel of land; however, the total service contracts that could be involved in excessing of Spesutie Island and Gunpowder Neck would be in excess of \$919,000.

UNEXPLODED ORDNANCE

Mr. LONG. What areas of this land have unexploded shells and other ordnance devices on them?

General McCONNELL. The following areas of land have unexploded shells and other ordnance devices on them:

(a) 900 acres on main post: Within the area between Maryland Boulevard and Aberdeen Road is an area used by explosive ordnance

training courses during the 1940's. There are unexploded training devices in the area.

(b) Spesutie Island: It is definitely known that there are dud rounds and other explosive devices in marshy areas of lower Spesutie. No feasible, economical method has been determined to recover these items. The exact extent of the hazard is unknown because of the extended period over which contamination has occurred—since 1918.

(c) Pooles Island: Heavily impacted with many types of artillery up to 14-inch projectiles. The amount cannot be accurately calculated because of the long duration over which firing has taken place—since 1918.

(d) Gunpowder Neck: Artillery shells have impacted here since 1918. Chemical munitions testing has taken place over a 50-year period. There are several known disposal sites on the neck. There are many unaccounted for munitions buried throughout the area, both on solid surfaces and in marshy areas.

(e) Lauderick Creek area: During the 1940's part of this area was used as a training area by the Chemical Corps School. There will be some minor residue in a few isolated areas.

(f) Housing area tracts: No problem exists.

(g) Carrolls Island, Graces Quarters: There is some minor contamination on these areas resulting from chemical testing.

(h) Westwood area: There is white phosphorus contamination and a radiation grid in this area.

Mr. LONG. How effectively could these areas be cleaned up, using "best possible" technology.

General McCONNELL. (a) It is doubtful that 100 percent of the duds buried in wet marshy areas of Spesutie Island could feasibly be cleaned up. All duds located on solid ground can be removed. It is calculated that 80 percent of this area could be declared clean and safe.

(b) The decontamination of Pooles Island will be an extremely difficult, but not impossible task. Explosive experts will not estimate the total magnitude of contamination, but feel it will take at least a year to accomplish a suitable cleanup. Because of the marshy nature of the island heavy equipment cannot be effectively used. The process will cost over \$4,000 per acre under ideal conditions.

(c) Clean up of Gunpowder Neck will be a long process taking several years. The process will cost over \$2,000 per acre under ideal conditions.

(d) Lauderick Creek area can feasibly be cleaned up with little difficulty and an almost 100 percent surety. Cost will be \$2,000 per acre.

(e) Carroll Island/Graces Quarters area can feasibly be cleaned up with little difficulty and an almost 100 percent surety. Cost will be \$2,000 per acre.

(f) Westwood area will require further cleanup of white phosphorus at a cost of \$1,500 per acre. This can be accomplished with almost 100 percent surety. It is estimated that it will cost \$100,000 to remove the radiation grid. This can be accomplished with almost 100-percent surety.

Mr. LONG. How much would it cost to cleanup the unexploded ordnance?

General McCONNELL. Considering all possible areas that are contaminated and the magnitude of the task, preliminary estimates indicate that it would cost between \$2,000-\$4,000 per acre to accomplish cleanup.

ARMY WILDLIFE CONSERVATION PROGRAMS

Mr. LONG. What programs does the Army have for conservation and protection of wildlife on these lands? For protection of wetlands?

General McCONNELL. The Aberdeen Proving Ground and former Edgewood Arsenal have had coordinated and cooperative natural resource programs cosponsored with the State of Maryland and the Department of Interior for wildlife conservation at the installation. AR 420-74 provides the Army policy in this area. Projects specifically directed toward conservation objectives include but are not limited to the following:

(1) Planting of food and cover crops for small game at the installation. Plot plantings from one-quarter to 3-acre size have included several thousand acres interspersed between testing facilities during the past 10 years. In addition, liming and fertilizer of these areas were accomplished for regeneration of badly depleted soils.

(2) Establishment of Army-designated water fowl refuge areas of several hundred acres in size throughout the past 10 years (upper Romney Creek, Aberdeen Proving Ground and Watson Creek, Edgewood Area). Reestablishment of aquatic plant life through planting efforts of celery grass, duck potatoes, 4-square grass, et cetera.

(3) Planting of nut trees and mast producers on an annual basis throughout woodland areas of the installation where needed and available for wildlife utilization.

(4) Construction and installation of duck nest boxes, squirrel nest tires, and provisions for tires for Canadian geese in the marsh areas has been a sustained program over the 10-year period. Pheasants, ducks, turkeys, quail, and checker partridge brood stocks have been obtained, eggs incubated and young raised and released totalling thousands of birds over the past 10 years. Efforts in connection with mallard releases have shown returns of banded birds from hundreds of miles distance from the installation. Pheasant shooting and quail shooting outside the boundaries of the installation have benefited from overflow from the post.

(5) Construction and installation of water control dams have provided constant water levels in preferred areas of the installation to maximize water fowl production.

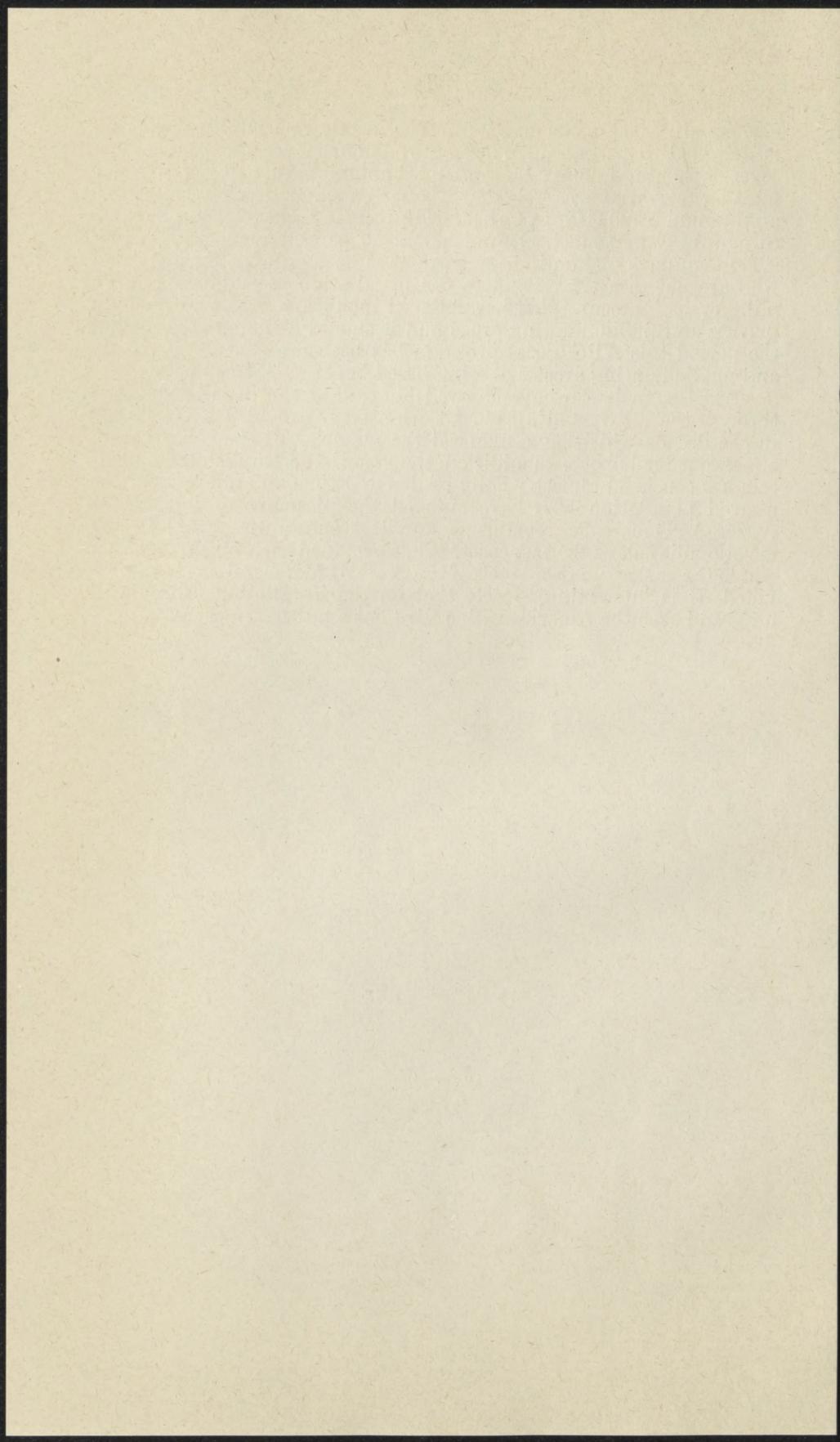
(6) Pot hole blastings have been accomplished throughout the period to the extent that several hundred nesting and rearing sites with constant water levels are now available which formerly did not exist.

(7) This installation has consistently followed a program of prohibiting the filling or the polluting of wetlands within its boundaries which consist of several thousands of acres.

(8) Planned game management hunting programs matching the hunters cropping with the ability of the land to produce have been in effect. Man days of hunting enjoyment, in tens of thousands, over a 10-year period have been provided. Harvest of game throughout this time are approximately 20,000 deer, 5,000 pheasants, 30,000 rabbits,

8,000 quail, 5,000 ducks and geese. The installation hunting program is designed to permit introduction of guests. Over the past decade several thousand non-APG upland hunters have enjoyed outdoor hunting recreation as guests of APG personnel. In deer hunting alone a minimum of 20,000 days of hunting recreation have been provided to non-APG personnel. Overall, about 40 percent or approximately 2,000 man-days of hunting per year have been enjoyed by personnel who are not directly related to the installation as employees or by military assignment. This has relieved mounting pressures on both private and public hunting areas and it should be noted that during the period this APG guest program has been growing both private and public hunting areas are being taxed beyond their capacities.

(9) Personnel who have enjoyed hunting at the installation have through the APG hunting permit fee system provided over \$50,000 in the decade which have financed the majority of the conservation efforts outlined above. In addition, the labor to accomplish these projects has consisted almost wholly of donated time and effort from the nimrod population who have enjoyed the pleasures of hunting at APG. APG acreage remains as the last substantial areas in the megalopolis belt of the east coast. It has provided the well spring from which the basic wild deer stock of the State of Maryland has been provided. It is interesting to note that on the installation osprey still nests and even the American Blue Bird has a last haven there.



BIDDING PROCEDURES

TUESDAY, OCTOBER 3, 1972.

WITNESSES

HON. ROBERT L. LEGGETT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

HON. HAMILTON FISH, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

RICHARD JACKSON, REPRESENTING AMERICAN SUBCONTRACTORS' ASSOCIATION

REAR ADM. JOHN G. DILLON, DIRECTOR OF CONSTRUCTION OPERATIONS, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE, ACCOMPANIED BY COMMANDER JEROME R. DUNN, STAFF ASSISTANT

ROBERT L. WHITE, MANAGER, PUBLIC RELATIONS, NATIONAL ELECTRICAL CONTRACTORS' ASSOCIATION

JOE M. BAKER, JR., MANAGING DIRECTOR, INTERNATIONAL ASSOCIATION OF WALL AND CEILING CONTRACTORS

RON BRATTI, REPRESENTING TILE, MARBLE, AND TERRAZZO INDUSTRY

PIERRE SCHMITZ, REPRESENTING D.C. METROPOLITAN SUBCONTRACTORS' ASSOCIATION

Mr. SIKES. The committee will come to order.

This morning we are privileged to hear discussion of alleged peddling practices in military construction subcontracting.

We are privileged to have with us the Honorable Robert L. Leggett and other members. We feel we are privileged to have the benefit of the suggestions of these members on this very important subject and I think, Mr. Leggett, it would be well if we can get right into your statement.

The committee does recognize the importance of the matter and is very much interested in it. You and I have discussed your thoughts on this a number of times and we will be glad to hear from you and your witnesses.

Please proceed and give us your statement and present anyone else whom you wish us to hear.

Mr. LEGGETT. Thank you, Mr. Chairman.

[Mr. Leggett's statement follows:]

Mr. Chairman and gentlemen of the committee, I want to thank the Chair for making this time available to a few of my colleagues, Hon. William L. Hungate, Democrat of Missouri, Hon. Lawrence J. Hogan, Republican of Maryland, Hon. Hamilton Fish, Jr., Republican of New York, myself and the subcontractors of the country to review a facet of contracting within your jurisdiction.

Many of us have been involved in the cause to prevent bid peddling for many years—we've had considerable success.

What we are asking here this morning is not legislative action, but rather your recommendation to the Corps of Engineers and the Navy Department, that they give:

1. A closer ear to the problems of subcontractors in military building construction.

2. That you encourage the referenced military agencies to experiment through their own pilot programs in subcontractor bid listing procedure parallel to the actions taken by GSA and the Department of the Interior 9 years ago.

3. That you further encourage the Departments, if the pilot programs prove successful, to implement regulations which are complementary to the GSA and Interior regulations now in effect.

My interest in this subject matter can be attributed to the fact that there is located in the North Bay of San Francisco and the Sacramento Valley approximately \$650 million of annual Federal payroll at six major military bases—Army, Navy and Air Force—and we have considerable interest in the careful and excellent work done by this committee on military construction.

Frankly, we feel that sometimes after my own House Armed Services Committee has performed excellently and well, your function need not be quite as excellent and well as it was in the recent past.

H.R. 10

In the current Congress, I have pending before the Donovan Subcommittee on the Judiciary my H.R. 10, which I have attached as an exhibit, to promote fair competition among prime contractors on Federal public work to require bid listing. We have held hearings on this legislation in the past, and we have always had the strong support of the subcontractor industry. The bill on file has the indirect support of the General Services Administration and the Department of Interior.

The bill would require the General Services Administration and the Office of the Secretary of Defense to promulgate regulations listing the subcontractors on all Federal public construction and shall include plumbing, heating, air-conditioning and ventilation, electrical, elevators, wood structures, painting, masonry, tile and terrazzo and granite, lathing and plastering, roofing, and all other categories of work comprising $3\frac{1}{2}$ percent of the total estimated cost of the contract. Other categories may be included on the list, when in the judgment of the contracting officer, the inclusion is necessary to effectuate the purposes of the act. The regulations would be similar to those in effect in the General Services Administration and the Department of Interior.

The legislation, I am convinced, would relegate all Federal subcontractor bid shopping to the period prior to the submission of the contractors bid and would go a long way toward restoration of morality in construction contracting. It would also assist the general contractor in living up to his AGC code which reads:

"Construction is based on teamplay. The dealings between prime contractors, subcontractors, and suppliers must be guided by the same principles of honor and fair dealing each party would desire if he were the other party. This requires that proposals should not be invited or received for consideration from anyone who is known to be unqualified to perform the proposed work or to render the specified service or from one who for some other reason has no genuine possibility of being awarded a contract. The figure of one competitor should not be made known to the other before the award of the subcontract or order, nor should they be used by the contractor to secure a lower proposal from another bidder. Thus the practice of bid shopping by the general contractor and bid peddling by the subcontractor and the supplier is condemned. In no case should the low bidder be led to believe that a lower bid than his has been received. If the award is not made to the lowest bidder, it should be made to the next qualified bidder. To provide time for accurate analysis and compilation of proposals received by contractors from subbidders and suppliers, arrangements for receiving bids and quotations at stipulated periods of time prior to formal opening of the contractors bid should be encouraged.

Over the past 10 years I have discussed this legislation with several dozen national conventions of subcontractors and their associations. In the 88th Congress the bill was entitled "H.R. 11072," in the 89th Congress H.R. 489, in the 90th Congress H.R. 8213, and H.R. 3345, now H.R. 10. Then, as now, the bill would set up a procedure for the listing of important subcontractors at the time the prime building contractor submits his bid on Federal construction projects.

While the Donohue committee held hearings on this legislation several times, and while there is strong committee support for the bill, the chairman has not called for a markup.

At this point I have determined that legislation really is not required. The current primary area of concern is defense building contracting. This committee by recommendation could accomplish in an informal way, what we have been attempting to do for many years by legislation.

This legislation and subject is really not special interest, because on a plebiscite a few years ago of the National Federation of Independent Business, better than 72 percent was recorded nationwide in favor.

The problem of curbing bid peddling is certainly not new. I want to read to you a portion of the House of Representative's report of the Committee on Expenditures in the executive department dated May 11, 1932, concerning the then pending H.R. 9921.

"The bill is designed to eliminate or curb a vicious practice variously known as 'bid shopping' or 'bid peddling' which witnesses testified now flourished in connection with Government contracts. The fact that the Government is in no way responsible for these shady operations does not seem to justify the Congress in not passing some legislation that will at least put a stop to the practice so far as Government work is concerned."

"The hearings reveal many examples substantially as follows: A, a general contractor has secured a Government contract. In making up his successful bid, he utilized figures submitted by several subcontractors in each phase of the contract, such as foundation, plumbing, electrical fixtures, etc. The subcontractors competing for, say, the plumbing were B, C, D, and E, among whom E supplied the lowest satisfactory figure which was used by A in obtaining the contract. A then informs B, C, D, and perhaps a favored firm which has submitted no previous bid as to the amount bid by E, and offers the work to the one that will shave this figure the most. The same thing happens in connection with the foundation, electrical fixtures, etc. In their anxiety to keep their organizations at work, the cut-throat competition between the several concerns makes the cost of the work much lower to the general contractor than he figures in his bid, the difference being additional profit. It is testified that these conditions often bring about the failure of the subcontractor."

"Witnesses in opposition to the legislation state that the admitted evil cannot be removed by legislation, but only through better business ethics being adopted by the contractors themselves. The fact remains, however, that the subcontractors usually go to considerable expense in working up the figures which they submit to the general contractor, especially on large projects. It seems to be only fair that when a firm has spent money and enabled the general contractor to secure a contract by reason of its low estimate that it should be given the same assurance of receiving the work as the general contractor when he enters into competition with other general contractors for the whole job. This assurance is a matter of legislation. It is also stated that many responsible firms have withdrawn from competition for Government work on account of this lack of assurance, and that this is likely to be detrimental to the Government interest * * *."

The measure was not brought to a vote, however, until 1938 when H.R. 146 was passed by both Houses of Congress and subsequently passed after a reconsideration vote in the Senate, only to be vetoed by President Franklin Roosevelt. The New Deal apparently extended to everybody but subcontractors.

President Roosevelt stated in that veto message that he recognized the evils of bid shopping. He believed the bill had a vague penalty provision, covered small contracts of \$500—and the President was wary of possible increased costs to the Government and delay of construction. It's been 35 years since that Presidential veto and I believe changed conditions, a modified bill and better experience, both State and Federal, will militate against a veto recurrence.

My interest in this legislation has resulted from my legal representation of the Solano County Builders Exchange of California for a number of years and also my work with a number of contractors on Capehart housing projects.

This bill I have introduced is really a measure to save contractors and subcontractors from themselves and provide reasonable provisions to safeguard a subcontractor his contract when he has submitted a reasonable bid on federal work. Admittedly, the bill which I have introduced is not as strong as the California legislation which has worked effectively in that State now for 26 years—there are political considerations of obtaining agency and departmental support which have dictated the current form of the bill.

The bill's provisions are very much in line with General Services Administration and Department of Interior regulations which have been in effect for 9 years successfully with those organizations.

The basic provisions of the bill are as follows:

Department of Defense and General Services Administration shall jointly develop and separately promulgate regulations that shall require:

(a) Invitations to bid on new Federal construction over \$100,000 shall require the listing of subcontractors, and subcontractors named shall perform work.

(b) Provision for substitution for cause.

(c) First tier subcontractors are covered who perform on or off job.

(d) Subcontractors covered: The contracting officer for each project to which this act is applicable shall determine the categories of work for which subcontractors are to be named by the bidders. The listing of subcontractors to be included in each such invitation shall include plumbing, heating, air-conditioning and ventilation, electrical, elevators, painting, masonry, tile and terrazzo, wood structures, granite, lathing and plastering, roofing and all other categories of work comprising more than 3½ percent of the total estimated cost of the contract. Other categories may be included on the list when, in the judgment of the contracting officer, the inclusion is necessary to effectuate the purposes of this act.

(e) Exceptions: The provisions of this act shall not be applicable to any contract as to which the head of any contracting agency specified in subsection 3(a) has determined that compliance with the provisions of this Act would adversely affect national security or result in unreasonable delay in the award of the contract.

The legislative history of the bill can be summarized further as follows:

Seventy-third Congress (1934) H.R. 4937, H.R. 9776.

Seventy-fifth Congress (1938) H.R. 10087.

H.R. 146 passed by both Houses after reconsideration vote in Senate. Franklin D. Roosevelt vetoed H.R. 146 as it had a vague penalty provision and small contracts of \$500 were covered—32 years have now expired. The New Deal extended to all but subcontractors.

Seventy-sixth Congress (1940) S. 1639.

Eighty-fourth Congress (1955) S. 1644 passed Senate Judiciary June 21, 1955 (report 617) passed Senate July 27, 1955. Passed House Judiciary Committee June 15, 1956, failed to obtain two-thirds for suspension July 23, House adjourned July 27, 1956.

Eighty-fifth Congress (1955) H.R. 7168 passed Judiciary Committee May 9, 1957, passed House June 24, 1957, passed Senate Judiciary August 26, 1957, Senate adjourned August 30, 1957, bill not brought up in second session, 1958.

Eighty-sixth Congress (1959) H.R. 10940, Sisk.

Eighty-eighth Congress (1963) H.R. 11072, Leggett, Hanna, Senator Inouye.

Eighty-ninth Congress (1965) H.R. 489, Leggett.

Ninetieth Congress (1967) H.R. 8213, Leggett; H.R. 11807, Multer. Passed Judiciary Subcommittee April 26, 1968. After June 1967 hearings strong policy statement by House Select Committee on Small Business.

Ninety-first Congress (1969) H.R. 3345, Leggett, Hungate, Hogan, Fish.

Ninety-second Congress (1971) H.R. 10, Leggett, Hungate, Hogan.

Regulations have been amended to require scope of work notice—rehabilitation exception.

The States of Delaware, Massachusetts, and California have had subcontractor listing requirements on State work for many years.

National groups who have testified in support of the bill not yet mentioned are:

Mechanical Contractors Association.

National Electrical Contractors Association.

Masonry Contractors Association of America.

National Conference of Electrical Bid Registry & Depositories.

District of Columbia Subcontractors Association.

Painting and Decorating Contractors of America.

Brotherhood of Painting Decorators & Paperhangers of America, AFL-CIO.

National Association of Plumbing, Heating & Cooling Contractors.

International Association of Contracting Plasterers & Lathers.

National Association of Architectural Metal Manufacturers.

Tile Contracting Association of America.

Roofing Contractors Association of America.

International Brotherhood of Electrical Workers, AFL-CIO.

National Association of Sheet Metal, Heating & Air Conditioning Contractors.

Builders exchanges all over the United States.

Western States Democratic Conference.

PILOT PROGRAMS IN GSA AND INTERIOR

This was substantially the state of the law and background in the spring of 1963 when my legislation was introduced and when the General Services Admin-

istration specified the listing of subcontractors on certain GSA pilot projects. Under this program 23 contracts were let for the stated purpose of (1) avoiding bid peddling; (2) improving quality of Government subcontractors; and (3) promoting competition.

In 1964, the Department of the Interior introduced a pilot program of bid listing in two States.

General Services Administration promulgated regulations in November of 1964, the first standard requirement for the listing of subcontractors on GSA public works in excess of \$150,000 as applied to subcontracts in excess of 3½ percent.

GSA has made it indelibly clear that it does not intend that there be "privity" between the Government and any subcontractor.

In a report submitted to my office, GSA reports good success with the new regulations on over 150 jobs with substitutions being nil. Contractors list on the average about 18 subcontractors with a high of 28 listings. Though under the present procedures all listed subcontractors are reviewed for solvency and ability, no increased GSA budget has been provided for this additional work.

The agency states in a report to my office, "We do believe that the procedure is workable and in the best interests of the Government, all desired purposes and factors considered."

The latest report from GSA, dated December 8, 1971, is included in my statement.

[The report follows:]

UNITED STATES OF AMERICA,
GENERAL SERVICES ADMINISTRATION,
Washington, D.C., December 8, 1971.

HON. ROBERT L. LEGGETT,
House of Representatives,
Washington, D.C.

DEAR MR. LEGGETT: By letter of November 10, 1971, you asked for a report updating information previously furnished with respect to our experience with the use of subcontractor listing requirements to minimize bid shopping on construction and repair contracts administered by the General Services Administration.

Our experience since adopting the subcontractor listing requirement contractually in 1963 is substantially the same as reported to you in our letter of February 11, 1969. We have concluded that the requirement—

(1) Has been effective in minimizing bid shopping by prime contractors among principal subcontractors of the first tier;

(2) Tends to lead to better quality of performance by subcontractors (there is little tangible evidence which supports or negates this conclusion);

(3) Imposes a substantial burden upon our contract administration personnel although the burden appeared to be lessening as we and our contractors became more accustomed to the requirement, in the past 7 months we have received four protests resulting from improper listing of subcontractors. These protests substantially delayed award of the contracts involved, and in one instance the low bidder was found to be nonresponsive, with the award being made to the second low bidder at a higher price;

(4) Causes concern over the failure of subcontractors to furnish prime contract bidders with abstracts indicating how much work and material required for a particular category of work has been included in or excluded from their individual proposals (the absence of abstracts makes it difficult for prime contractors to make informed comparisons of the offers received for purposes of selecting the most advantageous subcontract offer); and

(5) While protecting some subcontractors from bid shopping, does not preclude bid shopping by the subcontractors themselves in the selection of their subcontractors and suppliers.

There is little evidence that the requirement either increases bid prices or reduces competition. Variations of time, type of structures, labor markets, economic conditions, location, weather conditions and other variable factors between different construction projects render extremely difficult, if not impossible, meaningful evaluation of the overall benefits or disadvantages of the requirement.

In an effort to obtain a more meaningful basis for evaluating the impact of the subcontractor listing requirement, we decided in 1969 to eliminate the requirement when re-advertising certain projects originally containing it. Unfortunately, opportunities to compare bidding results in this way were too few to produce significant data.

On the basis of our experience to date, we are of the opinion that the measures taken by administrative means have been and will continue to be effective against the practice of bid shopping. We also believe that the procedures adopted by GSA have proven relatively satisfactory from the standpoints of both the Government and the contractor. The recent increase in protests evolving from improper listing of subcontractors by bidders on GSA projects, however, indicates the failure of contractors to carefully read the provisions regarding subcontractor listing. In light of circumstances which would warrant making changes to our subcontractor listing requirements, we do not believe that legislation would afford the necessary administrative flexibility.

We hope the foregoing will be of assistance to you in considering whether legislation is advisable or desirable at this time.

Sincerely,

HAROLD S. TRIMMOR, Jr.,
Assistant Administrator.

Mr. LEGGETT. Five years ago I interested the Small Business Administration and members of the Select House Committee on Small Business in this legislation and hearings under the chairmanship of Congressman Abraham Multer, of New York, took place August of 1967.

The record of the hearings have been published. The Specialty Contractors Association and the Lathers & Plasters Association testified primarily on the current industry needs to enact legislation such as I have introduced.

The Select Committee has made a printed recommendation without dissent favorable to the immediate adoption of legislation like the former bill, H.R. 8213.

On November 13, 1965, Secretary Udall prescribed a uniform procedure of listing for the Department of the Interior nationwide on building and remodeling contracts only in excess of \$150,000 and required the listing of contractors for plumbing, heating, ventilating, air-conditioning, masonry, elevators, and electrical work and other designated categories by the contracting officer when the total estimated cost of subcontract is 2 percent or more of the prime contract. Provision may be made to include a category under 2 percent.

The Interior Department and the General Services Administration are experiencing nothing but success with the new regulations as is evident from the reports to my office.

In the latest report of November 26, 1971, the Department of the Interior will likewise include.

[The report follows:]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., November 26, 1971.

HON. ROBERT L. LEGGETT,
House of Representatives,
Washington, D.C.

DEAR MR. LEGGETT: Your letter of November 10, 1971, to Secretary Morton on the subject of our requirement for the listing of proposed subcontractors has been received.

Our experience with the listing procedure has met with no obstacles or complications since our report to you of April 1, 1969. The regulation is still in effect without change since its inception and we know of no plan or prospect to have it modified in any way. There have been no objections recorded to its continuance and what we previously reported, that the cost to the Government of supervision and enforcement has been trivial and incidental to contract administration generally, still holds true.

Further, we continue to hold to the view that we prefer the process of administrative regulation to legislative fiat.

In the hope that this report will answer your purposes of inquire, we remain
Sincerely yours,

J. T. HALL, Jr.,
Director of Survey and Review.

STATEMENTS OF OTHER MEMBERS OF CONGRESS

Mr. LEGGETT. We have my colleague, Hamilton Fish, Representative from New York, one of the coauthors of the legislation we have had in this field for many years. Statements will be submitted by Larry Hogan, Representative from Maryland, who has coauthored legislation of this type, as well as Bill Hungate from Missouri.

Senator Inouye has introduced legislation like this.

STATEMENTS OF PUBLIC WITNESSES

We have in the audience at the present time Mr. Richard Jackson of the American Subcontractors' Association; Mr. Bob White of the National Electrical Contractors' Association; we have Mr. Joe Baker of the International Association of Wall & Ceiling Contractors; Mr. Pierre Schmitz of the District of Columbia Metropolitan Subcontractors' Association; and Mr. Ron Bratti, representing the National Terrazzo & Tile Contractors Association and the Stone Institute.

STATEMENT OF THOMAS D. RAY, NATIONAL FEDERATION OF INDEPENDENT BUSINESSES

I have a statement I would like to submit at the appropriate time from the National Federation of Independent Business and I will refer to that statement in my case in brief, and I will deliver it to the reporter for inclusion in the record at some appropriate point.

[The statement follows:]

STATEMENT OF THOMAS D. RAY, CONGRESSIONAL LIAISON, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, WASHINGTON, D.C.

The National Federation of Independent Business greatly appreciates this opportunity to express its views on bid peddling,

The Federation is the largest business organization in the Nation, with some 318,000 member firms. We represent the small businesses of the country, with two-thirds of our members employing fewer than eight employees and having gross annual receipts under \$200,000.

Our interest in the problem of bid peddling stems from polls of our members taken by means of our publication, "The Mandate." In 1966, we polled our members on legislation to eliminate bid peddling on Federal projects. Seventy percent of our members voted in favor of such legislation, with 21 percent opposed and 9 percent undecided. A second poll in 1969 of a bill then designated as H.R. 3345 resulted in similar proportions, with 73 percent for, 19 percent against and 8 percent undecided.

While Congress has not passed this legislation, we were encouraged by previous efforts of agencies in the executive branch of Government to take administrative action to curtail this practice. It is our understanding that the U.S. Army Corps of Engineers is presently considering a pilot project to stop bid peddling by its contractors. We respectfully urge that this committee use its good offices to ensure implementation of such a program.

There are several reasons for our members' support of anti-bid-peddling laws and regulations. Many of them are small contractors, and therefore may be subject to squeezing by prime contractors. That is, a prime contractor who has been awarded a contract goes to the subcontractors on whose bids he based his own successful bid, and tries to force them to shave their prices. If the subcontractor refuses to cut his price, the prime contractor may go shopping for a lower price

elsewhere. The prime contractor is, of course, the sole beneficiary of any resultant cost cut.

Even our members who are not contractors, however, voted to curb bid peddling. One of their concerns perhaps is that, as taxpayers, they can be cheated by this practice. If a bid is fair in the beginning, there is no room for price cuts, only for cuts in quality of work and materials. If, on the other hand, the cost can be cut, the bid is too high.

Of more concern, possibly, is the fact that bid peddling is an unfair practice. It represents another case of big business exploiting small business. While we do not feel that it is the place of the Federal Government to police business ethics in everyday practice, we do believe that the Federal Government as a customer should not allow its contractors to engage in bid peddling.

Mr. Chairman, our statement is brief because we know that there are others who can plead more elegantly from personal experience the case against bid peddling. Our purpose is to make clear that the small business community as a whole backs the subcontractors in their fight for fairness.

Mr. LEGGETT. Mr. Fish will be submitting a statement. He will have to leave in about 15 minutes.

PERSONAL ACQUAINTANCE WITH BID PEDDLING

I would like to acquaint the committee a little bit with the bid peddling problem, where we have been, where we are going, what the situation is, and what I would like you to do.

I have worked in bid peddling restrictive legislation for many, many years. I am a lawyer, as you know. I guess I am one of the 80 lawyers who still practices some law, mainly because it is my firm, and we try to avoid conflict of interest and the kind of things that are involved in bid peddling and bid listing we don't do in my firm any more because obviously it is a conflict of interest.

I went into this situation years ago when a contractor came in to me and said that a contract had just been awarded to Murray Sanders & George Fuller Co. on a Capehart housing project over at Hamilton Air Force Base and they got that contract, as I recall, for something upwards of \$10 million and, as you will recall, under the old rules they practically built a city and you gave out that chunk of money, you took a piece of Government land, you leased it to the contractor and then he assigned the leasehold of Government land to the Manufacturers Trust Co. in New York and as he built back the project why the Government eventually ended up owning stock in the corporation and it really was a lease of Government land and that is the way those things were billed.

What happened, many times in those very large contracts, the prime contractors just had carte blanche with the \$10 million. He could do anything he wanted.

He could hand out contracts to his friends, do all kinds of things and this, of course, led to my interest in the subject matter and I thought that that was a basically unfair way of dealing, where the prime had to compete, but then \$10 million worth of subcontractors were totally at the caprice of the prime contractor for the completion of the work. I thought that was a very unbusinesslike way of doing things.

STATE SUBCONTRACTOR LISTING LAWS

In California we enacted a law back in 1946 that said that in all areas of State contracting, building construction, that we would actually list the subcontractors in excess of one-half of 1 percent of the contract prior to the time that the bid went in, and this procedure has

worked very well in California for some, I guess 20 or 30 years. It has worked in Massachusetts where they have a similar law. It works in Delaware where they have a similar law. Mr. Jackson this morning here will tell you a little bit about the Maryland law which they have recently enacted.

RECOMMENDATION FOR DEPARTMENT OF DEFENSE CONSTRUCTION
CONTRACTING

What we would like this committee to do here, I spell out in my statement—we have had legislation on file—it has been a rather diabolical history, the legislation in this field. I don't think we need legislation to do what we want to do. I am primarily concerned with Department of Defense contracting. A little contractor in my district called me years ago and said.

Bob, I am in the glazing business and just bid another job on Maryland and I was nosed out of the job again. I know I was low. The prime got the job and where the contract went, I don't know.

We started looking at it and we found out that the Federal procedure just had no safeguards at all for the small business subcontractors on this construction work. This particular contractor had a takeoff man. He would go through laborious 40 and 50 pages of plans and 200 pages of specifications. He paid a fellow \$1,000 a month just replanning his specifications and do takeoffs and look in the charts and books and figure what the costs were.

He would then submit the bid and nothing would come of it time after time after time even though he was low and even though he was close enough to do the job.

What happened, of course, would be the prime would get the job and say:

We have got these bids and we have Company A's bid over here. My friend over here, Company B or C, if you want this job, do it for a price.

He wouldn't have to spend any money at all, but was close to the contractor and, as a result, you get the competition from people who don't get paid for it.

We thought this was a very bad procedure.

What we are asking the committee to do, as I specify here, is if you would try to motivate some of the agencies in Defense, which originally got me interested in this subject matter, to give closer attention to the problems of the small subcontractors on military construction only.

No. 2, that you encourage the military agencies to experiment through their own pilot programs and subcontractor bid listing procedure parallel to the actions taken by GSA in the Department of the Interior more than 9 years ago.

Thirdly, if the military departments experience the same success—and this is a balanced success—it is not necessarily the best thing since sliced bread, but it seems to work out pretty well, that if they experience some success in getting fairer competition and fairer contracting procedures with their pilot program, that then we motivate them to do what GSA did and what the Department of the Interior did on their building construction back in 1964 and 1965 and I refer to what those agencies did as a result of some of the motivation of myself and the people in this room many years ago.

I don't think you can legislate like a bull in a china shop in this subarea. If you tell an agency they have to do things a certain way and then try to lay down parameters, if they do it they are not going to do it effectively and it is not going to inure to anybody's benefit.

They have to do it because they think it is worthwhile to experiment in this area. I know the Department of Defense has been very leery of getting into this area because I am sure they felt if they get their toe in they would be coerced and mandated to go all the way.

We have not mandated GSA; we have not mandated Interior. We tried to but unfortunately we have not been able to get very far with formal legislation and, as a result, in retrospect, I don't think we should. I think we should handle this by regulation procedures, the regulations should be up to the agencies.

Now, as a general overview of the law, General Services Administration has the inherent authority to promulgate regulations over all nondefense agencies of Government. They haven't done that yet. They have waited for some encouragement from the legislative side. The Department of Defense can promulgate regulations with respect to defense agencies.

In the legislation that we have on file, which I call H.R. 10, which is appended to the back of my statement—it is a very sexy number that I worked very hard to get and unfortunately the bill hasn't moved very far, even though it has a very attractive number, H.R. 10.

We have hearings before the Donohue subcommittee, successful hearings, very little opposition, and the form of the bill, H.R. 10, is really the marked up bill from the old Ashmore subcommittee of some years ago.

What it says is that we think it is advisable to have uniform regulations apply in this area; we think it is advisable that GSA promulgate uniform regulations for all nondefense agencies; we think it advisable for the military departments to promulgate regulations for the defense agencies.

The defense agencies have resisted even being mandated to promulgate regulations.

Now we come in, as a third attack, through this committee and we are suggesting they not be mandated to promulgate regulations; that we suggest to them that maybe they do the same thing that GSA and Interior did some years ago and we have got all of their records pretty well laid out. We have a number of dates that we specify. They achieve certain benchmarks. We have some letters in the report that we want to refer to. Perhaps I could yield to my colleague, Mr. Fish, at this point.

Mr. LONG. The objection is that the competition is cutthroat. Nobody likes competition. It is my understanding when you get outside of Federal contracts this type of bid shopping goes on all the time. I would think if we did what you asked us to do, the prime contractors are going to say to themselves, "Well, since I can't bid shop, I am going to have to bid a higher price on this." It could cost the Federal Government money.

Why is this bid shopping any worse for Federal contracts or defense contracts than it is for private industry?

Mr. LEEGERT. The quick answer to that is that it is not. It is bad for both.

Mr. LONG. Why is it bad for both? It is competition.

Mr. LEGGETT. We answer that rather laboriously in my report and it is not just me talking, but it is other Federal agencies talking about their experience under the program.

I want to read abstracts of what they have said in their reports. I know the normal "knee-jerk" reaction to this is that we are probably trying to raise prices to the Government.

If a contractor bids a job and gets it at a certain price, if he bids that on the basis of competition which has taken place up to the point of submission of his bid, then the taxpayers and the Government get the benefit of that competition.

But, if he submits it in anticipation of what he might be doing afterwards and doesn't give the Government the benefit of that competition and then he allows the competition after he has got the award, then that is what we call an unhealthy type of competition. Restated, it might be well to allow competition for maybe 24 or 48 hours after a bid, for a short period of time to sharpen things up and to get into a competitive posture, but to allow the thing to go into a daisy chain of 2 and 3 weeks and 5 months before you award the subcontracts is really very frustrating of a competitive environment in the subcontractor industry.

STATEMENT BY THE HONORABLE HAMILTON FISH, JR.

Mr. SIKES. I think we had better defer questions and let Mr. Fish proceed.

Let me take just about 30 seconds to reminisce. In 1941 the House heard the foreign aid bill for the first time—the United States had never gotten into anything of that sort before. It was before the Foreign Affairs Committee of the House and the Foreign Affairs Committee never had such prominent recognition in all its history in the House. Hamilton Fish was the ranking Republican member and Sol Bloom was the chairman. They not only were able Congressmen, they were master showmen and they knew it was their day; the cameras were there, and time after time these two engaged in heated discussions about procedure and then they would stand up and shake their fingers at each other and the cameras would grind. I thought they meant it.

Mr. LEGGETT. Now we will see young Mr. Hamilton Fish perform again.

Mr. FISH. Thank you, Mr. Chairman. I appreciate the opportunity to be with your subcommittee this morning and discuss this subject of great importance to the Congress, the Government, and the American taxpayer.

I am here really to support the position taken by Mr. Leggett. I think that we have an opportunity here for the Federal Government to exercise some leadership in overcoming a practice that I do not believe is in the public interest and I urge the subcommittee to recommend to military agencies that they include bid listing as part of their contracting procedure.

It is not necessary to dwell on the size and economic importance of the construction industry in the United States. Further, we all are somewhat familiar with the process of competitive bidding on construction contracts. But, while competitive bidding has been beneficial to both the consumer and the industry in general, it also has fostered the development of the damaging and unfair practice known as bid peddling or bid shopping.

Bid peddling operates in the following manner. After a prime contractor has been awarded a contract, he then negotiates lower prices with subcontractors than they originally had bid. Rarely, if ever, are the savings passed on to the customer. Rather, the unethical prime contractors who employ this practice are taking advantage of the smaller subcontractors, as well as their customers. Bid shopping can result in shoddy work, uncertainty, and even financial ruin for many small businesses. It certainly is not a practice that should be tolerated or encouraged by Federal Government policy.

The largest single buyer of construction in this country is the Federal Government. So, when Federal contracts are the backdrop for bid peddling practices, the American taxpayer is the loser as well as the victimized subcontractors. The answer to reforming this situation is the adoption of bid listing requirements for Federal contracts. That is, general contractors submitting bids on Federal public works contracts be required to list the names of the subcontractors who would do the work. Then if the bidder is awarded the contract, no work could be performed by other than those subcontractors named in the original proposal.

Congressional interest in bid peddling practices can be traced back to 1934 but, unfortunately, no definitive action has been taken. Since coming to Congress some 4 years ago, I have become a strong supporter and cosponsor of Bob Leggett's bill to prevent this practice on Federal contracts. H.R. 10 would statutorily require general contractors submitting bids on Federal contracts to name the subcontractors who would do the work to be named in the bid proposal. While, this specific legislation is not before this subcommittee—it contains the philosophy that I hope the members here will espouse.

So far, two Federal agencies—the General Services Administration and the Department of the Interior—have adopted bid listing requirements by administrative regulation. Both agencies have repeatedly expressed their satisfaction with the operation of these regulations. There has been no evidence that these requirements have led to any increase in bid prices. Nor has there been any additional delay created as was feared. Their experience encourages the extension of the bid listing practice to other Federal agencies.

Therefore, this is to formally urge that this subcommittee recommend that the Corps of Engineers, and other segments of the Defense structure coming under its jurisdiction, include bid listing as part of their contracting procedures. Such a committee request could be couched in terms of a demonstration project or experiment with bid listing, leaving the Corps the necessary administrative flexibility. I am certain that if the Corps adopts this approach that they, this subcommittee, and the American taxpayer will be gratified by the results.

COMPARISON OF FEDERAL AND PRIVATE PROCEDURES

Mr. LEGGETT. To answer your statement particularly, private agencies when they let large contracts like the Chuck Smith Skyline Development now, out here at the old airport there at Bailey's Crossroads, they are not obligated to put contracts out for competitive bid, period. He can call on a friend, he can do it himself, he can set up any rules that he wants right from the top, but the procedure in most municipal, county, State, Federal agencies, is that we adopt the

procedure of fair competitive bidding and we allow the contract to go to the lowest contractor.

Now, in California we carry this procedure right down to the cities and we have got a State law to that effect and it has worked very well.

Massachusetts has done the same thing. Maryland has just enacted a law to do the same thing on your State contracting.

You will find where the States don't do it that local areas have figured out ways to develop fairness.

Either they have developed bid depositories, or bid programs, or they have awarded separate contracts to the main primes as they have done in the State of New York, and this is not necessarily the sole answer, but it is a usable vehicle and I don't think that the principles here necessarily apply, as an example, in the electronics field, where you have got Bendix filing as a subcontractor to Lockheed on a major program.

These are large corporations which in normal times can pretty well take care of themselves.

These people we are talking about contracting on military construction are small people. They generally come under the "small business" classification.

Abe Moulter's committee held hearings on this subject some years ago. They had all the people in there and came out with the unanimous recommendation of the committee in a large report confirming the evils that were there, the fact that the industry was totally unable to extricate itself from its competitive dilemma and because you had the big eating the small and everybody trying to keep work forces going and such as that.

I could read to you just one statement here of the AGC and they are represented here in the audience; I don't think they intend to testify today, but their honor code which hangs behind every contractor's desk states:

The figure of one competitor should not be made known to the other before the award of a subcontract or order, nor should they be used by the contractor to assure a lower proposal from another bidder. Thus the practice of bid shopping by the general contractor and bid peddling by the subcontractor and the supplier is condemned. In no case should the low bidder be led to believe that a lower bid than his has been received. If the award is not made to the lowest bidder, it should be made to the next qualified bidder.

Now, that is the rule of the road that we have been trying to go by, but unfortunately due to feast and famine and competition, and the fact that this committee, of course, has jurisdiction over probably some of the largest contracting that occurs in the world, makes this one of the focal points for the addressing of this particular problem.

We have presented testimony—McNeill & Stokes, representing the council for the Georgia subcontractors, has presented an elaborate document to the Commission on Government Procurement, which is currently preparing reports in this area. I have testified before their group and made my views known.

HISTORY OF PROPOSED LEGISLATION

On page 3 of my statement at the bottom I say:

The problem of curbing bid peddling is certainly not new. I want to read to you a portion of the House of Representatives report of the Committee on the Expenditures in the Executive Department dated May 11, 1972, concerning H.R. 9921.

I am not going to read that, but what that shows is that this kind of cutthroat competition of pitting one against the other, one contractor against another after the contract is awarded, is something that has been with us for a very, very long time.

They wanted to do something about it way back then. They didn't do anything about it until 1938 when they passed H.R. 146, passed by both the House and the Senate, and then it was vetoed by President Roosevelt and he said in that veto message that the bill had a vague penalty provision, covered small contracts of \$500—we are suggesting we cover contracts of \$100,000 to \$150,000 and more. The President was wary of possibly increased costs to the government and delay of construction. He said it has been 35 years since the Presidential—well, it has been 35 years since the Presidential veto and things have changed. I think Roosevelt said, "Do you realize we are spending on military construction this year \$100,000,000"?

And he says, "With that fantastic expenditure, we just can't fiddle around with experimentation with new programs and things like that."

Of course, I don't need to tell this committee things have changed in that respect somewhat.

I have talked about our 26 years' success program with the California procedure. Very simply, what we are suggesting by way of regulations in the bill, which doesn't necessarily have to be the ironclad prototype of a pilot program, is that.

Mr. SIKES. I wonder what the \$100 million then would buy and what the comparable amount would be today?

Mr. LEGGETT. It would depend on what you buy, I guess. If you buy the sheet metal contractors today \$100 a day, you don't buy very much.

Anyway, the legislation has been paralleled, as far as the suggestion of regulations is concerned, after the procedures which are currently operative in GSA, without getting too complicated and I am not going to go into those.

They provide the usual safeguards on how you substitute. If you list somebody and he dies or goes bankrupt or can't put up a bond, and all of this seems to work under the existing procedures we work by.

This legislation was introduced in the 73d Congress, also in 1938. In H.R. 146 it was vetoed in 1940. In the 76th Congress we had a bill and then in the 84th Congress an interesting thing happened. It passed the Senate, passed the House committee and came up on suspension and they didn't get two-thirds and then the House adjourned 7 days later.

The next year it passed the House committee, passed the House floor, went to the Senate, passed the Senate committee, came out on August 26 and the Senate adjourned 4 days later before it could come up. It is about as close as bills ever have come to being enacted in this Congress and nothing happened.

Bernie Sisk introduced a bill in the 86th Congress before I got here.

In the 88th Congress we had bills, the 89th Congress, the 90th Congress, the 91st Congress, the 92d Congress, and then we have the State's experience. The legislation, as I indicated on page 7, is supported by virtually every single national subcontractors' association in the United States to my knowledge from all parts of the country, and a lot of them are here today.

We very frankly didn't beat the bushes to bring masses of numbers off people here. This is not really what you can call an inspired presentation. We have local people representing national associations who have voted to come over here and express themselves.

GSA AND INTERIOR DEPARTMENT EXPERIENCE

GSA developed a pilot program which was successful. It later led to regulations which they have carried out today.

Interior developed a pilot program just on building construction and later to regulations which are a little bit different than the other regulations of GSA and those are operative today.

I go on on pages 8, 9, and 10, with the reports of GSA, where GSA points up in their letter to me dated December 8 that the regulations, No. 1, have been effective in minimizing bid shopping; No. 2, they can lead to better quality of performance; No. 3, impose a substantial burden on the contract administration personnel because they have had a few little problems. They are in the process of modifying their regulations actually right now.

I have talked to Mr. Meisen of GSA as late as this morning and they have new procedures which they think will accomplish some of these results in a little less complicated procedure. That is one reason we really need regulations in this general subarea rather than a mandated program by the Congress.

COMMITTEE RESPONSIBILITY

Mr. JONAS. It worries me a little bit that our committee would be asked to make a recommendation when you have signally failed to get any approval of this concept by the Congress despite all of the efforts that you have cited.

Are we to second-guess the Armed Services Committee or whichever committee has your bill?

Mr. LEGGETT. That went to the Judiciary Subcommittee.

Mr. JONAS. Have they had a hearing on the bill in the full committee?

Mr. LEGGETT. They have had a hearing on the bill. They marked up the bill in the 91st Congress. Before it could get to the main committee for a hearing, the Congress adjourned.

I took the marked-up bill and I put it into the 92d Congress and that is our H.R. 10. I do have the full support of the subcommittee there but they have just not gotten around to marking up the bill.

Now, very frankly, they are a little bit hesitant in encroaching on your area, as an example, because this committee has general oversight over military construction contracts and what we are asking them to do is to recommend the promulgation of regulations for military construction contracts.

Mr. JONAS. Your committee is the legislative committee in this field. We are just an appropriations committee. Wouldn't this be a subject for consideration by the Armed Services Committee if you need legislation?

Mr. LEGGETT. I could bring it to the Legislative Committee and I very frankly—perhaps I have been negligent in not bringing it before my committee. Really, I thought that your subcommittee, which is

a sort of permanently organized subcommittee, might be a better group to address this problem to rather than the Subcommittee on Military Construction, which is not a permanently organized Subcommittee of the House Armed Services Committee.

Mr. SIKES. Does this subject require legislation?

Mr. LEGGETT. I don't want legislation at this point.

Mr. JONAS. I understood that and you made it clear in your statement, but it would appear to me we are getting into the situation we have been in year after year. We are within a few days of the adjournment of Congress and I don't know whether we have time to listen to all sides of this.

I wouldn't want to make a recommendation without hearing both sides.

Mr. LEGGETT. And I don't necessarily want that. Unfortunately, you are not going to be here next time, which is a loss to the Congress, and a loss to this committee, of course, and maybe this committee would not want to make a recommendation this year.

What I have waited to do, I addressed the committee early in the session and I suggested that at a convenient time we bring it before the committee and I have been working with the committee counsel and the chairman now for about 6 or 8 months to get a convenient time. We wanted to get your bill out of the way. This did not relate to the bill that you passed.

I didn't want this attached as a rider to your bill. That was not my objective at all and, as a result, this is the first convenient time after the adjournment—after your bill is out, after the conventions, to review the matter.

We are going to be done reviewing it in just about an hour and then whatever action you decide to take, of course, would be up to the committee.

Mr. JONAS. I haven't gotten into this problem before; there seems to be two problems.

You are interested, first, in subcontractors not being taken advantage of, not being forced to rescue a preliminary bid. That is based on fairness.

The second thing, you make a point that the Government loses the advantage of the savings when the competition occurs after the bid is let.

Wouldn't it solve that problem if whatever savings developed would go to reduce the original contract?

Mr. LEGGETT. That is right; if you could figure out a way to do that other than the way I suggested, that would certainly solve that. What happens, you see, is that you don't always get the contractor's best bid, if he knows that the particular contractor—you don't get the subcontractor's best bid if the subcontractor knows that this particular contractor is one who habitually shops. So you can get involved in all kinds of cyclical arguments as to whether or not you get the best bid or whether you don't and how and exactly the Government benefits.

EXPERIENCE OF GSA

I think really the best thing we can go on is the experience of the two agencies.

I would like to finish the two analyses by GSA and by Interior.

Mr. JONAS. I didn't mean to interrupt you.

Mr. LEGGETT. Where they state that, while protecting some subcontractors from bid shopping it does not preclude bid shopping by subcontractors themselves in the selection of their subcontractors and suppliers. So that is the kind of problem GSA is concerned with. They say there is little evidence that the requirement either increases bid prices or reduces competition. Variations of time, type of structures, markets, economic conditions, and so forth, make it very difficult to compare.

Then on page 9 they conclude like this. They say:

On the basis of our experience to date, we are of the opinion that the measures taken by administrative means have been and will continue to be effective against the practice of bid shopping. We also believe that the procedures adopted by GSA have proven relatively satisfactory from the standpoints of both the Government and the contractor. The recent increase in protests evolving from improper listing of subcontractors by bidders on GSA projects, however, indicates the failure of contractors to carefully read the provisions regarding subcontractor listing. In light of circumstances which would warrant making changes to our subcontractor listing requirements, we do not believe that legislation would afford the necessary administrative flexibility.

DEPARTMENT OF INTERIOR'S EXPERIENCE

They are suggesting a continuation of the procedure of doing it by regulation. I have talked about the actions of the Moulter committee. I would like to conclude with a statement sent to my office November 26, 1971, about 10 months ago, by the Department of the Interior. Their report is short and I will conclude with that and will be pleased to answer questions.

DEAR MR. LEGGETT: Your letter of November 10, 1971 to Secretary Morton on the subject of our requirement for the listing of proposed subcontractors has been received.

Our experience with the listing procedure has met with no obstacles or complications since our report to you of April 1, 1969.

I have had them report generally about once a year as to how they are going and what problems they have had.

The regulation is still in effect without change since its inception and we know of no plan or prospect to have it modified in any way. There have been no objections recorded to its continuance and what we previously reported, that the cost to the government of supervision and enforcement has been trivial and incidental to contract administration generally still holds true.

Further, we continue to hold to the view that we prefer the process of administrative legislation to legislative fiat.

In the hope that this report will answer your questions.

SUGGESTION THAT DEFENSE TEST BID LISTING

Because of that I am not asking for legislation. What we are asking is that the appropriate contracting agencies of the Department of Defense be encouraged to put their toe in the water and test it and see if they can experience in Defense contracting the very same experience that GSA and Interior are experiencing in other branches of government and to get some uniformity because nonuniformity very frankly does cause some problems.

Now, I think the committee should hear from some of the industry.

Mr. SIKES. Before we do that, Mr. Leggett, you have given us some very interesting testimony. You make a good case for the change in procedure on bid listing.

What is happening is a long standing practice. It was recognized back in the thirties. Yet in all these years, although legislation has come close a couple of times, there have been no changes either through legislation or through executive procedure.

Is the situation serious enough to justify action in view of the fact that nothing has been done through all these years?

Mr. LEGGETT. I would say if it was serious enough 9 years ago for GSA, which is the largest contracting agency in government outside of the Department of Defense, and Interior, which I guess is the second-largest contracting agency, to respond to the complaints of these small contractors and to promulgate regulations—very frankly, I have written to the Department of Defense on a number of occasions and their response was, very frankly, not very conciliatory.

I think it was not because I really wasn't trying to get them to promulgate regulations, but to agree to legislation.

We have considerably backed off from where we were. The procedures we have tried to enact for the last 40 years have been mandates, legislative mandates, and now we are coming forward with a much more flexible approach. We are just suggesting that departments themselves experiment in this area under a promise that they are not going to be mandated and see if they can get rid of some of the complaints of some of the small independent contractors.

EXTENT OF BID PEDDLING

Mr. SIKES. Do you consider that bid peddling is widespread as a practice?

Mr. LEGGETT. Yes. I am not the speaker on this. We have people in the audience representing subcontractors from practically every State and city in the country.

Mr. SIKES. Are there areas of the construction industry where it is more a problem than in other areas?

Mr. LEGGETT. Well, I think it is true in certain areas it is more of a problem than in other areas.

As an example, I think in St. Louis they have developed some procedures that by local custom are probably better than in other areas. I think in California, due to the fact that we have a great number of defense industries, we really find the situation prevalent because we have this State procedure in a very large State.

I think we are almost the seventh largest economic entity in the world, out there in California, with the GMT over \$100 billion, and where we have good listing procedures for all State work and all county work and all city work and all irrigation work, et cetera, and working reasonably well—and they polish up the legislation from time to time.

And then you compare that with very large construction programs going on in the Federal Government. Out there, we do get a considerable number of complaints and we have had a considerable amount of problems there.

In Florida, very frankly, we have had very little complaint and maybe you people happen to be more ethical down there, I just don't know.

I have not conducted an investigation of it. I know you have a big State. You have a lot of military construction that goes on down there.

There is a lot of military construction in Georgia, but the subcontractors of Georgia are rising up in arms.

Mr. SIKES. Is this problem more prevalent—is it prevalent other than in the construction industry?

Mr. LEGGETT. The electronics people would like to develop some procedure. We are not about to do that in procurement of hardware.

Mr. SIKES. Why not?

Mr. LEGGETT. One of the reasons is, we don't have the small business people there that we have—I think that you have other kinds of practices that have been prevalent in the electronics industry where traditionally Lockheed might be working with Aerojet on development of a Polaris-type missile and that might be their traditional procedure.

Right now they are trying to break that habitual procedure and work with Rocketdyne I think, which is causing heaven and earth to tumble, but necessarily they do a lot of negotiation after award of the contract and that is the simple nuts and bolts of it.

But on building construction it is not all that complicated, usually, and where it is complicated, where you are constructing, as an example, an ABM site—hopefully we are not going to be constructing any more of those, in my view—but when you are constructing a complicated missile site, there are procedures here that say that where the national defense is involved or where some criticality of time is involved, if it were legislated the agency would simply say, "National defense is involved; time is a factor. We think in this particular area we are not going to opt for these procedures."

If they did a pilot program, they could do it in 50 areas if the agency wanted to do it. They could stay out of the areas where they are inherently suspect, there they might get into problems or where they don't have the small business type of subcontractors that they do in the classic construction of buildings and things like this.

COST OF ADMINISTRATION

Mr. SIKES. How much additional red tape, how much greater cost would be caused by this procedure? GSA says the procedure which you suggest imposes a substantial burden on their contract administrative personnel. Conceivably it would add to recordkeeping, red tape, and cost.

If you admit that, is it worth it?

Mr. LEGGETT. I put that in to give an area of credibility to my statement. I could have abstracted that letter and just given you the better parts of it.

I have other letters from GSA. I have a voluminous file. I have a file drawer full of material in this general subject area and it just happens to interest me. I have no pecuniary conflict of interest whatsoever in it.

As a practical matter, GSA has also said, well, it is causing them some concern; it is causing them a little more red tape. They have no evidence whatsoever that it has cost them more money and I think if we further explored this with them that would be what they would say.

The Department of the Interior administers not 3.5 percent subcontractor law, but a 2 percent subcontractor law with discretionary

authority in the contracting officer to go below 2 percent, it said that they have determined that it hasn't cost them one more dime.

Very frankly, we would say this program can only be administered by an agency that wants to administer it, that wants to solve some of the problems of subcontractors. There are 100 ways they can goof up—the pilot program can goof up the regulations and they can make a record and the program is just going to die. So that is why we don't want to mandate it. If after this presentation and after any kind words the committee may have if, the agencies still don't want to do it, that is going to be the end of it.

But what we said in our case is that the agencies that did do it, they have had some complexities; they have had a few little problems in changing the regulations but by and large it has gotten rid of some of the bid peddling. It has not cost any more money. It has not raised the cost to the Government. It has improved the quality of the work mainly because the savings have gone to the contractor who is doing the work rather than perhaps the prime contractor who perhaps might get a windfall.

Mr. SIKES. You have made a very good case.

Mr. CEDERBERG. I think this is a legitimate problem, and I think the very fact that hundreds of subcontractors have gone broke testifies to the fact that it is. I think it is fundamentally wrong for a prime contractor to go out and require these small subcontractors to spend relatively large sums of money to prepare bids, if, after they give them to the prime contractor, he goes out and tells that subcontractor "If you want this contract, you have to shave it so much or somebody else is going to get it." I think that is fundamentally wrong.

I recognize there are a lot of complexities in this kind of a problem. I am not sure of our jurisdiction to handle them. We have very little military construction up my way, but I know of contractors who have gone broke under this kind of arrangement, where the prime contractor just beat him over the head and he has a substantial investment in preparing that bid. Some of these bids take a lot of people's time and cost them a lot of money. So I would be for whatever could be done to try to bring out some reasonable and sensible regulation. I recognize when you are dealing with not hundreds of millions but billions of dollars worth of construction there are complications.

SUB-SUBCONTRACTORS

I think not only the subcontractor but the sub-subcontractors have problems—subcontractors aren't always any cleaner than some of the prime contractors, because some of them go out and do the same thing. So I am not going to be very impressed by the subcontractors association coming in here and telling us how holy they are. They have some problems too. I think the whole thing has to go all the way down the line because I personally believe that it is just wrong for a small person to be put into that kind of untenable position. That is all.

Mr. LEGGETT. I had a client one time—and I mentioned that Capehart job, and the Fuller Co. got the bid. I represented a grading contractor. We had over 100,000 yards of material to move. The contract went something like this: You guys have got your equipment up in the area, get it on the job and get it working, and after it is working we will negotiate a price. So that is the way they went on

because there was such an inequality of bargaining and they knew the equipment was available. They went on the job and started moving all of this and they had a gerry-built type contract that was not well thought out. Unfortunately they ran into about 20,000 yards of bedrock, and then the fur really started to fly and nobody was protected and we got into a fierce number of lawsuits as to who carried the risk between the plumbing contractor, offset contractor, and grading contractor and the people that did the photogrammetric surveys from the air and such as that.

My view is that you get better performance on these contracts, and it is better thought out if it can be handled in advance rather than just by happenstance after the award is made.

Mr. CEDERBERG. On the other hand your client who puts all of his equipment on the job without having had something really finalized ahead of time wasn't using the best of judgment either.

Mr. LEGGETT. That is true.

Mr. CEDERBERG. He gets one lesson like that and that is about all he will need.

Mr. SIKES. Mr. JONAS.

Mr. JONAS. The gentleman from Michigan raised in his closing remarks the point I wanted to raise, and that is how far does this go, how many layers of subcontractors are involved usually. What does the GSA regulation do with respect to the subs down the line? Are they protected in the GSA regulations?

Mr. LEGGETT. That is a very good question, and as a practical matter under GSA regulations now in effect they are not protected. GSA right now is going through some procedures suggesting some modifications of their regulations. I haven't even got those regulations yet but they are suggesting that there be a degree of protection, but you have to define that in your working papers. While it might seem complicated to this committee, this is not really to the contracting industry, when you finally work out the regulations. After you go through 200 pages of specifications, it is not really one of the major things that hangs you up.

Mr. JONAS. There is really no way to limit this because the subcontractors have got to buy materials, supplies, and so perhaps you extend it to the procurement of supplies and materials used on the job, and, if so, where are we?

Mr. LEGGETT. If you want to go all the way to the bottom, there is no place to end, but the thing is the subcontractor that goes in and buys \$25 worth of lumber to put up some scaffolding, the lumber supplier doesn't really need any protection on that because he hasn't gone to any expense in doing a takeoff. So really the normal cutoff line would be, is the man making the investment in the job trying to be competitive and at what layer are they helping to get the lowest price for the Government.

Actually GSA feels they can develop further modifications of their regulations which will set a proper cutoff line which will protect the people that need to be protected but still not confound GSA with 50 subcontracts that need to be approved and lead to the throwing out of bids unnecessarily. Frankly, they have indicated this morning that they have had to throw out a few bids recently that were good bids but they have such a daisy chain of subcontractors submitted that—

and one of them was wrong, and if one is wrong you have to throw it out. They need to refine that a little bit.

I am not bringing you here today the ultimate answer to the problem, but I am saying that two agencies of Government have their ear closely attuned to independent business and to the industry, and they are trying to reach some proper modifications and balance the equities between the contractors and subcontractors. And what we wanted to do in the blue ribbon procurement commission hearing was to not only address this problem but also the other procurement problems which are more massive.

Mr. CEDERBERG. I think you need, if you can get one, a definition of a subcontractor. We shouldn't get the impression that all subcontractors are just little fellows because they are not. You have plenty of big subcontractors, and you have plenty of prime contractors that don't even intend to fool with the construction after they get the bid. They really sell the bid to somebody else, and then that fellow is a subcontractor, and then it goes down the line.

So until you get some kind of a definition of what a subcontractor is, you can have all kinds of problems. When you start talking about \$100 million worth of construction or \$50 million worth of construction some of these big combines come in and bid and sub it out all over to subcontractors, but big ones, and they don't have any more conscience than some of the rest of them.

Mr. LEGGETT. That is right.

Mr. JONAS. Here is one of the problems I think I visualize in this. It is all right to use the example of \$25 worth of gasoline, but some of these subcontractors procure millions of dollars worth of equipment. They buy all the plumbing in a complex of buildings, all of the lumber, all of the roofing, all of the flooring. I don't know where you stop if you don't go all the way, but I don't see how going all the way would accomplish anything. You would deny the subcontractor the right to shop around among half a dozen different suppliers of, say, floor covering or roofing or plumbing or electrical equipment. I don't think we want to do that. This is a bigger problem than we can handle here in 1 hour.

Mr. LEGGETT. Right, and that is why I say you really can't handle it by legislation. All we really want you to do is to suggest maybe to the appropriate defense agencies that they talk to the subcontractor just like the other agencies of Government are talking to them.

Mr. SIKES. Are you ready to bring on your other witness?

Mr. LEGGETT. I think Mr. Richard Jackson is the spokesman for the American Subcontractors Association. He is the organizer and first president.

Mr. SIKES. Would you come to the witness table. Let me assure you we are happy to have you here. That is an important and very interesting subject.

STATEMENT OF RICHARD JACKSON, AMERICAN SUBCONTRACTORS ASSOCIATION

Mr. JACKSON. Thank you very much, Mr. Chairman. My name is Richard L. Jackson. I have spent my entire business career in the construction industry as a subcontractor. I am vice president of John H. Hampshire, Inc., and in charge of its operations in the

District of Columbia area. We are engaged primarily in the installation of acoustical systems, drywall, plastering, gypsum roof decks, and related activities. We have participated in some of the area's largest public building projects.

I am here as chairman of the board of the American Subcontractors Association (ASA). The membership of ASA is composed of construction subcontractors of all trades, union and open shop, who belong to our 36 local chapters. In addition to our member firms, 13 national specialty associations are also affiliates through the ASA national advisory council, representing thousands of subcontractors throughout the United States.

I have been associated with ASA since its inception in May 1966, and since then have discussed the matters affecting our industry with subcontractors of all trades in many areas. Thus my remarks concerning bid listing are intended to reflect the views of subcontractors everywhere, not just my own.

I am here today on behalf of our members to ask that this subcommittee recommend to the Corps of Engineers that it administratively change its contracting regulations to require the listing of subcontractors on all prime bids submitted to it for contracts. Adoption of such a policy would effectively eliminate the wasteful and harmful practices known to our industry as bid shopping and bid peddling on projects of the Corps of Engineers.

We recognize that neither bid shopping which is initiated by the prime, nor bid peddling which is initiated by the subcontractor, could exist unless both parties were willing. Thus it is not my purpose to attempt to persuade you that one party may be more to blame than the other. The fact is that they are equally blameworthy—just as the giver and receiver of stolen goods are both guilty.

Federal construction procurement involves the solicitation of prime bids from various general contractors who are considered qualified. A prime contract is awarded to the lowest qualified responsive bidder. Once the award is made, the cost to the Government is firmly established. Should the successful contractor be able to reduce his estimated cost of performance by bid shopping or otherwise, he alone will reap the benefits thereof.

A prime bid is nothing more than an offer to construct a building or project—at a stated price. The price is based on the contractor's estimate of what it will cost him to construct the project, after taking into consideration the bids of subcontractors for the sections of the work at specified prices.

Unlike the bids of general contractors, the lowest subbidder for a particular section of the work may or may not be awarded a subcontract. If the successful prime is one who engages in bid shopping, he will use the lowest subcontractor prices as a basis for shopping, and continue the process until he has exhausted every possibility for shaving prices.

This procedure is what we call bid shopping and it has a devastating effect on construction costs—initially and ultimately.

It causes many qualified general contractors and subcontractors to refrain from competing because they are opposed in principal to the concept of bid shopping. Also, why should they go to the trouble and expense of bidding a particular job only to find out that their prices, even if low, will be used only as starting points for future

bartering? I know of many instances where subcontracts have been awarded to establishments who took no part in the initial bidding. The result has been a narrowing field of those willing to compete for Federal jobs—even though the Federal Government is the construction industry's largest customer.

As for savings, as pointed out, the Government does not benefit from bid shopping because all the shopping occurs after the prime contract—with a fixed price—has already been awarded.

There can be little doubt that many of the competing general contractors will base their initial price, the "prime bid" on what they think will be the ultimate prices for various subcontracts after bid shopping, and not on what these prices actually are. The opponents to bid listing have made arguments to the effect that this policy results in lower initial costs to the owner. This might seem logical except for one thing—the subcontractors who are involved in these situations have quoted prices knowing that they are likely to be shopped. This method of pricing never represents the subs' "real" price which would be on the estimated cost of labor and materials plus a reasonable markup for general overhead and profit.

When bid shopping is involved, the price ultimately agreed upon between the subcontractor and the general contractor may be above or below the best possible price. If the ultimate price is too high, it simply means that the Government is paying more than it should have for the particular work. If the ultimate price is below a fair price standard, the public cost may be even greater in the long run because of substandard workmanship that often results as the contractor cuts corners trying to make up for his losses.

There are two objections that the general contractor has traditionally offered in opposition to bid listing: first, that subcontractors submit their bids at the last minute, hindering the figuring of the prime bid; and second, that the general contractor is never sure exactly what work the subcontractor is agreeing to perform for the price bid.

In response to the first objection, we recognize the need of the general contractor to have adequate time in which to intelligently analyze the subcontractors' bids. We therefore would not be opposed to having a time limit placed on all subcontractor bids, something similar to the "4 hour plan."

JOINT POLICY STATEMENT

I am pleased to say that we, the subcontractors and general contractors, through our respective national organizations, are working together toward solution of the second problem. Through the national liaison committee of ASA and the Associated General Contractors of America (AGC), a "joint policy statement" on scope of the work has been approved. It reads:

Subcontractors should furnish a letter or abstract defining the scope of their bids at least 48 hours prior to the time the contractor must submit his bid in order to allow proper time for evaluation by the general contractor.

Both ASA and AGC, working through our local chapters, have informed our members of this recommended procedure. It is a big step toward solution of the "scope" problem.

I would like to take a moment to reflect on this joint action we took with AGC. It is indicative of the growing cooperation within the

construction industry. We—the subcontractors, the generals, the architects, the suppliers—realize that many of the problems plaguing the industry can be solved among ourselves. A real effort is being made. Another example of maturing cooperation is the recent GSA/industry conference on change orders. A series of meetings has been held with GSA to discuss what can be done to improve the handling of change orders. ASA participated in these meetings along with the General Contractors, the Electrical Contractors, the Council of Mechanical Specialty Contracting Industries, and a number of other national groups—and I think we are getting somewhere. It is through this sort of joint action that solutions to many of our problems can be found.

H.R. 10

Let me return to the subject at hand. As an example of how bid listing works, we can examine H.R. 10, which has aptly been named the "Federal Construction Fair Practices Act." The bill, in substance, states that in all Federal construction where the cost exceeds \$100,000, bid invitation shall require each bidder to submit with his bid the names of the subcontractors he will use if awarded the contract, including the right to name himself for any category of the work. The bill requires that such listing include several specified trade categories and all others where the cost will be 3½ percent or more of the estimated total cost.

The experience of the General Services Administration and the Department of the Interior, which already require by administrative regulation the listing of subcontractors, should be ample proof that the principle behind bid listing does work in actual practice. This satisfactory experience has been acknowledged by both public and private statements of these agencies. Both GSA and Interior have found that bid listing does not result in higher prices or burdensome administration. Nor do they report any failure on the part of general contractors to respond to bid invitations because of objection to the paperwork. From our point of view, it is indeed refreshing to bid under a system where we can offer our best price in the first instance and know that we will not be asked to cut it, and that we will not be undercut by a competitor that did not even bid until after the prime contract was awarded.

Bid listing is now required by law in the States of California, Massachusetts, and Delaware. The General Services Agency of the State of Maryland has just changed its policy to require that subcontractors be listed on prime bids, and we have been told that many other States are considering adopting the policy, either legislatively or through administrative changes.

SMALL BUSINESS COMMITTEE FINDINGS

The House Select Committee on Small Business in 1965 investigated the practice of bid shopping and made the following recommendation:

"The bid shopping practice in the construction field creates unfair competition, disadvantages small business, and discourages small business participation as subcontractors in Government procurement construction work.

"The subcommittee finds that this results from unfair practices by some bidders for prime construction awards and not from actions by Government procurement agencies.

"The subcommittee commends General Services Administration and the Department of the Interior for having initiated procedures and regulations which tend to curb the practice. Some procurement agencies, however, have not established regulations or procedures which would discourage the practice.

"Remedial legislation should therefore be promptly considered which would promote fair competition among contractors and subcontractors on construction contracts by requiring persons submitting bids on those contracts to specify subcontractors who will assist in performing them."

Subcontractors are in complete accord with the findings of the committee; there is a real need for legislation which would require bid listing with all Federal construction contracts. Until such a requirement is made universal through law, however, we appeal to every Government contracting agency to follow the lead of GSA and Interior by adopting the policy through administrative regulation. I am confident that if the Corps of Engineers does so, even if only on a trial basis, they will find it beneficial in terms of competition, prices, and workmanship.

In conclusion, what we subs are asking for is the same deal—the same protection—that the general contractor already has when he bids on Federal work. He knows that if he is qualified, and that if his bid is responsive and his price is the lowest submitted, the contracting officer has no choice under the law but to award him the prime contract. There is no such thing as bid shopping on the part of a contracting officer; there can't be. In asking for a policy of bid listing we are merely asking for the same protection that the general contractors now have.

Mr. Chairman, on behalf of the members of the American Subcontractors Association, I thank you for affording us the honor and privilege of appearing before you

EFFECT OF BID LISTING ON COST

Mr. SIKES. This is very interesting. I know you have had considerable experience in this area. From your own experience have you encountered any increase in costs as a result of the procedure that you recommend. Have there been any delays, any particular problems insofar as the subcontractor is concerned?

Mr. JACKSON. I can speak from my own personal experience. I am in charge of the company's operations here in Washington and have been for 15 years. We do all types of interior work. We bid on most of the Government projects here of any size as a subcontractor. We do lathing and plastering, acoustical work, moving partitions. You name it on the interior and we do it.

I can tell you if I know that the general contractor is required to list bids, for example on a GSA job—as I tried to emphasize in my remarks, if I know the general contractors are the type you must be low to get the job, when I bid, regardless of what item—and on many items we have eight or nine subjects going in—we give them our best

price at that time. If we know of a general contractor or contractors who are not that type, we certainly don't give them our best price. We prefer to bid once and low on the job. When it is awarded to the general contractor and we were low second bidder, we could care less and go to the next job. Our experience has been we put our best price out when we know the contractor.

EXTENT OF BID PEDDLING

Mr. SIKES. In your experience how widespread is the practice of bid peddling?

Mr. JACKSON. I could say in my personal experience that it is confined to a small percentage of the general contractors. However, a small percentage bids most of the large Federal work or the larger jobs. Without naming names specifically, I am speaking from practical experience. I certainly don't want to have it appear that all general contractors work like that. That is not true. Unfortunately in this area the small percentage we are talking about bids most of the large Federal projects.

Mr. SIKES. Mr. Patten.

Mr. PATTEN. I don't know how it works out at the national level, but I know in my community if the general contractor was unethical after you did the work and gave him a figure, you wouldn't go to the expense the next time to help him out.

Mr. JACKSON. That is true.

Mr. PATTEN. There is a little blacklisting of the fellows who cut and shop around after they get a contract. So they are penalized.

I don't think we have passed any legislation in New Jersey like that you speak of.

Mr. JACKSON. No, but you have a very strong subcontractor association out there.

Mr. PATTEN. We hear about it in every session of the legislature.

Mr. JACKSON. I agree. May I state from practical experience certainly any good businessman, regardless whether a general or sub, if he had a bad experience would not continue to do business with them. But unfortunately, and this is the point I think that sometimes may be overlooked, there are so many subcontractors in the United States that the general contractor can certainly beat me down to a place where I would never do business, but I am just one of literally, for example, in this area, 70 people who are my competitors. And there is always one sucker born every day. You know this, and it takes a long time for a general contractor to go through every competitor.

I can tell you truthfully from personal experience right in this area on a government job I was the low bidder, and it took the general contractor 14 months to award me a contract, and I wouldn't take a penny off it. He went all over the United States, up and down the east coast, you name it, to try to get someone to come in and go lower than my price. I bring out the point that unfortunately is a very hard thing, and the greatest thing we have to do in our association is to educate the people on just what you say, to become better businessmen.

Mr. SIKES. Mr. Jonas.

Mr. JONAS. No questions.

Mr. SIKES. Mr. Jackson, thank you very much. You were a very informative witness.

I think at this time we will hear the military witnesses.

Mr. LEGGETT. The rest of our witnesses are short. We have about four who would take 5 minutes each at the most.

Mr. SIKES. We will hear the Defense witnesses now and come back to them.

Admiral Dillon, I would like very much now to hear the recommendations of the Department of Defense on this subject. We have with us Rear Adm. John G. Dillon, Director of Construction Operations, of the Department of Defense and Comdr. Jerome R. Dunn, his staff assistant.

Admiral Dillon, you have a statement. Would you like to give it or put it in the record and brief it?

STATEMENT OF REAR ADM. JOHN G. DILLON, DIRECTOR OF CONSTRUCTION OPERATIONS, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

Admiral DILLON. Mr. Chairman, I have an abbreviated version of that which I will read and offer the statement for the record.

Mr. SIKES. The statement will appear in the record and we will hear your abbreviated version.

[The statement follows:]

STATEMENT OF REAR ADM. JOHN G. DILLON, DIRECTOR OF CONSTRUCTION OPERATIONS, OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE (INSTALLATIONS AND LOGISTICS)

Mr. Chairman, and members of the committee, I am Rear Adm. John Dillon, Director of Construction Operations, Office of the Assistant Secretary of Defense (Installations and Logistics). I have been designated to represent the Department of Defense for the purpose of the hearing today.

The Department of Defense has examined on many occasions the various proposals which have been made concerning antibid shopping bidding procedures. Based upon these analyses, we have consistently opposed legislation or administrative requirements which have been proposed for this purpose. Our position on this issue is based upon the following factors:

1. The listing of subcontractors in the prime contractor's bid will not, in fact, preclude alleged bid shopping by primes who may engage in such unethical practice. Rather, the proposed procedures would only require that such prime contractors develop subterfuges with which to continue this practice, or that they engage in bid shopping prior to the time of submission of bids.

2. The bid listing requirement may, however, materially interfere with the full flow of competition during the bidding period, and would materially alter the existing bid formulation and pricing procedures of the vast majority of ethical and responsible contractors, both primes and subs, who bid our projects. We believe that such changes would reduce the level and nature of competition obtained, and may adversely affect our bid prices.

3. The bid listing requirement would be yet another administrative procedure, and a burdensome one, in an already very complex set of Federal contractual and bidding requirements. Two effects may and most probably would result:

(a) Responsible prime contractors who may not routinely bid Department of Defense projects because of the added expense and complexities which are created by existing Federal requirements, such as Davis-Bacon Provisions, and EEO plan requirements and certifications, may not choose to bid at all if a further administrative encumbrance is imposed.

(b) Based upon GSA experience, numerous cases requiring the administrative set aside of otherwise valid bids which fail to properly list subcontractors, can be anticipated. The number of bid protests resulting may also be significantly increased.

4. The next point, I believe, deserves particular emphasis. The procedures would seriously interfere with the prime contractors' control of the job and his ability to effectively manage the coordinated work effort. Under the procedures which have been proposed, the prime contractor would have to obtain approval from the contracting officer prior to replacing a subcontractor for nonperformance, faulty performance, or for any other reason. The standards for granting such approval are uncertain, and in substance would involve specifics of prior agreements reached between the prime and the subcontractor to which the contracting officer is not a party. Thus, the contracting officer would be forced to insert himself in uncertain grounds, involving legal as well as performance questions, between two private parties. Undoubtedly, the hearing of such disputes would delay contract performance; and most importantly would render the Government liable to litigation and claims for additional costs and/or delays arising from refusals or processing time delays in permitting the substitution of contractors. On this point, intrusion in this form into the customary management flexibility and control of the prime contractor may cause some responsible firms to not bid contracts with such procedural requirements.

5. Finally, the proposed requirements would cause a significant administrative burden on our construction personnel. Moreover, in our judgment, it would be necessary to extend the period we normally allow for the preparation of bids in order to accommodate the changes in normal industry bidding procedures caused by this requirement.

In regard to the present proposal to test the bid listing procedures on a trial basis, we are opposed to such a test because:

(1) It is unlikely that a test would provide substantive data, for or against the procedures, due to the complexities of the elements involved. There is simply not a means to measure the level of competition and bid prices obtained, against those which would have been obtained under our normal procedures.

(2) The implementation of the procedures, even on a trial basis, would on the other hand definitely impose significant, added administrative effort and expense on the part of our contracting organizations. While this impact is measurable, we do not have an estimate of such effort and costs as the elements are, of course, directly related to the specific nature of a particular test application.

We realize that our position in regard to the bidding listing procedures is not fully shared by either the General Services Administration or the Department of the Interior. Both of these organizations presently utilize administrative procedures of this form. However, in reviewing a letter on this subject from the Assistant Administrator of GSA, Mr. Trimmer, dated December 8, 1971, which provided Congressman Leggett with a report on their experience with these procedures, we note the following points:

(1) GSA states that a substantial burden is imposed upon their contract administration personnel by this procedure. This is noted after over 5 years of GSA experience with this procedure.

(2) GSA notes concern over the failure of subcontractors to provide prime contract bidders with abstracts indicating how much work and material for a particular category of work has been included in or excluded from individual proposals. GSA went on to say that this makes it difficult for prime contractors to make informed comparisons between proposals for the purpose of preparing the prime's bid. While GSA did not extend this comment, it is proper to note here that such circumstances assuredly would work towards increasing bid prices, in order for the prime to cover this contingency.

(3) GSA notes that there is little evidence that the bid listing requirement either increases bid prices or reduces competition, noting the numerous factors which make such comparison difficult if not impossible to effectively derive. We certainly agree with this latter point, and for this reason believe that a DOD trial application would be meaningless. In regard to the first point, concerning measurable impacts upon competition and bid prices, we would only note that GSA's own earlier statement concerning difficulties experienced with subcontractor abstracts would tend to argue against the conclusion that bid prices are not increased.

(4) GSA also notes that while the procedure may afford protection to some subcontractors from bid shopping, the procedure does not preclude bid shopping by subcontractors themselves in the selection of their subcontractors and suppliers.

(5) Finally, GSA states that their procedures have been effective in minimizing bid shopping by prime contractors at the first tier of subcontractors. Here we would differ with GSA to the extent that the procedures may afford the appearance of minimizing bid shopping, while not precluding this unethical practice either before bidding or through various subterfuge devices.

In substance, GSA has drawn the conclusion that their bid listing procedures are generally effective and the resultant impacts from the use of these procedures are acceptable. Similarly, the Department of the Interior apparently shares this view. However, the Department of Defense, with differing requirements in terms of the nature and scope of our construction programs and organizations, cannot share these judgments. To illustrate the differences involved between the Department of Defense and these other agencies, consider the following factors:

(1) Using the fiscal year 1972 projected outlays for directly funded Federal new construction as a basis for measurement, the Department of Defense construction programs constitute 51.7 percent of the total Federal Government construction program. This value reflects not only our military construction programs but also the Corps of Engineer's Civil Works and the Postal Service program assigned to that organization. In contrast, the Department of the Interior, principally the Bureau of Reclamation, accounts for 5.2 percent and GSA for 4.3 percent.

(2) Further, while both the Bureau of Reclamation and GSA tend to centrally administer their major construction programs, the Department of Defense programs are executed by over 45 major field offices and innumerable smaller contracting offices. This contrast in the method and organization for construction administration and contracting is perhaps an even more important difference in relationship to this issue, than is the differing magnitude of the construction programs. In summary, the Department of Defense is naturally, opposed to the unethical practice of bid shopping, at whatever tier or subcontracting level it may occur. The experience of our construction agencies, however, has been that bid shopping is neither widespread nor malevolent. Very few specific complaints from subcontractors concerning such alleged practices have been received. We believe that in these circumstances it is proper to evaluate the procedural remedy which has been consistently advanced in regard to this issue in the following manner: First, what will be the extent and nature of the remedy provided by the proposed procedures; and next, what will be the cost and other impacts which will result from the procedures?

Based upon our analyses, and in consideration of the circumstances operative in our construction programs, we conclude that the proposed procedures will not be effective. Specifically, the procedures proposed would not be effective in preventing bid shopping and would make no attempt to preclude this practice at the second tier of subcontractors and below; and second, the identifiable adverse impacts from the proposed procedures are severe and in our judgment unacceptable. Mr. Chairman, this concludes my formal statement.

Admiral DILLON. I will begin by wishing you good morning.

Mr. SIKES. Thank you, Jack; it is good to see you again.

Admiral DILLON. Thank you.

Mr. SIKES. I am sorry but I will have to leave now, but I assure you I will read the record thoroughly.

Mr. PATTEN. You may proceed.

Admiral DILLON. Defense has examined this issue many times in the past, these analyses have involved attorneys, procurement specialists, contract administrators, and engineers. Based on these analyses, Defense has consistently opposed legislation or administrative requirements calling for subcontractor listing by the prime at time of bidding.

DEFENSE DEPARTMENT OPPOSITION TO BID LISTING

Our position is based on the following:

This procedure will not preclude bid shopping by the unethical contractor. He will either bid shop before bidding or develop subterfuges in order to bid shop afterward.

The procedure may materially interfere with the full flow of competition during the bidding period. It would alter existing bid formulation and pricing procedures. We believe this would reduce the level and nature of competition and adversely affect bid prices.

The procedure adds still another administrative burden in doing business with Federal Government. We foresee a reduction in the number of contractors willing to do business with us. Based on GSA experience there will be numerous cases requiring the setting aside of otherwise valid bids. We can anticipate this procedure becoming the basis for bid protests.

The procedures would seriously interfere with the prime contractor's control of the job and his ability to effectively manage the coordinated work effort. He would need the contracting officer's permission to replace a listed sub for nonperformance, faulty performance or other reasons. This inserts the Government between the prime and the sub—two private parties—and involves legal as well as performance questions. This in turn renders the Government liable to suit by the sub and the prime, both as to the decision and the delay involved.

The procedures would generate a significant administrative burden on our construction personnel.

OBJECTIONS TO TEST

With respect to a test of the bid listing procedures we are opposed because:

It is unlikely that a test would provide substantive data, for or against the procedures. There is simply not a means to measure the level of competition and bid prices obtained versus those we would have obtained under normal procedures.

The test would add significant workload and expense on the part of our contracting organizations.

We realize our position is not fully shared by GSA or Interior. But when we review Assistant Administrator of GSA letter of December 8, 1971, we note the following points:

First, GSA states that a substantial burden is imposed upon their contracting people by this procedure.

Second, GSA notes concern over the failure of subs to provide prime contract bidders with abstracts indicating how much work and material has been included in or excluded from their proposals. This makes it difficult for a prime to make informed comparisons between proposals for purposes of selecting his subs and making up his bid or to determine if all the work is included or if there are redundancies.

Third, this will lead to higher bids by the prime in order to cover contingencies. GSA notes that there is little evidence that the bid listing requirement either increases bid prices or reduces competition, noting the numerous factors which make such comparison difficult if not impossible to effectively derive. We certainly agree with this latter point, and for this reason believe that a DOD trial application would be meaningless. In regard to the first point, concerning measurable impacts upon competition and bid prices, we would only note that GSA's own earlier statement concerning difficulties experienced with subcontractor abstracts would tend to argue against the conclusion that bid prices are not increased. GSA also notes that while the procedure may afford protection to some subcontractors from bid shopping, the procedure does not preclude bid shopping by subcontractors themselves in the selection of their subcontractors and suppliers.

Fourth, finally, GSA states that their procedures have been effective in minimizing bid shopping by prime contractors at the first tier of subcontractors. Here we would differ with GSA to the extent that the procedures may afford the appearance of minimizing bid shopping, while not precluding this unethical practice either before bidding or through various subterfuge devices.

In substance, GSA has drawn the conclusion that their bid listing procedures are generally effective and the resultant impacts from the use of these procedures are acceptable. Similarly, the Department of Interior apparently shares this view. However, the Department of Defense, with differing requirements in terms of the nature and scope of our construction programs and organizations, cannot share these judgments. To illustrate the differences involved between Defense and GSA and the Department of Interior, the DOD total annual new construction program, based upon the fiscal year 1972 projected outlays, is some ten times greater than those of the other agencies; and, the DOD construction organization encompasses 45 major field offices and innumerable smaller construction and contracting officers in contrast to the centralized contracting and contracting organizations of GSA and the Department of Interior.

This is to say in a decentralized process a procedure for bid listing is that much more liable to incur problems and expense.

In summary, the Department of Defense naturally is opposed to the unethical practice of bid shopping, at whatever tier or subcontracting level it may occur. The experience of our construction agencies, however, has been that bid shopping is neither widespread nor malevolent.

I want to go back to something Mr. Leggett said about the Capehart program. In the early sixties I did discern some malevolent bid shopping that I have not seen since.

Based upon our analyses, and in consideration of the circumstances operative in our construction programs, we conclude that the proposed procedures will not be effective. Specifically, the procedures proposed would not be effective in preventing bid shopping and would make no attempt to preclude this practice at the second tier of subcontractors and below; and second, the identifiable adverse impacts from the proposed procedures are severe and in our judgment unacceptable.

I would add a postscript, Mr. Chairman, building on a point Mr. Jackson made. I dare say that the prime contractors don't like bid shopping, the subs don't like bid shopping, and the subsubs don't like bid shopping. But it occurs to me this is an industry problem, one which they can best solve, and they are solving it I would gather, without the benefit of the third party, in this case the owner, stepping in between them.

This concludes my abbreviated version of the submitted statement.

TEST OF BID LISTING

Mr. PATTERN. Can a trial program of bid listing such as has been suggested by the previous witnesses be accomplished solely by administrative action within the Defense Department?

Admiral DILLON. Yes, sir, in the same sense that GSA and Interior have through their administrative processes developed such a procedure.

Mr. PATTERN. Has such a trial ever been recommended by any defense construction agency?

Admiral DILLON. Not to my knowledge.

Mr. PATTERN. How would such a trial or a full-scale bid listing requirement alter the existing bid formulation and pricing procedures of contractors?

Admiral DILLON. It is a very long question.

In the normal bidding process the subs submit their bids very late, the prime puts together his bid, often standing in a telephone booth at the bidding office, adding in his last subs or maybe his 10 to 15 to 20 subs: He may not have adequate competition in some sub areas. He may feel he can get additional competition later. He drops his price in order to remain competitive overall. He fills out his bid form, the bid bond, and puts it in the box. In that procedure he knows he has a quotation over the telephone from somebody, he has no bid bond with that sub; he has no formal agreement with that sub. He doesn't know if there is any problem of scope, or who is going to do what work, what equipment the prime is supposed to furnish, the matter of scheduling; they can work these out after the fact. If he is going to list that sub beforehand, it would be very important to a prime, if he is going to get the best price overall into the bid box, to sit down with that sub, determine exactly what is going to be covered by the scope of work he is going to do. In the case of the mechanical contractor for air conditioning, determine with him and with the electrical contractor which of the two will put in the conduit, who is going to make the hookup; with the other sub for sheetmetal, the division of work; what he is going to do with the sub for controls, and who is going to pipe and wire them; and with the installer when he is going to come aboard and do his work. He can do this before bidding under the bid listing procedure and then agree on the price with these gentlemen and put it in, but he doesn't have enough time to deal with all of the people who may want to do business with him.

This is why we think it would be deleterious to good competition. In order for him to be able to live with that subcontractor he has listed, he should require a bid bond from that sub, and he may even require some contractual agreement.

One of the problems in going through this procedure beforehand is that it means the subs must disclose their price much earlier than half an hour before bid time. If the prime contractor is unethical, then he immediately can call up somebody else and say "You can have this job for this price," which would be less than the one the sub has quoted him. This is why we say that bid shopping will occur before the fact if the prime is supposed to put together a real good bid.

Have I answered our question?

Mr. PATTEN. Yes. You said it would take a long answer.

EXTENT OF BID SHOPPING

I see many people who are represented here from the national contracting associations to express their opposition to bid shopping. Previous witnesses have expressed their concern with it. Why do you feel this is not a widespread problem? Do you feel it is a serious problem?

Admiral DILLON. Wherever it occurs, sir, it is serious; whenever it occurs it is serious. I stated I don't feel it is widespread. In some areas it is very intense, in other areas it might not be prevalent at all. I do think there has been progress made in recent years within the industry in improving the situation.

Mr. PATTEN. Would the Department of Defense be willing to examine the extent to which bid shopping does occur in its construction contracts? We are dealing in generalities here. I have a little experience at the city level and the county level and the State level. If you are around the statehouse 8 years you become a little knowledgeable as to what extent this practice occurs and how widespread and how serious it is. I just wondered if Defense is willing to examine the extent to which bid shopping does occur in its construction contracts?

Admiral DILLON. Mr. Chairman, we can make discrete inquiries and get discrete answers. I don't know why anybody would admit he is bid shopping, or why any sub would admit he participated in bid shopping either with his sub or to a prime.

There is a matter also of really discerning between bid shopping and rightful negotiations, negotiations as to how often the contractor is going to pay the sub; will the sub want the contractor to make his payroll, to use the parlance of the industry; will the prime contractor be furnishing the prime heavy lifting equipment; what kind of job scheduling coordination can the prime guarantee. For the mechanical contractor, what electrical sub will he be working with. This could affect his price as well. These are legitimate negotiations that take place after the awards. Some people might call it bid shopping. I wouldn't view it as bid shopping. Negotiations do take place. There is no contract signed until after these negotiations take place.

Mr. PATTEN. Taking the whole spectrum of people who would be involved, including the witnesses present here, what percentage of all of the people would be involved that aren't represented here? Who is missing? You have the sheetmetal workers, air-conditioning people, electrical contractors, your independent business group, your plumbing, heating and cooling contractors, and the American Subcontractors Association. It looks like the whole industry is pretty much here.

Admiral DILLON. I heard Mr. Sikes or somebody say AGC was here today. I haven't heard them speak today.

Mr. PATTEN. Is anybody here from AGC?

I understand there is someone here but they are not going to speak. They weren't on our agenda today either.

LIMITED TEST OF BID LISTING

If the Department of Defense were to initiate a test of bid listing procedures, could this be done by one construction agency on a regional basis?

Admiral DILLON. Yes, sir, it could, but the additional work is significant.

In the "Defense military construction" appropriation, as you gentlemen so well know, the management and execution costs are a part of that project in the appropriation.

Mr. PATTEN. Would you give us a percentage on that?

Admiral DILLON. The Corps of Engineers use 5 percent and the Navy uses 6 percent. That is right in each line item or project. This

takes care of the total construction management contracting inspection and upper echelon overhead. There is a tremendous pressure both in the Congress and by the users of those facilities to reduce those costs because every cent we can reduce those costs goes into facilities. But every cent we raise those costs comes out of the facility. So any expense, any additional people, additional procedure, typing, printing, and the time involved in this test has to come out of the "Military construction" appropriation and be applied to the overhead, and that reduces the facility.

Mr. PATTEN. What would be a practical method of testing this procedure, and how much would it cost? One percent?

Admiral DILLON. It is a very complex problem. It wouldn't be fair to you or to me to estimate 1 or one-half percent. It would not be fair to give that figure to you at this time, but it would be a positive expense.

Mr. PATTEN. Mr. Jonas.

PROBLEMS WITH LISTING SUBCONTRACTORS

Mr. JONAS. Admiral Dillon made a statement that I want to discuss with Congressman Leggett here. I wonder how you can make sub-listings effective unless you give the prime a lot of time to do all of his negotiating ahead of time? Isn't that in effect shopping in advance?

Mr. LEGGETT. Right.

Mr. JONAS. That is a problem I had not thought about until the admiral mentioned it. I can see a lot of serious problems arising there. If the prime contractor on short notice has to list all of his subs without having an opportunity in advance to negotiate with them, I don't see how you could get much competition among the subs.

Mr. LEGGETT. I think the question is very good, and the kind of competition that goes on before the Government gets the bid is what we call good competition. As a practical matter it is unethical at any time for a contractor to give the bid of one subcontractor to another subcontractor to see, even prior to the bid, if there is a difference. But there are benefits to the Government when this bid shopping goes on before the bid. Then when the final bid goes in, the Government gets the benefit out of it. So we say that that perhaps is a tolerable kind of shopping and that is the kind of competition that perhaps we are used to. But the kind of competition that goes on afterward, where the contractor is in, the contract is awarded on the basis of certain assumptions, and then the contractor goes around the barn, so to speak, and comes up with a total new list of subcontractors, that doesn't inure to the benefit of the Government or anybody.

Mr. JONAS. You made a very telling point in your initial presentation, I thought, when you used the example of the small sub who pays a man \$1,000 a month just to read these specifications and if he never gets a contract of course he is in bad shape. He can't keep that up.

Mr. LEGGETT. He goes broke.

Mr. JONAS. Yes. That isn't fair to require these subs to go to all of the expense and never give them a contract.

But when you close one loophole or correct one problem you don't accomplish much if you open up a lot of others. This is a very complicated situation, I think, and one that is going to be difficult to resolve.

COMMENTS ON DEFENSE POSITIONS

Mr. LEGGETT. It is. I think what the admiral has said is the kind of stock answer that you would get from AGC in response to this kind of program. I think that the quick answer to a number of things which he has said is relevant.

He said it deters bidding. The experience of the other agencies is it hasn't deterred bidding.

The indication is that it interferes with the contractors control of quality. But the experience of the other departments is that the quality is really enhanced because the subcontractors are not skinned out of the job.

He talks about the administrative burden, and the evidence is that really the costs are negligible as far as administrative burden.

There is some talk about it doesn't stop subtler contractors' bid shopping. This is exactly what the new modifications and regulations attempt to address themselves to. It is not an all black or an all white area, it is complicated. We think rather than just dismissing the subject out of hand through traditional positions it should be a matter of consultation and negotiation.

Mr. JONAS. How is this handled in private industry?

Mr. LEGGETT. In private industry they don't have to go to a public bid. Most private industry goes to bid depositories, and in the bid depositories—as an example the electrical industry in many parts of the country is very closely controlled. Everybody puts their bids in a box. When the subcontractor gets the job he uses the low bid in the box, and these bid depositories have been substantiated as a valid method of contracting. In St. Louis they have a general box for everybody and use the accumulated small bids that are in the box. They don't use that in Government contracting.

Mr. PATTEN. Are there other witnesses?

Mr. LEGGETT. I have three short witnesses if you could hear them. Admiral DILLON. Mr. Chairman.

Mr. PATTEN. Admiral Dillon.

Admiral DILLON. May I say that I don't want to leave the impression here that Defense is not sympathetic to the problem. I certainly want to make the positive statement that we recognize the importance of the subcontractor in constructing the facilities we need and which we have built through the competitive process.

I will repeat the point I made earlier. I feel it is an industry problem, and with the massive size of the program we have, our decentralization, I don't think it is wise for the Defense Department to step in between the prime and the sub and try to untangle this very complex problem.

Mr. PATTEN. Thank you, Admiral.

Mr. LEGGETT. I would like to call now on the representative of the National Electrical Contractors Association, Mr. Robert White.

Mr. PATTEN. Mr. White.

STATEMENT OF ROBERT L. WHITE, NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION

Mr. WHITE. I would like to thank you and Mr. Leggett for allowing me to participate in these proceedings. I won't take a great deal of time here. I would like to associate our association with what Mr.

Leggett has said. He has covered the ground pretty thoroughly here.

Mr. PATTEN. Your statement will be made a part of the record and you may brief it.

[The statement follows:]

STATEMENT OF THE NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

OCTOBER 3, 1972.

Presented by Robert L. White, Manager, Public Relations

Mr. Chairman, members of the committee, my name is Robert L. White. I am manager of public relations for the National Electrical Contractors Association. NECA, as we are known, was founded in 1901 and is the nationally recognized spokesman for the electrical construction industry. This industry consists of more than 28,000 independent business firms engaged in installation and maintenance of electrical systems in homes, stores, schools, factories, hospitals, and many other types of structures. According to the latest census report, this industry employs more than a quarter of a million people. It has an annual payroll of almost \$3 billion and construction receipts of more than \$10 billion. The electrical contractor for whom NECA speaks, brings together material and expertise to put electrical energy to work. In order to do this he usually must bid competitively against other electrical contractors. His bid is based on his informed estimate of the costs involved and the profit he needs to keep his business alive and growing.

The system of competitive bidding has brought many benefits to the consumer and the construction industry. In addition, however, it has provided breeding ground for evils which harm both. Possibly the foremost evil in this system of bidding and contract award is the practice of "bid shopping" and "bid peddling." These twin evils come about after a prime contractor has been awarded a contract. At that point the contractor "renegotiates" lower prices with a subcontractor than had originally been bid. He does this on the strength of having the contract "in his pocket." Rarely, if ever, do the savings realized from this bid shopping go to the customer. In the case of Government contracts, it is the Government itself, and ultimately the taxpayer, who is the loser.

NECA has always opposed practices of bid shopping and bid peddling. The construction industry has been criticized as being chaotic and for having a high rate of bankruptcy. Much of this is a direct result of these practices. For many years, during and prior to the 1950's, this association supported separate contracts and bid listing legislation as a way to cure the evils of bid shopping and peddling. In 1959, however, we turned our attention toward a voluntary effort within the construction industry itself to solve the problem. This effort achieved results when, in 1965, the General Services Administration voluntarily began the use of bid listing procedures. Shortly thereafter it was followed by the Interior Department.

In the intervening years, however, we have seen little further action on the part of other Federal agencies. In those areas where it has been used, we believe bid listing has done a commendable job of eliminating the practices it was intended to combat. However, efforts to extend the use of bid listing, so far, have been fruitless.

In 1969 we once again resumed active support for legislation to require bid listing in all Federal contracts. And, ideally, we would like to see bid listing requirements included on all new Federal construction and on maintenance and repair work over \$100,000. To that end we have consistently supported legislation similar to H.R. 10 of Representative Robert Leggett in the present Congress. As a practical matter, however, we feel this pilot project by the Corps of Engineers would be a welcome step forward.

It is for that reason that we fully support the concept of the pilot program under discussion today. Use of bid listing by the Corps of Engineers will show the benefits of this procedure, and would, we hope, eventually, result in across-the-board use of bid listing, not only in the Defense Department, but in those other Federal agencies which do not currently subscribe to the practice.

Bid shopping and bid peddling result in the Government and the taxpayer getting less than their money's worth. Shoddy work and cut corners are the real results.

Bid listing benefits the taxpayer, the Federal Government, and the ethical contractor and subcontractor. Many ethical contractors now abstain from com-

peting for Federal work knowing that their bid prices may be undercut through bid shopping. Having won a bid in open competition, they did not want to be forced to cut corners to avoid a loss caused by an artificially low price decided behind closed doors. With bid listing the corps and the taxpayer will get more for their construction dollar.

There has been some opposition to the practice of bid listing by those who feel that listing all the construction trades is an onerous task. If that is felt to be a problem to this committee and the corps, we suggest that the requirements to list might be limited to the mechanical specialty subcontracting trades—those who do the electrical installation, plumbing, heating, air-conditioning, and ventilating. But none of these trades should be excluded from bid listing requirements since each is responsible for too great a portion of the work on a construction job today.

Today these specialty subcontracting trades do work comprising more than 50 percent of the cost of the average construction project. They are also the trades most subject to bid shopping and bid peddling. Restricting bid listing to these trades would greatly reduce the administrative problems involved in having to deal with all the trades.

In conclusion, the National Electrical Contractors Association strongly supports the institution of a pilot bid listing program in the Corps of Engineers, and offers its assistance in the implementation of this program in any way it may be of service.

Thank you for allowing me this opportunity to present our views.

Mr. WHITE. I would like to talk a little bit about some of the things that the admiral just mentioned here and perhaps take a look at it from our standpoint.

One of the points that he made was that he felt it would decrease the amount of competition involved in bidding on Federal work. We have found that in our experience the electrical contractors don't like to get involved in this cutthroat thing. The bid shopping problem tends to keep some of the contractors away from Federal work. These are good competent contractors. As a result, the Government isn't getting all of the competition, the best competition it might in the case of the contract award.

The Government also loses in cases of bid shopping from a psychological standpoint. A contractor who goes into a contract where he knows there is going to be shopping and where he has possibly gained the contract by contracting before bid, this is not likely to do the best job possible or possibly use the best terms. You get kind of a corner cutting approach to doing the job under those circumstances.

It is more likely that under a standard free competition before bidding where the bidding is listed that you are going to get exactly what the taxpayer and the Government are paying for.

A contractor generally operates on a very small profit margin. There are about 28,000 electrical contractors in this country. The average annual volume is somewhere under \$1 million, and the average profit according to our figures is somewhat less than 3 percent. So we are dealing with relatively small figures and a great variety of small businessmen.

You mentioned earlier there are some large subcontractors. I recently went through the Price Commission's listing of the tier 1 and tier 2 firms and out of these 28,000 electrical contractors was able to find 19 classified as tier 1 and tier 2 firms. So we are dealing with small businesses, the people who can't afford to shave prices without cutting corners somewhere if they are forced to. It is for this reason that we would very much like to see a pilot program instituted in the Department of Defense. We feel it has worked well in GSA and in the Interior Department and would like to see the pilot program instituted.

Mr. PATTEN. I see you make a good point at least for the subcontractors who require special expertise like your own people do, if not across the board.

None of you have said much about how this problem varies according to how busy the contractors are. I think in the Washington area right now everybody is pretty busy. There is a lot of bidding going on around here. It would seem to me if a good firm can be kept busy, they would try to stay out of trouble and try to be ethical and try to deal with the subcontractors on a high plane.

Mr. WHITE. In response to what you just mentioned, when there is full work, when there is a lot of work available, the prevalence of bid shopping would tend to decrease a little bit, but there usually is one or two major areas of the country where work is not at full steam. We haven't seen full-steam construction for several years now.

In cases like this, even if a contractor is approached by someone who is shopping for a bid, it is to his advantage to keep working even at a loss in the hopes there is some way he can make money later on. This is the way that really cheats the Government and himself, and that is why we end up having such a high rate of bankruptcy in the construction industry. It is a matter of hoping to find something in the future if he can keep going at this time.

Mr. PATTEN. Are there further questions?

Thank you.

Mr. LEGGETT. If we could hear now from Mr. Joe Baker, representing the International Association of Wall & Ceiling Contractors of the United States.

STATEMENT OF JOE M. BAKER, JR., MANAGING DIRECTOR,
INTERNATIONAL ASSOCIATION OF WALL & CEILING CONTRACTORS

Mr. BAKER. My name is Joe M. Baker, Jr. I am the managing director of the International Association of Wall & Ceiling Contractors, an association of subcontractors engaged in acoustical tile, dry wall, demountable partitions, lathing and plastering, and similar fields.

In addition, I am also the chairman of the advisory council of the American Subcontractors' Association which has nearly 4,000 members throughout the United States in every branch of subcontracting, and which has 13 national associations affiliated through its advisory council.

Our members are the contractors who ask for and who need the support of the congress in our quest for legislation to require general contractors to list their subcontractors on all Government work.

Let me make it clear at the outset that we are not, repeat, not, seeking additional Federal intervention into our lives nor our businesses. We do not want bid listing legislation to cover private work, only that work which is under the aegis of the Federal Government. We believe that if a contractor objects to bid listing in principle, then he should seek work in the non-Government field.

We have appeared before other committees on this legislation in the past, and we have told those committees that we admit to our own guilt in the area of bid shopping and bid peddling. In a statement before the House Judiciary Committee a number of years ago, I said:

* * * The subcontractors of this country cannot try to kid you or anyone else. We know and we admit that "it takes two to tango"—a general contractor cannot possibly shop a bid unless there is a subcontractor willing to go along.

Let me point out further that our position here is not one of simply opposing the associated general contractors in their own position. We respect and admire the AGC and its competent staff. We—the International Association of Wall & Ceiling Contractors—find ourselves usually about 95 percent in support of AGC goals; and we—the American Subcontractors Association—have a joint liaison committee with the AGC.

We also respect the code of ethics of the associated general contractors in this area where it states quite succinctly:

Ethical conduct with respect to subcontractors and those who supply materials requires that:

1. Proposals should not be invited from anyone who is known to be unqualified to perform the proposed work or to render the proper service.

2. The figures of one competitor shall not be made known to another before the award of the subcontract, nor should they be used by the contractor to secure a lower proposal from another bidder.

3. The contract should preferably be awarded to the lowest bidder if he is qualified to perform the contract, but if the award is made to another bidder, it should be in the amount of the latter's bid.

4. In no case should the low bidder be led to believe that a lower bid than his has been received * * *.

Gentlemen, the above quotations from the AGC code of ethics is what this matter is all about.

We support this code of ethics 100 percent, and all we ask is that the Government give full recognition to the portion of the code of ethics which I have just quoted and incorporate this portion into Government construction and bidding.

As you know, two Government building bodies have already accepted this part of the AGC code of ethics in principle; namely, the Department of the Interior and the General Services Administration.

We have been attempting for years to get legislation which would require all Government building agencies to adopt the AGC code of ethics with relation to bid shopping, but our efforts have annually been defeated by those persons who, although they may agree with the code of ethics, simply cannot understand why Uncle Sam should get involved.

Yet, the Federal Government is involved and has been involved for years.

As I have mentioned, both the Department of the Interior and the General Services Administration have bid listing programs of their own without congressional approval or congressional sanction or congressional direction.

And the programs of both agencies have been successful.

What we feel we need now, rather than actual legislation, is to have bid listing covered by other agencies in the construction business and we today ask this committee to use its authority and powers to have the U.S. Army Corps of Engineers adopt bid listing requirements into its own construction contracting regulations.

No harm can come from such action.

It has already been proven successful by Interior and GSA. If the Corps of Engineers will now adopt a similar program, we will be given a third opportunity to prove that the idea has merit. It is our gamble:

If the corps puts a similar program into effect and if it does not work, we are the ones who will have to eat crow.

But we are positive that it will work. And with three major building agencies in the Federal Government utilizing a bid listing program, we believe that the Congress will then see the value of such an idea and will give more affirmative thought to pro-bid-listing legislation for Government construction.

When GSA first promulgated its bid listing proposals, then Administrator Bernard Boutin was denounced by construction contractors all over the country. A national trade magazine in the construction industry editorially attacked the move as one which would cost the Government more than the program was worth.

GSA has time and time again pointed with pride to the success of its program. Bid listing can and will work. With the records of the Interior Department and GSA already established, we ask you to do your best to bring about a similar program at the Corps of Engineers so that we may (1) save the Government more money as the GSA and Interior have already done, and (2) so that we may have one more record of success to point to when, within the next year, we return to the Judiciary Committee of this House to ask for legislation in this field based on the success stories to date.

I don't think we are seeking Federal intervention into our lives or our businesses. I, sitting here with my friend, Mr. Leggett, consider myself a little to the right of Barry Goldwater and I don't think Mr. Leggett does.

Mr. LEGGETT. Let the record show that I confirm that.

Mr. BAKER. It is not a case of looking for further Federal intervention. This is Government money.

Mr. PATTEN. Would you say about 180°?

Mr. BAKER. This is Government money and I think the Government should control this money.

We also, as a subcontractors' group, sir, would welcome any type of bid listing which could be effected with our subs, and our association does have sub subs and we do not shy clear of that particular type of regulation in Government construction.

I want to quote for you the AGC code of ethics in this field.

The AGC says:

Ethical conduct with respect to subcontractors and those who supply materials requires that:

1. Proposals should not be invited from anyone who is known to be unqualified to perform the proposed work or to render the proper service.
2. The figures of one competitor shall not be made known to another before the award of the subcontract, nor should they be used by the contractor to secure a lower proposal from another bidder.
3. The contract should preferably be awarded to the lowest bidder if he is qualified to perform the contract, but if the award is made to another bidder, it should be in the amount of the latter's bid.
4. In no case should the low bidder be led to believe that a lower bid than his has been received * * *

We subscribe 100 percent to that code of ethics. All we ask is that the Government give full recognition to the portion I have just quoted and include this in Government construction and bidding.

The GSA and Interior have already accepted this part of the AGC Code of Ethics in principle and we have been attempting for years to get legislation which would require all Government building agencies to adopt this code of ethics in relation to bid shopping.

Our efforts have been annually defeated, as Mr. Leggett has stated, and yet the Government is involved in bid listing and has been involved for years and their involvement has been successful. I don't think we have to go back further into this.

Mr. Leggett has pointed that out in the letters from Interior and GSA.

What we would like to see now rather than actual legislation—and I do not subscribe to Mr. Leggett's views that legislation is not needed, I do believe it is needed. I don't think it will come about tomorrow, but I think we can get it through a series of steps. Rather than actual legislation have bid listings by other agencies in the construction business. We ask the committee to use its authority, power and influence to have at least one portion of Defense, let's say the Corps of Engineers, adopt bid listing requirements into its its own construction contracting regulations. We don't think any harm can come from such action. It is a proven program of these other two organizations, GSA and Interior, and if we can get a third opportunity to prove the merit of bid listing, it will be our gamble. It is not going to be a loss to the Government or to the corps. If they will put a similar program into effect and if that doesn't work, we will come back here to eat crow.

We'd like to see another agency, especially in Defense, take on a bid listing program so we can prove it does work and perhaps then we can come back to the Congress and say:

Gentlemen, it has worked now in three agencies, let us have it all across the board in Government construction.

I appreciate being heard, Mr. Chairman.

LEGAL ASPECTS OF INVOLVEMENT IN SUBCONTRACTING

Mr. JONAS. Perhaps this should be answered by Mr. Leggett. What do you say to Admiral Dillon's argument that if you list a dozen or 15 or 20 subcontractors in the bidding papers, you put the Defense Department in the position of being an arbiter of all the disputes and in effect by listing the subcontractors in the papers, the subcontractor more or less becomes a party to the contract and I think that is one of the things that the admiral—the principal points that he doesn't think the Defense Department ought to be involved in, that they ought to deal with one contractor.

Mr. LEGGETT. That question has been raised before. It is an excellent question. The question is, by the listing of subcontractors, does that put the Government in privity contract with the subcontractors and the answer to that is "No." It might seem like it does, but the answer is definitely and emphatically "No," as it has worked out with the agencies both legally and as a matter of fact in the implementation of the contracts.

This has given the Government in the agencies where it has worked, it has given them a look-see at the subcontractors who are going to be doing the work and if the Government has had a traditional problem such as the Hampshire Co., a highly unlikely prospect, but if on a number of other jobs they have had problems with that subcontractor when they get this bid in and they see that the prime contractor who might possibly be low has got a bad subcontractor, then

they can work to see that they only deal with people who have proper and legitimate and capable subcontractors on the job and that is part of the bid. So it really gives the Government better control over the job than they would otherwise have.

Mr. JONAS. Doesn't it put the Government pretty close to being in the position of accepting the subs and accepting responsibility for his work instead of imposing that responsibility on the prime?

Mr. LEGGETT. No, because they specifically say in the regulations of the agencies that these regulations in no way constitute any contract between the Government and the subcontracting agencies and they specifically do not exculpate the prime contractor from any responsibility whatsoever with respect to the overall responsibility for completion and management of the job.

Mr. PATTEN. Thank you.

Mr. LEGGETT. We have two witnesses who will take a very short period of time.

We have Mr. Ron Bratti here. Ron represents the terrazzo industry and also the Stone Institute contractors and he also represents one of the largest worldwide contractors individually, the Peter Bratti Co. that has done a great amount of the stone and terrazzo and granite work in Washington.

STATEMENT OF RON BRATTI, REPRESENTING TILE, MARBLE AND TERRAZZO INDUSTRY

Mr. BRATTI. The present Federal regulations go through a long dissertation on how and what constitutes competitive bidding among general contractors. That is, what establishes a norm and what establishes a good or bad general contractor and what the Government can accept as a GC bid, or what it doesn't accept as a GC bid.

PERCENTAGE OF WORK INVOLVING SUBCONTRACTING

One tends to forget that the number which is submitted to the Government is composed of 80 percent of the subcontractors performing work on that project, or the aggregate of which makes 80 percent of the dollar volume that is presented to the Government.

So you see, the subcontractor is extremely important.

The subcontractors ask that they be treated in a manner equal to the way the general contractor is treated by the man who carries the dollar; that is, the Federal Government. The Federal Government should treat the 80 percent of dollar volume as it treats the 20 percent dollar volume, the general contractor, broker, or the general contractor who performs part of the overall job.

Certainly not more than 30 percent in this day and age.

That is why the subcontractors ask for the subcontract bid listing. We feel if the Government can take 5, 6 or 7 general contract bids and say, "That man is low. He gets the job. He is qualified. He has a bid bond." We feel the subcontractor or the general contractor should pass on that same equity to the subcontractor.

They can say, "This bid is low. He can perform and has a bid bond." Or what other form you want to establish as making him morally capable of performing the job.

COST

I say this results in a decrease in cost to the Government and the taxpayer. I say that the listing of subcontracts allows the subcontractors to know, early, how to schedule their own construction program, how to regulate their own manpower application and how to buy and furnish materials on time, and place early orders with the sub-subs, or subcontractor suppliers.

This results in a decrease of cost simply because with costs escalating as fast as they are in our business it allows early placement of orders and consequently lower cost. In the present day and age where the subcontractor doesn't find out that he has a job until perhaps 2 months before he is to perform the work, he is in difficulty in performing the job and consequently often has to place a top dollar value with sub-subs or sub-suppliers.

I say it decreases the cost to the taxpayer simply because it increases competition. Many of the subcontractors at this day do not bid jobs that do not require sub listing on some established norm. This is also true of some general contractors who simply don't bid Government jobs because of the present system.

We are all caught up in a system. We are all caught up with a system that advocates or does not prevent subcontract bid shopping, the generals as well as us. There are many generals who don't like it and most subs don't like it.

I say the contrary of what the admiral was saying that it is an industry problem, I say no; I say it is everybody's problem. There is enough dollar volume spent by the U.S. Government to make it everybody's problem, simply because I and you pay the tax and I think when we talk of this kind of money it becomes very significant and consequently everybody's problem. Not just an industry, but everybody.

Furthermore, I think it is more of the Federal Government's problem at this time because contrary to what the admiral says, the man who carries the dollar in our business carries the big stick. In this case it is the Federal Government carrying the big stick. The regulations are clearly defined to what the Federal Government can do in relationship to the general contractor. He has got to pay his bills. He has to do certain things to that general contractor because the law defines the relationship of the owner to the general contractor very, very clearly. What he does in arbitration, how he goes about it, the contracting officer's decisions, the whole thing.

I say, therefore, the power comes from the Government which has the big stick with the money. It is passed on, which they must do, to the general contractor simply because the lines are very clearly defined on that relationship. Consequently we have this same power relationship between the general contractor and the subcontractors, but their lines are not clearly defined, yet they perform 80 percent of the job.

Mr. PATTEN. Thank you.

Mr. LEGGETT. Mr. Schmitz is with the District of Columbia Subcontractors Association.

STATEMENT OF PIERRE SCHMITZ, DISTRICT OF COLUMBIA
SUBCONTRACTORS' ASSOCIATION

Mr. SCHMITZ. Gentlemen, my name is Pierre Schmitz. I am president of the MAX Contracting, Inc., in Falls Church, which is an extremely small subcontracting outfit. We do about \$500,000 or \$600,000 a year as opposed to Mr. Bratti.

I testify in behalf of the District of Columbia Metropolitan Subcontractors' Association with a membership of approximately 230 small, medium, and larger specialty subcontractors.

MAX Contracting Co., my company, is an acoustical contractor. The subcontractor, gentlemen, puts 80 percent of the labor and materials and dollars into the building so, therefore, we have a vital interest in supporting this piece of legislation. I am going to be brief and I am going to offer two points only. One is a meaningful bid on a project with all subcontractors listed will be more economical. There can be no question about that. The true cost will be reflected and the excess profits resulting from bid shopping or bid peddling will be eliminated. Bid shopping results in two sets of profits, gentlemen. It results in the profit that the general contractor puts in at the beginning and the profit the general contractor buys out after the bid is let. That leads to the second thing:

QUALITY

Quality labor and materials will be used and a quality building or project will result because there will no longer be an incentive to use inferior labor and materials because the subcontractor has not been forced to cheapen the product because of bid shopping and lower margins.

EXTENDING BID LISTING TO ALL SUBCONTRACTOR

Now, I would also like to see the bid listing extended to all sections or subcontractors on the job without regard to the size. My specialty is acoustical ceiling and I account for maybe 1.5 or 2 percent. The reason for this is that only certain subcontractors like the larger ones, the mechanical, electrical, and those, are listed. That intensifies the bid shopping for the small ones further down the line and I would like see it go even to the subsubcontractors.

Gentlemen, as far as the prevalence of bid shopping in the industry is concerned, I find it widespread. I think it is very, very prevalent. In numbers of dollars; not necessarily in the number of contractors, but I'd say 80 or 90 percent of the dollar volume is bid shopping.

That doesn't represent 80 or 90 percent of the general contractors; it represents maybe 10 or 20 percent of the general contractors.

Gentlemen, that is all I have and I thank you very much.

Mr. PATTEN. All right; thank you. We are pleased to have had your witnesses before us this morning, Mr. Leggett. It is a very important subject and I am sure the chairman of the committee will go over the testimony very carefully.

Mr. LEGGETT. Thank you very much, gentlemen, for remaining here and I appreciate your attention.

STATEMENT OF ASSOCIATED GENERAL CONTRACTORS OF AMERICA

[The following statement was submitted for the record:]

STATEMENT OF THE ASSOCIATED GENERAL CONTRACTORS

Mr. Chairman, on behalf of the 9,400 construction firms throughout the United States that comprise the membership of the Associated General Contractors of America, we appreciate the opportunity to submit written testimony to the Military Construction Subcommittee of the House Committee on Appropriations regarding the subject of subcontractor bid listing.

We need not remind you that the construction industry is extremely complex. Any requirement which attempts to regulate the relationship of buyer or seller or prime contractor-subcontractor, or subcontractor-vendor is destined to create more problems than it could ever solve.

Any sharp departure from the traditional way of doing business, especially in an important area such as relationships with subcontractors, can have a drastic impact and a "ripple" effect felt throughout the whole industry. We could discuss this effect at great lengths, however, we will confine our comments to the salient features of the question under consideration.

One who is unfamiliar with the procedures and operation of the construction industry may be of the opinion that the listing of subcontractors in the general contractor's prime bid is a simple matter. We assure you that it is not. The normal practice of our industry is for subcontractors to submit their bids only minutes before the prime bid is to be submitted to the owner. Thus, under any mandatory bid listing requirement, it would be necessary in these last few frantic minutes to list virtually all of the subcontractors involved in a project, including their names, addresses, and a description of the portion of work which they will perform.

This listing would inevitably result in increased costs. First, it is folly to imagine that any additional paperwork today does not add to the cost of doing business. With the high salaries of competent personnel and other costly overhead items, any additional burden of work will add to the cost of construction. The more paperwork, the higher the cost.

Second, as previously suggested, the complicated features of the information required by mandatory bid listing and the short time in which it must be obtained, would invariably result in more mistakes in bidding which will initiate protests from the other bidders, a review and investigation of the facts, delays, and possibly the rejection of all bids preparatory to calling for new bids. All of these factors cost time and money.

But, by far the major factor having a bearing upon cost, is the restrictive effect that such mandatory bid listing places upon legitimate negotiations between general contractors and subcontractors. In order to try to eliminate bid shopping and bid peddling, which is an exception rather than the rule, such regulation sacrifices legitimate negotiations.

To give you an example of what we mean of how such regulation restricts normal business negotiations and increases the cost of construction, let us say that a contractor receives a rather low bid from a subcontractor a few hours prior to the time he must submit his bid. Although he may have heard of the subcontractor, he may actually know very little about his capability, financial standing, work load, reliability, supervisory staff, or his ability to comply with regulations relating to Equal Employment Opportunity and the Occupational Safety and Health Act. Under this circumstance, the contractor is not going to name that low-bid subcontractor whose capabilities are unknown to him.

Under mandatory bid listing, the problem of substituting later is a one-way-street type of negotiation. The subcontractor whom the contractor names can back out on his bid prior to signing any subcontract without any penalties, while the contractor must go through a laborious procedure of trying to prove this subcontractor is unreliable, or has assumed too much work or is, otherwise, incapable of doing a good job. To avoid all of this, if the contractor must name a subcontractor, he will name another subcontractor with whom he is familiar at a higher cost to the contractor and the customer.

This, of course, brings up another question regarding the small, unknown, but yet completely reliable subcontractor who, under the circumstances just mentioned above, will have difficulties in obtaining Government work in competition with the larger, more well known, established subcontractors gaining a greater share because it is safe to name them.

It is not uncommon either for the general contractors to receive only one bid in a given category. Under the obligations of mandatory bid listing, the contractor would be required to name his subcontractor, whether the quotation was unreasonably high or not. Contrary to any claim by subcontractors, responsible general contractors can evaluate the cost of every phase of a construction project. This is one of the reasons he is in business—to check cost, to pare down out-of-line or inflated figures of subcontractors or suppliers prior to bid time—thereby passing these savings on to the owner. This is precisely what a chief estimator should be concerned with in the last few minutes in the preparation of the bid, rather than being encumbered with securing names, addresses and description of work for all subcontractors as required by mandatory bid listing.

Another factor relating to cost is that the more requirements and controls that are introduced, the less attractive bidding on Government work will become. Although the amount of construction throughout the Nation varies from month to month, when there is ample work available, qualified and competent general contractors need not depend on work which is loaded with undue restrictions and red tape. Such requirements as mandatory bid listing can restrict the scope of bidding, especially among competent and qualified contractors.

As to quality in construction, the mere listing of names of subcontractors at the time of bidding does not automatically insure improved quality. The sure way is to prepare accurate plans and specifications, and a qualified Government inspection system to insure that the work strictly conforms to the design.

Now, let us turn to other features which complicate mandatory bid listing.

First. The bids of general contractors are opened publicly at a stipulated time and place. The bids of a subcontractor are privately opened, and are submitted at any time or by any means the subcontractor wishes. He is barred by no time limit, his bid can be late without penalty, his bid may be transmitted by telephone and not even written, and he may, if he wishes, bid different prices to different contractors.

Second. The general contractor accompanies his bid with bid security. The subcontractor is bound by nothing more than good faith.

Third. The general contractor in his bid is required to cover the entire contract while the bid of a subcontractor covers only that which he wishes it to cover. He can make any inclusions or exclusions he wishes, often without these inclusions or exclusions being noted in his bid. It is the burden of the general contractor to make a decision, when he has three or four bids which differ in the scope of work, as to which bid is low. The subcontractor bids may be nonresponsive, unrepresentative, or irrelevant.

Fourth. The award to the general contractor is subject to his furnishing a performance and payment bond. The general contractor cannot always determine at the time of the bid whether or not a subcontractor can furnish such a bond or, indeed, whether he is financially capable of performing the work covered by this bid.

Fifth. Due to the increasing number of alternates on public projects, it is impossible for the general contractor to determine which alternate the owner will accept, thus complicating the general contractors determination of which subcontractor actually submitted the best bid. Alternates can, and do, present a problem which is extremely complicated if listing of subcontractors is required. Deductive or additive alternates are usually required by the Government to allow later selections in order to fit the cost within the budget. For instance, an alternate may call for the omission of air conditioning in certain sections of the building, or possibly leaving portions of the building unfinished, or even omitting whole floors or wings of a building. When bidding, or course, the general contractor has no idea which combination of alternates the owner will eventually select. It is not too uncommon for the general contractor to be required to bid on a base bid and 12 or more alternates. Under these conditions, any given selection of alternates could introduce a new name for some of the low subcontractors listed with the base bid. Compound this complicated feature with a requirement to list 30 some subcontractors from plumbing to venetian blinds, and one can see the impossibility of following the requirements of mandatory bid listing.

Whether such a procedure requiring the listing of subcontractors will eliminate bid shopping and bid peddling is problematical. The proponents of mandatory bid listing singled out in their testimony the AGC code of ethics as condemning bid shopping and bid peddling. This is true. Since the development of our code of ethics in 1918, we have promoted "those principles of honor and fair dealing each party would desire if he were the other party." This code is not merely a placard to hang on the wall. AGC, in cooperation with others of our industry, has introduced procedures to implement these ideals.

Following the defeat of legislation requiring mandatory bid listing, in 1957, the mechanical specialty contractors accepted an invitation by AGC to discuss ways and means of solving problems of mutual concern through joint cooperative efforts. It was in this year that the AGC-Council of Mechanical Specialty Contracting Industries Joint Cooperative Committee was formed. The Council of Mechanical Specialty Contracting Industries has representation from four major mechanical and electrical associations: National Electrical Contractors Association, the Mechanical Contractors Association of America, the Sheet Metal, Air Conditioning Contractors National Association, and the National Association of Plumbing-Heating-Cooling Contractors. The record and progress of this joint effort has been extremely productive and certainly effective.

One of the first actions of this joint activity was to develop a code of ethics for the construction industry. In reviewing the current situation within our industry at that time, and realizing that basically the problems of bid shopping and bid peddling deal with morals in the industry, it was felt imperative that ground rules should be developed, citing what is generally acceptable practice and fair procedure within the industry. This code, similar to the AGC code of ethical conduct, has been distributed throughout the industry.

Following this, the joint committee turned to problems arising out of contractual relationships between general contractors and subcontractors. A checklist for subcontract agreements was developed and distributed to the industry. Basically, this checklist is to be used by the general contractor and subcontractor at the time of signing the subcontract agreement, pointing out various subjects and areas that could cause controversy later in the job so that these matters of responsibility can be determined prior to the start of the project, instead of arising later. Following this, a bilaterally drawn standard form of subcontract agreement was developed over a 5-year period, approved by all of the representative organizations, and printed and distributed to the industry. At last count, over 200,000 copies of this subcontract form had been distributed within the industry. It provides very clearly the recourse that subcontractors can take if their portions of money are unfairly retained by a general contractor.

The industry also developed recommended plans for the handling and receiving of subbids for both private and public work. In the study of this program, the joint committee felt it practical and advisable that such a procedure or program should be of a voluntary nature and should not be associated with any regulatory sources standing between the general contractor and the subcontractor.

This voluntary procedure calls for the subcontractor to submit, at least 48 hours in advance of prime bid submission time, an abstract or bid proposal outlining specifically the portions of work which the subcontractor would perform and more importantly, the portions of the work which he has excluded from his particular bid. It is optional whether his price is included or excluded from this submission. However, prior to prime bid submission time, the subcontractor would telephone, telegraph, or otherwise transmit his bid price to be included with the abstract. The objective, of course, is to allow the general contractor to analyze and evaluate each subbid in an orderly and timely manner.

To supplement this program, the national joint cooperative committee has more recently developed a standard form of abstract, or subbid proposal, which is now being distributed for use around the country. This abstract or subbid proposal form allows the subcontractor to insert the pertinent information necessary for the general contractor to properly evaluate his bid.

While we are discussing the matter of bid proposals, we think the committee would be interested in knowing that due to the complexity of our industry and the difficulty on some occasions to separate the functions and responsibilities of the various subcontractors, bid proposals are not always submitted in a clean-cut manner. For instance, someone must determine whether the ventilating fans, being installed by possibly a sheet metal contractor due to the duct work involved, will include the motor or not. The motor and its connection may be a responsibility the electrical contractor feels is his. The mechanical contractor may or may not include pipe covering, and he may or may not include painting of the duct work in the equipment room. The plumbing contractor may say he will include all of the plumbing as provided in the plumbing specifications, or more likely, he may say he will include 82 bathtubs, 65 toilets, 73 washbasins, etc. This naturally requires the general contractor to determine if there are 82 bathtubs, 65 toilets, 73 washbasins, etc. This requires patience, of course, but, above all, time to perform this evaluation. This points up the value of early submission of abstracts—either with or without the price at the time of submission so long as the price is finally submitted prior to prime bid submission time.

In summary, our main objections to mandatory bid listing are that—

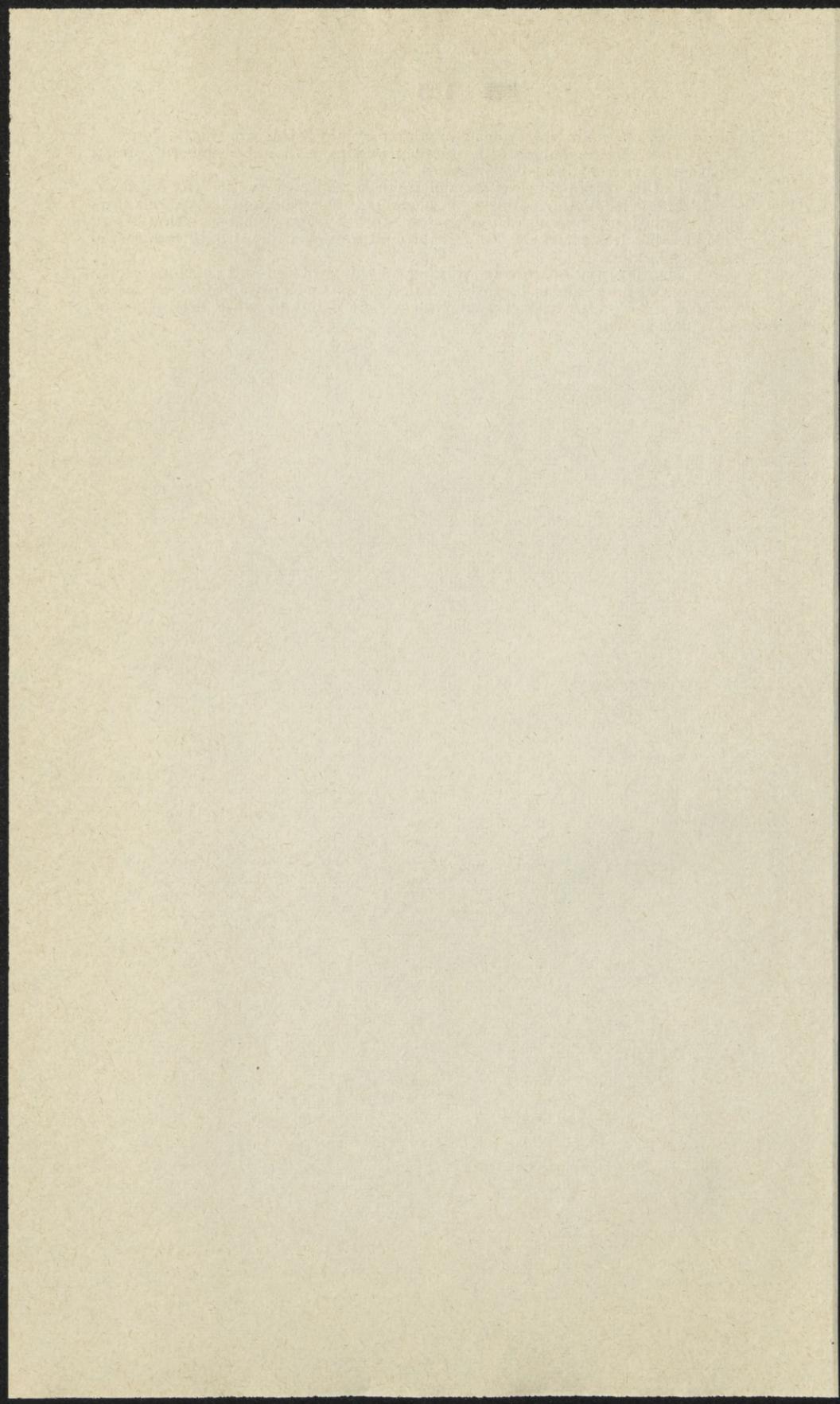
(1) The requirements are impractical and near to impossible to comply with under current industry practices.

(2) Listing of subcontractors will increase the cost to the Government.

(3) The construction industry is becoming overregulated by various laws and regulations, making Government work during a construction boom considerably less attractive to general contractors, which would reduce the scope of bidders.

(4) The industry is actively working on this problem and developing procedures and programs to improve relationships as well as bidding procedures.

For these reasons, we respectfully request that mandatory bid listing not be favorably considered.



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The first part of the book is devoted to a general survey of the history of the world, from the beginning of time to the present day. The author discusses the various civilizations that have flourished throughout history, and the factors that have influenced their development. He also examines the role of religion, philosophy, and science in shaping human thought and action.

The second part of the book is a detailed study of the history of the United States, from its founding to the present. The author traces the path of the young nation, from its struggle for independence to its emergence as a world power. He analyzes the political, economic, and social changes that have shaped the American character, and the challenges that lie ahead.

The third part of the book is a study of the future of the world. The author considers the various theories and predictions that have been advanced, and offers his own views on the course of human events. He discusses the possibilities of a new world order, and the role of the United States in the coming century.

