

Y4
Ag 8/1
F 76/51

1010

9314
Ag 8/1
F 76/51

FOREST SERVICE FIRE PROTECTION CONTRACTS

GOVERNMENT

Storage

DOCUMENTS

26 1974

THE LIBRARY
KANSAS STATE UNIVERSITY

HEARING

BEFORE THE

SUBCOMMITTEE ON FORESTS

OF THE

COMMITTEE ON AGRICULTURE

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

ON

H.R. 12071

FEBRUARY 13, 1974

Serial No. 93-SS

Printed for the use of the Committee on Agriculture



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

32-238

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION



1/8/81
12/10/77
DOCUMENT
JUN 2 1981
FOREST SERVICE FIRE PROTECTION CONTRACTS

COMMITTEE ON AGRICULTURE

W. R. POAGE, Texas, *Chairman*

FRANK A. STUBBLEFIELD, Kentucky

Vice Chairman

THOMAS S. FOLEY, Washington

E DE LA GARZA, Texas

JOSEPH P. VIGORITO, Pennsylvania

WALTER B. JONES, North Carolina

B. F. SISK, California

BILL ALEXANDER, Arkansas

JOHN R. RARICK, Louisiana

ED JONES, Tennessee

JOHN MELCHER, Montana

DAWSON MATHIS, Georgia

BOB BERGLAND, Minnesota

FRANK E. DENHOLM, South Dakota

SPARK M. MATSUNAGA, Hawaii

GEORGE E. BROWN, Jr., California

DAVID R. BOWEN, Mississippi

CHARLES ROSE, North Carolina

JERRY LITTON, Missouri

BILL GUNTER, Florida

WILLIAM C. WAMPLER, Virginia

Ranking Minority Member

GEORGE A. GOODLING, Pennsylvania

ROBERT B. MATHIAS, California

WILEY MAYNE, Iowa

JOHN M. ZWACH, Minnesota

ROBERT D. PRICE, Texas

KEITH G. SEBELIUS, Kansas

WILMER D. MIZELL, North Carolina

PAUL FINDLEY, Illinois

LAMAR BAKER, Tennessee

CHARLES THONE, Nebraska

STEVEN D. SYMMS, Idaho

EDWARD YOUNG, South Carolina

JAMES P. JOHNSON, Colorado

EDWARD R. MADIGAN, Illinois

FOWLER C. WEST, *Staff Director*

JOHN F. O'NEAL, *General Counsel*

HYDE H. MURRAY, *Associate Counsel*

JOHN RAINBOLT, *Associate Counsel*

L. T. EASLEY, *Press Assistant*

SUBCOMMITTEE ON FORESTS

JOHN R. RARICK, Louisiana, *Chairman*

THOMAS S. FOLEY, Washington

JOSEPH P. VIGORITO, Pennsylvania

JOHN MELCHER, Montana

BILL GUNTER, Florida

GEORGE A. GOODLING, Pennsylvania

LAMAR BAKER, Tennessee

CHARLES THONE, Nebraska

STEVEN D. SYMMS, Idaho

CONTENTS

	Page
H.R. 12071, a bill to amend the Department of Agriculture Organic Act of 1944 to authorize the Secretary of Agriculture to enter into negotiated contracts for the protection from fires of lands under the jurisdiction of the Department of Agriculture, and for other purposes-----	1
U.S. Department of Agriculture report on H.R. 12071-----	2
Statement of:	
Deinema, J. W., Deputy Chief for Administration, Forest Service, U.S. Department of Agriculture-----	3
Hastings, John, deputy State forester, California Division of Forestry, Sacramento, Calif-----	20
Mathias, Hon. Robert B., a Representative in Congress from the State of California-----	33
Moore, Henry, representing National Air Tankers Association, Tulare, Calif-----	27
Additional material submitted to the subcommittee:	
Comptroller General's Views on U.S. Department of Agriculture Report on H.R. 7367 to House Committee on Agriculture-----	14
Study of Forest Service Procedure for Contracting Air Tanker Services and a New Policy for Such Contracting-----	16

FOREST SERVICE FIRE PROTECTION CONTRACTS

WEDNESDAY, FEBRUARY 13, 1974

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FORESTS
OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:30 p.m. in room 1302, Longworth House Office Building, Hon. Thomas S. Foley, presiding.

Present: Representatives Foley, Rarick, and Goodling and Representative Sisk (member of the full committee).

Also present: John O'Neal, general counsel; Hyde H. Murray, associate counsel; Steve Pringle, staff consultant, and Anita Brown, staff assistant.

Mr. FOLEY. The Subcommittee on Forests will come to order.

We meet this afternoon for consideration of the bill H.R. 12071 to amend the Department of Agriculture Organic Act of 1944 which would authorize the Secretary of Agriculture to enter into negotiated contracts for the management and protection of Forest Service lands under the jurisdiction of the Department of Agriculture from fires and for other purposes.

The bill and the departmental report will be placed in the record.

[The bill introduced by Mr. Foley, Mr. Teague of California, Mr. Ullman, Mr. Mathias of California, Mr. Don H. Clausen, Mr. Rousset, Mr. Johnson of California, Mr. Hansen of Idaho, Mr. Dellenback, Mr. Goldwater, Mr. McCormack, Mr. Shoup, Mr. Melcher, Mr. Talcott, Mr. Roncalio of Wyoming, and Mr. Wyatt, and the departmental report follow:]

[H.R. 12071, 93d Cong. first sess.]

A BILL to amend the Department of Agriculture Organic Act of 1944 to authorize the Secretary of Agriculture to enter into negotiated contracts for the protection from fires of lands under the jurisdiction of the Department of Agriculture, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 205 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 579a) is hereby amended to read as follows:

"SEC. 205. The Secretary of Agriculture, acting through the Forest Service, may by negotiated contract or otherwise provide for procurement and operation of air tanker facilities and services for the protection and management of the national forests and other lands administered by it, including the furnishing, at the airbase of facilities, equipment, materials and the preparation, mixing;

and loading into aircraft, with authority to renew any contract for such purpose annually, not more than four times, without additional requests for proposals. Notwithstanding any other provision of law, such contracts shall be entered into solely on the basis of capability to perform the required services, as determined by a technical proposal based upon experience, pilot qualifications, aircraft, and aircraft maintenance facilities, at rates to be negotiated based on guidelines developed by a continuing cost gather and study, but the Secretary shall impose such terms and conditions as are necessary to protect the United States."

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., February 13, 1974.

Hon. W. R. POAGE,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR MR. CHAIRMAN: As you requested, here is our report on H.R. 12071, a bill "To amend the Department of Agriculture Organic Act of 1944 to authorize the Secretary of Agriculture to enter into negotiated contracts for the protection from fires of lands under the jurisdiction of the Department of Agriculture, and for other purposes."

The Department of Agriculture recommends that H.R. 12071 not be enacted.

H.R. 12071 would amend section 205 of the Department of Agriculture Organic Act of 1944, as amended (16 U.S.C. 579a), to authorize the Secretary of Agriculture to negotiate contracts or otherwise provide for procurement and operation of air tanker facilities and services including equipment, materials, and the preparation, mixing, and the loading of aircraft for the protection and management of the National Forest and other lands administered by it, with up to four annual renewals without additional requests for proposals. Such contracts would be entered into solely on the basis of capability to perform the required services, as determined by experience, pilot qualifications, aircraft, and aircraft maintenance facilities, at rates to be negotiated based on guidelines developed by a continuing cost gather and study. The Secretary would impose such terms and conditions as are necessary to protect the United States.

Over fifteen years of experience by the Forest Service has shown that successful air tanker attack of forest fires requires experienced operators who can accurately and safely drop retardants where they will be effective. Otherwise, a small fire which might have been inexpensively controlled by a timely and effective air tanker drop can become an expensive, damaging, large fire.

For many years contracts for air tanker services for the Forest Service were processed annually by competitive bid. Intense competition led to unprofitable low bids and frequent failures. This resulted in new, inexperienced and generally ineffective operators at many bases each year. The Act of April 24, 1950 (16 U.S.C. 579a) provides for no more than two renewals without additional advertising of such annual contracts. This provision helped provide some stability in air tanker services; however, an in-depth study of air tanker operations in 1964 concluded that a safe, effective, air tanker service by a stabilized industry could not be achieved under the existing competitive bidding procedures.

Acting in accord with the Comptroller General Decision XXXXXXXX, dater December 15, 1965, air tanker contracts were negotiated by the Forest Service with the best qualified operators for each air attack base. During the ensuing five years this system helped stabilize the industry and led to the most efficient and dependable air tanker fleet since inception of the program. On August 19, 1970, the Comptroller General amplified Decision XXXXXXXX to require that price be included in all proposal submissions for the award of air tanker contracts.

To help assure continued stability and provide for elements of competition, two rates are presently utilized to determine the total cost of air tanker service. One rate is a guaranteed availability rate based on in-depth cost analysis. This rate is applicable to the number of days equipment is required in a state of readiness and is intended to help assure continued stability of the industry. The second rate is a flying rate which is applicable to the actual hours of flight time. This rate is established by competitive bidding.

Before contracts are awarded, surveys are made to assure that the apparent low bidder meets all contract requirements. During these surveys, pilot qualifications, experience, aircraft, and maintenance facilities are checked.

We believe that we can contract for an efficient, dependable and safe air tanker fleet under the guidelines containing dual rates. Therefore this Department recommends that H.R. 12071 not be enacted.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD A. ASHWORTH,
Deputy Under Secretary.

Mr. FOLEY. The first witness today is J. W. Deinema, Deputy Chief for Administration, Forest Service, U.S. Department of Agriculture.

STATEMENT OF J. W. DEINEMA, DEPUTY CHIEF FOR ADMINISTRATION, FOREST SERVICE, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY HAYDEN OWENS, DIRECTOR OF THE DIVISION OF ADMINISTRATIVE SERVICES, FOREST SERVICE, AND MONTE K. PIERCE, NATIONAL AIR OFFICER, FOREST SERVICE

Mr. DEINEMA. Mr. Chairman, my name is Jack Deinema and I am the Deputy Chief for Administration of the Forest Service of the U.S. Department of Agriculture.

Here with me today is Hayden Owens, Director of the Division of Administrative Services of the Forest Service of the U.S. Department of Agriculture. In the audience I have Monte Pierce who is our Air Operations Officer and he is behind me—

Mr. FOLEY. Mr. Pierce, we would appreciate it if you would bring a chair up and sit with Mr. Deinema and Mr. Owens.

Mr. DEINEMA. We were hoping we could give you all the service and all the answers to questions you may have. I do have a short statement, Mr. Chairman, I would like to read to tell you how much we do appreciate this opportunity to present the views of the Department of Agriculture on H.R. 12071.

This bill would amend section 205 of the Department of Agriculture Act of 1944, as amended, to authorize the Secretary of Agriculture to negotiate contracts for procurement and operation of air tanker facilities and services for the protection and management of the national forests and other lands administered by it. The bill provides authority to renew any contract for such purpose annually, not more than four times, without additional requests for proposals. Such contracts would be entered into solely on the basis of capability to perform the required services, as determined by experience, pilot qualifications, aircraft, and aircraft maintenance facilities, at rates to be negotiated based on guidelines developed through cost studies. The Secretary would impose such terms and conditions as necessary to protect the United States.

We do not believe this new authority is necessary to provide effective air tanker services and we recommend H.R. 12071 not be enacted. I would like to briefly describe the history and present system for awarding contracts for air tanker services.

Over 15 years of experience the Forest Service has shown that successful air tanker attack of forest fires requires experienced operators who can accurately and safely drop retardants where they will be effective. Otherwise, a small fire which might have been inexpen-

sively controlled by a timely and effective air tanker drop can become an expensive, damaging, large fire.

Prior to 1950, contracts for aerial services for the Forest Service were processed annually by competitive bid. Intense competition led to unprofitable low bids and frequent failures. This resulted in new, inexperienced, and generally ineffective operators at many bases each year. The act of April 24, 1950, allowed us to make up to two renewals without additional advertising of such annual contracts. This provision helped provide some stability in air tanker services; however, an indepth study of air tanker operations in 1964 concluded that a safe, effective, air tanker service by a stabilized industry could not be achieved under the existing competitive bidding procedures.

Acting in accord with the Comptroller General's decision of December 15, 1965, we were allowed to negotiate contracts with the best qualified operators for each air attack base. During the ensuing 5 years, this system helped stabilize the industry and led to the most efficient and dependable air tanker fleet since inception of the program. On August 19, 1970, the Comptroller General amplified his decision to require that price be included in all proposal submissions for the award of air tanker contracts.

To help assure continued stability and provide for elements of competition, two rates are presently utilized to determine the total cost of air tanker service. One rate is a guaranteed daily availability rate based on indepth cost analysis and is not subject to competitive bidding. This rate is applicable to the number of days equipment is required in a state of readiness and intended to help assure continued stability of the industry. The second rate is a flying rate which is applicable to the actual hours of flight time. This rate is established by competitive bidding.

In addition, before contracts are awarded, surveys are made to assure that the apparent low bidder meets all contract requirements. During these surveys, pilot qualifications, experience aircraft, and maintenance facilities are evaluated.

We believe that we can contract for an efficient, dependable, and safe air tanker fleet under present guidelines utilizing a dual rate system. We therefore recommend that H.R. 12071 not be enacted.

This concludes my prepared statement, Mr. Chairman. Hayden and I or Monte will be happy to respond to any questions you may have.

Mr. FOLEY. Thank you very much.

Mr. Goodling?

Mr. GOODLING. No questions, Mr. Chairman. I anticipated the roll-call so I stayed for it.

Mr. FOLEY. Mr. Sisk?

Mr. SISK. Well, Mr. Chairman, let me say that I am sitting in here ad hoc since I am not a member of the subcommittee. I would simply like to say to the chairman that I am very much interested in this subject because of the fact that my area is substantially dependent on these air tankers and the job they do.

I am concerned about this subject. I basically am in support of what I consider to be negotiated contracts.

Now, I would like a little more clarification here, if I could, as to what I understand to be the situation. Mr. Deinema, you indicate that

in spite of the 1970 ruling that you are letting these bids noncompetitive so far as availability, that is so far as the standby rate. Is that right?

In other words, how do you work this out?

You say that, for flying time, which I suppose is the per hour of actual flying time, you say that is a competitive bid.

I would like a little more clarification as to what the practices of the Forest Service are now and to what extent it might be changed.

Mr. DEINEMA. I believe Mr. Owens could probably clarify that much better, with your permission, sir?

Mr. SISK. Go right ahead.

Mr. OWENS. The guaranteed daily availability rate establishes the fixed cost that is isolated through the cost evaluation process that the Forest Service and the air operators go through each year. Now, this provides for the fixed operating costs, the insurance, a profit ratio, et cetera, as well as the depreciation of their equipment.

Now, the competitive part of the present procurement is their cost of flying. That is the only part of that we are asking them to compete on.

We have established what we feel is a fair and equitable daily availability rate to stabilize the industry.

Mr. SISK. Well, again, in trying to get to the practical application of that portion on which you require competitive bidding, now you cited the experience prior to 1950 when it was strictly competitive bidding and the failures that were occurring with that type of operation, which was very bad. And certainly those of us who have seen it first hand know that we don't want to go back to something like that. Yet I am concerned, and as I said, of why a clear-cut situation which would authorize you to negotiate contracts, I am concerned why the Department really is opposing it. In other words, I just don't quite understand why you oppose it in light of the fact that apparently it did a good job at the time you were conducting negotiated contracts.

Mr. DEINEMA. I guess primarily because we feel the situation has now changed, that it is now greatly stabilized, and it has all good operators left in the pool from which we get our bids.

Mr. SISK. How many operators are we talking about?

Mr. DEINEMA. I believe there are 22 established operators.

Mr. SISK. That is approximately the figure I had.

Mr. DEINEMA. You can correct me, Monte.

Mr. PIERCE. Yes, that is right.

Mr. DEINEMA. But it used to be approximately 75. It has boiled down since those days to the really stabilized and dependable contractors.

We feel the present system is a more equitable system at this time.

Mr. SISK. Well, of course, my fear is that to the extent you get back to the competitive situation, that that situation could change. This is a concern I have. As I said, this is just a concern.

That is all I have, Mr. Chairman.

Mr. FOLEY. To follow up on Mr. Sisk's expressed concern, I must say I have the same feeling. I think, as Mr. Sisk did that much of your statement addresses itself to problems of the past when there was a

strict competitive bidding situation, for air tanker services and not to problems which may arise as a result of the Comptroller General's ruling.

Many of us on the subcommittee do represent areas that have national forests. Before being redistricted in the last Congress, I had most of the Wenatchee National Forest and Okanogan National Forest and in 1970, particularly, a series of damaging fires occurred, including one that got completely out of hand, causing the loss of a little less than 100,000 acres. Forest fires are one of the tragic situations we have all seen from time to time and I personally would rather see the Forest Service armed with the greatest flexibility so it can provide the best fire protection and firefighting services possible.

You are saying to the subcommittee that you have adequate authority now to obtain the services you need, but I think Mr. Sisk and I are concerned that you have even broader authority, if necessary, to negotiate contracts. The legislation under consideration does not require the Department to negotiate contracts.

Mr. DEINEMA. I am not an attorney, and I read the bill three times. I find it very difficult to really see if we would be limited or not. There is one sentence on the second page that looks like it would require us not to consider price in our bids. I think we have all the authority that we need right at the present time. We do not feel the need for this particular piece of legislation, and that is primarily why we are recommending that it not be enacted.

Mr. FOLEY. Mr. Goodling?

Mr. GOODLING. No questions.

Mr. SISK. Well, Mr. Chairman, may I?

Mr. FOLEY. Mr. Sisk.

Mr. SISK. As I understand it, the GAO—well, as I understand it the law under which you are now operating, it requires and there are certain pressures for you to accept the low bidder, is that not correct?

Mr. DEINEMA. That is correct, to have the price as a part of the bid procedure, but this bill does not provide for price insofar as we can read it.

Mr. SISK. Well, I don't claim to be an expert in this particular bill, but it seems to me that the intent is pretty clear in reading the bill in that what it does it permit you, as the chairman has indicated, to negotiate if in fact that does lead you to the best service and to the best quality of service, and the companies within the particular area in which that forest is located being able to do the best job. Yet to the extent that you are required—and I was trying to refer back to your statement in connection with this, back to the portion which is competitive—it does seem to me that it inhibits the flexibility you need to do the kind of a job which was successful after 1950 up until the GAO's ruling.

Now, I guess somehow I don't follow your reasons for opposing the bill. Do you feel there is something in this bill that ties your hands in any way?

Mr. DEINEMA. Well, what it does not say, sir, and again I am not an expert, and if I could—

Mr. SISK. Well, I am not being critical of you, Mr. Deinema, and I hope you understand that.

Mr. DEINEMA. I realize that.

Mr. SISK. Frankly, I am hearing some other problems and other justifications. Of course, I have been in strong support of this legislation. I think we have some other witnesses who I assume will be testifying in support of this bill, and I am going to be interested in hearing what they say.

But anyway, I just don't quite understand why this wouldn't give you more flexibility in doing the job that I think we are all interested in, and that is protection of our forests from fires.

Mr. DEINEMA. According to my understanding, the Comptroller General told me that price should be one portion of the bid procedures, and that is pretty much the law.

Now, in this bill it says, "Notwithstanding any other provision of law, such contracts shall be entered into solely on the basis of capability to perform the required services, as determined by a technical proposal based upon experience, pilot qualifications, aircraft, and aircraft maintenance facilities, at rates to be negotiated, based on guidelines," and so on. There is nothing that I can see on the word "price" in what is mentioned. That is why we felt that maybe the omission of price is possibly the one thing that we could not live with in this particular piece of legislation.

Mr. SISK. Well, I still find myself lost there. Certainly it is your responsibility as it is of any agency in connection with contract services to get the best deal for the country and the people, for the taxpayers, as it is possible to get, and I am sure you have carried that out. In fact, as one who is in support of the Forest Service, I think you folks do a great job. As I say, I am not being critical. Maybe I am not doing a good job asking the right questions.

But I assume you are going to continue to do that under the language herein contained, and nothing herein would seem to prohibit you from still keeping in mind all aspects including costs and so on, because that has to be a part of it, even under the terms of this legislation.

Mr. DEINEMA. I think our objectives are the same. We both want the same type of service, but how we get it is probably the area of disagreement.

Mr. SISK. I think we do too. I would appreciate Mr. Owens answering.

Mr. DEINEMA. Maybe Mr. Owens would.

Mr. OWENS. Well, under the concept we are now operating, we no longer have resident base operators. Under the original proposal, we had resident base operators.

Mr. SISK. Could you speak louder?

Mr. OWENS. The concept of our fire management program now is total mobilization and use of the aircraft where needed. The resident base operator concept under the original concept is no longer necessary or needed in our particular program.

At the same time we had resident base operators, we said they should have the necessary stability and we would negotiate solely with that one party. This was the approach we used with the Comptroller General.

Now, the sole source is no longer an item of procurement. We are procuring a total national air tanker need. Under our present authority, the Comptroller says price is a factor in our evaluation.

The industry has stabilized to a point that we have 22 reasonably similar operators. They are all relatively equal. They can all perform the type of services we are asking for.

So this type of an approach doesn't really lend itself to negotiation. We can specify in our requirements a specific requirement. They can respond to this and we can evaluate their bids on the basis of our pre-award surveys.

Now, in negotiating the contract, we would have to go out with a request for proposals. The request for proposals would say nothing different than we are now saying in our competitive bid process.

If at some point, everybody is relatively equal, then where are you going to negotiate? In other words, are we going to try to negotiate with nine operators for a base? And if we do, then at some point we still must consider price.

The negotiation process includes constraints and controls, and obviously these constraints are necessary. We have certain boards of awards we go through, so there is a delay in the paperwork in this type of procurement. In my judgment, we are buying nothing more than under the competitive process. It is just time consuming.

So there is a certain amount of delay in it and I think there is some undue hardship also to the contractor in this area. If we negotiate a contract that exceeds \$100,000, then he is going to be subject to the cost accounting standards. Now, I don't know whether the industry is set up to comply with this requirement or not.

So we are getting to the same point, Mr. Chairman, but we feel it is through the bid effort that we can state our specifications. The operators can then respond to the particular bid package.

Mr. SISK. Of course, the only thing we can go on is history, and you know, that is the concern I have. Even though we only have 22, they still have a question of antitrust here, and they can't sit down and confer and reach an agreement on price, because then they are involved in the Sherman and Clayton Acts and so on, so in the final analysis, they still have to submit a bid and the pressure is on them for, let's say, survival.

Now the only thing I want to be sure doesn't happen here is one company or one particular tanker finds himself in a bit of a bind, and let's say he cuts the price of the bid. The first thing you know, then, you are right back to where you were prior to 1950. This is the danger I see. Basically, as I see, it seems to me that the record under negotiated contracts was excellent and even Mr. Deinema's statement indicates that.

Mr. OWENS. Surely.

Mr. SISK. And I just don't see why we don't continue with that rather than getting back into a bid procedure. That is all.

Mr. GOODLING. Mr. Chairman, may I ask you a question?

Mr. FOLEY. Yes.

Mr. GOODLING. If in your opinion, this is an important bill, and I assume you think it is, why did you not say on the last line of page 1 "shall" instead of "may"?

If we pass this bill, the Secretary does not need to act as I read it now.

Mr. FOLEY. You are correct. The Secretary isn't required to undertake anything under this act. Its language is so drafted deliberately.

We want to ensure that the Secretary has the flexibility to negotiate contracts if he feels that this is the best way to procure services, such as air tanker services, for national forest protection and management. But we didn't want to create a legal situation where the Forest Service is required to negotiate all contracts. This may not always be the best way to procure necessary services. The purpose of the legislation is to give the Forest Service and the Department an additional means to obtain the best fire protection services.

Mr. GOODLING. Doesn't he now have that under existing law?

Mr. FOLEY. Well, under the existing law, the opinion of the Comptroller General is that price must always be included at least as a determining factor of procurement requirements. Is that your understanding?

Mr. OWENS. Yes.

Mr. FOLEY. I don't think price can ever be just cut out per se when deciding how to award a contract. Obviously, you can't negotiate a contract without considering the price. I don't want to see a situation where the Department is powerless and must accept what an air tanker operator says is his price for downtime, no matter how unreasonable that price is. No doubt the Department obviously will always have an opinion as to what is a reasonable rate for air tanker services and I don't believe that the power to negotiate contracts in any way eliminates the Department's ability to refuse to pay unreasonable and unjustified rates for these services. If the Department had to accept without question the rates set by air tanker operators, it would not be entering into negotiated contracts but instead mandatory contracts, something that I am sure is not intended by this legislation.

Mr. OWENS. Well, I think under that concept we do have the authority that you are talking about.

Mr. FOLEY. You have the authority to negotiate?

Mr. OWENS. To negotiate the contract.

Mr. FOLEY. Notwithstanding a low bidder?

Mr. OWENS. No, we don't have to accept a low bidder in any type of action if we feel that the service is not what we are after.

Mr. FOLEY. But you have to go through the process of taking bids?

Mr. OWENS. We would at some point in negotiation under our present concept. That is, I think it would help the committee in terms of what happened prior to when we were negotiating to say here we didn't have a guaranteed availability rate. Everybody was bidding strictly competitive process here without any stability to the industry.

Mr. FOLEY. Well, when did this factor of the availability rate come into play? When did you first initiate it?

Mr. OWENS. I think it was in 1965, that the first contract was negotiated with the availability rate.

Mr. FOLEY. About 2 years ago, we had a similar piece of legislation before the committee and at that time the Forest Service testified in favor of the legislation.

Mr. DEINEMA. I don't have a copy of the hearing record, Mr. Chairman, but I do have a copy of the statement presented by Dick Droege and it was opposing.

Mr. FOLEY. It was opposing? I stand corrected. My recollection was the Forest Service supported the legislation at that time.

Mr. SISK. Mr. Chairman, could I ask a question?

Mr. FOLEY. Yes, Mr. Sisk.

Mr. SISK. On this August 19, 1970, order, the Comptroller General amplified his decision to require that price be included in all proposal submissions where the award of air tanker contracts was concerned.

Now, what do you interpret, Mr. Owens, that that meant? Are you now saying that that does not require you, then, to take competitive bids, but still leaves you open to negotiate so that you would not necessarily have to take the low bidder?

Mr. OWENS. Under the original concept, we looked at the best qualified operator for a specific location and evaluated him through his qualifications and that was it. Price wasn't a factor in determining this. It was strictly the quality of the individual we were looking at under his proposal.

Mr. FOLEY. Could I interrupt? Would the gentleman yield?

Mr. SISK. Yes.

Mr. FOLEY. Price was to some extent a subtle consideration. You didn't just accept any offer?

Mr. OWENS. Under the selection process, the——

Mr. FOLEY. Excuse me. In other words, if you felt that the proposed contract was reasonable, you didn't have to take into consideration the fact that there was a lower bidder, perhaps less qualified?

Mr. OWENS. There would have been no lower bidder since we were negotiating with the best qualified individual at a location. We wanted the best qualified, and not the second best qualified, even though the price might have been a little bit higher.

Mr. FOLEY. Let me ask you this question. Would the gentleman continue to yield?

Did you then negotiate contracts that you thought were unreasonable?

Mr. OWENS. No, sir. We had our flight rates established as to what we felt was reasonable, the same as we have today under any type of procurement process.

Mr. FOLEY. Thank you. Please excuse my interruption.

Mr. SISK. Well, I am just trying to get clear, really, what you feel you are prepared to do here. Now, Mr. Deinema says here that on August 19, 1970, apparently the rules of the game were changed, and I assume that is why you refer to it where it says "The Comptroller, General amplified his decision—and this was the 1965 decision—to require that price be included in all proposal submissions for the award of air tanker contracts."

Now, I haven't read that order, at least not recently, and what I am trying to get clear is to what extent this requires you to take competitive bids?

Are you saying that you still feel free to negotiate contracts even though X bidder comes in with a little bit higher but if he rates higher in performance, that you could still go ahead and take him, rather than taking the lowest bidder?

Mr. OWENS. Under the evaluation process, the process, the price was not a factor if the total point system generated him out as the best buy. We could accept him at the higher price under the old system, but not as we are now proposing it.

Mr. SISK. Well, you lost me again when you made that last statement.

Mr. FOLEY. Yes, please, if you could repeat that statement?

Mr. SISK. Let me say to you, I am not trying to trap anybody here. I am just trying to find out what has changed since the Comptroller General's August decision in the actual operating of concluding these contracts.

Mr. FOLEY. The 1970 decision?

Mr. SISK. I am referring to the August 19, 1970, decision and this is on the last page of Mr. Deinema's statement, where he says, "The Comptroller General amplified his decision to require that price be included in all proposal submissions for the award of air tanker contracts."

Now, to what extent has that decision changed your procedures as against what you were doing prior to August of 1970?

Mr. OWENS. Prior to 1970, price wasn't in the evaluation criteria for the selection of the best operator.

Mr. SISK. Well, you, on behalf of your responsibility as a Government employee, though, certainly considered price, didn't you?

That is what I understand the chairman was asking you a little bit ago. In other words, you didn't ignore price?

Mr. OWENS. Oh, no.

Mr. SISK. In other words, if X tanker came in at let's say \$1 million for a given job, and Y tanker came in at \$980,000, and Y tanker happened to have a higher performance factor according to all the criteria you use to determine availability and capability of doing the job, you certainly considered the difference in price in that evaluation, didn't you?

Mr. OWENS. No, what I am saying is that we didn't in establishing the best qualified air tanker operator. Price was not a factor in that evaluation process.

Now, the price obviously was a factor in the actual negotiations of the rates. If you offered me a lower price, and without evaluating the price in this, and you came out stronger in the evaluation process, then you were selected to negotiate. So the Comptroller General said you've got to put price in as part of your evaluation factor before you negotiate. Do you see what I am trying to say?

Mr. SISK. All right, then explain to me how you do it differently since August of 1970—to what you were doing before that?

Mr. OWENS. That is when we put price back in the evaluation.

Mr. SISK. Oh, I see what you say, but I assume the location fits into this too?

Mr. OWENS. Two concepts have changed. One is that price is considered in the evaluation and second there is no resident base operator any more. So in other words, everybody is competitive on all items.

Mr. SISK. Mr. Chairman, I surrender the floor. I know I am taking too much time here.

Mr. FOLEY. Mr. Rarick?

Mr. RARICK. Mr. Chairman, thank you. As I view Mr. Deinema's statement, he is saying that prior to August of 1970, the price could have been considered but didn't have to be the controlling factor, and since the August 1970 statement by the Comptroller General, price must now be taken into consideration. Is that correct?

Mr. OWENS. Surely.

Mr. RARICK. What experience have you people had since the 1970 policy by the Comptroller General? Are you able to secure qualified firefighters?

Mr. OWENS. Yes, sir.

Mr. RARICK. You are having no problems under the new regulations?

Mr. OWENS. No, sir.

Mr. RARICK. And the Department supports the Comptroller General's policy and is ready to standby it in opposition to the proposed legislation?

Mr. OWENS. Yes, sir.

Mr. FOLEY. Mr. Goodling.

Mr. GOODLING. If I may pursue this a little further?

What difference will this bill give the Secretary of Agriculture, or what privilege will it give him that he does not have now under existing law?

Mr. FOLEY. I think it would give him the privilege of negotiating the contract without having to consider the price quotations of the various operators in his evaluation of which operator can best meet the requirements of a job.

Mr. GOODLING. Doesn't he have that privilege now?

Mr. FOLEY. As I understand Mr. Owen's last answer, they must take rates quoted by an operator along with other considerations such as the operator's equipment, pilot training, availability, et cetera, to determine who is best qualified. Under the old system, as I understand it, they merely considered who was the best qualified operator regardless of the price difference between different operators—that is, who was most capable and had the best equipment to respond to the needs of the Forest Service in a given situation.

Mr. GOODLING. Can any of you men answer my question?

My question was what will this bill give the Secretary of Agriculture that he does not already have under existing legislation?

Mr. DEINEMA. I will try to answer that and let them contradict me if I am wrong. I think this bill would restrict us in being able to consider prices as one of the items of consideration because of the omission of it in the second page of the bill where they list several other factors to be considered, but they do not list price. The Comptroller General told us that it must be one of the items to be considered.

Mr. GOODLING. I still think, Mr. Chairman, if this is so important we should say "shall," rather than "may." We can sit here and talk for the next 3 weeks about it, and if we are going to leave the "may" in there, it isn't going to mean one thing.

Mr. FOLEY. Well, perhaps the gentleman from Pennsylvania is correct. I personally believe that the Forest Service should have the broadest possible latitude and should not be restricted by the requirements of the Comptroller General in setting up a procurement system, for their air tankers and Mr. Sisk, I think, feels the same way. I am troubled by the fact that the Comptroller General is telling the Forest Service how to implement their service procurement contracts, requiring them to include price as a factor in their procurement procedures, something the Forest Service did not do prior to the 1970 report of

the Comptroller General and apparently something they did not believe necessary in order to reach fair and equitable contracts in the best interests of fire protection.

Now, perhaps the Forest Service can adequately maintain fire protection service with air tankers under their present policy. They have had, though, and I think on the record there is a statement by Mr. Deinema and his associate to the effect—they have had a very sad history in the past when competitive price cutting reduced the quality of air tanker protection.

My concern is that introducing the element of price for consideration as part of the process of selecting a service is liable to result in price cutting and the dropping of the quality of the service as is only natural with competitive bidding. In dealing with a stock or commodity or the procurement of material for example, where you can specify exactly what you want, a different situation arises. But when you are talking about services such as pilot capability and training, aircraft availability and aircraft quality, especially where long-term capital investment is necessary, you become involved in subjective analysis and subtleties that make it far more difficult to ensure that you get the high quality so important to the protection of our national forests. I want to see the Forest Service get the best available fire protection service available because if we have inadequate fire protection we risk losing a highly important and valuable national resource, one that cannot be easily replaced and sometimes not at all which could cost us millions of dollars worth of Forest Service lands.

I am not an expert on fire protection; but in getting retardants dropped on a fire outbreak to stop it from spreading into a major wildfire, time is the critical factor. This is where the responsiveness and expertise of the people who are contracting to drop the retardant is so important.

I think that sometimes procurement agencies and the Comptroller General worry too much about cutting costs. Yet when we begin to fight a major fire after it has broken out and gotten out of control, total cost is not a consideration.

The Forest Service, when it is fighting a major wildfire in a major national forest, simply has to rewrite the book and do anything that is possible to contain the fire. In other words, you don't sit around and worry about whether you have to negotiate with one air tanker or another or one helicopter service or another. You just bring in all the resources you can and try to put the fire out. Is that essentially correct?

Mr. DEINEMA. That is essentially correct.

Mr. FOLEY. To put it another way, fighting a fire is like fighting a war where you must bring in all the resources you need and can obtain. Frequently, you are losing millions of dollars a day of resources as long as a fire continues.

It just seems to me we ought to be a little more generous in helping the Forest Service prevent fires—thereby save a lot of money in doing that—only giving the Forest Service everything it needs after a fire gets out of hand.

Mr. GOODLING. Are you doing an adequate job today with the facilities available?

Mr. DEINEMA. Yes, sir, we certainly think we are.

Mr. GOODLING. Would you agree with that, Mr. Foley? I am not in a forest area.

Mr. FOLEY. Well, I am not in a position to criticize the Deputy Chief's statement that the Forest Service is doing an adequate job, but it is difficult to properly assess such a subjective question as to what is an "adequate job." It is rather like asking how many safety precautions need to be taken to ensure a safe condition?

How much fire protection is necessary in order to protect the forests? Theoretically, I suppose, if we didn't have to consider cost at all, something we obviously have to, we would have two or three times the fire protection presently available, and be in a better position than we are now. What is "adequate" is a question of judgment that must be weighed against costs.

Mr. DEINEMA. You are certainly correct. There is always a plateau, though.

Mr. Chairman, I am really apologetic of not being able to explain this issue in a better fashion, but in the testimony in 1971 when this similar bill came up, the Comptroller General gave the committee a statement dated November 4, 1971, and it was signed by R. F. Keller, Deputy Comptroller General of the United States. In it he said there are certain aspects of that legislation with which he strongly disagreed.

I was wondering if I could put that into the hearing record, and maybe that would explain the issue we are not able to adequately explain. It is three pages long, and I would hesitate to read it to you, but maybe that would help some.

Mr. FOLEY. Well, I think it might be helpful, if we could have you read at least selected portions of it, but without objection, we will put the entire statement in the record.

If there are portions of it that you feel are useful in explaining the position of the Department, please proceed.

Mr. DEINEMA. I would hesitate to try to pick it out or take the time to read the entire statement, Mr. Chairman, but if I may, I think this could be part of the record.

Mr. FOLEY. If there are portions of it that you feel are useful in explaining the position of the Department, please proceed.

Gentlemen, as there are not further questions, at present, the subcommittee would like to thank you very much for appearing today. We do have other witnesses scheduled to testify and we would appreciate it if you would remain with us through this hearing today in case we need to recall you for additional questions. I hope this request will not present any problems.

Without objection, the entire 1974 report of the Forest Service will also be placed in the record.

[The documents referred to above follow:]

COMPTROLLER GENERAL'S VIEWS ON U.S. DEPARTMENT OF AGRICULTURE REPORT
ON H.R. 7367 TO HOUSE COMMITTEE ON AGRICULTURE

NOVEMBER 4, 1971.

DEAR MR. SCHULTZ: By letter dated September 22, 1971, the Assistant Director for Legislative Reference requested our views on the proposed report of the Department of Agriculture to the Chairman, Committee on Agriculture, House of Representatives, on H.R. 7367, 92nd Congress, 1st session.

The bill would amend section 205 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 579a). The Secretary of Agriculture, acting through the

Forest Service, would be authorized to enter into negotiated contracts for the procurement and operation of air tanker facilities and services for the protection and management of the national forests renewable annually, but not more than four times. In addition, the bill would permit such contracts to be entered into solely on the basis of capability to perform the service, at rates to be negotiated based on guidelines developed by a continuing cost gathering study, "but the Secretary shall impose such terms and conditions as are necessary to protect the United States."

Initially, we invite your attention to the fact that this proposed legislation is substantially similar to H.R. 19696, 91st Congress, 2nd session, introduced in the House of Representatives on October 13, 1970.

The proposed Department of Agriculture reports recommends that the bill be enacted if amended to provide as follows:

"Sec. 205. The Forest Service by contract or otherwise may provide for procurement and operation of aerial facilities and services for the protection and management of the national forests and other lands administered by it, including the furnishing at the airbase, of facilities, equipment, materials and the preparation, mixing and loading into aircraft, with authority to renew any agreement for such purposes annually, not more than twice, without additional advertising.

"Notwithstanding any other provision of law, such contracts for air tanker facilities and services shall be entered into solely on the basis of capability to perform the required services, as determined by technical proposal based upon experience, pilot qualifications, aircraft, and aircraft maintenance facilities, at rates which can be negotiated based on guidelines developed by a continuing cost gathering study, or otherwise set, with the Secretary of Agriculture imposing such terms and conditions as are necessary to protect the United States."

The language of paragraph 1 of the suggested change is identical to that presently contained in 16 U.S.C. 579a. With respect to this recommendation, we have no comment to offer, except to say that we also favor the reduction of the permissible number of annual contract renewals from four to two years.

We strongly oppose the enactment of that portion of the proposed bill, as recommended by the proposed report, which would sanction the present Forest Service system to contracting for air tanker services by entering into negotiated contracts without utilizing price as a factor in the selection of air tanker operators. The practical effect of enactment of this bill would be to overrule our decision, 50 Comp. Gen. 110 (1970), copy herewith, wherein we concluded that the failure of the Forest Service to require that proposals solicited include price as an evaluation factor violates the spirit and intent of the Federal Property and Administrative Services Act and implementing regulations. In that decision, we emphasized and specifically dispelled the fear expressed by the Forest Service that we were requiring awards of air tanker contracts on the basis of price alone. In other words, the inclusion of price in proposals need not cause a return to the strict formal advertising method of procurement and the alleged "attendant bad effects" incidental thereto in the procurement of air tanker services. Our office has consistently supported the principle that when the Government selects a contractor under negotiation procedures award may properly be made on the basis of factors other than price.

We recognize the vital need of the Forest Service to contract with air tanker operators of the highest quality in order to protect the national forests and other public lands from forest fires. However, we do not believe that the quality of air tanker services will be lessened by reason of our conclusion that price be made one, but not the only, factor to be given consideration in contractor selection. We do not feel this requirement should preclude the exercise of judgment by contracting officials in negotiating contracts to secure quality services. Many Government procurements of services or products of critical national importance are accomplished successfully by competitive negotiation.

Furthermore, the Forest Service has not presented any evidence to substantiate the claim that the utilization of competitive negotiation procedures would adversely affect the quality of air tanker services. We do not believe that a special exception to the requirements for competitive negotiation should be granted without, at the very least, a testing of the feasibility of competitive negotiation procedures in the context of air tanker procurements. In this regard, efforts should be made to ascertain what steps, if any, the Forest Service has taken to effectively implement our decision.

For purposes of uniformity, we wish to advise that the Bureau of Land Management, Department of the Interior, employs the same procedure used by

the Forest Service for the procurement of air tanker services. In our letter dated January 21, 1971, copy herewith, to the Secretary of the Interior, we stated that the Bureau of Land Management should effectively implement our decision in 50 Comp. Gen. 110 by requiring the submission of proposals which include price or cost estimates and the Department of the Interior has not expressed any objection to the procedure.

Sincerely yours,

R. F. KELLER,
Deputy Comptroller General of the United States.

A STUDY OF FOREST SERVICE PROCEDURE FOR CONTRACTING AIR TANKER SERVICES AND A NEW POLICY FOR SUCH CONTRACTING

As the use of air tankers for dropping retardants to aid in the control of forest and range fires has increased, many problems of contracting for such services on a basis fair to the Government and to the operators have been encountered.

Air tankers like other types of fire control equipment are needed only during the actual fire emergency. Need for the service is highly unpredictable as to location and extent of use. We have approached the air tanker problems by the same time tested procedure generally applied to other kinds of fire control equipment furnished by private contractors. Since we cannot predict where a forest or range fire will occur or how big it will get, it is economically impracticable to contract in advance for the maximum anticipated fire demand. We, therefore, limit advance contracting of equipment to those strategically located "first attack" bases and to the quantity and type of equipment at such bases which past history has demonstrated gives us the best coverage for the money spent. Additional equipment demands to control large fires is obtained by contracting on the open market where and to whatever extent the emergency situation demands.

Procedures we have used to contract for ground equipment for fire control have not been satisfactory to either the operators or the Forest Service for air tanker services. In an effort to resolve the matter, a survey was made this year during July and August, of air tanker operations in western Forest Service Regions 1, 3, 4, 5, and 6, to determine whether initial attack air tanker services should be covered by formal contract and, if so, whether such a contract could be prepared for service-wide use.

The survey proved to be timely. The operators interviewed were very glad for the opportunity to be heard on this matter. All preferred to have a firm contract covering tanker operations. Forest officers from the various Regions participating in the survey agreed that some standardized procedure must be adopted to provide the tanker services needed with the greatest possible margin of safety and dependability. They also favored a firm contract for first attack tankers.

Basically the objectives of the Forest Service and the operators are compatible. Both want safe, effective service and a stabilized industry. There is every reason to believe this can be done. Quite naturally the operators are interested in a profitable contract. They were not unreasonable or arbitrary in their proposals. Contract procedures and contract requirements were discussed at every meeting. There was little difference of opinion either by operators or Forest officers on contract requirements, specifications, and terms. However, it became apparent early in the survey that the primary objectives of safe, effective air tanker service by a stabilized industry cannot be achieved by soliciting open competitive bids for the contracts.

There are a great many more air tankers for hire than the Forest Service needs to hold in readiness for initial attack. These are surplus military aircraft modified for air tanker use. They are not useful as a general purpose airplane and many can be used only as air tankers. The Forest Service is therefore the biggest user and the competition for our contracts is very great. Our problem is how to contract our initial attack requirements with the operator able to furnish the most effective service at a reasonable price and with the greatest possible margin of safety. Regardless of how this is done, there will be a flood of protest from operators who are not awarded contracts. Regardless of this the Forest Service policy for awarding initial attack air tanker contracts must be one that best serves the interests of the Government.

The standard practice of purchasing property and services after open competitive bidding is effective when the service to be furnished can be fully described in the bid specification, bids submitted can be fairly compared and evaluated, and performance can be measured for actual compliance with the advertised specifications. This is not possible for air tanker service. The true value of this service to the Government can only be measured in terms of effective air tanker support for control of forest and range fires. Effective air tanker service is not subject to precise specification, nor can the capability of a bidder to deliver effective air tanker service be evaluated from a quoted unit price. Whether bids are solicited on the basis of dollars per hour of flight, gallon-miles or ton-miles of retardants carried or any other manner, there is not practicable method of comparing the real value of the service to the Government by analysis of unit prices quoted by the various bidders.

Airplanes used for tankers are of many makes and models. Performance characteristics, speed, and capacity vary between makes and types, and even between the same makes and types because of condition and age. Airplanes which can be used effectively and safely over certain terrain are ineffective and hazardous in other areas. A pilot able to perform with a high degree of accuracy and safety in one type of airplane may be capable of only minimum performance in a different type. Minimum requirements for aircraft and pilots can be written. However, minimum performance in this kind of work is most expensive in dollars paid for flying time and has the least effectiveness in control of fires.

Forest Service requirements are not satisfied with an airplane which can carry a given number of gallons of retardant slurry and a pilot who can fly it to a given spot, dump the load and return. Unless the retardant is accurately dumped on the area of the fire where it is most effective in stopping the fire the entire trip is of no value to the Government. Unlike a standard contract, there is no opportunity for the Government to protect against poor or ineffective performance by "reperformance" or "buying against" the contractor. Either the original performance is effective or it is useless. There is no second chance. The small fire which might have been inexpensively controlled by a timely and effective air tanker drop can become an expensive damaging blaze. Time does not pause.

In performance of standard contracts the Government is fully protected by enforcement of the contract terms and the contractor reaps the benefits of his efficiency and experience if he can perform to a better standard than his competitors. The reverse is true for air tanker contracts. If the contractor can perform with speed and effectiveness his flying time is held to the minimum and so are his earnings. The contractor that performs to the minimum standard builds up more flight time and thus more pay. The benefits of premium performance accrue to the Government rather than the contractor just as the accomplishments of highly efficient employees are of greater benefit to the Government than the accomplishments of average employees of the same grade.

Air tankers from our initial attack bases frequently will be the first control units to reach a fire. It is essential that the pilot have the experience and judgment to recognize and properly assess the situation as he finds it. His proficiency and accuracy as a pilot may enable him to drop the retardant slurry on the target of his choice. However, if the drop is to be effective the target must be correctly selected. Fires occur in varying physical situations. Retardants dropped by air tankers seldom extinguish the fire. Properly placed and applied the retardant can slow down the rate of spread until smoke jumpers or ground crews can get on the job. All pilots do not have the same ability to properly evaluate the prime factors of fuel, topography, and weather which radically effect fire behavior. Drops on the wrong area of a fire which are ineffective or which are only partially effective cost just as much as drops with maximum effect on correctly selected targets. It is essential that the Forest Service know the capabilities of pilots before awarding a contract.

The dependability, experience, and integrity of the contractor and his facilities for inspecting and maintaining his equipment are also of prime importance.

We now have established where initial attack tankers should be based to give the best coverage. Mixing plants are permanently installed at these bases. At some locations like Redding, California and Redmond, Oregon we have entire regional air service centers built up. Types of aircraft that can operate most effectively from the base airports and in the terrain which the base serves on first attack have been determined.

At most of our tanker bases there is a resident operator with hangar and shop facilities, spare parts, tools, and equipment for the type aircraft he owns. These operators have franchises or leases with the city or county authorities. They have been encouraged to risk capital and time to develop airport facilities which will serve the communities. They were in business last year and can be expected to be in business next year. At very few bases is there more than one resident operator. These are operators regularly engaged in the airplane service business. We know them, their regular pilot and mechanic personnel, their equipment, and the repair, inspection and maintenance facilities at each operating base. During the past several years while air tanker operations have been developing we have procured services from them by contract and by open market rental arrangements. It is only natural that resident operators have secured and now have the kind of aircraft and the trained pilots our program people have found most suitable and reliable for use in their particular areas.

There is a distinct advantage to the Forest Service in having a contractor who is available year after year, is familiar with the country, and has a diversified air service business. These resident operators and most of their pilots are "old timers" who know the National Forests in their respective areas. This is invaluable in firefighting both in the saving of time and in safety of performance.

They have other air service business which enables them to maintain a stable operation and we know from past experience that we can get effective air tanker service at a fair price and with a greater safety factor from these operators. In open competitive bidding these operators are at a disadvantage. If there is to be competition at these bases the specifications have to permit transient operators to compete with resident operators. If we specify that the bidder must have hangar and shop facilities, tools, equipment, and repair parts at the operating base, we eliminate all but the resident operators. If we do not so specify, we risk the prospect of awarding the contract to a transient operator who must then maintain his aircraft in the open with such transportable tools and equipment as he can bring to the base with him.

We have solicited bids for air tanker services and the results are far from satisfactory. In some cases these bids have resulted in good reliable resident operators with top notch pilots and the best available maintenance and repair facilities losing out to transient operators who under-bid them from a few cents per hour to several dollars per hour. In other cases resident operators who must operate at their regular base or not operate at all and recognizing they must underbid transient operators have cut their price to a point of actual loss to get the contract.

It is neither equitable nor in the best interests of the Government to force these operators to cut prices below reasonable levels to protect their business and investment in unequal competition with transient operators who clearly are unable to furnish a truly comparable service. For example on a recent bid a transient bidder underbid a resident operator with known capability for superior performance by \$34.00 per hour. The airplanes offered by the bidders while not the same were fairly comparable. Past experience as to reliability of equipment and personnel, effectiveness of air tanker operations, safety, and dependability materially favored the resident operator. From a strictly fiscal comparison of bid prices, \$34.00 per hour seems to be a substantial price saving. However, the low bid of \$365.00 per hour is \$6.00 per minute. If the transient operator uses over six minutes more flight time per hour than the resident operator, the low bid becomes in fact more costly. The probability that he will require more flight time is very great indeed. Responding to initial dispatch to a fire the transient operator must proceed on a compass bearing. The resident operator knowing the country knows exactly where to go and how to get there. A single extra orbit waiting for radio directions can use up the time. Going unnecessarily high in unfamiliar country, crossing a single ridge in the wrong place, and many similar things are much more apt to happen to the transient than to the resident operator. The price difference in this example is sizeable. Bids have been received with as little as ten cents per hour between the high and low bids. In this case all bids were rejected. However, had award been made to the low bidder there is no doubt it would have cost the Government more for performance of the contract.

Local airport authorities have tried to protect resident operators from unequal competition by assessing heavy landing and use fees on transient aircraft. Some states likewise attempt to protect resident operators. See pages 26 and 74 of

Utah laws governing Aeronautics and Ordinance No. 2073, passed July 8, 1964, by the city of La Grande, Oregon.

Undesirable results of bids in other areas have been:

1. Resident operators that were underbid at their home base in turn entered low bids at other bases. As a result all were in the position of "transient" operators. None of them were operating efficiently or economically. This is the poorest kind of a contractual arrangement possible.

2. Resident operators of known reliability were underbid at their home base. The next year in order to protect against a similar situation they bid below actual cost. The Forest Service cannot foster this kind of cutthroat price competition.

3. A top notch resident operator whose fair price was underbid folded up and quit the business rather than reducing his operating standards to engage in the price cutting scramble.

Inequities of pricing and of paying for standby, ferry time, and flight time are numerous. Most are directly attributable to the impracticability of comparing the true value of competitive bids when applied to an operation with the variables existing in air tanker performance. Bids are not serving the best interest of the Government. They are encouraging the worst kind of cutthroat pricing which can only result in less effective service at a higher cost, with greater risk to life and property. Cutthroat pricing is spreading to open market transactions also. This summer transient operators flew air tankers into bases where the Forest Service had rental agreements which were not legally binding contract with dependable resident operators. They demanded consideration for all, or at least a share of the business because they offered to cut the unit price per hour of flight by as much as \$25.00 per hour.

All of our contracts and open market rental arrangements for air tanker services contain the standard "save harmless" clause. The contractor is solely responsible for death or injury to his employees and for damage or loss of his aircraft. However, this cannot be considered an invitation to the Government to foster or permit cutthroat competitive pricing which must in the end result in cost cutting by the contractors to make ends meet. The first place to cut costs is to cut maintenance and repairs to the aircraft and the next is to cut personnel expenses. Both lead directly to a more hazardous, less dependable service.

The only tankers available now, and for the next several years, are surplus military airplanes. These are old airplanes. They require a very high level of maintenance and inspection. Parts and replacement engines are increasingly difficult to find. Pilots and mechanics with training and experience on these aircraft are fewer each year.

Insurance companies underwrite tanker operations anticipating that twenty per cent of them will be lost each year. It is necessary only to review the record to see that this not a wild guess. Each year we lose tankers on fire or spray jobs, most of them with pilot fatalities. This has been a favorable fire year but, to date, we have lost two aircraft and two pilots while actually attempting to make fire drops. Another tanker airplane was lost and the pilot killed while making a practice drop. One fatal and one non-fatal crash occurred on Forest Service spray jobs. Because of the nature of air tanker work we cannot hope to eliminate all risk to men and equipment. The Forest Service cannot do less than its utmost to protect the lives of tanker pilots and prevent loss of contractor equipment in performance of air tanker services. To do so it is imperative that we contract with the best available operator at each base, not with the cheapest.

The risk to pilots and equipment can only be minimized by awarding tanker contracts to the resident operators with the best available maintenance, repair, and inspection facilities. There is no question that these services can be better performed at a base shop where equipment, parts, tools, facilities, and personnel are maintained for that very purpose, than they can in an open field with such materials as the operator can carry with him.

The physical demand on pilots is an important item. The nature of the work requires that pilots be readily available. This may go on day after day with no actual flying. Pilots of transient operators either have no "ready room" facilities at all or they move in on the resident operator or the Forest Service. We have experienced both. It is justly said "every contractor should have a toilet and a telephone". Many transient bidders have neither. Pilots cannot maintain efficiency if they must spend their non-flying time in the dirt under the wing of an airplane. To expect the resident operator to furnish ready room facilities to

his competition or the Forest Service to provide for the transient but not the resident operator is neither practicable nor defensible.

These are the factors which make it impracticable to write bid specifications in a manner which will permit open competition, comparison and evaluation of bids on an equal basis. Bids by operators owning different makes and models of tanker aircraft, employing different pilots, and providing repair and maintenance facilities which vary from nothing to sizeable fixed investments in plant and equipment cannot be compared on the basis of dollars per hour of flight. The value to the Government must be measured in terms of safe, reliable service which is effective in controlling forest and range fires.

New Policy: Initial attack air tankers will be covered by contract that, to be useful to the Government, will be negotiated under the authority of the Federal Property and Administrative Services Act, Title III, Section 302(c) (10), with the best qualified resident operator at each initial attack air tanker base.

At any base where there is more than one than one qualified resident operator, and at bases where there are no qualified resident operators, competition will be restricted to operators known to be capable of safe, dependable and effective performance.

The policy of the Department of Agriculture and the Forest Service for negotiating contracts in excess of \$2,500 is designed to assure selection of the best available contractor and to secure a fair contract price. A Board of Contract Awards of three or more members is established in each Regional Office. The duties of the board are to (1) solicit proposals from individuals or firms capable of undertaking the contract, (2) review and evaluate the qualifications and capabilities of all prospective contractors. (3) select and authorize negotiation with the best available prospective contractor, and (4) determine a reasonable contract price for the job to be done. This information is then furnished the Contracting Officer who actually negotiates the contract.

We believe this procedure to be in the best interest of the Government and fair to the operators. It is the most which can be done to provide effective air tanker service safely at a fair price by a stabilized industry.

Mr. FOLEY. Our next witness will be Mr. John Hastings, deputy State forester, State of California, California Division of Forestry, Sacramento, Calif.

STATEMENT OF JOHN HASTINGS, DEPUTY STATE FORESTER, CALIFORNIA DIVISION OF FORESTRY, SACRAMENTO, CALIF.

Mr. HASTINGS. Mr. Chairman, and members of the committee, I am John Hastings. As my statement indicates, I am the Fire Control Officer for the California Division of Forestry based in Sacramento. I do wish to thank the committee for the opportunity to appear before you and present testimony in support of such a piece of legislation regarding negotiated contracts for air tanker services.

I would like to reemphasize what I heard the Forest Service people say. When we say "negotiate" we are seeking the best qualified to do the job.

Perhaps to give your committee some measure of our concern for this legislation and involvement in the use of aerial tankers and wild land fire control, I can quote a few figures here.

During the 1973 fire season, the U.S. Forest Service and the division of forestry in California contracted with the same four air tanker operators for the services of 35 fixed wing aerial tankers. Now, 21 of these were contracted by the State of California, and 14 by the U.S. Forest Service. Now, the services are provided from 18 primary air attack bases from Ramona in southern California, and Rohnerville in northern California.

At six of these, there are both Forest Service and division of forestry people, and Forest Service and division of forestry aircraft located in a cooperative venture. Six of the bases, the division of forestry contracts by itself, and at six bases, the Forest Service contracts by itself. Like I said, this is to give you a measure of our cooperation and the interest that we have in fixed wing air tankers.

I think reflecting on that, there are 14 aircraft contracted to the Forest Service and 21 to the State of California, I think that gives you an idea. If my memory serves me correctly, I think the Forest Service is presently contracting for 48 air tankers nationwide so perhaps this puts our use of air tankers and our concern in perspective.

Now, the division of forestry and the Forest Service began jointly using fixed wing air tankers in wild land fire control in about 1956. We early recognized that because of the capabilities and the speed and the flexibility and the need to operate these from existing airports which could serve both agencies, we recognized that the best and most efficient and most economic manner to operate this program was through a joint use of facilities and a cooperative program.

Now, because of this joint use and the sharing concept and the fact that both Forest Service and division of forestry were dealing and working with the same group of operators, and as the air tanker program has expanded and grown and developed since 1956 in California, with the Forest Service and division of forestry, it is a highly cooperative effort and we have deliberately, both of us, endeavored to develop very similar specifications for the service, operational practices, coordinated dispatching, coordinated cooperative use, joint planning and training. In the fire protection business, we recognize that air tankers are in effect a limited resource. When the chips are down, both agencies have a high need and they should both be made available to the agency that has a fire at the moment. That is how we operated in the past.

Now, because that fixed wing air tankers and their services are highly specialized, and because of the seasonal nature for the service, from the start of the program—and this is in comparison with the fact that we own and operate our own ground fire trucks—we have contracted for air tanker services from private industry and we still think that is a good way to go.

Now, in the initial stages of this program there were no firm contracts and there was no background of experience. The agencies were learning. There were many, many operators and I think, as Mr. Deinema has indicated, there were many aircraft in the business. The revenues shouldn't be dependent solely on fire occurrence and we most of the funding was from the agency's emergency fire suppression funds in comparison to port budgets or P. & M. budgets, and things of that kind.

But as we learned from the use of this tool, after 1956, it became obvious that if we were going to continue to have the services of fixed wing aerial tankers as a firm part of our wild land fire protection system and if we were going to get sustained and enduring and efficient and effective services from private enterprise, it became obvious that revenues shouldn't be dependent solely on fire occurrence and we had to set up some kind of contracting and revenue system that would

insure that if we were going to get the services needed from private enterprise, it was a business operation and reasonable return was received from the service contract. This has been the continuing premise that the division of forestry in the State of California has.

I think as was mentioned, I think we had numerous operators at the peak of 1961. As we learned more about the use of aircraft, we became more demanding in the quality of the service and wanted higher standards. With the variability of fire activity from year to year, the number of operators available began to diminish. Until at present, in California, there are four operators available to provide service.

As was also mentioned, early contracts were awarded on the basis of what are pretty much established competitive bidding practices for both State and Federal Governments. But as the fire agencies began to express their concern for the stability of the service, and to be able to guarantee it as a part of the system for safety, we began demanding higher standards. Now, these in turn required that the operators make increasing capital investments for maintenance equipment, for buildings, for aircraft, and all of those type of things which result in resident operators at the various bases mentioned.

Now, the operators found within the framework of the competitive bidding process, that they could get their capital investments returned to them in the framework of 1 or even 3 to 5 year contracts.

I think some of the resident operators found in the competitive bidding process, that in order to protect their capital investment, that they were forced to bid below cost to make sure that they weren't pushed out by somebody who wanted to buy in or somebody who wanted to deliberately bid low, because it was better to have his aircraft in use than to park them, and keep them in the barn.

At the same time as we solved the decreasing numbers of air tanker operators, we felt that we didn't have the ability to pick and choose and it was better for us to be able to sit down and go through the negotiation process rather than competitive bidding. We felt that because of the decrease in competition, we felt that we had some concern for the bids received.

As was mentioned, in 1964 the Forest Service conducted an indepth study of the merits of competitive bidding versus negotiation. And the gist of their report was that the primary objectives of safe and effective air tanker service by a stabilized industry could not be achieved by soliciting open competitive bids for the contracts.

And the report recognized that whereas you could get operators to redo, you can get some contractors and some services redone for poor performance, in other words, but if you don't drop at the right time and the right place on a going fire, you can't buy the service again and there is no opportunity for reperformance. It is a one-time only situation.

This report recognized the need for premium performance by experienced operators and people with good judgment. This report recognized the value of well-maintained equipment, the value and need for the capital investments required to provide good service.

This report recognized the resident operator concept and their stability of operation and their safety record. That was mentioned. This is one of the concepts that has been removed in the existing contract procedure.

Now, following this 1964 report and the select service request to the Comptroller General, well, in his document of December 15, 1965, the Comptroller General gave the Forest Service approval to enter into negotiated services for fixed wing aerial tanker services. In California, beginning with the 1966-68 contract period, the Forest Service did negotiate for air tanker services.

Now, I think it should be noted that there is really a two-rate system here. The availability is fixed and is determined on the basis of audit, and a reasonable return to the operator and, secondly the flight rate is then negotiated. And again, as a part of the negotiating process, which is heavily dependent upon audit, then based upon audit, there are certain goal rates which are privileges to the industry—no, I mean, privileged to the agencies to facilitate the negotiation process. So when the agencies begin with the negotiation process, then, based upon audit, they have some feel for what is a reasonable negotiated rate. Now, granted there may be some exceptions between individual operators as you sit down in this negotiated process.

Now, in California, we strongly supported the 1964 report of the Forest Service and we supported the need to go for a negotiated basis. We were not able to convince our fiscal control people in the 1966-68 period to go this way. In fact, they said to us, "You go competitive bidding for 1966 and 1968, and when the time comes for the 1969 through the 1971 contracts, we will see what happens."

We solicited proposals from 29 operators for the 1969-71 contract period. We only received replies from eight interested firms, including the four operators that had been providing our service, and we found four were not qualified, and we ended up with only the four California operators we had been dealing with before.

The fact that we had received what we felt was a limited response to our solicitation and the consideration of the little competition between the operators for the bases, and with the consideration of the capital investment that the resident operators had, we went to our State control agencies and requested negotiation approval, and we received it.

For the period 1969-71, the division of forestry and the Forest Service jointly negotiated for fixed wing aerial tanker services.

Of interest and another thing that also kind of pushed us in the negotiated route, when we compared 1966-68 contract services, negotiated by the Forest Service versus our bids, when we did that, we found that in our judgment the cost of bidding had raised our costs about \$190,000 for the 3-year period than if we had gone the negotiated route with the Forest Service in 1966.

I think a key part to the negotiation process which we have recognized is a standard chart of accounts and good audit capability. During 1970, representatives from the National Air Tanker Association and the division of forestry, U.S. Forest Service, did develop a uniform chart of accounts which all agreed to and which all used. And we attempt to audit in some detail the air tanker operators in California.

As I mentioned, the audit is important to the two facets of this process. One is the determination of the availability figure, and the second is the establishment of goal rates to facilitate the negotiation process for the flight rate process.

And we felt that the rationale for negotiation was well established and we were pleased to be able to go along with it with the Forest Service. So when the Comptroller General in his letter of August 19, 1970, directed the Secretary of Agriculture to pursue what was described as "competitive negotiation" with price a factor in all proposals, this caused us substantial concern because we felt at least for the first time we had a good, solid and cooperative program that was getting for us the quality and durability of service needed at a reasonable return to the operators, and at a cost that was reasonable cost for us that were providing the service. So thus we feel that the competitive bidding process is kind of a step backwards. We think it can result in a decrease in the quality of service.

We can see ourselves as having certain rates established for a type of aircraft based on negotiation and another type of rate established by the Forest Service's competitive bidding process, and we feel perhaps we can be held up for criticism in the eyes of State governments because we are following two different paths in what is basically the same business. This bothers us.

We see the potential for a mix of different operators at the same base. I mentioned the six cooperative bases that we have.

Really, what I am essentially saying is that we see this recommendation and this process to be disturbing what we felt has been a well established and good and cooperative relationship with all parties concerned to do the job of wild land fire control in California.

There has been some discussion about the word "shall," or "may," and which shall be used, but at least we think the Federal Government should have the option or the Forest Service should have the option to either negotiate or competitive bid, which it appears to us they are now restricted in by the rules of the GAO at the moment.

I think it may just be helpful to recap rather quickly the process that the division of forestry is going through now, which is an extension of the system that the Forest Service was using. So we sent out in effect requests for proposals for air tanker services at the various bases which we occupy. Now, this is a prequalification application, which is intended to list the capabilities of the individual operators to perform and it is a selection process to establish who is the best qualified individual in effect.

Then we take these proposals and we endeavor on a rating system, which was initially developed cooperatively with the Forest Service, to select the best qualified individual at each base. We then sit down with these people, and at that time, negotiate with them for the price.

When we sit down at the negotiation tables, we have then their response to our proposals which indicates that in our judgment they are the best qualified for the base, and we have the audit information to use from our standpoint and response to what we feel is a need for the service, and it helps us in the negotiation process. Then, at this time, price first comes into the factor, and then the award is made.

In comparison at the present time, and if I understand the Forest Service operation correctly, they in effect are going out and formally advertising for bids. Now, I guess I should go back and mention that presently both in our negotiation process and the Forest Service's advertisement for bid, both have a fixed availability price based upon audit. At the present time, the Forest Service now instead, well they are going out and advertising for the service at various bases based upon the performance that is expected.

The resident operator concept has been eliminated. They advertise, as I mentioned, for flat rates. They open the bids. Then following the bids, they conduct a preaward survey to determine if in effect the operators can meet the intent of the contract.

So as I look at it, in our process we are attempting to qualify the best qualified ahead of price, but they now have price first, and then are making the preaward survey to determine if the operators in effect can perform to contract standards. If they can, then my understanding is they would award the qualified low bidder at the individual basis. So that is kind of the differences between the system that we presently have and the system that we did have in California.

Again, I appreciate this opportunity to testify to your committee. If there are any questions I can respond to, I would be happy to do so.

Mr. FOLEY. Thank you very much. Your testimony has been very helpful.

Mr. Goodling?

Mr. GOODLING. Yes, thank you.

Mr. Hastings, you said the present competitive bidding process is a step backward. Would the Forest Service approve of a bidder that is not qualified to perform satisfactorily?

Mr. HASTINGS. Well, I am sure they would do their best not to, but the details of the present contract are just substantially different than the details which measure quality of performance in their technical proposal or prequalification survey. In other words, they came to the price factor with substantially more information in the negotiation process than they presently come to the price factor in their present advertisement process.

Mr. GOODLING. Well, wouldn't negotiation improve the quality of the service that any company is going to give?

Mr. HASTINGS. Well, in our judgment, negotiation is the only way that you can protect and provide for the capital investment that is necessary to provide enduring high-quality service, and it is necessary that these operators build hangars and make long-term investments in aircraft and make long-term investments in a whole variety of capital facilities if they are going to provide a long-term service. And under the present advertising concept, these requirements are very difficult to pinpoint, and none of these requirements are as near specifically stated as they were in the technical proposal, which was a part of the negotiation process.

Mr. GOODLING. You were going more than 55 miles per hour, the legal speed limit today, and I didn't understand everything you said.

You were saying something about the material to be dropped before, and when it was to be dropped. Who determines that?

Mr. HASTINGS. Well, you have to look at fixed wing aerial tankers just like a firetruck. When you get to the fire, it is very important that you put the water on the seat of the fire and you put it out.

Now, the same thing is true of the aerial tankers. The aerial tanker is radio equipped and is nothing more than an aerial tanker firetruck. It is under the direction of a fire boss, who will usually be either on the ground or on the airplane, and he directs the pilot to put the material precisely on the fire. If he does his job as it is intended, it can make the difference as between the fire escapes and gets bigger, or the fire is extinguished and is relatively small.

Mr. GOODLING. But my question is, who instructs the pilot?

Mr. HASTINGS. In most cases, it is either the Forest Service or division of forestry man in an airplane or a man on the ground to make sure that his response is integrated into the total suppression effort.

Now, there are some so-called initial attack pilots and it is possible that they may be dropped in the absence of anybody else, since airplanes can get there very rapidly.

Mr. GOODLING. Will the passage of this legislation increase the efficiency of both the firefighters and the firefighting equipment?

Mr. HASTINGS. Our reason for supporting this legislation is we think it gives us a better opportunity to make this best qualified decision.

Mr. GOODLING. As of now, I am not pro or con on this bill. I am just trying to find out some of the answers to the questions that are running through my mind. That is all, Mr. Chairman.

Mr. FOLEY. Mr. Sisk?

Mr. SISK. Mr. Hastings, I appreciate very much your statement because I understand the problems that California might have in connection with the fact that you have developed a very fine and coordinated operation and this would tend to cause some problems, as I would understand it, for the State.

Let me ask you this. Has there been any contract negotiated by the Forest Service? I should have asked this question of the Forest Service people, but I will ask you now.

Mr. HASTINGS. Well, I think in 1972 as a part of their previous contracting that price was a consideration. But for all practical purposes, in the contracting processes they are going through now, I think this is the first real implementation and Mr. Deinema or Mr. Owens can answer that better than I.

Mr. SISK. As I said, I should have asked them the question.

It is my understanding that really what is happening is we have had no experience under the August 1970 order and for the first time, we are just now undergoing a procedure here under that. Is that virtually correct?

I will ask Mr. Deinema to comment on it later, with your permission, Mr. Chairman.

But it is my understanding these are generally made on fairly long-term contracts, are they not?

Mr. HASTINGS. Well, the Forest Service at the present time is 3-year contracts. The division of forestry service is 5-year contracts. I think prior to 1956, both agencies were strict competitive bidding.

Mr. SISK. Yes, I understand that.

Mr. HASTINGS: Then in 1966 two things happened. One is the fixed availability rate was established and negotiation was established for the flight rate by the Forest Service and division of forestry, and that was competitive bidding. So in effect, the Forest Service is going back to kind of half way between where they were in 1966 and where they were prior to that time, in my judgment.

Mr. SISK. I just wanted to get this clear because I understand what we are faced with here. Some of these contracts are expiring. They have to renew the contracts. This is the first time we have had experience in attempting to comply with the August 17 order of the GAO as far as the Forest Service is concerned.

Mr. Chairman, might I ask Mr. Deinema if he would comment on this?

Mr. FOLEY. Mr. Deinema, Mr. Sisk wonders if you would comment?

Mr. SISK. I am seeking that in view of the fact that you are just now involved for the first time in complying or attempting to comply, either you or Mr. Owens, with the August 17 order of the GAO—

Mr. OWENS. We complied in the fire season of 1972. To an extent we also complied in the 1971 season.

Mr. SISK. I didn't hear that.

Mr. OWENS. 1972 was the first season under the price concept.

Mr. SISK. Well, did you negotiate any new contract in 1972?

Mr. OWENS. Yes.

Mr. SISK. How many?

Mr. OWENS. I would have to look that up.

Mr. SISK. What terms?

Mr. OWENS. I would have to look that up because they were being negotiated by our regional offices.

Mr. SISK. Well, I have been led to believe that really what you are undergoing now for the first time is some experience with the renewal with some contracts that really have lapped over the procedures that you followed prior to the 1970 order. That was the question I was trying to get at. That is all, Mr. Chairman.

Mr. FOLEY. Mr. Hastings, thank you very much. Again, we appreciate your testimony.

Mr. HASTINGS. My apologies for my speed.

Mr. FOLEY. No, your testimony was very well presented.

Our next witness is Henry Moore, representing National Air Tankers Association, Tulare, Calif.

STATEMENT OF HENRY MOORE, REPRESENTING NATIONAL AIR TANKERS ASSOCIATION, TULARE, CALIF.; ACCOMPANIED BY GRAHAM PURCELL, GENERAL COUNSEL

Mr. MOORE. Mr. Chairman, my name is Henry Moore. I reside in Tulare, Calif.

I am here today representing the National Air Tankers Association, of which I am a member. The association formed in 1964 is comprised of 15 of the 18 private companies which provide aerial firefighting services, by contract, to both Federal and State agencies. It is the trade association of the fixed wing aerial firefighting industry.

On behalf of the National Air Tankers Association, Mr. Chairman, I want to offer to you and your subcommittee my deep appreciation for this opportunity to testify on H.R. 12071.

H.R. 12071 would amend the authority under which the Department of Agriculture contracts for private air tanker services. Presently the Secretary of Agriculture, through the Forest Service, may procure these services "by contract or otherwise." This bill would require that such procurement, if by contract, be by negotiated contract—and I would like to pause here to mention there are others and have been in the past, other procurements called memorandums of verbal agreement or continuing agreements by which people provide the service although not by contract.

This bill would require that such procurement, if by contract, be by negotiated contract, entered into solely on the basis of a prospective contractor's capability to perform the required services.

The bill would retain language which the Forest Service sought and received from Congress several years ago specifying its authority to include in any contract the procurement of airbase facilities, equipment support services and materials, in addition to the services of air tankers themselves.

Finally, the bill would provide that any contract could be renewed annually, up to four times, without the Government issuing additional requests for proposals, a provision encouraging further capital investment by the operators into new and improved aircraft.

From 1966 through 1973, the Federal Government negotiated contracts for these services. The method of contracting employed prior to 1966—and to which the Forest Service has returned this year—was highly unsatisfactory to both the Government and industry. The system of contracting on a negotiated basis has proven itself fully satisfactory to both the Government and industry for the past eight fire seasons, and we respectfully submit that it should not have been changed.

Mr. Chairman, I want to interrupt my statement again to explain to you that right now in 1974, that the Forest Service contract is being let by formal advertising. There is no negotiation at all. It is formal advertisement for bid. Now, although that isn't what the GAO required them to do, that is being done as we will see further in the statement.

In essence, Mr. Chairman, this bill would preserve that proven system, benefiting the public, the Government and the industry.

Prior to 1966 contracts for aerial firefighting services were awarded on a competitive bid basis. In 1964 a Forest Service task force thoroughly examined the operation and results of then existing procurement methods. The study was comprehensive, including the coordination of information from all segments of the Government and of the industry involved. In the introduction to the report, the task force said:

It became apparent early in the survey that the primary objectives of safe, effective air tanker services by a stabilized industry cannot be achieved by a solicitation of open competitive bids for contracts.

Briefly, the difference between negotiated procurement and advertised procurement is the difference between selecting the best qualified contract applicant and then negotiating price—or being forced to accept the lowest bid and then hopefully making sure the bidder meets the minimum acceptable standards of qualification.

The 1964 report heavily emphasized the inadequacy of any such minimum standard both in terms of the ultimate cost to the Government and in terms of the protection of lives and property from the destruction of forest fires. The report noted——

Mr. FOLEY. May I interrupt at this point. Is your testimony all excerpts from the 1964 report?

Mr. MOORE. Yes sir, it is.

Mr. FOLEY. I just think it might be useful for the record to include the entire 1964 report of the Forest Service in the hearing record, following the testimony of the Forest Service.

[See Forest Service report on p. 16.]

Mr. MOORE. Would you rather I didn't actually read this part?

Mr. FOLEY. Yes, maybe you can just proceed.

Mr. MOORE. After concluding that "bids are not serving the best interests of the Government," the Forest Service brought its case to Congress seeking approval to switch from formally advertised competitive bid contracting to negotiated procurement.

As other testimony has indicated, Congress specifically approved the Forest Service request to shift from formally advertised to negotiated procurement. The General Accounting Office likewise specifically approved the change, and although its decision was later modified, the continued need for negotiated procurement was not ignored. In the August 1970 decision requiring that price be "a factor," in the evaluation of proposals, the Comptroller General stated unequivocally:

It is not our intention to require a return to the strict procedures of formal advertising.

I want to interrupt my statement again to state again that the present procurement that is in process is formal advertising. That wasn't mentioned by the Forest Service in their testimony and no one asked them.

In 1965, the Senate Appropriations Committee stated in its report accompanying the Forest Service appropriation for fiscal year 1966:

The committee approves the decision to change the aerial tanker hiring system to negotiated contracts with guaranteed minimums.

In 1965, the Comptroller General stated in decision number **XXXXXXX**:

This office would have no objection if the proposed procurements are consummated under a request for proposals and contracts awarded by negotiation under the exception to formal advertisement set forth, impracticability of securing competition, arising from inability of description and particularization by specification.

Mr. Chairman, we respectfully submit that congressional intent has been established on the question of the procurement of air tanker services. The Forest Service shifted back to formal advertising without consulting either Congress or the industry. It is most appropriate, therefore, that Congress should review the question.

The reasons for maintaining a system of negotiated procurement remain strong. By the Government's admission, formal advertising just did not work. To quote again from the 1965 study:

Bids are not serving the best interest of the Government. They are encouraging the worst kind of cutthroat pricing which can only result in less effective service at a higher cost, with greater risk to life and property.

Nor has the system of contracting on a negotiated basis left the Government unprotected with respect to the price of these improved services. Intensive price negotiations were conducted on the national level between industry and the Forest Service in establishing overall price guidelines. In addition, individual operator negotiations, which included price, took place between each qualified company and the local regional contracting officer as well as the Board of Contract Awards at the time of actual contracting. In 1970 a joint task force of industry and government (both State and Federal) agreed to a uniform system of cost reporting as a part of their contract. Industry readily agreed to this because we understood that it was important to have an accurate history of costs to achieve a fair and equitable rate basis. Annual operator audits were conducted by the agencies involved. Books of accounts were willingly submitted to the Government auditors by the operators revealing all aspects of costs and profits on a year by year, base by base reporting system. It should be apparent that this method of contracting is cautiously protective of the public interest.

For the sake of simplifying administrative procedure, the Government is quietly forcing to the public once again the diminished protection which is the certain result of a procurement policy which has proven most unsuccessful. The Government is forcing on the public not just a risk, but a probability which it has acknowledged and cannot refute, that forest fire protection will worsen with every coming fire season.

Mr. Chairman, on behalf of the National Air Tankers Association, I want to thank you and the members of the subcommittee again for this opportunity to present our views on H.R. 12071, legislation which we consider essential to protecting our national forests against the disaster of fire. I will be happy to try to answer any questions the committee may have.

Mr. FOLEY. Thank you very much, Mr. Moore.

Mr. PURCELL. Mr. Chairman, for the record, my name is Graham Purcell, and I am general counsel for the Air Tankers Association. There is one point that is purely a legal one that I would like to try to clear up, although I am not on the witness list.

In regard to whether or not the provision of this proposed bill is "may" or "shall"—and the chairman might have the copy of the bill in front of you—the only change as I understand it in the first page of the present law—and reading the bottom line of the page, line 7—it states "The Forest Service may by negotiated contract" and the old law said, "Made by contract or otherwise." But it is my judgment, as the counsel for the Air Tankers Association that this makes the matter mandatory on the part of the Secretary that this would be a requirement to negotiate and not have price as a factor in their procurement procedures.

Mr. FOLEY. Thank you very much. I appreciate your clarifying that point.

Mr. Moore, you say that your association represents about 15 of the 18 companies where operators are qualified by contract. The number of 22 was mentioned a little earlier. Now, are there 18 to your knowledge that are contracting with the Forest Service at the present time, or is the number 22?

Mr. MOORE. Well, Mr. Chairman, I am not certain, and I do not believe anyone is.

Mr. FOLEY. You know you have 15 members, though?

Mr. MOORE. Well, we have 15 members. There are at least three more. Now, this is in the continental United States. Now in Alaska there are two additional operators, at least two. There may be, and I think there are, in the Eastern United States some very small firefighting efforts made by other States.

Mr. FOLEY. Are your members generally of the same size or do they vary substantially?

Mr. MOORE. No, sir, they do vary substantially. They vary from 1 airplane and operator to probably 10 airplane operators.

Mr. FOLEY. And is there an average size that you could describe?

Mr. MOORE. Well, everyone in the air tanker business, members, or not, are all subject to the small business set-aside qualifications. Currently it is just a standard 500 employee set-aside. However, I would say that the gross revenue from air tanker services annually would vary from probably \$5,000 on the smallest to maybe \$700,000 or \$800,000 on the largest. So there are differences, wide differences in the type of companies providing service. One of the things that this solicitation to bid here, the formal advertisement, is going to do, and I think this is certain, is going to put two or three of these companies out of business.

Mr. FOLEY. Are most of your members bidding under present Forest Service procedures?

Mr. MOORE. I am certain they all are, yes.

Mr. FOLEY. And have any of these bids been awarded yet?

Mr. MOORE. No, Mr. Chairman, they haven't. In our company we feel that our bids in most cases where we have operated in the past have shown they will be the low bid and will be accepted. If I may amplify that answer a little bit?

The case of the B-17 at Fresno, Calif., which is Mr. Sisk's district, well, our bid is approximately \$50 an hour lower than our negotiated price was in 1973, even though the normal inflationary factors have occurred.

We did—and I did the bidding, and I bid those kind of figures in order to hold our crew of people, both air crew and ground crew together, I bid at those rather than at a higher rate on a good risk, and then park all of our stuff and lose our people who are the heart of the program. So what we are going to have to do now, first let me add, we did not reply to a request for proposal. Our past history wasn't considered. We simply answered the advertisement.

Then, and assuming that the preaward qualification finds us able to meet the minimum requirements, we will be awarded the contract. Then we are going to have to operate within the revenues that this bid price is going to produce, and it is not going to allow us to spend the kind of money that we were spending under the negotiated contract. I believe that as time goes by, our reduction in the money we spend to support the long-term quality of the service, well, I believe the lack of that money is going to cause maybe not the safety but the depend-

ability and efficiency of the service to decline, and I think that will happen in almost every case.

Mr. FOLEY. I take it you see this as a process that is inevitable under the new bidding procedure?

Mr. MOORE. I think that the 3-year period starting the fire season of 1974, I think that at the end of that 3-year period, and assuming you have another advertisement, I think you will find a whole lot fewer replies to it because there are going to be some people that either actually went broke or who cut their level of support for the service now down so that they could work the dollars worth of value out of that equipment. They, rather than answer another one under the severe competitive conditions that may accrue, they probably will retire from the business.

In addition, and if that happens, the ones that remain may then really raise their prices. So I really don't know what the answer is, except that I believe the answer is that ultimately the cost to the Government will be higher.

Mr. FOLEY. Well, thank you very much, Mr. Moore. I would like to thank Mr. Deinema and the departmental witnesses, and Mr. Hastings.

The subcommittee through this hearing record will now have the opportunity to understand the changes that have occurred in the Department's practice in awarding air tanker service contracts that is the cause of this legislation. I personally found this hearing very helpful to better understand what is at issue.

Judge Purcell, did you have anything you wanted to add for the record?

Mr. PURCELL. Mr. Chairman, thank you.

I would just like to add that of course I represent the Air Tankers Association, so I claim I have a right to have a viewpoint that takes in their welfare first. But I just have no question in my own mind but that if this is allowed to run out at even the length of this 3-year contract, it is just my view that the service to the Government will have deteriorated to the point that the likelihood of controlling the fires will be much less than now. It is my view that in the long run, as Mr. Moore so aptly put it, that the cost is just bound to increase. When they finally get everybody out, except a very few, we will have to find that their pricing will go way up. There is no choice as far as the Government is concerned, that the Government will find itself in the position of having poor firefighting service, and they will then come back and demand on Congress that they go into the firefighting business.

They do not have the pilots, they do not have airplanes, and there will be some brandnew ones, so that some manufacturing company will put the pressure on Congress to sell to them the planes and the cost will be astronomical compared to what it has been with this industry developing gradually and carefully and prudently and furnishing a very good service to the Government.

So I think there are several fears. I think to change from a very satisfactory system to one that has already proven to be unsatisfactory is shortsighted, as far as I can see.

I appreciate the opportunity to submit this closing argument.

Mr. FOLEY. Well, thank you very much. The subcommittee will stand adjourned.

[Whereupon, at 3:50 p.m., the subcommittee recessed subject to the call of the Chair.]

[The following additional statement was submitted to the subcommittee:]

STATEMENT OF HON. ROBERT B. MATHIAS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CALIFORNIA

Mr. Chairman, I urge this Committee to take affirmative action on H.R. 12071, the bill which will authorize the Secretary of Agriculture to negotiate contracts with air-tanker service operators for fire protection of our national forests. The present method which requires that contracts be given to the lowest bidder does not necessarily guarantee that our forests will be protected by the best qualified pilots, flying the safest and best equipment. Under the present law, minimal qualifications will allow any operator to make a bid and if it is low enough, he will be successful.

As a co-sponsor of H.R. 12071, I believe the negotiated contract method will provide more efficient fire protection for our national forests, maintain stability in the air-tanker industry while assuring the pilots the safest possible flying conditions under circumstances which are often extremely hazardous.

It is essential that those persons who seek air-tanker contracts must be able to demonstrate the ability to provide well-maintained equipment, well-trained pilots and a responsible safety program to even be eligible for consideration by the Secretary. The Secretary must also maintain vigilance in his negotiations to avoid excessive and wasteful contracts.

I believe that H.R. 12071 provides the means to insure the best possible fire protection for our national forests.



