AMENDING THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

HEARING

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

H.R. 5381

TO AMEND THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949 TO REFORM CONTRACTING PROCEDURES AND CONTRACT SUPERVISION PRACTICES OF THE FEDERAL GOVERNMENT, AND FOR OTHER PURPOSES

OCTOBER 15, 1979

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CONTENTS

AMENDING THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

MONDAY, OCTOBER 15, 1979

HOUSE OF REPRESENTATIVES,
GOVERNMENT ACTIVITIES AND
TRANSPORTATION SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2172, Rayburn House Office Building, Hon. John L. Burton (chairman of the subcommittee) presiding.

Present: Representatives John L. Burton, Mike Synar, and Robert S. Walker.

Also present: Gary Sellers, staff director; Miles Q. Romney, counsel; David A. Caney and Stephen G. Berman, professional staff members; and Rachel Halterman, minority professional staff, Committee on Government Operations.

Mr. BURTON. The Subcommittee on Government Activities and Transportation will come to order.

Today we are opening hearings on H.R. 5381, to amend the Federal Property and Administrative Services Act of 1949 to reform contracting procedures and contract supervision practices of the Federal Government, and for other purposes.

In addition to this, we will be hearing from the Administrator and the Inspector General, information that we hope will bring the subcommittee up to date on the investigations of unsavory practices that have been going on in the GSA prior to our two witnesses taking over their offices.

I should like to welcome our witnesses and other guests here today on H.R. 5381. This is a bill to strengthen the General Services Administration's functions in procurement and disposition of property and services under its basic charter; namely, the Federal Property and Administrative Services Act of 1949. Legislative oversight of this statute and investigative oversight of most of GSA's operations are part of this subcommittee's assigned jurisdiction.

The subcommittee has been considering GSA's procurement activities since early last year. During that time, we have obtained advice and assistance from several interested and informed parties. They made valuable suggestions as to directions and steps toward strengthening existing law. As a result we have developed the present text of H.R. 5381, introduced September 25 by myself and fellow subcommittee members, Messrs. Walker, Evans, and Matsui.

Last May, the General Accounting Office submitted, at our request, a report on a comprehensive review of GSA's major buying

program, the multiple award schedule program, which involved 4 million products, 8,000 yearly contracts, and $2 billion in total purchases, for fiscal year 1978. GAO found that GSA did not have the capability to assure protection of the Government's interests in this procurement activity. It said that GSA has a service-oriented approach to the filling of other agencies' needs, concluding that GSA needs a fundamental change in philosophy.

GAO then proposed two recommendations to Congress: First, put GSA under a deadline to improve its management, and second, strengthen GSA's posture as a primary supplier of products to Federal agencies. H.R. 5381 seeks to do both of these things.

Let me also mention that among those consulted was the Congressional Research Service. We have just received for comment a final draft of a report prepared through their auspices that covers a survey of selected procurement practices of State governments. We feel this report will be highly valuable to our further consideration of this legislation.

In very brief outline, here are the main points of H.R. 5381.

Section 1 requires contractors to certify their data to the contracting agency. It subjects those who furnish fraudulent or misleading information to special Government remedies, including specific monetary assessments and debarment. The contractor's right to hearing and appeal is spelled out.

Section 2 provides for improved and systematized contract administration. It requires detailed recordkeeping about decisions, personal accountability for both decisions and operations, periodic review of contracting practices, and a GSA-centralized contract information system.

Section 3 requires GSA to establish a uniform and regular system of contract audits. It requires all Inspectors General to conduct periodic evaluation of their respective agencies' audit resources and report this semiannually to Congress.

Section 4 assures greater economy in the repair or alteration of Government-leased office space. It fills a gap in present law by providing additional congressional oversight and control of proposed work. This gap and the problems it caused were covered in a September 14, 1978, report to the Committee on Government Operations.

We consider the purpose of H.R. 5381 urgent. It does not, however, represent our final thoughts on what should be done. We need it to advance the beginning of a full-fledged dialog with the executive branch. With the bill, we have provided for our witnesses today a framework which will help us work together in the next months on this area of mutual concern.

We are glad to note from the testimony to be delivered this morning, statements of general support for the legislation and also insightful, constructive suggestions on specific points where H.R. 5381 may be made more effective.

So it is clear that this dialog has begun. We need only to examine in greater detail some of the means to get to our mutually agreed ends. We will be asking the witnesses this morning about some of the technical proposals and later will be soliciting further technical assistance, always indispensable to developing a bill that

improves enforcement processes involving contract fraud and waste.

We look forward to the continued cooperation of the witnesses and their agencies with our subcommittee.

[The bill, H.R. 5381, follows:]

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96TH CONGRESS
1ST SESSION

H. R. 5381

To amend the Federal Property and Administrative Services Act of 1949 to reform contracting procedures and contract supervision practices of the Federal Government, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 1979

Mr. JOHN L. BURTON (for himself, Mr. WALKER, Mr. EVANS of Indiana, and Mr. MATSUI) introduced the following bill; which was referred to the Committee on Government Operations

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A BILL

To amend the Federal Property and Administrative Services Act of 1949 to reform contracting procedures and contract supervision practices of the Federal Government, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PENALTIES FOR CONTRACTOR FRAUD

SECTION 1. (a) Section 209 of the Federal Property and Administrative Services Act of 1949 is amended by redesignating subsection (d) as subsection (i) and by striking out subsections (b) and (c), and inserting in lieu thereof the following:

"(b)(1) Every person who enters into a contract or agreement with respect to the procurement, transfer, or disposition of property or services pursuant to this Act shall certify that, in connection with the obtaining, execution, and performance of such contract or agreement (including any amendment or change order thereto), he—

"(A)(i) has furnished all information required by the Administrator or his designee and (ii) will furnish all such information; and

"(B)(i) has not furnished false or misleading information and has not failed to furnish information available to him and necessary to prevent any information previously furnished from being false or misleading and (ii) will not furnish false or misleading and will not fail to furnish information available to him and necessary to prevent any information previously furnished from being false or misleading.

"(2) Any person who makes a certification under paragraph (1) and who knows or should know that such certification is false or misleading or who willfully violates the certification required under paragraph (1)(A)(ii) or (1)(B)(ii) shall be liable to the United States for a penalty in an amount determined in accordance with a penalty assessment schedule prescribed by the Administrator by regulation. Such schedule

shall include, as appropriate to the facts of the particular case, provision for the assessment of the following penalties:

"(A) a penalty of not less than $1,000 nor more than $15,000;

"(B) a penalty of not more than 10 per centum of the amount of the transactions affected by the failure or violation; or

"(C) a penalty in an amount which shall be not less than three nor more than five times the damages resulting from such failure or violation,

plus a sum not to exceed $1,000 for the costs of collection.

"(3) Any person (A) who makes a certification under paragraph (1) which is false or misleading or (B) who violates the certification required under paragraph (1)(A)(ii) or (1)(B)(ii) shall be liable to the United States for a penalty in an amount not to exceed 5 per centum of the amount of the transactions affected by the violation.

"(4) No person who has paid a penalty under paragraph (2) or (3) with respect to any violation shall be assessed a penalty under the other such paragraph with respect to that violation.

"(c)(1) A penalty for a violation of subsection (b) of this section shall be assessed by the Administrator through an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance

with section 554 of title 5. Before issuing such an order, the Administrator shall give written notice to the person to whom such order is addressed of the Administrator's proposal to issue such order and provide such person an opportunity to request, within fifteen days of the date such person receives the notice, a hearing on the order.

"(2) In determining the amount of a penalty, the Administrator shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, history of any other such violations, the degree of culpability, and the deterrent effect of such penalties.

"(3) The Administrator may, by written order identifying the reasons and need therefor, compromise, modify, or remit, with or without conditions, any penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the United States to the person charged.

"(d) Any person who requested in accordance with subsection (c)(1) a hearing with respect to the assessment of a penalty and who is aggrieved by a final order assessing a penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of

Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the thirty-day period beginning on the date the final order making such assessment was issued.

"(e) If any person fails to pay an assessment of a penalty (and such amount has not been deducted from any sums owed by the United States to the person charged)—

"(1) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with subsection (d), or

"(2) after a court in an action brought under subsection (d) has entered a final judgment in favor of the Administrator,

the Attorney General shall take action to recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the thirty-day period referred to in subsection (d) or the date of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

"(f) The Administrator shall, after notice to the person or persons involved and opportunity for a hearing, impose on persons found, by a final order under subsection (c), to be in

violation of subsection (b), (1) debarment from participating in Government contracts for a period of not less than two nor more than five years in the case of a violation under subsection (b)(2), and (2) debarment from such participation for a period not in excess of five years in the case of a violation under subsection (b)(3). If the Administrator determines that debarment should not be imposed under clause (2) of this subsection, a full written statement of the reasons for such determination shall be included in the record of the proceeding.

"(g) Notice of the penalties which can be imposed under this section shall be contained in any contract or agreement for property or services entered into on or after ninety days after the date of enactment of this subsection.

"(h) Any penalties assessed and collected under this section (other than penalties imposed to cover the cost of collection, which shall be credited to the appropriation from which expenses under this section are drawn) shall be deposited in the general fund of the Treasury and credited to miscellaneous receipts.".

(b) The amendments made by subsection (a) of this section shall become effective ninety days after the date of enactment of this Act.

IMPROVED PROCUREMENT PRACTICES

SEC. 2. Section 307 of the Federal Property and Administrative Services Act of 1949 is amended by adding at the end thereof the following new subsections:

"(e)(1)(A) It is the purpose of this subsection to provide for the establishment and maintenance of rigorous and more nearly uniform procurement practices designed to improve the decisionmaking in such practices by requiring detailed records of the significant stages of contract operations, by requiring a systematic organization of all such records, by requiring personal accountability for all decisions as to each contract, and by requiring periodic review of contracting practices to foreclose existing or new methods of abuse.

"(B) Not later than nine months after the date of enactment of this subsection the Administrator shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

"(2) The Administrator shall, not later than nine months after the date of enactment of this subsection, establish and maintain a system for control and coordination of all contracts and agreements for procurement of property or services under this Act. Such system shall include a requirement that the Administrator (with respect to the General Services Administration) and any agency head to whom the Adminis-

trator has delegated contracting authority (with respect to that agency) will—

"(A) require the approval by the Administrator or agency head of any contract or agreement negotiated the value of which may exceed $10,000 and any other contracts or agreements as may be required to be so approved in accordance with regulations prescribed by the Administrator;

"(B) make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of Federal funds;

"(C) impose a system of accounting and internal controls sufficient to provide reasonable assurances that—

"(i) transactions are executed in accordance with the Administrator's or the agency head's general or specific authorization;

"(ii) transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles and any other criteria applicable to such statements, and (II) to maintain accountability for such funds;

"(iii) access to funds is permitted only in accordance with the Administrator's or the agency head's general or specific authorization; and

"(iv) the recorded accountability for funds is compared with existing funds at reasonably frequent intervals and corrective action is taken promptly with respect to any differences;

"(D) provide to each such agency specific criteria, procedures, and practices, for obtaining complete cost and pricing data, an adequate and effective cost estimating capability, with the capability to make reliable forecasts of such factors as the lifetime costs of major systems, programs, and projects, total cost projections, and incidental costs.

"(3)(A) The Administrator shall by regulation establish a system, as part of contract operations, to ensure that with respect to each decision affecting such operations for a particular contract a memorandum is made which shall include (i) a statement of the nature of and parties to any discussions or communications pertaining to any such decision, (ii) a description of action taken or proposed as a consequence of such discussions or communications, (iii) any schedule of future discussions or communications proposed or agreed to, and (iv) the identity, position, and personal signature or en-

dorsement of the Federal officer or employee responsible for making the decision.

"(B) The Inspector General of the General Services Administration shall investigate (or refer to the Inspector General or other appropriate officer of other agencies) any allegation concerning any officer's or employee's failure to comply with the regulations prescribed under subparagraph (A) which may arise in the course of any audit conducted pursuant to subsection (f) or otherwise, or which may be found in any inspections or investigations initiated by the Inspector General. If the Inspector General of the General Services Administration (or the Inspector General or officer of another agency to whom the matter is referred) determines that such failure is intentional or grossly negligent, he shall refer the matter to the head of the appropriate agency, who shall take or initiate such authorized corrective action as he deems appropriate.

"(C) Each Inspector General shall include in each semiannual report required to be submitted under section 5 of the Inspector General Act of 1978 the matters referred under subparagraph (B) of this paragraph and actions taken.

"(D) The Administrator, after consultation with the Inspector General, may provide by regulation for the exemption from the requirements of subparagraph (A) of this paragraph with respect to contracts or agreements which, together with

57-507 O - 80 - 2

any related contracts with the same or related parties, do not involve an actual or projected expenditure by the Federal Government in excess of $10,000.

"(4) The Administrator shall periodically and regularly review the contracting activities of the General Services Administration, and of any other agency to the head of which the Administrator has delegated contracting authority, for the purpose of eliminating fraud, waste, and abuse. The Administrator shall keep the Congress fully and currently informed with respect to any deficiencies in such contracting activities by including such information in the annual or other reports provided for in section 212 of this Act. Such review shall promptly be made in the case of any matter raised in a semiannual report of any Inspector General under section 5 of the Inspector General Act of 1978 which has not been substantially corrected.

"(5) The Administrator, within ninety days after the date of enactment of this subsection, shall prescribe regulations to eliminate practices which result in fraud, waste, or abuse, including regulations—

"(A) to require that each agency head establish and operate a system through which the agency will report quarterly to the Administrator purchases made from sources within any buying program established by

the Administrator or from such other sources as the Administrator may designate by regulation;

"(B) to prohibit the evasion (by such means as multiple contracts by the same party, change orders extending the contract, or other similar devices) of procedural requirements based on the relatively small size of any contract;

"(C) to require submissions with respect to any amendment, change order, or extension to any contract comparable to those required in the proposals or bids for the initial contract;

"(D) to prohibit abusive practices with respect to late bidding, including regulations requiring the invalidation of any late bid which is not received by registered mail containing verification of its timely transmission;

"(E) to prohibit any changes to be made in the terms of a proposed contract prior to actual signing of the contract, but after agency approval thereof; and

"(F) to establish appropriate sanctions for noncompliance with the regulations prescribed under this paragraph.

"(6) Purchases under this title are not authorized unless made from sources within a buying program established by

the Administrator or from other sources as provided by the Administrator by regulation.

"(7) As used in this subsection, the term 'contract operations' means all phases of making and administering advertised or negotiated contracts for property or services from the initial notice of contract, request for proposal, invitation for bids, or the initial contact with a contractor for advertised or negotiated contracts through the final settlement of accounts concerning any such contract, and includes any phase which involves amendments to or change orders concerning any such contract or any renewal or other extension or revision of any such contract.

"(f) The Administrator, after consultation with and advice from the Inspector General of the General Services Administration, shall establish a procedure for the review of contracts and agreements subject to the approval requirement under subsection (e)(2)(A) for purpose of determining whether, by aggregation or otherwise, such contracts and agreements can be more economically and efficiently secured by advertised bids or otherwise. The Administrator shall report annually to the President and the Congress on activities under this subsection and shall make any recommendations concerning appropriate changes in procurement procedures.".

REQUIRED AUDIT PROCEDURES

SEC. 3. Section 307 of the Federal Property and Administrative Services Act of 1949 is further amended by adding at the end thereof the following new subsections:

"(f)(1) With respect to contracts or classes of contracts made pursuant to this Act for property and services, the Administrator shall provide by regulation for the establishment of a uniform system of contract audits to be conducted by the Administration or by any agency to the head of which the Administrator has delegated contracting authority or which is otherwise purchasing pursuant to a contract secured by the Administration.

"(2) Such regulations shall include—

"(A) a plan and schedule of both regular and random unannounced audits of major contracts;

"(B) establishment of audit criteria and procedures (such as number, character, incidence, and sampling techniques) necessary to ensure a significant probability that any contract with an actual or projected cost in excess of $1,000 will be audited, including—

"(i) regulations governing the classification of contracts by size and character;

"(ii) regulations to ensure that not less than 20 per centum of the contracts within each such classification (or such other percentage as may be

approved by the Inspector General pursuant to paragraph (3)) are audited each fiscal year and to ensure that not less than 10 per centum of each fiscal year's audits are random and unannounced.

"(3)(A) Regulations established under this subsection shall be subject to review and approval by the Inspector General of such Administration. During the first three full fiscal years beginning after the date of enactment of this subsection, such Inspector General may make such variations in the percentage of contracts to be audited under paragraph (2)(B)(ii) as may be necessary or appropriate in the light of such factors as the nature of such contracts and the availability of resources for conducting such audits.

"(B) Each Inspector General shall include in each semiannual report required to be submitted under section 5 of the Inspector General Act of 1978 an evaluation of the availability of such resources for the purposes of this subsection and any recommendations concerning more appropriate allocation thereof.

"(4) The Administrator and any agency head to whom the Administrator has delegated contracting authority shall maintain convenient abstracts of such audits, shall regularly monitor recommendations or proposed recoveries contained in such audits, and shall periodically review reports of the status of such recommendations or proposed recoveries.

"(g) In accordance with regulations prescribed by the Administrator, the Administrator and the Inspector General of the General Services Administration may obtain access to and examine (1) the records of any executive agency relating to any contract or agreement under this title for procurement of property or services, and (2) material records of any contractor or subcontractor engaged in the performance of, and involving transactions related to, any contract, subcontract, or agreement under this title for procurement of property or services.

"(h) To the fullest extent consistent with the purposes subsections (e) and (f), such subsections shall be subject to the provisions of the Accounting and Auditing Act of 1950 and the Inspector General Act of 1978.".

ALTERATION OF LEASED FACILITIES

SEC. 4. Section 210 of the Federal Property and Administrative Services Act of 1949 is amended—

(1) in paragraph (8) of subsection (a) thereof, by striking out ": *Provided*, That" and everything that follows through the semicolon at the end of such paragraph and inserting in lieu thereof ", subject to the limitations contained in subsection (l) of this section;"; and

(2) by adding at the end of such section the following new subsection:

"(l)(1) Any determination made by the Administrator pursuant to subsection (a)(8) shall show that the total cost (rentals, repairs, alterations, or improvements) to the Government for the expected life of the lease shall be less than the cost of alternative space (whether owned or leased) which needs no or less costly repairs, alterations, or improvements. A copy of every such determination shall be furnished to the General Accounting Office.

"(2) No expenditure or obligation shall be made under the authority of subsection (a)(8) for any work, or for any part thereof, unless—

"(A) the Congress, or a committee or committees of the Congress pursuant to procedure established by statute, gives specific advance approval for the work;

"(B) an explanatory statement of the overall work including purpose, estimated cost, estimated completion time, source and method of procurement, and any determination made pursuant to subsection (a)(8), has been provided in advance to the committees of both the Senate and House of Representatives having legislative, oversight, and appropriation responsibility for such activity; or

"(C) the estimated aggregate cost of the work is less than $25,000.".

Mr. BURTON. I will now yield to Mr. Walker, the ranking minority member, for whatever comments he may wish to make.

Mr. WALKER. Thank you, Mr. Chairman. I was pleased to join you in sponsoring legislation designed to curb abuses in Government contracting procedures. As you noted, H.R. 5381 is an initial effort, and I look forward with you to receiving testimony from public as well as private witnesses as to how we can improve and strengthen its provisions.

As you know, Mr. Chairman, the American public has heard a great deal about fraud and abuse in Government expenditures, and the much-publicized GSA scandals have dragged on for some time with no end in sight.

The personnel transitions within GSA have had the unfortunate effect of slowing, if not halting, the progress of the investigation. I look forward to hearing from Administrator Freeman and Inspector General Muellenberg that it is moving ahead. The lack of continuity has benefited the wrongdoers to the detriment of the public as well as the majority of honest GSA employees. I think it behooves our committee to push for final results as soon as possible, and I intend to be active in pursuing such an end. I look forward to many more hearings, and thank you for your efforts, Mr. Chairman.

Mr. BURTON. Mr. Synar.

Mr. SYNAR. I have no questions.

Mr. BURTON. Mr. Administrator, you may proceed. Will you stand and be sworn, please.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God.

STATEMENT OF R. G. FREEMAN, ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION

Mr. FREEMAN. I do.

Mr. Chairman, I welcome the opportunity to appear before this subcommittee today to discuss with you this important piece of legislation.

This appearance also gives me a chance to thank you, Mr. Chairman, for your longstanding interest in GSA and in the reform of its procurement and management process. I know that you share my firm commitment to the development of an integrated management system that will not only eliminate waste, mismanagement, and the potential for fraud, but also deliver the best possible services to GSA's client agencies. We have a common objective—which is to see that GSA fulfills its mission of maximum service, at minimum cost, in a timely fashion.

The legislation which is before us today is an outgrowth of your concern over the well-publicized problems of our agency—the allegations of fraud, glaring deficiencies in the multiple awards schedule and, in fact, the whole procurement process. I share this concern, and I believe that the changes which I have introduced in the short time I have headed this agency represent an important first step in the solution of some of the more basic problems which we face.

These changes include: decentralization of management; institution of an agencywide performance measurement system; expanded oversight of major procurements; reduction of the multiple awards schedules program and institution of a priority program to prepare 300 commercial item descriptions for commonly used commercial products; increased use of single award competitive schedules; procurement training and a warranting program for all contracting officers.

The task ahead of me will not be easy. It will require teamwork on the part of the 38,000 employees at GSA. With the continued support of Congress, I believe we can achieve our goal.

At this time I would specifically like to address what I believe to be some of the more important issues raised by this legislation.

First, penalties for contract fraud. Existing legislation does not provide adequate safeguards to insure the integrity of the contracting process. While certain civil and criminal statutes provide the Federal Government with the ability to penalize contractors for fraudulent contract practices, there is no efficient mechanism for their enforcement at the agency level. Furthermore, although the civilian agencies require the certification of cost and pricing data under negotiated contracts, thus paralleling the requirements of the Truth in Negotiations Act, there is no administrative sanction for false certification other than a debarment action. The legislation now under consideration, however, would require certification of any information required in obtaining or performing any contract, advertised as well as negotiated, and would provide a much needed mechanism for GSA to act swiftly and directly against fraudulent contractors.

We do recognize that if this section is enacted, GSA would be performing enforcement functions which are normally the province of the Department of Justice. We think that the comments of that Department on these and similar issues should be given serious consideration, and look forward to working with them in resolving any jurisdictional or procedural questions.

We would like to suggest that an effort be made to clarify exactly what type of information is intended to be covered by the bill. We would suggest that the provisions apply only to such information as may be required by the solicitation or the contract, as opposed to any request for information made by the Administrator. Contractors should be given advance notice of the specific type of information that will be required before subjecting themselves to a binding agreement and the subject penalties. It is also important that it be made clear that the time penalties imposed under the provisions for nonwillful violations are in proportion with the penalties imposed for willful violations of a similar nature.

Second, scope of the bill's application. We are unsure as to whether the bill is intended to apply to all civilian contracting agencies. The bill amends certain sections of the Federal Property and Administrative Services Act of 1949 and places certain requirements on the Administrator of GSA. The systems, procedures, regulations, and oversight functions to be performed by GSA are to apply to contracts made by GSA under the Federal Property Act, and by other agencies which have been delegated authority under the act. Because GSA only delegates contract authority to other

agencies in limited areas, such as ADP procurements, we are unsure of the subcommittee's intent as to the scope of GSA's authority and responsibility. If the subcommittee intended that the requirements of the bill should be applicable to all civilian contracting agencies, we believe that the language should be amended to clarify this point.

Third, improved procurement practice. A legislative mandate to prescribe a system for the control, coordination, and documentation of procurement activities will be a valuable tool in improving contracting practices and fixing responsibility and accountability for contract decisions. We fully support the intent of this provision. We would suggest, however, that the threshold amount of $10,000 above which the administrator or agency head would be required to approve negotiated contracts is unrealistically low. We estimate that there are well over 16,000 of these contracts awarded by GSA alone each year.

Our office of acquisition policy now reviews approximately 70 percent of the dollars obligated under negotiated and single-bid contracts. The specific dollar thresholds and other criteria for required clearance have been calculated to maximize oversight of contracts where procurement problems are most likely to occur, and where the taxpayer's money is most likely to be affected by improper or unwise procurement decisions. We would, therefore, recommend: (*a*) that the present language be revised to require the Administrator to establish by regulation a strict, yet efficient system of contract clearance, with a meaningful dollar approval threshold, and (*b*) that consideration be given to a limited delegation of approval authority below the level of Administrator.

One final note. We agree that a review by the Administrator of GSA of the contracting activities of those agencies to whom it has delegated contracting authority would be an important tool in effective procurement oversight. However, this review would be an enormous undertaking, requiring the commitment of substantial resources. We would be happy to work with the committee to discuss appropriate language to insure these goals are achieved.

Fourth, required audit procedures. The Office of the Inspector General would be unable to meet the expanded audit coverage envisioned by this bill within either existing or projected levels of staffing. We therefore recommend that consideration be given to amending the legislation to allow a greater flexibility in the size and percentage of contracts to be audited.

We note that the bill would allow GSA to obtain access to and examine the material records of any contractor or subcontractor peforming a Government contract. This requirement would represent a major change in the procurement philosophy of the Federal Government. In the past, we have maintained that the competitive forces of the market would reduce the need for detailed oversight in this area. I believe any change in this philosophy should be approached with caution. I would therefore recommend that the subcommittee contact representatives of those industries which do business with the Government to discuss their concerns in this area. I believe that these discussions would be extremely useful in arriving at a better understanding of the difficulties which could arise.

However, broadly speaking, we support this provision as a useful tool in the oversight of our contracting process. Under present regulations, access to such information is largely limited to negotiated contracts. The expansion of audit capabilities into formally advertised contracts would allow for more effective oversight of Government contractors. Experience has proven that advertised contracts must also be audited in order to detect and prevent waste, fraud, and abuse.

Fifth, alteration of leased facilities. We have serious reservations concerning that language in the bill which would restrict the authority of the Administrator to waive limitations on alterations in leased space imposed by the Economy Act of 1932.

Unlike alterations in federally owned buildings, alterations in leased space are not capital improvements to modernize or extend the functional life of the rented premises. Alterations in leased space are either: (1) legislatively mandated after execution of the lease contract, such as various recent public laws which mandate facility accessibility for the handicapped; or (2) tenant alterations frequently reimbursable, to meet special mission requirements of the tenant agency.

The proposed amendments to the Federal Property Act would require the approval of one or more unspecified committees of each House of the Congress prior to commencing with alterations costing in excess of $25,000. This requirement would unquestionably establish a time-consuming process of congressional review and approval of many relatively small projects, thereby delaying work either required by law or urgently needed for the effective performance of the tenant agency's mission. We believe the controls and system of checks and balances now being incorporated into GSA operations will go a long way to insure prudent and proper use of appropriated funds in accommodating the needs of agencies housed in leased space. In this regard, we are working with the respective Public Works Committees on proposed draft legislation which would give those committees a more direct role in the oversight of such expenditures.

Again, I wish to express my appreciation to your subcommittee for its oversight efforts. I look forward to working with you in the weeks ahead to insure that this legislation is tailored so as to best achieve the reforms we both recognize are so urgently required.

This concludes my prepared statement. I will be happy to answer any questions you may have.

Mr. BURTON. Mr. Administrator, I think what we will do in the interest of time: The Inspector General has a very brief statement. We will have him join with you and make that, then some of the questions we would be asking you, we would be asking him later. It makes sense to do that jointly as far as portions of this bill and the ongoing investigations.

So, Mr. Inspector General, will you step forward?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

STATEMENT OF KURT W. MUELLENBERG, INSPECTOR GENERAL, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY HOWARD W. COX, COUNSEL

Mr. MUELLENBERG. I do.

Mr. Chairman, when you get to the detailed provisions of the legislation, I have an attorney from the staff with me, and I may have to call upon his expertise to assist me on this matter.

Mr. Chairman and members of the subcommittee, I would like to take this opportunity to thank the subcommittee for the opportunity to comment upon the proposed amendments to the Federal Property and Administrative Services Act of 1949. As the Inspector General of GSA, I have a statutory obligation under the Inspector General's Act to report to Congress upon proposed legislation which may impact upon the operations of GSA. I am particularly grateful to the committee for allowing me to testify directly upon this important legislation.

After examination of the existing legislative and administrative measures which are designed to protect the Government's interests in the procurement of property and services, I am convinced that further legislation is necessary in order to assure that GSA possesses the adequate authority and means to identify, investigate, and penalize fraudulent practices.

For this reason, I am pleased to support the substance of the proposed amendments contained in H.R. 5381. The bill will extend the penalty provisions of the Federal Property and Administrative Services Act to the procurement of services, which are becoming an increasingly larger portion of GSA's procurement responsibilities. The bill will require the certification of contractor information and create stiff penalties for intentional or negligent certifications which are false or misleading. The penalties would be imposed swiftly and certainly through an administrative procedure by the contracting authority, thereby increasing the deterrent effect and avoiding the need for costly and time-consuming litigation. Furthermore, the legislation will allow the Inspector General to audit all material records of any contractor doing business with GSA, whether through advertised or negotiated contracts. These powers will substantially enhance and improve the existing investigative tools of the Inspector General in carrying out the legislative responsibility to promote economy, efficiency, and effectiveness and to prevent and detect fraud and abuse in the programs and operations of GSA.

In addition, I think the subcommittee should consider a possible amendment to 18 U.S.C. 1505, Obstruction of Proceedings of Departments and Agencies, and have that cover all Inspector General audits and investigations.

While judicial interpretation of 18 U.S.C. 1505, would in all likelihood apply to the obstruction of Inspector General investigations, the statute has never been applied to the obstruction of audits. Furthermore, with the creation of an Inspector General subpena power to augment normal audit and investigatory functions, it is essential that adequate legislative penalties exist which will apply to the obstruction of the subpena power. For this reason, I recommend that paragraph 3 of 18 U.S.C. 1505, which applies to

civil investigative demands, be expanded to specifically include Inspector General subpenas.

I further recommend that provisions be included in H.R. 5381 which would mandate the promulgation of regulations by GSA which would require prospective contractors to certify certain additional information which will enable the Government to more easily determine a contractor's responsibility. A contractor should be statutorily required to disclose whether the company or its principals have ever been indicted or convicted of any crime, other than traffic and disorderly persons offenses, by any State or Federal court. The contractor should be further required to disclose any debarments or suspensions imposed upon the company or its principals by any Federal, State or municipal agency.

While GSA maintains a consolidated debarred bidders list of all contractors debarred by any Federal agency, there is currently no internal mechanism within GSA to accumulate and index, on a nationwide basis, all criminal or adverse administrative actions taken against a company or its principals. Such information is essential to enable a contracting officer to evaluate the performance history of a corporation and to arrive at an informed responsibility determination. Convicted or debarred contractors have been known to reincorporate under a new name, or to commence operation in a different part of the county, where their previous reputation is unknown. It is therefore essential for contractors to certify such information to the contracting officer.

This concludes my prepared remarks upon the bill. I am prepared to respond to any questions the committee may have regarding my position on the legislation.

Mr. BURTON. That would come under the Judiciary Committee, although we could work with them to see if there would be a way to include that in this legislation, and see if they can put legislation in.

Starting with the Administrator, then the Inspector General, can you bring us up to date as to the ongoing investigation into, shall we say, past activities that have cost the taxpayers money without taxpayers getting any benefit therefrom?

Mr. FREEMAN. I have spent the first part of my administration in GSA in reviewing areas where I can take front-end action to avoid problems downstream, whether it is in the building management area, our retail managers, or whether it is buying in excess of need.

With regard to both the retail stores and building managers, the problems we have had there are well known to your committee. We want to make sure we have the appropriate checks and balances, that we have audits going on before the problem arises, Mr. Chairman.

The people involved in these jobs have not received the kind of training to give them even a rudimentary knowledge of investigatory procedures. We are effecting a substantial increase in our budget this year to correct this problem.

I became concerned long before I took over the agency that our knowledge of how we calculated our requirements could use a great overhaul. I am on the way to do just this with the one commodity now, but we will be reviewing others as we get downstream. This is going to be an area that will take more time than I would like,

because it involves large reviews. These front-end actions will begin to show fruit downstream. It will be a while before I can demonstrate adequately to the subcommittee the value of what we have done. But I am trying to head off these problems before they start.

Mr. BURTON. How about activities? Would this be more in the Inspector General's area? I mean activities that started before you took over in trying to find out who did it or bring them up to date? In other words—and you are to be commended for action you have taken to prevent things that occurred in the past—have you been involved in trying to dig out some of the past actions?

Mr. FREEMAN. I told Mr. Muellenberg that I support the Inspector General; what I have done to date is to support requests for resources so we can get at rapidly identifying areas where we have problems. I have asked him to undertake audits in certain areas where I have concerns there may be problems.

As to specific details as to ongoing investigation, I would prefer Mr. Muellenberg answer that for you.

Mr. BURTON. Mr. Muellenberg.

Mr. MUELLENBERG. Mr. Chairman, as you know, since I arrived at GSA in April of this year we have followed up on some of the investigative matters that were pending when I got there.

Let me explain that some of the major allegations which related to possible wrongdoing at GSA are being worked at by both my office and the Department of Justice headed up by Mr. Lynch. He has 19 officers working full time in trying to unravel some of the allegations as they relate to past practices.

Since my arrival at GSA, we have utilized the subpena power of the Inspector General. I think fairly aggressively. We have served 39 subpenas up to now. We have a number of investigations ongoing. We have made 15 referrals to the Department of Justice task force. I will be the first to admit these are not the kinds of cases some people might expect after 6 months of work, but I hope you realize and appreciate, Mr. Chairman, that trying to reconstruct fairly difficult paper investigations is not that easily done.

As to some of the progress made, for example, here in the Washington, D.C., area, on fraud and alteration of contracts, by now there have been guilty pleas of the Government having been defrauded in the amount of $261,000; GSA kickbacks, $269,000; and at that particular time, 10 more companies and approximately 20 GSA employees are under investigation in that same area.

We have prepared a fairly detailed vulnerability assessment plan. We have gone through all the GSA programs very systematically and have identified those programs which have the highest potential for not only waste and mismanagement, but also fraud and abuse. We are going through the agency, beginning with consultant contracts that were let in the past. That survey will take a little bit of time. I assure you we are trying to approach it as quickly as we can and do the best professional job we can under the circumstances.

Mr. BURTON. Have you prepared your request for next year's budget? You got your appropriations, Tom Steed handles GSA appropriations. Your people are getting paid, anyway.

Do you feel you have adequate personnel for your present operations within that appropriation?

Mr. MUELLENBERG. With your support and also Senator Chiles', I believe the greatest need in the Inspector General's office is a very effective internal audit program. That is where some of the resources will have to go. All of us will agree, in order for the Inspector General's office to have some kind of a deterrent value down the road, the audit side is a very important component, obviously more important to the taxpayer than preventing the abuses, and not overly concentrating on whether somebody stole $5,000.

We have received the resources. I do not think the Inspector General's office at GSA could absorb any more personnel. We have to hire 125 auditors, which under the civil service system is complicated. I would think my budget for 1980 is adequate for 1981. The investigative staff at GSA, the number of bodies are adequate, but slow in coming in the direction of the kind of investigative work that has to be done. That has to be changed drastically. I am working on this. There are a lot of nickel-dime matters going on that if I were a prosecutor I would certainly not consider for prosecutions, but it is a matter of getting things in line.

Mr. BURTON. If this bill passed, close to its present form, there would probably be a necessity for more people?

Mr. MUELLENBERG. I believe there would be on the audit side. I would have to get back to you and give you some indication specifically as to the numbers we are talking about.

[Additional information follows:]

It is estimated that if annual audits are required of 20 percent of all contracts in excess of $1,000, we would need an additional 1,000 auditors to accomplish this goal. For example, approximately 8,000 multiple award schedule contracts take place each year which are in excess of $1,000 each. In order to audit 20 percent of these contracts, which amounts to 1,600 contracts, it would be necessary to utilize 225 auditors on a full time basis. It should be noted that Multiple Award Schedule Contracts make up only a small percentage of the total number of GSA contracts which would be subject to audit if this bill is passed.

Mr. BURTON. Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

In the last appearance Mr. Solomon made before the subcommittee, he expressed concern that the transition period of Administrators, as well as setting up the new Inspector General office, would virtually halt the investigations. I share those concerns.

Can either or both of you tell us whether or not the transitional period has ended? If it has, do you feel the investigation is in full swing?

Mr. FREEMAN. The transition period ended on July 2, when I took over as Administrator. I think the Inspector General will confirm that. I can assure you that the momentum, the direction, and need to get at this thing as soon as possible was reemphasized by myself the day I took over. I think Kurt can confirm that as well.

Mr. MUELLENBERG. I remember Mr. Solomon's comments at that particular time. I do not agree with them at all, quite frankly. I am convinced and satisfied that the work done by the Department of Justice and the Department of Justice task force, which has been in existence for over a year, is excellent. They are pursuing major complex investigations.

I came from the Department of Justice to GSA, earlier this year, following Mr. Borowski. But the investigations by GSA were ongoing investigations. I think it is a little bit unfair to talk in terms of a Government institution just because of one individual's thoughts about the Inspector General or the Administrator, and that individual is not there. There are still a lot of people who go to work every morning and want to make a contribution. That is true at the GSA as well as at other places.

Mr. WALKER. Can you give us an idea as to when we might expect further indictments?

Mr. MUELLENBERG. My referrals go to the Department of Justice. The 15 referrals I have made require additional investigative work by the Department of Justice. The Inspector General subpena gives me the authority to review books and records, but not testimony. The matters that I have referred so far, I cannot tell you at what time indictments are expected.

Mr. WALKER. None of those have been subject to indictment at this point?

Mr. MUELLENBERG. That is right.

Mr. WALKER. So of the 15 there are no indictments from that?

Mr. MUELLENBERG. That is right.

Mr. WALKER. Have you additional ones that will be going to the Department of Justice in the near future?

Mr. MUELLENBERG. Yes.

Mr. WALKER. Mr. Administrator, how detailed are the reports you get from the Inspector General?

Mr. FREEMAN. I stay abreast with Mr. Muellenberg and his office. I consider Mr. Muellenberg an expert as an administrator; therefore, I have asked him to tell me where he needs help, where I can interface with external agencies. He keeps me regularly informed on progress.

Mr. WALKER. When you say "regularly"——

Mr. FREEMAN. I see him at least once a day on various matters.

Mr. WALKER. There was some concern—Mr. Muellenberg may be more familiar with this than you, Mr. Administrator—there was concern that the statute of limitations may run out on some people. Have you taken a look at the statute-of-limitations problem, and are we faced with any situations where someone may escape under that statute?

Mr. MUELLENBERG. The statute of limitations is 5 years. Certainly, I am sure there are some allegations which are now beyond the statute of limitations, but that probably was true of perhaps a year ago, there was nothing you could do about an allegation in 1968 or 1969.

Mr. WALKER. Have you taken a look at some of the allegations when we may run into a period of time where we will be affected by the statute of limitations?

There was a time in the mid-1970's when it was the concern of a subcommittee in the Senate that time would run out and nothing could be done. Are you looking at those cases to make sure we do not have any serious offenders escaping under that statute?

Mr. MUELLENBERG. We are doing that at the present time. There are allegations which relate to 1974 and 1975 which obviously have

to go on the front burner, so to speak. I am very much aware of that and also very concerned.

Mr. WALKER. Can you tell me what is the status of the allegations into the Atlanta Federal buildings?

Mr. MUELLENBERG. As you know, there is a dispute now in the litigation phase on claims made by the general contractor. On that part, I have nothing to do with because that is a civil matter between the agency and the general contractor.

Mr. WALKER. Mr. Solomon in February said there were three investigations into the Atlanta Federal Building matter. I am wondering what the status of those investigations is.

Mr. FREEMAN. First of all, the construction collapsed on April 27, 1978, in the South Plaza, and the formal report on that is not available. This matter will be referred to the Department of Justice.

The second was the modification after the building was completed. These were made to serve the recently revised needs of the using agency. If there is fraud involved in this, again, this will be referred to Justice.

Third, as far as the waterproofing, this problem is still under study. I cannot give you a definitive answer on that. It is in litigation with the contractor.

Mr. WALKER. One of the three is complete at this point; there is suspected fraud on the second, that will be referred to the Justice Department if that is proven; and the third is still a matter of negotiation?

Mr. FREEMAN. Yes, sir. We have a number of claims submitted by the contractor which are in litigation before the Board of Contract Appeals.

Mr. WALKER. We are still getting a lot of mail on Capitol Hill regarding the various abuses that have gone on in the past. I recognize this happened before the new Inspector General came aboard, and certainly preceded the advent of the new Administrator, but we are getting a rather steady pace of questions on what is being done to clean up the mess? All reports indicated it went much higher in the GSA than a few store managers or a few lower employees on the line.

What do we tell people when they ask those questions?

Mr. MUELLENBERG. From the point of view of the Inspector General, sooner or later it is going to have to be said that abuses in the Government do not necessarily mean that there is corruption at the same time. There is also such a thing as less-than-competent work. I think it is fair to say that arises in Government programs as well, that the performance by an agency is mediocre, the public sees the abuses, certainly the Congress takes an active look at the abuse, but it could be corruption or it could be less-than-competent work.

Mr. FREEMAN. I also believe it will take 2 to 3 years to get management processes in place to realize stabilized management; to get things like management systems and performance standards in place. These things GSA has never had.

Mr. WALKER. Your problem with the agencies is somewhat different than Mr. Solomon's. When he came in, he would talk about the

fact that as a former businessman, he did not think the system was working.

Mr. FREEMAN. He did not understand the system, to begin with. I find the average civil servant is a very dedicated, hard-working citizen who needs understanding. When the agency was put together in 1949, it was never allowed to integrate. That is one of the problems we face, we do not have an integrated budget, or a priority system. What GSA needs is corporate management and a recognition that what we have is a large corporation, with major divisions out in the field. It is a tough management job, but you have to put in place the necessary checks and balances, the management formation systems, the performance management systems. None of these existed and they were never imposed on the agency. I come from a fairly orderly agency, but I admit, when we spill, we spill largely.

Mr. WALKER. I do not find what you have just said too much different than Mr. Solomon's presentation. Except the question becomes whether or not the system itself has some inherent problems; whether there needs to be a restructuring of the system, or whether it can be managed into some degree of acceptability.

That is the problem we are dealing with. For instance, what this subcommittee has heard in the past is the fact that we do not even have the checks and balances in the present system that any good businessman absolutely requires in the course of, say, putting up a building. We do not even have the number of inspections within the Government system that would take place in private construction for many billions of dollars of contracts. Some of those things may be inherently a problem with the system.

Mr. FREEMAN. I do not see any problem with the system, I see a problem with the priorities and attempts to get things done. I have heard a lot about contract administration within the agency, and I have directed that a better position be established and will provide budget support to establish it. There is a lot of difference in saying the checks and balances are not there, and providing the checks and balances and resources to get them done.

One of the best systems is the Defense Contract Service. I think their method can be practiced here at GSA as well as other places in the Federal Government where they are required.

Mr. WALKER. How do you feel about the legislative-reorganization aspect?

Mr. FREEMAN. I support the intent of the bill as it is proposed but it needs good, sound management. There are some amendments to things like the Public Buildings Act being worked by both Public Works Committees of the Congress. There are perhaps other oversight areas as it pertains to my overall responsibilities with the Federal Government which at the time are unclear, and I intend to come back to discuss this. There are areas in the agency where I do not have the legislative authority to do what I would like to do. I will come back and request of you and the committee the authority I think I need to run the agency.

Mr. BURTON. Mr. Muellenberg, can you comment on the possibility of civil actions following criminal cases or civil actions that do not materialize in criminal indictment? You referred 15 cases over and you wind up with nine indictments. What kind of civil action

have you taken against those not indicted and also what kind of civil actions can be taken against people indicted after the trial?

Mr. MUELLENBERG. It is an area I've some concern about. The figures I read to you as to frauds in the District of Columbia, there is some additional work to be done by the Department of Justice in conjunction with the U.S. attorney's office here, at least to make an attempt to recoup as much of that fraud committed as possible back into the Treasury of the United States.

Having spent 14 years of my life at the Department of Justice, I understand how these things sometimes work. Criminal cases are worked by prosecutors who indict, go to trial and convict, then march on to the next trial. Oftentimes a followup, as to what is the Government going to do to get some of the money back, is not always there. The only thing I can tell you, Mr. Chairman, is that we have met with the Civil Division of the Department of Justice and I have been assured they will take a much more active interest in pursuing remedies.

In addition, I have instituted a procedure, that in any kind of report submitted to me the investigator makes sure that with some specificity he ascertains the total amount by which the Government has been defrauded. But the bottom line is, it is an area that needs an awful lot of attention.

Mr. BURTON. There is not as much sex appeal in a good criminal action as in a television——

Mr. MUELLENBERG. That is true. On the other side, in terms of the American taxpayer, it is just as important, if not more so, to get as much of the money back to where it belongs, and I am paying some personal attention to that.

Mr. BURTON. Mr. Administrator, you talked about the need for stability, but were not personnel given an option of early retirement?

Mr. FREEMAN. That has destabilized. We have lost some good people through the early-out program.

Mr. BURTON. You have no control over that?

Mr. FREEMAN. No, sir, that is an option the employee has.

Mr. BURTON. In your testimony on the bill, you mentioned things you were doing in terms of more oversight of major procurements. Have you a definition of major versus minor?

Mr. FREEMAN. No, sir, not at the present time. We will cover those areas which I believe need my attention. I have found that due to the way in which we put together requirements, what I might call minor procurement in one area becomes major. I have now Mr. McBride, on board as Assistant Administrator for Acquisition Policy. I have asked him for a good definition of the oversight we need. I do not have a planning system in being right now. Hopefully we will have that by January.

Mr. BURTON. Would there be a dollar figure?

Mr. FREEMAN. Yes, sir. What I want to do within the agency is stratify review by Regional Administrators, and the Commissioners, and then myself. I will be personally involved in some of these as will my Deputy. We will have a system of major acquisitions review in the agency.

Mr. BURTON. What about minor ones?

Mr. FREEMAN. We are looking at that. I am unsure as to whether the system we have now is consistent with what we need.

For example, in one commodity area we forecast a need by a statistical curve. I have to go back now and see how we determine the need, and how we take into account the surplus, or what other agencies hold. So I have a problem of reviewing how we determine that we need what we are buying.

Mr. BURTON. What is the warranting program you referred to in your testimony?

Mr. FREEMAN. We do not have a training program for our officers. I have established a program requiring certain training. When they are designated a contracting officer, they will have a warrant signed by myself or the Assistant Administrator for Acquisition Policy which will delineate the areas where they can act as a contracting officer. This does not exist now.

Mr. BURTON. If things move to problems that are handled by Justice, such as normal enforcement functions, and Justice cannot provide the swift and direct remedy, how can we achieve this if Justice is the one involved? Or to what extent do you think functions that are vested in Justice or reliance on the Department of Justice for enforcing could either be moved, changed, or just not deal with them? Once they are referred to Justice, it is out of your domain and Lord knows what is happening. Under the old theory, if something is prematurely referred to Justice, GSA is out of it, Inspector General is out of it, Justice looks at it and thinks it is a bum case and they throw it out.

Mr. FREEMAN. I find our relationships with the Department of Justice are good. Mr. Muellenberg provides the primary interface. The concern I have had is where a case is rejected by Justice for the reasons you cite but yet there is sufficient evidence there that we should be taking some kind of administrative action. Mr. Muellenberg and I have been discussing the best way to handle these cases. He continues to track them, even if they go to Justice. I am looking at trying to establish some kind of a board policy where there is evidence relating to an employee who may not be criminally indicted. I have to be very careful under the Civil Service Commission Reform Act, and with the OPM.

Mr. MUELLENBERG. As far as the referral to the Department of Justice, I feel fairly comfortable in knowing what a criminal case is all about. I have taken the position that I want to work up a case in the Attorney General's office to such a point where I feel the case has a potential for prosecution and requires a minimum of further investigative work. Some of the figures thrown around before I got here, of the number of referrals—I heard a thousand were referred. Those were not cases; those were allegations. It has to be work by the FBI or whatever other agency is concerned with that particular matter.

I like to refer what I think are cases that I can work up to the point where I possibly can, within my power and that is what I intend in the future. So, where those thousand cases went to, I have no idea.

Mr. BURTON. Basically, you prepare the case, I guess, as best you can for criminal indictment, or if you get to the point where there is an issue at stake, somebody takes the fifth, and you cannot give

them immunity, you cannot do anything, that is referred to Justice. It is probably overstating it, but if they bring them before a grand jury, the issue is whether they are willing to grant immunity or if the person does take the fifth, whether they think they can prosecute the individual with the evidence available without that person's testimony.

Mr. MUELLENBERG. That is correct.

Mr. BURTON. Say the 15 go to Justice and Justice finds that it just does not make any sense to push for the indictment, in other words they are going to go in with a bum case and waste their time and the taxpayers' money, do they then move those to the civil section, or do they kick them back to you?

Mr. MUELLENBERG. Because of my arrangement with the GSA and Department of Justice task force, he will kick it back to me. I would feel more comfortable if I were to pursue the possible civil remedy. I think that is really my job and he should not have to worry about that, so that is the way it is going to be in the future.

Mr. BURTON. They keep you informed as to the disposition of the 15 cases and if they find they cannot make an indictment or that there is just a great question that they could convict, they would rerefer the file and case back to you?

Mr. MUELLENBERG. Yes. And in those cases where Government employees are involved, where there is a question of some kind of administrative proceeding by the supervisor from anything ranging from a dismissal or a letter of reprimand, it still has to be resolved, and I am sticking close to Justice to make sure the file does in fact return and employees who are involved are in fact disciplined.

Mr. BURTON. Dealing with the bill again, Mr. Administrator, would it help with respect to the kind of information to be certified if the bill spelled out that the certification requirement be incorporated into and made part of your contract?

Mr. FREEMAN. Yes, sir, I think Public Law 87-653 indicates what is required. So I think following somewhat those provisions would be appropriate as far as the data requirements and certification. He would certify at the time of completion of negotiations as provided in that public law. He has to certify he has furnished all data in compliance with that law.

Mr. BURTON. If they did not comply with that, they would be subject to a breach of contract?

Mr. FREEMAN. Here I am treading in an area in which I am not expert.

We have to go back to the GSA, in dealing with recoupment, in determining whether it is fraudulent. If it is fraudulent, you can get them for breach of contract. I would have to consult with counsel as to what is called for.

Mr. BURTON. A breach of contract does not have to be fraudulent. It is just an area where they failed to do something——

Mr. FREEMAN. That is an area in which I am not familiar. I am not a lawyer, but you are.

Mr. BURTON. I am licensed to practice law.

What do you suggest as the specific types of information to which the certification requirement would apply?

Mr. FREEMAN. The basis for estimating, determination of price, historical background, the overhead rates, the background of that,

the makeup of the overhead rates, all the elements that go into his pricing are elements I would like to see. I would also like access to corporate records to determine that they are financially responsible and responsive.

Mr. BURTON. An easy way to do that is, if you are in legitimate business you have a CPA submit a statement of something they already have instead of your going in and requesting them to reinvent the wheel; they should have that information available in a status of finance report that any normal business would have.

What problems and what advantages would you see if the bill were to cover all civilian agencies?

Mr. FREEMAN. It would increase my workload. I am not sure that I would need additional authority, except as Mr. Muellenberg was indicating. The oversight responsibilities would require additional audit, and I am not sure how many that would take.

Mr. BURTON. In order to assure applicability of the bill to other agencies, would it be necessary to make changes in section 1 relating to the certification requirement and the related assessments against violators if you would be delegating your authority under the section 205(d) of the act?

Mr. FREEMAN. Right now I delegate in a very limited fashion. If this was intended to apply to all agencies, I would need additional authority which I do not have now.

Mr. ROMNEY. When you say other Federal agencies, are you saying other civilian agencies or all agencies, military and civilian?

Mr. FREEMAN. I have no authority over any agency.

Mr. ROMNEY. But you have broad delegating authority which then would give you an opportunity to reach those agency heads.

Mr. FREEMAN. That would have to be clarified in any legislation.

Mr. ROMNEY. Why is it necessary to legislate, in view of the breadth of the Administrator's current delegating authority in section 205(d)?

Mr. FREEMAN. Because I get resistance from other agencies when I make the attempt.

Mr. BURTON. So it would be helpful if this were in the legislation?

Mr. FREEMAN. Yes.

Mr. BURTON. Mr. Walker.

Mr. WALKER. In your efforts to change operational practice, have you encountered resistance from either within or outside the agency?

Mr. FREEMAN. Yes, sir. Change is normally resisted. Many of the things we are trying to do are new. They are going to require additional work. They are going to require a more orderly process of checks and balances, and the system will tend to resist because it has been in place for quite a period of time.

Mr. WALKER. So there is internal resistance?

Mr. FREEMAN. Yes. Internally I find I have had an almost adversary relationship with most of the agencies. I am trying to break this down; I have asked them for their cooperation. We have pulled together the Assistant Secretaries at one meeting. We will have another shortly to explain space problems and other issues, and try to get better communications going with the agencies instead of getting into these turf battles.

Mr. WALKER. Your resistance has been more bureaucratic rather than political pressure?

Mr. FREEMAN. I have had no political pressure.

Mr. WALKER. Do you feel you have the full backing of the President to carry out the reforms?

Mr. FREEMAN. Yes.

Mr. WALKER. Have you had adequate backing from the White House staff?

Mr. FREEMAN. Yes, sir.

Mr. WALKER. Have there been any attempts to bring political pressure as to contracts from the White House staff?

Mr. FREEMAN. No, sir.

Mr. WALKER. Have you had any dealings or contact with Mr. Griffin?

Mr. FREEMAN. No, sir.

Mr. WALKER. Do you feel he is exerting any influence?

Mr. FREEMAN. No, sir.

Mr. WALKER. What about Mr. Kirbo?

Mr. FREEMAN. I have never met him, sir.

Mr. WALKER. I would guess the announcement by the White House that Mr. Kirbo would serve as liaison is null and void.

Mr. FREEMAN. I was not aware of that arrangement, but I have not met Mr. Kirbo.

Mr. WALKER. In recent testimony, you cited some improvements that you have made in the course of the time that you have been at GSA. Could you give us some idea of how you would put those in terms of priorities, where your real priorities lie at this point?

Mr. FREEMAN. There are several major issues. The first of these had to do with trying to determine how I could get control of the financial management of the agency. We have not had a centralized budget. There has been confusion as to how money flowed within the agency. On July 2 I issued a directive which straightened out those channels. I have called in fiscal 1982 for an integrated budget, which we have not had in the past. The creation of a planning system is also a high priority. The only plan in GSA has been a 1-year plan. So in the 1982 budget submit, I am asking for a 5-year plan for all the services which will allow me then to determine where we are going in the future.

Mr. WALKER. Is this the new Office of Planning and Analysis?

Mr. FREEMAN. Yes, sir.

Mr. WALKER. Will that require additional staffing?

Mr. FREEMAN. No, sir, no more than I have asked in the budget. We have eight people there; it is a small, expert outfit.

Mr. WALKER. You are also asking for an expanded audit force?

Mr. FREEMAN. Yes, Mr. Muellenberg and I discussed the matter of audit followup. I will set up my own personal staff for audit followup, so I know that something is being done with the recommendations given us.

Mr. WALKER. So what you are giving Mr. Muellenberg at that point is a peg to hang a hat on as to the performance of the agency?

Mr. FREEMAN. Yes, he may give me a report with six recommendations on it; the audit staff I have will be responsible for seeing those steps are taken. Then on a check-and-balance basis, Mr.

Muellenberg can follow through and see if what we say is going on, is so.

Mr. WALKER. So you will be trying to get some kind of management tools in place for long-range planning and analysis and transmitting that essentially to a regional board as well?

Mr. FREEMAN. It's performance against a plan as well.

Mr. WALKER. Where do you see the legislation we are introducing fitting into that?

Mr. FREEMAN. It will give GSA the authority over the contractors if I have problems with them. I think the previous operations I have been involved with show the need for this legislation. I have no enforcement powers to deal with the problem now. Mr. Muellenberg deals with the problem with his subpena power.

Mr. WALKER. As I listen to your remarks, and admittedly there are a number of things in the bill we want to upgrade, I got the feeling you were telling us it is a great idea, but it will not work. Is that a fair analysis of what you are saying?

Mr. FREEMAN. No, sir. I am sorry if I left that impression. I think in any legislation, you would always like to have the provisions as clear as you can so you do not get into arguments with contractors or others as to what the law meant. This is always a problem in a complex area like procurement. There are comments by other witnesses here who have the same concern, that the legislation be as clear as possible.

Mr. WALKER. I guess it is the problem I have with that. Every time we go into specifics, we end up creating the loopholes that then come back to haunt us when we find a whole series of abuses based upon those specifics. How are we going to overcome that?

Mr. FREEMAN. I think that is a problem with every piece of legislation that comes out. I do not know how you can prevent people from trying to find loopholes.

Mr. WALKER. Then would it not be better to try to be more general instead of so specific? It seems to me we almost come to loggerheads when it's spelled out precisely, whereas generalized authority would provide a better means of managing details within the agency.

Mr. FREEMAN. If it is general, I would write the regulations to so reflect the intent of Congress. If it is general in nature and I write specific requirements, I would have to communicate with the agencies, so both systems are workable.

Mr. WALKER. So the legislative thrust would help you primarily in transmitting the new authorities to the agencies and getting immediate compliance from them, rather than having them bucking all the way on what you are intending to do?

Mr. FREEMAN. Yes, sir. The same goes for external contractors.

Mr. WALKER. Mr. Muellenberg, I had one additional question. Have you found in the course of your investigation there is undue political influence in the contracting process? I am talking about congressional influence or political contributions as they relate to contract awards.

Mr. MUELLENBERG. No.

Mr. WALKER. You have not run into anything where you think there is undue congressional influence with relation to contracts?

Mr. MUELLENBERG. With the caveat some of those things are under investigation, and whether that will surface I do not know, but right now, as I sit here today, no.

Mr. WALKER. Are you saying or are you not saying there are indications in some of those previous investigations that there were problems in that area, or the investigations underway may include that but you are not familiar with it at this point?

Mr. MUELLENBERG. In some of the investigations underway, there were allegations there was. Those allegations have not been corroborated to my satisfaction, but I cannot predict what will happen.

Mr. WALKER. So looking back 3 or 4 years, there are some indicated problems with either congressional or political pressures in the contracting process?

Mr. MUELLENBERG. I would prefer to stick with allegations.

Mr. WALKER. All right. Your terminology is more correct than mine on that, but in other words, those are allegations that are presently under investigation.

Mr. MUELLENBERG. That is correct.

Mr. WALKER. What should be the role of Congress in overseeing procurement activities?

Mr. MUELLENBERG. Mr. Walker, I am going to have to, as politely as I can, decline to answer that.

I have been at GSA now 5 months full time. Procurement to me, until I got there, meant something entirely different, being a former prosecutor. I am learning as quickly as I can. I do not feel qualified to answer the question.

Mr. WALKER. Mr. Administrator, how do you feel about the role of Congress in oversight?

Mr. FREEMAN. The role of Congress in oversight has been outstanding.

Mr. WALKER. Right now, the Golden Fleece Award.

Mr. FREEMAN. I have not been the recipient of one of those; however, I have testified before that fine gentleman many times. The mission statement has been very helpful as it concerns the needs portion. My own personal belief is that this oversight is effective and should continue.

Mr. WALKER. The one problem I have with the congressional role is that it seems Congress always gets in after the money has been spent. In other words, our oversight of the procurement process comes in showing money that has been spent poorly, rather than in any way affecting the front end of the process. Is there any way that can be changed?

Mr. FREEMAN. Good management is the only way I know that will preclude these things from happening. We have adequate administration and management, but we do not use it in the most effective way. Where I am now, I think some of the statutory and legislative directions that are needed are not there, for what reasons I am not qualified to state, but I think they are being put in place now, and between that and the revision of the Federal acquisition regulations, we can preclude problems from happening.

Mr. WALKER. We look forward to working with you, and as the chairman indicated and as I indicated in my opening statement, we view the legislation as the right way to get things done, and we

hope you will help us in coming forth with a piece of legislation that will make your role more effective and stem some of the abuse in the contracting areas. This is a prime goal, and we appreciate your testimony today.

Mr. BURTON. Mr. Administrator, you talked about the threshold being a little low, a threshold of $10,000 for review. Generally, what are the $10,000 yearly contracts, under $10,000? Are they negotiated or advertised?

Mr. FREEMAN. Most are advertised, mostly competitive procurements.

Mr. BURTON. You would not know the percentage?

Mr. FREEMAN. I will provide that for the record.

[The information follows:]

GSA estimates that approximately 277,000 procurement actions under $10,000 were released in FY 79 and of this figure approximately 30 percent were advertised, 40 percent negotiated; competitive and non-competitive; and 30 percent other directed, that is, tariffs and regulated acquisitions.

Back-up analysis:

UNDER $10,000

Number of transactions through 3d quarter (FPDS)	207,642
Extrapolated in 4th quarter	69,214
Total estimated GSA fiscal year 1979 transactions	276,856

UNDER $10,000 PROCUREMENT METHOD

		Percent
Number of transactions through 3d quarter	207,642	100
Number of advertised transactions through 3d quarter	61,218	29
Number of negotiated transactions through 3d quarter	87,138	42
Number of other directed transactions (tariffs and regulated)	59,286	29

Mr. BURTON. If smaller dollar contractors realize there is limited oversight, would they not be tempted to cheat?

Mr. FREEMAN. If I can get into place what Mr. Muellenberg and I have been discussing, good contract oversight, we can avoid that. The opportunities will be lessened greatly by that kind of an internal audit, contract audit capability.

Mr. BURTON. Do you think a $20,000 threshold would be more advisable, or is that something we should play by ear?

Mr. FREEMAN. My personal review of 16,000 contracts per year would take a lot of time.

Mr. BURTON. When we say Administrator, we really mean Administrator or somebody designated by you.

Mr. FREEMAN. If those words are in there, it would not give me a problem, because then I could set the levels within the agency as to how we do it.

Mr. BURTON. We think you have the authority in 205(d) to delegate it, but clearly that would be our feeling. You would not have time to look at 16,000, much less look at them and do anything.

What kind of controls do you think should exist for smaller contracts?

Mr. FREEMAN. I think that any competitive negotiated contract should be reviewed by the regional administrator. I think that any advertised contract which has less than adequate competition should be reviewed. This is a matter of making a determination. I get very concerned with advertised bids with only two bidders, and with a substantial price differential. But I think an adequate determination has to be made, and I would want oversight on those.

Mr. BURTON. Do you believe any GSA review of other agencies' procurement activities is warranted, and is it possible?

Mr. FREEMAN. That is a big job. The buying authorities of some of the larger agencies are tremendous. And the resources required to oversight something like that on a regular basis would be extremely difficult. I am not even doing an adequate job now of oversighting what I have delegated, which concerns me. So the additional job of oversighting the other agencies would require additional resources. I am not sure in my own mind what form that should take, whether it be procurement reviews—I think it is more a matter of making sure of the internal checks and balances, and we have coordination through Inspectors General to make sure it happens.

Mr. BURTON. I know this committee, and I think Congress generally, is going to support seeing that you get whatever additional resources necessary to do the job. What happens in Federal agencies is the head of that agency has gaged the success of his administration by the amount of people he can cut from budget. But in your agency, each staff person, especially in the audit investigative area, requires investments of money.

You talked about the audit procedures. Section 3 of the bill could pose a burden on the Inspector General, and you recommend greater flexibility to the size and percentage of contracts. Would you be able at this time to specify the amount or degree of flexibility you feel is necessary?

Mr. FREEMAN. I think what I had in mind here was a sampling procedure, so we sample the spectrum in order to ascertain that the procurement procedure in each agency is working well. I would prefer Kurt to talk to this.

Mr. MUELLENBERG. Mr. Chairman, I am not prepared to go into figures, but with your permission I would be very happy to submit my views to you in writing. I think it might be more precise.

[The information follows:]

Substantial time would initially be spent in identifying which types of contracts in each program area should receive immediate scrutiny and then grouping those contracts by classification and size. For the first year all contracts over $100,000 in each class will be subject to audit. Based upon existing and projected audit resources, we would attempt to audit 20 percent of all such contracts. If such an attempt is successful and if additional audit resources are made available, we would attempt to audit 20 percent of all contracts in each class in excess of $50,000. In the third year of the program we would expand our efforts in 20 percent of all contracts over $10,000. By the conclusion of the third year we would have a solid base of information to use in our report to Congress as to whether the ultimate goal of 20 percent of all contracts over $1,000 is feasible and necessary. Based upon our three year trial, we would have sufficient data to precisely identify which classifications of contracts require a certain percent of audit scrutiny and what dollar level would be the most cost effective in terms of audit resources in each classification of contract.

Mr. BURTON. We are not trying to impose unworkable burdens, but I cannot remember the figures as to auditing contracts that were in the GSA report. It was almost like the FAA having 7 inspectors for 6,000 mechanics. There was just no watching what was going on.

Under the present situation, where all you had to do was pay back the unjust enrichment, the odds against getting caught were great so it was easy and not too risky.

Would you, Mr. Administrator, elaborate on the reason competitive forces are regarded as reducing the need for detailed oversight of advertised contacts?

In discussions with Justice and in our own staff work, we feel you can have a pretty good ripoff in an advertised contract open to bid, as well as any others. You have the buy-in situation, the bid in your pocket, and things of that sort.

Mr. FREEMAN. Historically the sealed bid procurement has been viewed as the way to buy. There are obviously circumstances in the advertised area where a determination should be made there was not adequate competition and we should look at it more carefully. That has been the philosophy in all the regulatory material we have had on procurement. Therefore, I think we should approach it cautiously in defining in what area we seek to make corrections.

Mr. BURTON. In advertised contracts, if they are regarded as different in kind from a negotiated contract with respect to contract records, do you think there should be any difference in treating the two?

Mr. FREEMAN. I always felt the Federal Government should have access to records where Federal expenditures are made.

Mr. BURTON. So basically we should try to get the access to the information whether it is negotiated or bid?

Mr. FREEMAN. I do not feel we should have to go to subpena power to get that information. Since it is a brandnew field, we should approach it slowly.

Mr. BURTON. You would not have to go to subpena if they gave it to you voluntarily.

What pattern of usefulness in developing access to record provisions do you think exists, say, in the value of contracts over $100,000? Do you usually require cost certification of the values over $100,000? What sort of access to records do you think exists in such price and cost data cases?

Mr. FREEMAN. I am not sure I have the access to records necessary to satisfy me and my agency.

Mr. BURTON. Can you do that on your own capability, or will you need legislative authority?

Mr. FREEMAN. I believe I can. In most cases clauses needed to get that data can be drafted as required by the agency.

Mr. BURTON. Explain the records audit procedures with respect to multiple awards contract.

Mr. FREEMAN. I will have to reply for the record.

[The information follows:]

Under multiple awards schedule contracts, contract certification of price and discount information is required. GSA is entitled to examine limited records of the vendors to ensure that the government is receiving the discounted prices called for under the contract. After the completion of at least 1 year under the contract, the

auditors will select a contract for audit, the selection being based upon the size of the contract. Currently, audit resources do not allow us to examine contracts less than $50,000 to $100,000. The auditors will contact the vendor and request access to sales data for the contracted item. The auditors will then compare the sales price of the vendor to the government with the sales prices offered to commercial customers. Under our current authority, we do not have access to cost data or other contractor records which are not related to sales data.

Mr. BURTON. Do you think there should be a dollar cutoff with respect to contracts subject to the access requirement?

Mr. FREEMAN. When you get down to $25,000 or less in procurement, yes, sir.

Mr. BURTON. With something like that, you can be authorized to do it, but the agency should use its own judgment rather than having people with small procurement bids know that is not going to happen.

Mr. FREEMAN. The thing you have to worry about is splitting a larger procurement down to 2,500 pieces. This can be precluded by oversight reviews.

Mr. BURTON. Two bills now before the Public Works and Transportation Committee would require that committee to approve alterations in leased space costing over $250,000. They are H.R. 2155 by Mr. Mineta and H.R. 2494 by Messrs. Levitas and Abdnor. The latter bill, it should be noted, would apply the $250,000 to the total of new and all previous alterations in the facility.

What is GSA's position with respect to this particular aspect of each of these bills, the $250,000 that would require the same approval for a new building, or the cumulative effect of the Levitas bill?

Mr. FREEMAN. I would prefer to have an annual alteration and repair approval in our long-range plan rather than having to bring them all back to Congress before they are done, primarily because of the administrative strain that would cause. If we had legislative authority that we could do repair work during the year, I would like to consult with the Congress about doing it.

Mr. BURTON. Is there a difference between repair and alteration?

Mr. FREEMAN. I lump them all together; the important thing is the need and whether it is real or not.

Mr. BURTON. So you would view repair and alteration——

Mr. FREEMAN. As being the same. There is a difference, but it is more cosmetic than real, Mr. Chairman.

Mr. BURTON. I do not want to get hung up on this, but if a building has a leak in the roof, that is something that has to be repaired. If it is a tenant that needs enlarged quarters with three or four wet bars, that would be somewhat different in my mind.

The Comptroller General in September 1978 found many serious deficiencies in GSA's use of funds in its procedures for alterations in lease space. It was reported there was no requirement for congressional review at all, even when alterations have been over a half million dollars. In fact the report noted there were several over $2 million. You state now that there are controls, checks, and balances incorporated into your operations. Would you elaborate on that?

Mr. FREEMAN. Yes, sir. These are required to come to headquarters. I brought over several alterations myself to both sides of Congress for their review before I proceeded with them. Adminis-

tratively, we have in being the kind of checks and balances that you require, and I would be glad to present a copy of these for you.

Mr. BURTON. If you would, for the record.

[The material follows:]

Checks and Balances in Altering Leased Space

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Our procedures for altering leased space have changed to include requirements for independent cost estimates and physical inspections. Lease alterations over $100,000 must be approved in the Central Office. Further, requirements exist in our regional offices for approval by Regional Administrators, or their designees, of alterations to leased premises over $50,000.

Beyond these changes, we have new alterations procedures under active consideration which will implement most of the recommendations contained in the GAO report entitled "General Services Administration's Practices for Altering Leased Buildings Should be Improved".

Copies of the documents which established these checks and balances are attached.

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION

Public Buildings Service
Washington, DC 20405

DATE: APR 13 1979

REPLY TO ATTN OF: Acting Commissioner, PBS - P

SUBJECT: PBS Contract Clearance Requirements, GSA Order APD 2800.1, Contract Clearance

All Regional Administrators, GSA
All Regional Commissioners, PBS
All Assistant Commissioners, PBS - PB, PC, PR, PS
Acting Assistant Commissioner, PBS - PF

PBS Contract Clearance Procedures implementing GSA Order APD 2800.1, January 30, 1979, are attached. The effective date of PBS implementation of the enclosure is April 15, 1979.

The Office of Acquisition Policy (AP) has granted approval to adjust the requirement for clearance of 80% of the PBS obligational base through FY 1980. The subject order will be appropriately revised by the Office of Acquisition Policy for this purpose.

The threshold criteria contained in the attachment to this letter will provide for approximately 250 contract actions to be cleared at the Central Office level during a fiscal year period. An additional 50 contract actions will be selected for both pre-award clearance and post-award review. These actions will include formally advertised procurements and a random selection of contracts under $100,000. This is in conformance with GSA Order APD 2800.1 and subsequent direction from the Office of Acquisition Policy.

For planning purposes, it is expected that ten working days will be required for clearance of contracts by the PBS Office of Contracts. This will include PBS Assistant General Counsel review and coordination. An additional five working days will be necessary for those contracts requiring final clearance and approval by the Office of Acquisition Policy.

The PBS clearance requirements for contract changes and lease alterations exceeding $100,000 replace the review and approval requirements contained in (1) the Commissioner's letter of December 20, 1978, Subject: Construction Contract Modification Approval, and (2) paragraph 3 of the Commissioner's letter of September 8, 1978, Subject: Control of Changes and Amendments to Leases. Contract changes and lease alterations that do not meet enclosed contract clearance requirements will continue to be subject to the provisions of the letters until further notice. Actions are currently being

57-507 O - 80 - 4

taken to modify or amend existing policy and directives which have been identified as impacting on the clearance procedure. Our objective in this regard is to recommend revisions to current delegations of authority where appropriate.

Adjustments to the April 15, 1979, implementation date may be required by some of your operating activities. In the event this should be necessary, requests for extensions, including expected start dates, should be directed to the Acting Assistant Commissioner for Contracts, telephone 202-566-0615.

DENNIS J. KEILMAN
Acting Commissioner

Enclosure

SUBJECT: PBS Contract Clearance Procedures

1. Purpose. This directive implements GSA Order APD 2800.1 dated January 30, 1979. These implementing instructions and procedures will supplement those portions of the GSA Order pertinent to PBS.

2. General. GSA Order APD 2800.1 sets forth requirements and procedures for clearance of contracts by the Assistant Administrator for Acquisition Policy and PBS Assistant Commissioner of Contracts prior to award. For contracts meeting the thresholds identified below, the contracting officer will sign, but not date, the contract prior to forwarding to the Central Office for contract clearance. Only upon clearance approval at the PBS and/or Assistant Administrator level will PBS contracting officers then date and publicly release notice of the award and distribute copies of the contracts.

3. Effective date. These implementing procedures become effective April 15, 1979. Contractual actions to be awarded after April 14, 1979, which meet the criteria established herein and by GSA Order APD 2800.1, are subject to the provisions of this directive.

4. Definitions.

a. Contract clearance. Contract clearance is defined as the process of pre-award review and approval necessary at specified levels of authority to ensure that contractual actions conform with applicable laws, regulations, established policies and procedures. Contractual actions shall be reviewed and approved in accordance with GSA Order APD 2800.1 and this directive.

b. Manual approval. Manual approval is defined as the requirement to obtain the signature of the designated clearance official on the face of a contractual document prior to execution of a legally binding contract. The signature will represent final review, approval, and clearance of a contractual action for execution by the contracting officer. Manual approval will be required on all contractual actions forwarded to the Central Office for clearance.

c. Contractual actions. PBS contractual actions requiring clearance are defined in GSA Order APD 2800.1. For PBS purposes, these include the following categories restated from the Order, with additional definitions:

(1) Contracts for supplies and non-personal services, including but not limited to contracts for construction, alteration and repair, leasing, consultant services, A-E services, and building maintenance services.

(2) Modifications which include changes, amendments, options, and supplemental agreements to existing contracts.

(3) Letter contracts as defined in the FPR do not require Central Office clearance. However, definitive contracts superseding letter contracts will require Central Office clearance. (This does not change existing letter contract approvals required in the Interim Manual, Procurement and Administration of Design and Construction.)

(4) For clearance purposes, the dollar value of a contractual action is the sum of the estimated or actual dollar amount of obligations and the amount of any option (or, in the case of a lease, the full term of a lease and all options) included in the action. An estimate will be used only where actual dollar obligations are not available as in the case of a requirements contract.

5. Applicability.

a. Categories and dollar thresholds for contract clearance are specified as follows:

(1) Office of Acquisition Policy.

(a) Actions resulting from invitation for bids, including Small Business Restricted Advertising, when award is proposed to a sole responsive and responsible bidder and the total dollar value of the sole bid items to be awarded exceeds $500,000.

(b) All negotiated actions exceeding $1,000,000.

(2) PBS Central Office.

(a) Leases which have a total value exceeding $1,000,000 over the term of the lease plus all options. Leases include new, succeeding, superseding, extensions, renewals, and supplemental actions to acquire additional space.

(b) Other negotiated contract actions which have a total dollar value exceeding $250,000.

(c) Modifications which include changes, amendments, options, and supplemental agreements exceeding $100,000 to existing contracts. For leasing, this threshold applies to alterations only.

3

(d) Formally advertised contracts will be subject to pre-award clearance by the PBS Office of Contracts. These contracts will be identified for clearance on a highly selective basis prior to issuance of the Invitation for Bid.

(3) Regions. All contracts that do not meet clearance threshold requirements as noted above shall be processed within the regional offices in accordance with existing Delegations of Authority and other current regulations, instructions, and procedures.

b. GSA Order APD 2800.1 stipulates that PBS Central Office of Contracts must clear a sampling of those contract awards not within the dollar thresholds described above. The Central Office will randomly select contracts for clearance within this category. This will include both pre-award and post-award contractual actions.

6. New contract clause.

a. GSA Order APD 2800.1 requires that a new contract clause be included in all solicitations expected to require Central Office contract clearance. A modified version of this clause is reproduced below incorporating expanded PBS clearance requirements as well as those stipulated in the GSA Order. This new clause shall be made a part of every Solicitation for Offer (SFO), Request for Proposals (RFP) and Invitation for Bids (IFB) requiring Central Office clearance action:

Approval of Contractual Action

> This contractual action shall be subject to the written approval of either the Assistant Administrator for Acquisition Policy, General Services Administration, or the PBS Assistant Commissioner for Contracts, and shall not be binding until so approved.

b. This provision shall be included in negotiated contractual documents when the solicitation document is not to be made a part of the resulting contract or modification, or when the provision has not been included in the solicitation.

c. The effect of this clause is to preclude award of a contract should there be errors which may require correction, renegotiation or cancellation. GSA Order APD 2800.1 also sets forth the procedures for including

4

an approval line on the face of both the contractor's copy and the official file copy of a contract. The line will be added by the PBS regional contracting officer.

7. Concurrence of Counsel. Contractual actions to be submitted for clearance by the Assistant Administrator for Acquisition Policy or by the PBS Assistant Commissioner for Contracts shall have the prior concurrence of the Regional Counsel and the appropriate Assistant General Counsel in the Central Office. Evidence of such concurrence shall be made a part of the supporting contract file. The PBS Contract Clearance Division shall be responsible for obtaining the concurrence of the Assistant General Counsel.

8. Submission of contract files to PBS Central Office for clearance.

a. The composition of the contract file is prescribed by GSA Order APD 2800.1. PBS modifications, where necessary, are included in the following restatement of the organization and content of a contract file submitted for clearance.

b. The complete contract file supporting the contractual action shall be forwarded together with a duplicate file for retention. The information and documents listed below are those which are normally required as support for an advertised or negotiated contract. These should be included in the contract file in the order indicated, i.e., starting with the lowest number. Not all information and documents will be applicable to every contractual action. Conversely, other information and documents may be applicable to specific contractual actions, and the contracting officer should include such items in the contract file in proper sequence in the contracting cycle. An index of the contents of the file should be prepared and placed on the top of the file. In addition, each item should be tabbed and, if more than one document is included under a tab, they should be filed chronologically with the most recent document first. The following order of indexing sequence shall be used for all contract files to establish an organized and uniform approach to the maintenance of contract files:

(1) Requisition or request for contractual action. The basic acquisition authority and all changes thereto should be filed under this tab. Documentation supporting and authorizing any differences between supplies or services called for in the contractual document and the acquisition authority must also be filed under this tab.

5

(2) Specifications, drawings, or other descriptive material of the supplies or services being acquired. If specifications and drawings are too voluminous for inclusion in the file, Tab 2 should then include a brief description of the supplies or services being acquired and a statement identifying the Central Office or regional file containing the specifications and drawings.

(3) Acquisition plan. (A planning document that sets forth the technical and business aspects of a proposed procurement such as budgeting, technical, schedule and cost objectives.)

(4) Determinations and findings. Determinations and findings required by Subparts 1-3.2 and 1-3.3 of the FPR shall be included under this tab.

(5) Department of Labor Wage Determination.

(6) Small business and labor surplus area determinations; waiver opening procurement to large and small business (GSA Form 2689).

(7) Source list.

(8) Statement as to synopsis of proposed procurement pursuant to FPR 1-1.1003.

(9) Pre-invitation notice.

(10) IFB/RFP/SFO and amendments.

(11) Abstract of bids/proposals/offers.

(12) Cost or pricing data. Where the requirement for submission of cost or pricing data is waived as provided in FPR 1-3.807-3, the waiver and documentation supporting the waiver shall be filed under this tab.

(13) Audit report. Where the requirement for an audit of a price proposal is waived as provided in FPR 1-3.809, the waiver and documentation supporting the waiver shall be filed under this tab. Reports of technical analysis required in support of audit reports shall be filed under this tab.

(14) Price or cost analysis report prepared pursuant to FPR 1-3.807-2. Supporting technical analyses, other than those supporting an audit report, shall be filed under this tab. The profit or fee analyses required by FPR 1-3.808 shall be made a part of the price or cost analysis report.

6

(15) Price negotiation memorandum required by FPR 1-3.811 shall be filed under this tab. This memorandum must be written so as to permit reconstruction of all of the major considerations of the acquisition.

(16) Certificate of current cost or pricing data (P.L. 87-653) as provided in FPR 1-3.807-3 and 4, and 1-16.806.

(17) Pre-award survey. The following supporting documents should be forwarded where appropriate:

- GSA Form 894, Financial Responsibility, Inquiry, and Reply
- GSA Form 353, Plan Facility Report
- GSA Form 527, Financial Statement
- Certificate of Competancy (COC)
- Summary of Responsibility Determination Actions
- Board of Award Recommendation

(18) EEO compliance review.

(19) No bid or no proposal correspondence.

(20) Unsuccessful bids or proposals. Unsuccessful bids or proposals (responsive, responsible, and considered in the evaluation and award process) need not be included in the file if too voluminous, provided that an abstract of bids/proposals is included in the file. However, a copy of each rejected bid or each unacceptable proposal (non-responsive, non-responsible, and not considered in the evaluation and award process) or offer must be included in the file under this tab.

(21) Mistakes in bids. All correspondence and determinations relating to mistakes in bids disclosed prior to award shall be filed under this tab.

(22) Actions taken on late bids or proposals or offers.

(23) Successful bid or proposal or offer and all pertinent correspondence applicable to the contractual action.

(24) Contractual action. The contractor's copy and the copy for the official contract file shall be submitted. Where an award is to be accomplished by use of the Award portion of the SF 33, or similar forms, the contract document shall be included in Tab 23.

(25) Evidence of concurrence for legal sufficiency of the appropriate Regional Counsel.

7

(26) Any PBS required approvals. (In accordance with the Administrator's letter of January 4, 1979, entitled "Redelegation of Authority," requiring specific approvals as well as those approvals and reviews described herein.)

9. Mailing of contract files to Central Office. Contract clearance files shall be forwarded directly to the following address:

General Services Administration
Public Buildings Service
ATTN: Assistant Commissioner of Contracts (PP)
Contract Clearance Division
Washington, DC 20405

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D.C. 20405

DATE: MAR 8 1979

REPLY TO ATTN OF: Administrator - A

SUBJECT: Revised Special Procedures for Alterations in Leased Buildings

All Regional Administrators, GSA - A

Because of the large backlog of alterations requests in your respective regions, the policy and procedure for securing such work in leased space as outlined in the memoranda of mine and the Commissioner, PBS, of June 29, 1978, and GSA Order ADM 2800.14 dated August 22, 1978, are hereby revised.

I. OPERATING POLICY

It is the policy of GSA that leased space meet the minimum needs of agencies and, to minimize the likelihood of costly Government liabilities and inefficiencies, that any necessary alterations be contracted for by negotiations with the lessor either as part of the lease award when the alterations are for initial occupancy or as a lease amendment when they are required to accommodate changes in minimum agency needs during the lease term.

Exceptions to this policy are required to be made in cases where, after negotiations, a lessor fails to submit a reasonable offer to accomplish the work, either as to price or any other factor. In such cases, the alterations will be contracted as in Government-owned buildings. Generally, offers not in excess of 10 percent of an independent cost estimate, now required for all alterations in excess of $500, are regarded as reasonable.

II. PROCEDURE

To the extent which the Leasing Handbook, PBS P 1600.1, Chapter 8, entitled "Alterations, Improvements, and Repairs", is unchanged by this new operating policy, it is to be followed. The only Central Office review or advice of lease alterations which continues in effect is that required by the Commissioner, PBS' memoranda of September 8, 1978, and February 5, 1979. Further, the findings and determinations which serve as the basis for negotiations of original leases also serve now to justify negotiations for lease alterations, and the Regional Administrator's approval of this means of contracting is no longer required.

Jay Solomon
Administrator

cc: All Regional Commissioners, PBS - P

General Services Administration — Public Buildings Service — Washington, DC 20405

Date FEB 5 1979

Reply to Attn of Commissioner, PBS - P

Subject Sole Source Alterations Contracts Negotiated with Lessors

To All Regional Administrators, GSA

The policy and procedures for obtaining space alterations in leased space were outlined by memorandum of this office dated June 29, 1978.

By memorandum of September 8, 1978, your authority to contract for such alterations requires my prior approval when the cost is greater than $50,000 and negotiated on a sole source basis with lessors. In addition, any change to any sole source alterations contract with a lessor which singly or cumulatively provides for an increase in price of two percent of the original contract amount and at least $10,000 also requires my prior approval.

To assist in expediting these approval requests it is requested that your memorandums conform to the format and content shown on the attachment to this memorandum. In addition, copies of the following documents and/or other supporting data as appropriate shall be forwarded as enclosures.

1. Agency request
2. RWA or statement on funding
3. Findings and Determination
4. Certificate of Determination
5. Lessor's proposal
6. Award of negotiations
7. Proposed contract or acceptance letter
8. Breakdown of work by category and estimated cost

Upon receipt, the data shall be reviewed by the Leasing Division, Office of Space Management, necessary concurrences obtained and a recommendation forwarded to me through the Assistant Commissioner for Space Management.

Your assistance in providing a complete submission will assure prompt disposition of the case.

DENNIS J. KEILMAN
Acting Commissioner

Attachment

cc: Regional Commissioners, PBS

Format Lease Space Alteration Transmittal Memorandum

From: Regional Administrator, GSA

Building Name and Address:
Lease No:

To: Commissioner, PBS
Attention: Assistant Commissioner for Space Management - PR

Description of Proposed Alterations:

_____

_____

Government Cost Estimate:

$_____ Date:_____

Lessor's Proposal:

$_____ Date:_____

Proposed Award Amount:

	GSA Funds	Agency Funds
$_____	$_____	$_____

Project to Date:

(Complete only if approval is requested for a change)

		Percent of Total
Original Alteration Award	$_____	_____%
Amount of 1st change	_____	_____%
Amount of ___ change	_____	_____%
Amount of this change	_____	_____%
Total Project Cost to Date	_____	100%

Other Alteration Work in Progress at this Location

Cost $_____
Award date _____
Short Description _____

_____

Lease Data

Area Leased _____ occupiable square feet

Agency _____ Area _____ occupiable square feet

Lease Expiration Date _____ Annual Rental $_____
Renewable until _____

Rationale for Recommending Approval: (Why are these alterations necessary? If lease expires in near future, without renewals, why must work be done now? What alternatives were considered in lieu of a one time payment? What space alternatives were considered?) etc. . .

Your approval of this lease alteration project is recommended.

_____ _____
Regional Commissioner Date

Approved _____ _____
Regional Administrator Date

I concur with the above recommendations:

_____ _____
Assistant Commissioner for Date
Space Management

To: Regional Administrator
City, State

From: Commissioner, PBS

I approve the above recommendations.

_____ _____
Commissioner, PBS Date

General Services Administration
Public Buildings Service Washington, DC 20405

Date SEP 8 1978

Reply to Attn of Commissioner, PBS

Subject Control of Changes and Amendments to Leases

To All Regional Administrators, GSA

As you know, the changes made to contracts can sometimes change the complexion of the entire action. In this regard, we are concerned about leases and the more common changes which those contracts involve: specifically, additional space, additional services and alterations.

Therefore, effective immediately, the following actions will require my approval:

1. Lease amendments which singly or cumulatively will cause the amount of space initially leased to be exceeded by 25 percent (and by 25 percent increments thereafter), provided the aggregate space under lease will exceed 10,000 square feet.

   For example, in the case of a 10,000 square foot lease, a proposed supplemental agreement for 3,000 square feet of additional space will require approval. Further, again assuming a 10,000 square foot lease, if you are proposing to acquire an additional 1,000 square feet, that action need not be approved, nor would a second 1,000 square foot supplement require approval. But, a third such 1,000 square foot action would have to be submitted to this office. After having leased the additional 3,000 square feet singly or cumulatively the new threshold for approval of additional space would be 25 percent of the 13,000 square feet under contract.

2. Lease amendments for increased services or utilities or maintenance which singly or cumulatively will increase the annual rent by more than $50,000 (and by $50,000 increments thereafter).

   The explanations of cumulative effect and incremental thresholds offered above also pertain to actions for additional services, utilities or maintenance.

3. Alterations contracts greater than $50,000 and negotiated on a sole source basis with lessors. In addition, any change to any sole source alterations contract with a lessor which singly or cumulatively provides for an increase in price of two percent of the original contract amount and at least $10,000. The granting of an approval will establish a new two percent amount.

2

The information submitted in support of lease contract changes should address need, the reasons for exclusion from the original contract, the proposed price in relation to the initial contract price, and anything else which will enable us to make a judgment.

We will make every effort to process these approvals within a week of their receipt.

Your cooperation is appreciated.

Please promptly acknowledge receipt of this memo by signing, dating, and returning a copy to sender.

JAMES B. SHEA, JR.
Commissioner

cc: All Regional Commissioners, PBS

Received: Date _____ Name _____

General Services Administration — Public Building Service — Washington, DC 20405

Date JUN 29 1978

Reply to Attn of Commissioner, PBS (P)

Subject Revised Special Procedures for Alterations in Leased Buildings

To All Regional Commissioners, PBS

The all regions memorandum dated June 14, 1978, subject "Special Procedures for Alterations in Leased Buildings," is rescinded. This memorandum sets forth the revised procedures in accordance with Administrator Solomon's memorandum on procurement policy dated June 29, 1978 (copy attached).

The recent nationwide review of certain PBS procurement functions, and related investigations, reveals a need to strengthen our procedures for accomplishing alteration projects in leased buildings. Accordingly, formalized revisions will be incorporated into the appropriate handbooks in the usual manner; however, the urgency of this situation requires that the instructions set forth herein be immediately implemented. As discussed below, regional comments and suggestions will be sought and considered prior to the initiation of handbook revisions.

I. OPERATING POLICY

It is the policy of GSA that all alterations performed in leased buildings be accomplished in accordance with the procurement procedures which generally apply to alterations performed in Government-owned buildings. Alterations in leased buildings, unless performed by force account, will be procured on a competitive basis, either by formal advertising or by competitive negotiation, as appropriate, in accordance with Federal Procurement Regulations.

In extraordinary circumstances where noncompetitive, sole-source contracts with lessors are required, they are to be approved in writing by the Regional Administrator.

Information, such as a copy of the Findings and Determination, concerning each sole-source procurement approved is to be forwarded to the Administrator through the Director, Office of Planning, Policy and Evaluation. In addition, the same information is to be forwarded to me through the Assistant Commissioner for Space Management.

II. AUTHORITIES AND RESPONSIBILITIES

A. Regional Commissioner

The Regional Commissioner has the primary authority and responsibility for alteration work performed in leased buildings. Such authority and responsibility shall be exercised in conformance with the following procedures. It

is expected, however, that the Regional Commissioner will supplement (but not modify) these procedures to assure that this part of the alterations program is conducted in a manner which is efficient, economical and consistent with sound procurement principles.

The Regional Commissioner may delegate contracting and operational authorities as described below.

B. Space Management Division (SMD)

(1) Contracting Authority - The Director, Space Management Division, and the Chief, Acquisition Branch, may be delegated unlimited contracting authority. The authority redelegated to realty officers shall be limited to the dollar level delegated for the execution of lease contracts; provided, however, that any alteration project in excess of $10,000 executed by realty officers will be subject to the prior review of the Chief, Acquisition Branch, and those over $50,000 by the Director, Space Management Division.

(2) Receipt and Review of Alteration Requests - All requests for alterations, regardless of cost, will be forwarded to the Director, Space Management Division, and processed as follows:

Assignment and Utilization Branch

(a) Each request received is to be referred to the Assignment and Utilization Branch for review to determine that the work requested is:

- o Fully justified in terms of the requesting agency's mission and programs, and
- o Consistent with GSA policies and guidelines governing the character of alteration work which will be authorized and space utilization objectives.

(b) Any request which fails to meet these requirements will either be rectified through consultation with the requesting agency, or returned without action if mutual agreement cannot be reached.

(c) The Chief, Assignment and Utilization Branch will forward each approved request to the Chief, Acquisition Branch.

Acquisition Branch

Each alteration request forwarded by the Assignment and Utilization Branch will be handled as follows:

3

(a) Contractual Obligations of Lessor - The lease contract will be examined by the lease contracting officer to determine (in consultation with Regional Counsel, as appropriate) if the work requested is the responsibility of the lessor under the terms and conditions of the lease. If determined to be the lessor's responsibility, the case will be handled under regular lease administration procedures. Otherwise, the request must be endorsed by the lease contracting officer, signed, dated, and readied for contracting, as described below.

(b) Authorization by Lessors - The lessor will be requested to provide GSA with a written authorization to perform, or contract for, any work which extends beyond the premises described in the Government's lease contract. This authorization would be requested with the understanding that the lessor will have the opportunity to compete for the contract under which the full scope of the alteration project will be performed unless handled under existing term contracts.

(c) Waiver of Restoration Rights by Lessor - The lessor will be requested to waive, in writing, the right to require the Government to restore the affected premises to the condition which existed prior to alterations.

(d) Distribution of Projects - The Chief, Acquisition Branch, will review the data and circumstances associated with each project in order to recommend a course of action to the Director, Space Management Division. Other than those extraordinary circumstances mentioned above, all projects handled under competitive procedures will be referred to the Buildings Management Division for appropriate action.

C. Buildings Management Division (BMD)

(1) Contracting Authority - Contracting authority not in excess of $10,000 may be delegated to Buildings Managers. The level of authority to be delegated up to the $10,000 limitation is to be consistent with workload demands within the region and the demonstrated abilities of individual employees. When term contracts are used, the Buildings Managers may be delegated the authority to order against a term contract up to $50,000 without prior review. Above $50,000 the order must be reviewed by the Director, Buildings Management Division, and above $75,000 the order must be reviewed by the Regional Commissioner.

(2) Planning and Control of Funding - BMD will assure that funding is provided for the project, either through a Reimbursable Work Authorization, Budget Activity 54 funds, or a combination of the two, as applicable.

(3) Scheduling and Assignment of Work - BMD will be responsible for the work, time, cost, and other factors considered. An independent Government estimate shall be made and used to compare against contract proposals. The methods by which alterations may be effected include:

(a) By force account.

(b) By contract in accordance with the Federal Procurement Regulations.

(c) By work order under existing term contracts. These must be utilized and administered in accordance with the interim guidelines published as an attachment to the all regions' memorandum of December 16, 1977, subject: PBS Procurement Practices.

(4) Issuing Project Authorizations - BMD will be responsible for issuing a Project Authorization when it is determined that the work will be accomplished through the Construction Management Division under formal advertising procedures or competitively negotiated procedures.

(5) Economy Act Limitation - BMD will be responsible for implementing the requirements of Chapter 18.3a of the HB, Operations and Maintenance of Real Property, PBS P 5800.18A, which outlines the responsibilities for complying with the Economy Act in leased space.

D. Construction Management Division

(1) Project Scope and Schedule - CMD will review project authorizations received from BMD and group work items into logical projects. On-site inspections will be made, as necessary, and a definitive scope of work developed for each project. Lessor-imposed constraints, if any, will be identified. CMD will develop a proposed schedule based on project priority and projected division workload. Agreement on schedule will be reached by the Agenda Staff.

(2) Project Design - CMD shall determine whether the project will be designed:

(a) "In-house" by CMD personnel;

(b) By a term A/E already under contract (maximum fee of $25,000); or

(c) By an A/E selected in accordance with procedures contained in FPR 1-4.10.

On-board reviews will be made during design to assure compliance with PBS criteria, tenant needs, and lessor constraints. SMD and BMD representatives will be invited to participate in all design reviews.

(3) Methods of Contracting - After considering the nature, complexity, priority, and size of the project, CMD will select the method by which the procurement will be made; that is, either by:

5

(a) A work order against a current term construction contract; or

(b) Contract in accordance with the Federal Procurement Regulations.

If alterations are to be effected by a new contract, the lessor may be invited to participate in the bidding. CMD shall also insure that pre-invitation notices are sent to a representative number of minority firms.

(4) Contract Administration - The contract will be administered in accordance with applicable sections of GSPR 5B and the Interim Manual, Procurement and Administration of Design and Construction. Only mandatory changes will be issued to formally advertised or 8(a) contracts. Payrolls shall be reviewed for each trade on the project prior to approval of initial and final payments. On-site interviews shall be made in accordance with the Commissioner's letter of December 27, 1977. Inspections shall be performed as set forth in section IV, below.

III. INSPECTIONS

Payment will not be authorized for any job, regardless of cost, until the work has been physically inspected to assure that all contractual obligations have been fulfilled. This procedure also applies to individual purchase orders issued under term contracts.

The GSA contracting officer must have in his possession a written and signed inspection report before authorizing payment. The extent and type of inspections shall be as follows:

(1) Under $2,000 - A final inspection can be performed by GSA field personnel and/or a designated official of the occupying agency. The inspection report shall, as a minimum, contain the following:

(a) Name and address of building;

(b) Lease number;

(c) Contract identification number;

(d) Description and location of work in the building;

(e) Contract amount;

(f) Certification that all work required by the contract has been performed in a satisfactory manner and that quantities have been verified;

(g) Date of inspection; and

(h) Signature and title of the inspector.

6

(2) $2,000 to $10,000 - The procedures in (1), above, apply except the inspection must be conducted jointly by a GSA field office employee and an agency representative; and copies of all Davis-Bacon interview reports shall accompany the inspection report and all required payrolls shall have been received before payment is authorized.

(3) $10,000 to $50,000 - The procedures in (2), above, apply except the inspection will be conducted jointly by a professionally qualified representative of the Construction Management Division and an agency representative.

(4) Over $50,000 - The procedures in (3), above, apply except the Construction Management Division inspector must conduct at least one unannounced progress inspection in addition to the final inspection.

SPECIAL NOTE: Inspection forms presently available may be used; however, they must be augmented to the extent that they fail to meet the requirements of (1) through (4), above.

IV. LOCAL CODES AND ORDINANCES

All GSA contracting officers and inspectors are reminded that every contractor and subcontractor performing work for the Government in leased buildings is subject to all pertinent codes, ordinances, and regulations promulgated by the local governments.

V. COORDINATION

The dispersal of functions necessary to implement these procedures requires a high degree of coordination among the various PBS components, particularly with regard to the contacts with lessors. It is expected that every PBS component will deal directly with lessors on routine matters; however, any such contact which might affect the contractual relationship between the lessor and the Government with regard to the lease contract must be coordinated in advance with the lease contracting officer.

* * * * *

As stated above, the foregoing procedures are to be implemented immediately and without deviation. Each Regional Commissioner is expected to assure strict compliance and submit a written report to me within 30 days from the date of this memorandum setting forth any observations, comments or suggestions considered appropriate. These reports will be considered prior to revising the affected handbook(s).

7

Your personal and continuing involvement in this, and all other PBS procurement functions, is absolutely necessary to be certain that our funds are administered in a professional and fiscally prudent manner. I appreciate your cooperation, and please do not hesitate to call me, Bill Campbell, Loy Shipp, or Dave Dibner if the need arises.

For JAMES B. SHEA, JR.
Commissioner

Attachment

cc: All Regional Administrators, GSA
All Regional Directors, SMD

General Services Administration Washington, DC 20405

JUN 29 1978

MEMORANDUM FOR: Heads of Services
Heads of Staff Offices
Regional Administrators

FROM: Jay Solomon

SUBJECT: Procurement Policy

I want to call to your attention that it is the policy of this agency to award contracts or to make sales only as the result of formal advertising or competitive negotiation. Sole source procurements or sales are to be avoided except under the most extraordinary circumstances. The only exception to this policy will be the tariffed offerings of public utility companies.

Effectively immediately any sole source procurements or sales are to be approved in writing by the Head of Service, Head of Staff Office or Regional Administrator. This approval should identify the reasons for the method of procurement. You are not to delegate this authority to any subordinate.

In addition, I want to be advised of each sole source procurement. Please forward this information to me through the Director, Office of Planning, Policy and Evaluation (AZ).

General Services Administration — Public Buildings Service — Washington, DC 20405

Date JUL 6 1978

Reply to Attn of Commissioner, PBS (P)

Subject Typographical error corrections

To All Regional Commissioners, PBS

This refers to my memorandum dated June 29, 1978, Subject: Revised Special Procedures for Alterations in Leased Buildings.

The following changes should be made in section titles:

Page 5 - Section IV. INSPECTIONS should be changed to III. INSPECTIONS

Page 6 - Section V. LOCAL CODES AND ORDINANCES should be changed to IV. LOCAL CODES AND ORDINANCES

- Section VI. COORDINATION should be changed to V. COORDINATION.

Please correct copies of the memorandum accordingly.

For A. Sheahan

JAMES B. SHEA, JR.
Commissioner

cc: All Regional Administrators, GSA
All Regional Directors, SMD

Original corrected for future copy distribution 7/11/78

Mr. BURTON. Do you recommend repeal of the $25,000 limitation required by the Economy Act on leasing of space?

Mr. FREEMAN. I will have to look at that.

[Additional material follows:]

Repeal of Economy Act Limitation
on Leasing of Space

Our legislative program for this year includes a proposal to amend the existing limitation on annual rental imposed by the Economy Act (15% of the value of the leased premises) in favor of a limitation based upon 105% of the Appraised Fair Annual Rental.

Limiting rent according to a percentage of value in certain instances severely hampers the leasing of space in older buildings and can lead to the payment of even higher rates in new buildings. It is essentially for this reason that the legislation is proposed, although there will also be a savings in administrative expense.

The reference to a $25,000 limitation in Mr. Burton's question is in error. There is no such limitation; however, the Economy Act does place a ceiling on expenditures for lease alterations at 25 percent of the rent paid during the first year of the lease. We would not favor eliminating this limitation as the existing statutory authority of the Administrator of GSA to waive it, upon an appropriate showing of the facts, is sufficient to permit sound business judgments in all cases.

Mr. BURTON. If requirements were made to apply for a higher threshold than $25,000, have you given any consideration to what figure might be advisable?

Mr. FREEMAN. I have not come to a specific figure. I have asked my people to stratify so I can get a better handle on what we are doing.

Mr. BURTON. GAO issued a report entitled "GSA Has Been Lax in Managing the Columbia Building Lease," dated April 17 of this year. It was directed to Paul Goulding when he was the Acting Administrator.

They made several recommendations that required a report back to the committees by the agencies within 60 days upon receipt of that. Do you have a copy of this report, by the way?

Mr. FREEMAN. I am aware of it; yes, sir.

Mr. BURTON. On the cover page, in the letter to Mr. Goulding, they were requesting a written statement on actions taken on the recommendations to be made to the Senate Committee on Governmental Affairs and our House committee no later than 60 days after the date of the report. To our knowledge, there has been no response as yet.

Mr. FREEMAN. If you have not received a reply, I apologize for it, and I can assure you you will before the end of the week.

Mr. BURTON. Provide the report, because I know you have another meeting, and we called Congressman Pryer and told him you would be delayed.

[The information follows:]

GAO Report Entitled "GSA Has Been Lax
in Managing the Columbia Plaza Lease"

On October 31, 1979 we concluded a negotiated agreement with the Columbia Plaza building owners which addressed two of the four GAO recommendations. First, by the terms of the agreement, the owner has assumed responsibility for maintaining the structure of the building. Second, the owner has agreed to pay $400,000 to the Government in consideration for the landlord obligations we had undertaken earlier.

Regarding the other two recommendations, we expect to have the garage utilities separately metered in early January. However, we have not sought (as GAO recommended) a rental adjustment based upon the actual square footage in the building, because at the time the lease was negotiated the parties involved intended occupancy of the entire space regardless of its area.

Mr. BURTON. Would you comment on the GAO report on the multiple award schedule program concerning the agency is being indirectly hampered by its service-oriented philosophy?

Mr. FREEMAN. I agree with the GAO.

Mr. BURTON. You feel you have authority to take a stronger role so that service need not be subordinated to other functions vested in the Administrator?

Mr. FREEMAN. I believe we can question those, but we have a responsibility to look behind the basic requisition to make sure that is needed. I have done that.

Mr. BURTON. What kind of grumbles are you getting?

Mr. FREEMAN. None so far.

Mr. BURTON. What steps is GSA now taking, possibly in conjunction with the Office of Federal Procurement Policy, which would allow you to accumulate more procurement data to assist you in your contract and guidance functions?

Mr. FREEMAN. I am trying to put together a data system, which we lack now. I understand there is a proposal to transfer the data system to the GSA, in which case I will be able to do the oversight work I am supposed to be doing.

Mr. BURTON. The legislation treats the multiple award schedule program and the need for regulatory action within a specific time period. Have you come back with your reforms and changes within a time certain?

Mr. FREEMAN. I would be in a much better position to tell you how we are progressing in about 6 months.

Mr. BURTON. Can you tell us how many contracts there are over $100,000, and whether or not all of these contracts have costs and price data certified in them?

Mr. FREEMAN. I would have to furnish that for the record, sir.

[The material follows:]

Question (Mr. Burton): Can you tell us how many contracts there are over $100,000 and whether or not these contracts have cost and price data certified in them?

Suggested comment for the record: GSA estimates that approximately 1,600 negotiated contracts over $100,000 were released in FY 79. Only a small percentage of these procurement actions were awarded based on contractor's submission of certified cost and pricing data. The FPR subpart 1-3.807-3 provides for exemptions to submit cost and pricing data under the following circumstances:

1. Where the price negotiated is based on adequate price competition.
2. Where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quanities to the general public, or
3. Where the prices are set by law or regulations.

Most of GSA's negotiated procurements are exempt from the cost and pricing data requirement based on exemption 2—established catalog or market price of commercial items sold in substantial quantities to the general public. However, this area is one in which our newly established contract clearance office will be devoting considerable attention. We expect that there will be an increase in the number of contractors required to submit cost and pricing data. We also anticipate an increase in the number of contractors who will be required to provide adequate data on their commercial sales to demonstrate that their negotiated prices are in fact based on established catalog or market prices for commercial items sold in substantial quantities to the general public.

Back-up analysis:

Over $100,000

Number of transactions through 3d quarter (FPDS)	1,183
Extrapolated for 4th quarter	394
Total estimated GSA fiscal year 1979 transactions	1,577

Mr. BURTON. The size of the advertised procurements for the year, would you submit that for the year?

Mr. FREEMAN. Yes, sir.

[The material follows:]

Question (Mr. Burton): The size of advertised procurements for the year, would you submit that for the year?

Suggested comment for the record: GSA estimates that approximately 31 percent of all procurement actions in fiscal year 1979 were advertised.

Back-up analysis:

All reported transactions

Number of GSA transactions through 3d quarter (FPDS)	221,631
Extrapolated for 4th quarter	73,877
Total estimated transactions, fiscal year 1979	295,508
Total estimated advertised transactions, fiscal year 1979	90,746
Estimated percent advertised procurements, fiscal year 1979	31

Mr. BURTON. And your feelings on the GAO recommendation that these contracts need not have certified information because competitive forces operate there, do you agree with that?

Mr. FREEMAN. I think that is an area we will have to look at very carefully before we change the rules.

Mr. BURTON. Are you in agreement with GAO that GSA should and can require contractors to submit reports and submit specific information?

Mr. FREEMAN. Yes. I am uncomfortable with the data I am getting now.

Mr. BURTON. That is all the questions we have for you at this time.

Mr. Muellenberg, we will have a few specifically addressed to you. If we have more questions, we will submit them in writing for the record, if they come up. Thank you very much, Mr. Administrator.

Mr. Muellenberg, the Administrator in his testimony stated that the audit requirements of the bill would severely burden your staff resources, and he suggests that you have more flexibility as to the types and percentages of contracts to be audited. Would you comment to us and maybe give suggestions as to what numerical and type coverage you think advisable for audit?

Mr. MUELLENBERG. As I indicated to you when we started out, I would like Mr. Cox, an attorney on my staff, to answer some of the questions.

Mr. BURTON. Would you stand and be sworn, please.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Cox. I do. Under the proposed amendments, we are given a 3-year trial period to analyze the size and classifications of contracts. Then the Inspector General and Administrator have the necessary flexibility to set up the audit criteria, in order to determine how the resources can be properly allocated. We would like at

the end of that 3 years to come forward to Congress with concrete suggestions as to workable contract size and classification criteria for future audits.

Mr. BURTON. The problem that I might have with that would be if you are not set with a limit or requirement that you then would necessarily be limited by what the Appropriations Committee does. Then you find yourself locked in and doing fewer audits because that is your staffing standard and the next year when you come in for money, you are told: "Well, you did all right with what you had last year, you do not need any more." What we are afraid of is, we felt it might be beneficial to mandate you with a certain amount so then you had a reason to ask for sufficient personnel because Congress mandated these duties on you. To the extent we make it discretionary, I think will make it more difficult as the need arises maybe to get sufficient personnel. We had to fight with OMB to get you what you have now.

Mr. Cox. I agree with you, sir. Our concern would be at the end of the 3-year period, we would have the flexibility to come forward to Congress and suggest that certain classifications of contracts do not need the detail of scrutiny. We would like to have the flexibility to come forward and say that based on our experience, certain classifications, do not need full audit attention, whereas perhaps other kinds of contracts require a greater level of examination and audit than would be called for under the statute. Basically, sir, we ask ability to keep our options open, to be able to come back at the conclusion of the period and indicate whether those levels are properly allocated.

Mr. BURTON. Maybe there is a way we can have it both ways, but our major concern was if we did not put a mandate in, you would find yourself after all the furor dies down, there is nothing in the newspapers in the interest of showing that you are really doing a job, and lots of agency heads think they are doing the job by cutting slots out of the budget. Maybe working with your staff, we can figure out a way to protect against that. This was one of the concerns. If the word gets out that you do not have adequate audit processes in place, it would be OK to go out and mug somebody because the cop is up on 42d Street.

Mr. MUELLENBERG. Why do we not address that subject in a position paper?

[The information follows:]

Currently we have 150 auditors available to conduct internal and contract audits. Over the next two fiscal years, we plan to increase the size of our audit staff to 450 auditors. We would like the opportunity under this legislation to develop contract size and classification audit standards based upon our anticipated resources. As our staff expands we will be able to expand to the scope of our audits accordingly. A legislative mandate to perform a certain percent of audits may be required in order to obtain the necessary audit resources to accomplish our goals. We would like the flexibility to report to Congress at the end of the three year period that based upon our three year experience, we have established contract classifications and have determined what percentage of these contracts must be audited on an annual basis. We would also be able to report precisely what further resources would be necessary to accomplish these goals.

Mr. BURTON. Are you prepared to discuss other specific provisions of the bill in which we, in effect, are laying new functions on you such as 307(f), where we require you advise the Administrator

57-507 O - 80 - 6

in establishing procedures for reviewing contracts and agreements? Do you see any problems in that?

That would be 307(f). In fact, most of these questions will be dealing with 307(f) of the bill.

Mr. Cox. Sir, our examination of this indicates we believe it is a viable proposal to be put forth. We feel we can work adequately with the Administrator in order to establish the goals set forth here. The specific portions of it with regards to the types of contracts that would be audited, the flexibility, requiring by regulations these things be set out are absolutely essential at the present time.

Mr. BURTON. You do not see any problems?

Mr. Cox. No, the only concern we would have would be with regard to the $1,000 contract limit. In certain circumstances, I believe the Administrator indicated it might be too low. For example, every time we would purchase a Xerox machine, that purchase would be over the threshold. But the framework expressed in the legislation we believe is workable.

Mr. BURTON. If we decide not to lift the threshold to the required audit of 20 percent of the Xerox purchases or things of this sort, then where we have the Inspector General review establishing the audit plan and varying the audit percentages for 3 years, do you see any problems with that?

Mr. Cox. No, sir, we do not.

Mr. BURTON. In 307(f)(3)(B), where we have all Inspectors General under the 1978 act to include in the reports to Congress and the agency head an evaluation of resource ability, I assume there is no problem in that.

Mr. Cox. Absolutely not.

Mr. BURTON. In 307(g), we let the Inspector General and the Administrator receive access to all contractors' and subcontractors' records that would have materiality. Do you see any problem with that section?

Mr. Cox. No, sir, that is what we consider to be one of the most important strengths in this legislation.

Mr. BURTON. Could you describe communication coordination which exists between your offices and those of the other Inspectors General?

Mr. MUELLENBERG. As you may know, there is an overall structure now, an Inspectors General council, which I understand Attorney General Civiletti is taking an active interest in. In addition there are enforcement committees addressing questions of the new Judiciary Code. We have some problems with that. We have requested a hearing to present our views.

A very recent initiative, if you will, when the controversy arose as to the usable furniture in the Dempster Dumpster, I have taken the position, and we are doing a survey and audit of what is available in terms of personal property and furniture, specifically. So the coordination between all the Inspectors General is an ongoing thing.

Mr. BURTON. Can it end up to be an effective tool for all agencies?

Mr. MUELLENBERG. Yes.

Mr. BURTON. I assume your working relationship with the Justice Department's task force and GSA is a close one and an effective one.

Mr. MUELLENBERG. Yes, it is. There are no problems there that I see.

Mr. BURTON. We have no further questions for you. Thank you very much.

The next witness will be Mr. J. Roger Edgar, Commercial Litigation Branch, Civil Division, Department of Justice.

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

STATEMENT OF J. ROGER EDGAR, COMMERCIAL LITIGATION BRANCH, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. EDGAR. I do.

I have a prepared statement which I have submitted to the committee.

Mr. BURTON. That may be incorporated in the record.

Mr. EDGAR. The Department believes the purposes of this bill are salutary and long overdue. We have proposed a number of suggested changes in the bill which, in our view, are of a character which will perfect it and make it a better bill. I regret the constraints of time have not permitted me to come forward with concrete language which would, I believe, be of assistance to the committee in considering these matters that we have put forth.

The most useful type criticism, we believe, is constructive criticism, which consists of not only pointing out deficiencies but also suggesting concrete language to remedy those deficiencies.

I have had an opportunity to discuss these concerns we have with members of the staff, and indicated we would be pleased to work with the staff in developing language, if that is the committee's wish, to remedy these deficiencies.

But again I wish to emphasize that the Attorney General believes this bill is a good bill. It places the responsibility for recovery from civil losses with the agencies in the first instance. This is a marked departure from existing law; we believe it is significant, good, and overdue.

Mr. BURTON. We would like to thank Justice for their cooperation and input from the inception of the bill, and we do look forward to any other suggestions that you might make.

In your prepared statement, you mention that Justice is preparing legislation for administrative remedies. Have you any idea when that may be ready?

Mr. EDGAR. I believe, Mr. Chairman, that the process of drafting that legislation within the Department will be completed within 30 days. How long it will take to get it out of OMB, I am not prepared to say.

Mr. BURTON. When the time comes, if we may be of any help with you with OMB, we will try to do it. We had a lot of trouble with OMB getting sufficient audit and investigating staff for GSA in the first place.

You raise the constitutional question regarding the right to jury trial and the administrative penalties we would have here. Would

you tell us how that would pertain in an administrative determination based on a contract penalty clause?

Mr. EDGAR. Let me say at the outset these are only preliminary and tentative concerns. I would be presumptuous if I were to suggest to you as the lawyer for the Government that the bill in its present form is unconstitutional.

Mr. BURTON. No, but you are raising a very valid issue that we should be aware of and should try to address.

Mr. EDGAR. Well, the concern that we have is this. As you well know, the Constitution preserves the right of jury trial as it existed in 1791. What the committee is essentially doing is providing remedies for the recovery of moneys obtained through fraud. Of course in 1791, the action of fraud was well known, and there may be problems of attempting or striving to recover these losses in an administrative framework where, of course, the right of trial by jury would not obtain.

Committee members of the staff and, of course, you in your opening remarks, Mr. Chairman, have indicated this bill is not cast in stone, and there may be ways to avoid the problem. We would certainly be agreeable to working with the staff to draft legislation to avoid these problems. The idea that comes immediately to my mind is one which has been alluded to before, and that is requiring that all contracts entered into pursuant to this act contain a certification provision and agreement by the contractor to abide by adjudications made by the Administrator in proceedings initiated by him under the act. It may well be a device of that sort could properly be utilized.

Mr. BURTON. You are working on—Justice is working on a legal opinion on that?

Mr. EDGAR. We have requested the Office of Legal Counsel to provide us with guidance in this area. The Department, in turn, will be pleased to provide that opinion to the committee. But it occurs to me that it may be more prudent to wait somewhat and go to the legal counsel with what may be the final draft of the bill instead of asking for something that may not be incorporated in the bill.

Our work with the staff would lead us in that direction. That would be my preference.

Mr. BURTON. You suggest we specify the burden of proof to be required in the administrative hearings. What standard would you suggest and what problems are there in using the adequate-evidence standard?

Mr. EDGAR. Well, there are several standards that can be employed. One is the arbitrary-and-capricious standard; the other is clearly erroneous on the record as a whole. I would prefer to use the arbitrary-and-capricious test, because I believe it imposes a lesser burden on the Government.

Mr. BURTON. One option that you lay out for the standard of judicial review is to make the findings of administrative proceedings final and conclusive as to matters of fact. What effect would specifying this judicial standard have, and would you advise if that be a proper approach?

Mr. EDGAR. I would advise that would be a proper approach, and looking at it from the view of a litigator, which is what I am, when

you go to a court and seek enforcement and indicate Congress has stated that the findings of fact made by the agency, that the agency's determination as to the credibility of witnesses who appeared before it are final and conclusive, you are a long way ahead in litigating that case in court.

Conclusions of law that are arrived at by the agency are of course subject to broader review by the court, and courts will take a hard look at conclusions to make sure they are proper.

Mr. BURTON. Is it not a general legal rule, that on appeal or review they do accept findings of fact made at the administrative hearing? Since the people were there, and could observe the demeanor and determine credibility, it is a tremendous burden, even on a factual level, to overturn the trial or administrative court's findings of fact.

Mr. EDGAR. That is a fact, and it is my suggestion that it be incorporated into the bill so there will be no doubt about it when the matter is litigated.

Mr. BURTON. What other avenues of appeal do you feel would be open to a contractor penalized under this bill? Do you feel he could still appeal to the GAO or Court of Claims in addition to the district court?

Mr. EDGAR. Under the bill as presently structured, his appeal would go to the courts of appeals of the various circuit courts or in the District of Columbia if he is agrieved by an administrative determination. It would not, it would seem to me, be open to the contractor to initiate a suit in the Court of Claims. His exclusive remedy for appeal would be by the mechanism provided for in the bill itself. It seems the provisions are full and would afford all due process applicable to the situation.

Mr. BURTON. I thought the bill specifically made the appeal to the appellate court, but if necessary we can specify more clearly that is the appeal route, to the exclusion of others.

Mr. EDGAR. Yes.

Mr. BURTON. Could you expand on why Justice requires coordination or prior approval of certain administrative actions such as these, and what dangers there may be involving criminal matters if such coordination is not done?

Mr. EDGAR. The apprehension that we have, and to a certain extent I am carrying water up here for the Criminal Division——

Mr. BURTON. No, for the Bill of Rights.

Mr. EDGAR. The concern we have is not over expeditious resolution of these disputes, but rather precipitous resolution. If, for example, there is an ongoing investigation being conducted by a Federal grand jury, that investigation in our view could be impeded if an administrative proceeding were initiated under this act.

The defendant, or respondent as the case might be, could insist upon full disclosure of the Government's case in the administrative proceedings. The Government has initiated the action and charged him with fraud. Under the discovery rules that would undoubtedly be applicable, I think he can insist upon getting into the grand jury process and hindering and impeding that process.

Also, I would think the contractor named as the respondent in this type of proceeding could properly make a very sympathetic and compelling argument that the Government's discovery that the

Government would utilize in this case was very unfair. He might be able to show that the discovery by the Government which are elicited from him, whether by subpena, depositions, and the like, are to be turned over to the Federal grand jury. So, it works both ways. Not only would the contractor have an interest in getting into the Government's criminal case, but the Government might have an interest in eliciting from the contractor evidence that would further its criminal case. The Supreme Court spoke last term about the restrictions on the Government's use of the civil process to further its criminal goals.

So, one way to resolve this problem is simply to draft into the bill a provision that would require the prior approval of the Attorney General before the institution of a proceeding of this kind.

There are several available options: One is to say nothing, of course. The second option is to mandate cooperation. And the third, the option we at the Department urge, is to require the prior approval of the Attorney General be given before such a proceeding is initiated. Cooperation in our view must be accompanied by the power on the part of someone to make a decision, and we believe that someone ought to be the Attorney General, who is charged with the primary responsibility of enforcing all the laws of the United States, including the criminal laws.

Mr. BURTON. Would you run into a statute-of-limitation problem if there is a longer statute for the criminal action than a civil action?

Mr. EDGAR. We have a 6-year statute if we are working on the False Claims Act. If we are working on the common-law contract theory we have 6 years. If it is tort theory, 3 years. We also have a tolling provision which says the limitations period does not run while facts were not known or could not reasonably have been known to a person charged with the responsibility for pursuing the Government's actions.

Mr. BURTON. Mr. Muellenberg, would you come forward. Please explain it to us where you are running into something and where there is a civil action.

Mr. EDGAR. Our suggestion is before any action goes forward, the Attorney General gives his approval. Our suggestion is before the agency commences a proceeding under this statute, they receive the prior approval of the Department of Justice to do so.

Mr. BURTON. Before they commence proceedings for remedy, not investigation?

Mr. EDGAR. By no means would we seek to foreclose any investigation the Inspector General might make.

Mr. MUELLENBERG. That portion of the proposed legislation, and it gets into the area of parallel proceedings, it is correct. You cannot use the civil process in order to further a criminal investigation. We did not really address that in the comments we were prepared to make today. So, maybe perhaps again in connection with a position paper on the overall bill, let me reduce my thoughts to writing on that issue.

[The information follows:]

It is our position that prior to the imposition of any administrative penalty under the provisions of this bill, the Administrator, through the Inspector General, should inform the Department of Justice of the pendency of the administrative action. If

the Department of Justice is contemplating criminal action against the subject and requests GSA to delay action, the administrative proceedings will not jeopardize the substantial interests of the government in the criminal prosecution. However, GSA should be allowed to suspend the contractor, for a period not to exceed 18 months, while the criminal action is pending. Such a procedure is currently set forth in 41 CFR § 1-1.605.

I do not believe that the administrative proceedings envisioned by these amendments will jeopardize any civil remedies of the government under any other applicable civil statutes. If the penalties of this statute are to have a salutory and deterrent effect, the agency should be able to proceed swiftly, and not be required to await the termination of costly and time consuming civil litigation. For this reason I recommend that the agency's interest in imposing administrative penalties should not be subject to Department of Justice approval in cases where no criminal action is contemplated.

Mr. BURTON. All right. Do you have offhand the citation of the Supreme Court case?

Mr. EDGAR. It is the *LaSalle National Bank* decision, handed down last term. I do not have the citation.

Mr. BURTON. We would appreciate your comments on that. Because I can see where we could end up in some kind of expletive match between GSA and Justice. GSA gets back $30,000 but blew a big criminal indictment, and it could just cause a brouhaha over something unnecessary.

What use has been made of existing remedies under 209 of the Federal Property Act?

Mr. EDGAR. My experience only goes back to the time since I have been in my present position. But only a handful of cases have been referred to the Department under this statute. I can only think of one now currently in active litigation, which raises the further question of why that might be the case.

Mr. BURTON. Committee counsel says to his knowledge there have never been any cases under procurement. The limited cases have concerned to property disposal.

Mr. EDGAR. He is correct.

Mr. BURTON. Why is that?

Mr. EDGAR. I can suggest to the committee two possible reasons. One is the agencies themselves refer these cases to the Department. So the paucity of actions under the statute is partially because of the lack of referrals. I might also suggest some additional reasons. The first remedy provision provided under the current section of the act is the same as the remedy under the False Claims Act, namely double damages and a $2,000 forfeiture. The Department of Justice has had more experience with the False Claims Act than with this statute. The False Claims Act was enacted shortly after the Civil War.

Also, in my own view, there is a lesser burden of proof required under the False Claims Act than under this statute as it is currently on the books today.

Mr. BURTON. Just one last question. You get, say, 15 cases from the GSA for criminal action. You find that either you cannot get an indictment, or if you get an indictment you cannot get a conviction, or you just feel you cannot win a criminal conviction on the case.

What do you do with those cases? Are they then referred to Justice's Civil Division?

Mr. EDGAR. Yes, they are.

Mr. BURTON. You do not drop them and wait for the agencies to say why do you not proceed on a civil action? You automatically refer them to your Civil Division for civil action?

Mr. EDGAR. That is correct.

Mr. BURTON. Mr. Walker.

Mr. WALKER. I have only one question, Mr. Chairman.

You indicated the medicare and medicaid provisions to protect against fraud as being a model we might want to take a look at.

Mr. EDGAR. I think it would be helpful and have discussed it with members of the staff and have urged them to review it.

Mr. WALKER. What particular aspects do you think would be useful?

Mr. EDGAR. Primarily the bill deals with some of the problems I have discussed in my statement today, burden of proof, scope of review, the kinds of damages that are recoverable. I think the committee might well wish to consider the inclusion of consequential damages. A very simple example is if the Government buys a widget and the widget goes into the gizmo, sometimes the damages you can recover for the substandard widget are far overshadowed by the consequential damages which occur when you have to tear down the gizmo to get at the widget. Under the law today, those damages are not recoverable. The bill could provide that damages are recoverable.

Mr. WALKER. There are provisions of that kind in the medicare, medicaid fraud bills?

Mr. EDGAR. Yes, there are.

Mr. BURTON. I have no further questions—Mr. Romney.

Mr. ROMNEY. Thank you, Mr. Chairman.

Mr. Edgar, I would just like to clear up one part of your testimony, on page 6. The paragraph which reads: "The relationship of this bill to existing criminal and civil remedies may be further clarified by providing specific language stating that the relief provided by this bill is in addition to any criminal penalties provided by law and is an alternative to existing civil remedies."

A portion of the existing section 209 of the Federal Property Act and specifically 209(d), is preserved. It is merely redesignated by our proposed bill. It does read, "The civil remedies provided in this section shall be in addition to all other civil penalties and remedies provided by law."

Is your statement intended to suggest something different from section 209(d)?

Mr. EDGAR. You are quite correct. The subcommittee's bill does save subparagraph (d) of existing paragraph 489 of title 40. What I am urging the subcommittee to do is not repeal the existing civil remedy provisions as they now stand on the books, but to provide instead the administrative remedies are in addition to the existing civil remedies judicially enforceable in the statute as it now stands.

Mr. ROMNEY. Are you saying they should provide in terms what you have just said, or would this not just follow if the existing language of subsection 209 (b) and (c) were retained along with the additional language of H.R. 5381?

Mr. EDGAR. If the bill—let me answer the question this way. My understanding of the bill as it is presently drafted is that it repeals the 489(b) of title 40 and substitutes in its stead an administrative

mechanism to recover penalties somewhat analogous to those presently provided in the statute.

My suggestion is that these administrative penalties be in addition to and not a substitute for the existing remedies under the statute.

Now, I believe the bill, as I read it, repeals 489(b). If I am mistaken in that, there would be no need for remedial legislation.

Mr. ROMNEY. In view of the fact that would be retained, there would be no necessity to repeat that language or a paraphrase of the language elsewhere in section 209?

Mr. EDGAR. Again, this gets back to the way, maybe you read the bill differently than I do, but let me put it to you this way: If this bill is enacted by the Congress, I do not believe the Department of Justice could initiate a suit in the district court in the first instance, under 489(b)(1) of title 40, because that statute would have been repealed. Now, am I correct in that?

Mr. ROMNEY. Yes. But, I do not know that you have got the question. I simply am raising the question that the present section 209(d), if it stands under a new designation, would then save other statutes besides the existing 209 (b) and (c).

Mr. EDGAR. I believe it would, because in the draft bill, the bill provides that subsections (b) and (c) are eliminated and the new subsection (b) is inserted in its stead. So, I read this bill as eliminating subsection (b), the interdictory provisions, and subsection (c), the jurisdiction-in-aid provisions.

Mr. BURTON. Thank you very much.

I would like to thank the Justice Department for working with us on this bill, especially Mr. Lynch.

[Mr. Edgar's prepared statement follows:]

Department of Justice

STATEMENT

OF

J. ROGER EDGAR
DIRECTOR, COMMERCIAL LITIGATION
CIVIL DIVISION

BEFORE

THE

COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON ACTIVITIES AND TRANSPORTATION
HOUSE OF REPRESENTATIVES

CONCERNING

H.R. 5381 - GSA CONTRACTING

ON

OCTOBER 15, 1979

Mr. Chairman and Members of the Committee:

My name is J. Roger Edgar and I appear before you today to furnish to the Committee the Department of Justice's views on H.R. 5381, a bill to amend the Federal Property and Administrative Services Act of 1949 to reform contracting procedures and contract supervision practices of the Federal Government.

By way of introduction, I am a Director of the Commercial Litigation Branch of the Civil Division and my principal responsibility is the supervision and management of the Government's civil litigation to recover losses resulting from frauds upon the Government and from the corruption of its employees. Such litigation typically involves suits brought under the False Claims Act (31 U.S.C. §§231-235) to recover double damages and $2,000 forfeitures from those who submit false claims and false statements or who conspire to defraud the Government with respect to its contracts and other programs. In this respect, the False Claims Act is somewhat analogous to the objectives which H.R. 5381 seeks to obtain through administrative action.

The Attorney General supports Congress' consideration of alternative remedies to supplement the Government's principal rights to prosecute the perpetrators of fraud criminally or to sue them civilly in the federal district courts. The addition of effective monetary sanctions which are administered by the agency which has been victimized may serve as a useful deterrant and, at the same time, accomplish a significant recovery of the Government's losses and the costs of enforcing the integrity of its programs.

The first such effort to explore administrative alternatives to a civil law suit in federal court was the recent proposal to amend the Social Security Act to provide for monetary penalties in connection with certain frauds upon the Medicare and Medicaid programs. This proposal was supported by the Attorney General and was the product of an extensive and cooperative effort by the Department of Health, Education and Welfare and the Civil and Criminal Divisions of the Department of Justice. On May 15, 1979, this bill was introduced in the House of Representatives as H.R. 4106. We believe this bill is a useful model and valuable first step for any consideration of administrative action to impose monetary penalties.

Based on the earlier work done on H.R. 4106, the Department of Justice has begun developing a wider-reaching legislative proposal authorizing departments and Government agencies having significant contracting or program responsibilities to impose by administrative action monetary penalties upon those who commit fraud. This proposal is in the final stages of drafting and will soon begin the process of obtaining the necessary clearances prior to submission to Congress for consideration. We believe this bill will constitute a comprehensive advancement and realistic deterrant in our continuing effort to combat program fraud and white collar crime against the Government. As I said before, the Department is actively working on such a proposal and we hope to submit it to Congress as quickly as possible. Because of the considerable effort and discussion that went into the drafting of the Medicare/ Medicaid proposal, we suggest that it may provide useful guidance to the Committee as it considers this proposal.

Having said this, there are a number of technical comments and suggestions we can make concerning H.R. 5381 which the Committee may wish to consider further.

An initial problem the proposed bill may pose concerns the possibility that a broad administrative imposition of monetary penalties on essentially common law theories of fraud

may operate as an unconstitutional deprivation of the defendant's right under the Seventh Amendment to the Constitution to have the charges against him decided by a trial before a jury of his peers. I hasten to add that this is a preliminary and tentative concern. However, we have requested the Justice Department's Office of Legal Counsel to study this issue further and their opinion will be made available to this Committee, if it so desires, as soon as the study has been completed.

On a more technical note, we suggest that the Committee may wish to consider refining section 1(c), which provides for a hearing on the charges, to delineate the burden of proof required to support the imposition of penalties. Presently there are several possible levels of proof which might be required, ranging from proof by adequate evidence (the standard to justify suspension of a contractor), to preponderance of the evidence, (the usual civil standard) to proof by clear and convincing evidence, (the common law civil fraud standard) to beyond a reasonable doubt, (the criminal standard). Clarification of this issue would no doubt avoid future litigation and possible judicial imposition of a standard inconsistent with Congressional intent.

Along similar lines, the present bill provides no standard for judicial review of questions of fact and of law as determined by the agency. Again, a variety of standards

might be selected and a congressional resolution of the issue would surely be preferable to leaving the question unresolved.

Section 1(b)(2)(c) provides for the recovery of from three to five times the amount of the Government's damages resulting from the false certifications. The measure and type of damages included in this provision warrants clarification. Language similar to this found in the False Claims Act has been interpreted by the Courts to exclude consequential damages resulting from fraud. To use a simple example, under the False Claims Act, the Government may recover the losses resulting when a contractor fraudulently furnishes to the Government surplus, re-worked items assembled with, or added to, other equipment, such as an airplane, but may not recover consequential losts incurred in grounding the airplane, removing non-conforming parts, and replacing them with good quality parts.

A final and, we believe, important comment concerns the relationship between administrative action under this bill and potential prosecutions by the Criminal Division or civil lawsuits by the Civil Division of the Department of Justice. There is an obvious need to coordinate the investigations and legal proceedings that might result from the commission of a fraud upon the Government. Moreover, present law prohibits

agency action regarding matters involving fraud. The Federal Claims Collection Act of 1966, Pub. L. 84-508, provides as follows:

> The head of an agency or his designee shall not exercise the foregoing authority (to collect debts owed the Government) with respect to a claim as to which there is an indication of fraud, the presentation of a false claim, a misrepresentation on the part of the debtor or any other party having an interest in the claim . . . Title 31, United States Code, section 952(b).

In order to harmonize this bill with current law and to assure the coordination of investigations and legal proceedings relating to the same misconduct, we strongly recommend a provision allowing the Administrator to initiate proceedings only after authorization from the Attorney General.

The relationship of this bill to existing criminal and civil remedies may be further clarified by providing specific language stating that the relief provided by this bill is in addition to any criminal penalties provided by law and is an alternative to existing civil remedies. In this regard, we believe that the Committee should not eliminate (as this bill would) the civil remedies presently found in the current statute (40 U.S.C., par. 489(b)), since they do provide useful and salutary remedies which may be obtained in Federal court.

We suggest that the administrative remedies be added to, rather than substituted for, the existing provisions.

This concludes our substantive comments on the specific provisions of the bill. I want to thank the Committee for the opportunity to present the Department's views and for its interest in the very worthwhile objective of expanding the ways by which the government may attack incidents of program fraud and abuse.

Mr. BURTON. The last witness will be Mr. Jerome Stolarow, Director, Procurement and Systems Acquisition Division, accompanied by Mr. Bogar, Mr. Melby, and Mr. Evers.

Do each of you swear to tell the truth, the whole truth and nothing but the truth?

STATEMENT OF JEROME STOLAROW, DIRECTOR, PROCUREMENT AND SYSTEMS ACQUISITION DIVISION, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY CARL BOGAR, GROUP DIRECTOR, PROCUREMENT AND SYSTEMS ACQUISITION DIVISION; AND ROBERT EVERS, ATTORNEY, OFFICE OF GENERAL COUNSEL

Mr. STOLAROW. I do.

Mr. BOGAR. I do.

Mr. EVERS. I do.

Mr. STOLAROW. Mr. Chairman, it is a pleasure for us to appear again before this committee. You do have a prepared statement, but I think you have covered most of the points that are in our prepared statement and rather than me reading the whole statement, I would just like to summarize the main points.

Mr. BURTON. Without objection, the statement will be made part of the record.

[See p. 94.]

Mr. STOLAROW. The first point we would like to bring up is something you discussed with Admiral Freeman and that is about the recommendations we made in our report to you on the multiple award schedules for congressional legislation, and particularly a mandate from the Congress putting a specific time frame for corrective action in this most important area. We would like to reiterate our feeling that that is still necessary because of the longstanding situation at GSA where people have dragged their feet for years about doing something about this particular problem.

I am very much encouraged by the actions that Admiral Freeman is taking, but I think this gives him another weapon to use as well as the fact that just in case something happens to him and he has to leave office, there is a continuing mandate from the Congress that something be done to correct the problems we have talked about in our report. We would urge that this legislation include some specific language about the multiple-award schedules and a time frame for correcting the problems.

Other points we would like to bring up again have been covered.

57-507 O - 80 - 7

With respect to the certifications required in your bill, we also feel that there is some clarification needed, both with respect to the types of data that should be certified and as to whether or not we are really going to change the philosophy of the Government with respect to dealing with competitive procurements as opposed to noncompetitive and negotiated procurement.

As you know, there already is a requirement that on major contracts of $100,000 or over, contractors do certify to the cost and pricing data when a contract is negotiated and the Government does have a right for price adjustment if that data is found to be erroneous in some way later on. The specifics of what additional data or how you might want to modify the current provision should be spelled out better.

With respect to competitive procurements, as the Admiral mentioned, it has been the philosophy of the Government that the competitive forces in the marketplace kind of take care of the problems and that there is less data requirement, less monitoring, of competitive contracts necessary than of negotiated contracts.

We would agree that there is room for fraud and abuse under competitive contracts and we would agree that strengthening the data requirements and the certifications even with competitive procurement could be a very valuable tool in Government procurement, but again we would like to see it specifically spelled out so that there is no question and no disagreement later on between contractors and the Government as to what the Congress intended and what is required of them.

The third point, which Admiral Freeman agreed with, is the fact that there needs to be a better system for GSA to know what the agencies are buying, both under the multiple award schedules and under other types of contracts, and we are concerned that the way the bill is written now may generate a tremendous amount of paper and may be very difficult for GSA to administer. We are suggesting possibly looking at the information that has to be submitted by contractors in improving the types of information they submit and see if we can't on a quarterly basis get the kind of information that GSA needs a little easier than the way it is contemplated by the bill.

Here we are more concerned about a papermill and tremendous workload on GSA more than anything else.

And we have the same problem with one other facet of the bill that we would like to see somewhat modified and that is the documentation required with respect to procurement actions. I personally think that it is very difficult to legislate the specifics in an area like this and that it has to be left up to the judgment of procurement people as to what kinds of documentation go into a file and just how much paper does go into it.

Some of these files get very voluminous now and I think that rather than the committee through legislation trying to legislate the specific things that have to be included in procurement files, leave it up to the judgment of GSA with a requirement that the Inspector General look after the fact periodically at the types of information that are being included and report back to the Congress as to whether the system is working or not.

That summarizes our points. We did have the one other point on the alteration of leased facilities. We agree with the intent of the legislation, but, as pointed out in our report of last year, we think that the 25-percent limitation that is now in the statute should be repealed because it has proved to be unworkable at this point in time, but we do feel that there is a need for approved congressional oversight of alterations to leased property.

That summarizes our points.

Mr. BURTON. You comment that the Economy Act limitation of 25 percent is unworkable. Is that because nobody has tried to make it work?

In other words, what would it hurt to leave it in the law?

Mr. STOLAROW. Just that it doesn't seem to be an effective tool in controlling the kinds of things where the abuses have been; that it would be more appropriate to have a specific dollar limitation with a line item approval by the Congress and a justification for each major expenditure. It could stay in.

We feel that it is no longer necessary and probably should come out.

Mr. BURTON. I think one of the reasons that we specified things we wanted to see in a contract was that we are dealing with the history and we are dealing with the fact that GSA had not done its work well in this area. It may do it well under Mr. Muellenberg, may do it well under Admiral Freeman, and then you can get a new administration and a new philosophy or lack of philosophy and the horse would be out of the barn before we found out that the things they are asking for are not enough to deter fraud.

Is there any kind of middle ground where we don't get too specific, rather than just totally leave it up to their discretion?

Mr. STOLAROW. I think it goes back to the question Mr. Walker raised earlier about Congress role in procurement regulation, and my personal feeling is that it has to be a policymaking role and an oversight role and that if you try to write specific regulations, then it does get out of hand and it makes it very difficult for good managers to use their judgment. So, to me it would seem like the bill should express the intent of the Congress that important procurement decisions be documented properly and where they have an effect, a major effect, on cost or delivery, or the quality or things like that, but leave it up to the agency that has to administer that law to write the regulations and to instruct its contracting officers and its people exactly what is appropriate under the circumstances.

I just don't believe we can legislate that definitively enough to make it workable.

Mr. BURTON. Well, in order to find out that it doesn't work, the horse is already out of the barn.

Mr. STOLAROW. Well, that, to a certain extent is true, and that is why we have audit organizations that continually have to monitor these important areas. That is why the Inspector General's bill was passed to strengthen the internal reviews, but I also believe what Admiral Freeman said earlier, that the most important thing is good people doing the job and being properly led, that you just can't legislate every aspect of management.

Mr. BURTON. Can't legislate morality, right.

Mr. STOLAROW. That is correct, sir.

Mr. BURTON. And documentation of key procurement events—it is your phrase—would be important. Isn't that also kind of ambiguous?

In other words, who is going to determine, and this is a problem we would have, even if we tried to make a determination, what a key procurement event would be.

Mr. STOLAROW. That is right. That is the difficulty you face, but every contract is different, every circumstance is different, and I don't believe that you can really spell it out in advance. That is why I say that you have to trust the management and the contracting officers to do the best job possible, look at it after the fact and, if there are loopholes, try to correct those, but, you know, there are different dollar amounts of contracts, there are different circumstances involving negotiation or bidding, and so you can't possibly cover every problem that could come up.

Mr. BURTON. Could we set minimum standards somehow? I mean I am in agreement with you. We ourselves were hours discussing what was the right phrase to make sure that they kept records at every stage. We were trying to figure out what was the stage, or decision I guess.

We got down to the case of wanting the guy to record in the file why he called somebody instead of writing him a letter.

Mr. STOLAROW. I think that there could be some general language talking about, say, a certain percentage change or increase in the contract price or certain change in the quality in a product or the specifications.

Things like that, I think we could probably write some general language that would be useful for GSA or any other contracting office to go by in writing their specific regulations, and we could work with you.

Mr. BURTON. Yes, if you could help us with that. We are trying to get something. Whenever a contract is let or modified or you have these change orders, that there should be accountability. This seems greatly lacking. So that we had in writing the reason why a contractor was either given more money or less work to do, I mean we got down to things where literally under tight definition, if he decided to call in the afternoon instead of the morning, he was going to have to explain why, and we thought that might be a little overzealous.

Mr. STOLAROW. We think this is a very important area because our work over the years on contracts has shown severe deficiencies in the file to find out what happened and why certain things did happen.

Mr. BURTON. They used to do a lot of things orally, and so nobody knew why.

Mr. STOLAROW. That is right.

Mr. BURTON. Mr. Walker.

Mr. WALKER. I am trying to figure out where you think the legislation we have drafted is weakest. You have addressed some things here. If you were giving us one solid recommendation to upgrade it, where do you think the emphasis should be?

Mr. STOLAROW. I think the word that I would like to use would be clarity; really expressing what it is that the subcommittee

wants. For example, in the data requirement, the certification, given the fact that there are already regulations on the books for certain types of certification and data, we think that it should be specifically spelled out what the additional or just how that is to be changed.

The wording right now I think is too general. It says the contractor should certify the data that he submits, but there could be almost an unlimited requirement for data. In addition to cost and manufacturing processes, and quality control, and specifications, and things like that, it could be the agency could ask for almost unlimited data or could ask for nothing the way the bill is written right now, and I think we should specify a little more what it is we want.

Mr. WALKER. You feel that should be done in the legislation itself rather than in report language?

Mr. STOLAROW. I think it should be. My personal view is where you are talking about penalties, to avoid litigation in the future and misunderstanding, that the bill should clarify it.

Mr. WALKER. And is it your view, in line with what the Administrator said, that this would aid him in going to other agencies with these new powers in terms of their interpretation of his mandate?

Mr. STOLAROW. Yes, sir, definitely.

Mr. WALKER. I have no further questions. Does staff have questions?

We thank you very much for coming and we appreciate your testimony and I am certain that the suggestions you gave us will be valuable in our further dealings on the bill.

With that, the subcommittee stands adjourned.

[Mr. Stolarow's prepared statement follows:]

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

FOR RELEASE ON DELIVERY
Expected at 10 a.m.
Monday, October 15, 1979

Statement of
JEROME H. STOLAROW, DIRECTOR, PROCUREMENT AND SYSTEMS
ACQUISITION DIVISION
before the
House Subcommittee on Government Activities
and Transportation
House Committee on Government Operations

Mr. Chairman:

We are pleased to be here today to comment on your bill to amend the Federal Property and Administrative Services Act of 1949 to reform contracting procedures and contract supervisory practices of the Federal Government. We fully support your efforts to improve the management of the various activities of the General Services Administration. The recent disclosures of fraud and mismanagement, and GSA's long history of ignoring both internal and external audit reports detailing significant problems, makes it mandatory that Congress step in with corrective legislation.

Your bill prescribes improved procurement and contract administration practices, more stringent audit and reporting requirements, and changes to the procedures for approval of alterations to leased facilities. All of these are critical areas and need attention. We would, however, like to point out what we believe are some desirable changes to make this legislation more effective.

MULTIPLE AWARD SCHEDULES

I would like to discuss first GSA's $2 billion multiple award schedule program. In accordance with your September 1978 request, we reviewed the effectiveness of GSA's management of this important program. Our report detailed many of the

significant problems which have plagued this program for over a decade. Among these were:

--Unrestricted growth of the multiple award schedule program to the point where the size of the program hampers effective management. At the time of our review, there were over 4 million items in the program.

--Lack of assurance that the best price was being obtained. This was due to inadequate time for negotiation, as well as unreliable information furnished by contractors.

--Federal agencies not buying the lowest cost items to meet their needs and buying on the open market. GSA had no idea what these agencies were buying, nor in what quantities. GSA did not believe it had the authority to monitor and enforce its procurement regulations.

--Failure of GSA to maximize the use of competition by developing commercial item descriptions which would serve as the basis for obtaining bids. We found lower prices, in many cases, being obtained by States that did maximize competition.

All of the foregoing problems, as well as many more, have been known to GSA for years. In 1971, GSA's internal auditors reported that substantial savings could be realized if GSA competed multiple award items. The recommendations of the study were never adopted. During the past several years, GSA management has launched several initiatives designed to improve the multiple award schedule program. All have failed, either because of management apathy or organizational diffusion of responsibility. During this period of time, GAO also issued

several reports recommending improvements in the program. Most recommendations were never implemented.

In our most recent report, we made several recommendations to GSA that would contribute toward significant improvements in the multiple award schedule program. GSA agreed and currently is in the process of implementing many of them. In our opinion, however, recommendations to GSA alone were not sufficient and we, therefore, made two recommendations to the Congress. These were to:

--Put GSA under a mandatory time frame for accomplishing management improvements. We consider this necessary because of GSA's poor track record in solving its problems internally.

--Strengthen the posture of GSA as a primary supplier of products to the agencies. We consider this necessary because (1) there continue to be significant amounts of open market purchases by agencies for products which GSA manages and (2) GSA can maximize its cost effectiveness only if agencies must use it as a primary source of supply.

Your proposed legislation does address some of our concerns with respect to:

--Strengthening the role of GSA as the primary supplier of products to agencies.

--Requiring competitive procurements whenever feasible.

--Increasing audit activity over the procurement process.

We would also prefer to see a clear legislative mandate for a complete review and evaluation of the need for and methods of procurement of every item on the multiple award schedules within some reasonable period of time. The multiple award schedule is so big, and has been subject to such mismanagement, that it deserves special attention in this legislation so that GSA officials cannot mistake the congressional intent.

CERTIFICATIONS REQUIRED

The bill provides that every person who enters into a contract or agreement with respect to a procurement, transfer, or disposition of property or services certify that he (1) has furnished all information required by the Administrator and will furnish all such information, and (2) has not or will not furnish false information.

The proposed legislation is not clear as to the specific information requiring certification, and legal enforcement may be difficult, if not impossible, unless these requirements are clarified. As you know, there already are procurement regulations that require contractors to certify to cost and pricing data furnished in connection with most negotiated contracts over $100,000. These regulations afford the Government the opportunity to effect price adjustments when the data

submitted is not current, complete, or accurate, and the Government relied on that data in arriving at the contract price.

As we read the proposed legislation, it also requires contractors to submit certified information with respect to advertised procurements. This would be a major change in procurement philosophy by the Government since it has long been the belief that the competitive forces of the market place obviate the need for the types of procurement controls and price analysis required when contracts are negotiated. Of course, there is always the possibility of contractors--under competitive awards--delivering products that do not meet specifications or quality standards in which case there already are contractual remedies available to the Government.

If it is your intent to strengthen the remedies available to the Government--we suggest that these provisions be clarified. This is particularly important if the Government is to impose financial and other penalties on contractors. Also, the proposed legislation would delete the remedies available to the Government under 40 U.S.C. 489(b). That provision affords broad protection to the Government if properly enforced. It provides financial penalties for any person who engages in fraudulent means of securing

any payment, property, or other benefit from the United States in connection with the procurement, transfer, or disposition of property. Therefore, the Subcommittee may wish to consider whether its deletion is advisable.

DETERMINATION OF PROCUREMENT NEEDS

The bill provides that agencies establish a system of reporting purchases made through various GSA programs as well as any other sources the Administrator may designate. While we agree that GSA needs to obtain much greater knowledge of what agencies are buying and from whom, we are concerned that this provision may place a severe administrative requirement upon the agencies and generate a significant amount of additional paperwork.

As an alternative, as GSA makes changes in the multiple award schedule system, it should explore other ways to gather the needed data. Also, one of the ways GSA can obtain greater knowledge of agency procurement practices is through the reports that are submitted by contractors for sales under the multiple award program. Currently, these reports are submitted monthly but do not provide sufficient information for management purposes. We believe they could be more meaningful if information were requested on sales by item and/or model number as well as the name of the procuring office. These reports could be requested quarterly rather than monthly.

DOCUMENTATION REQUIRED

We also are concerned that the proposed legislation may result in excessive documentation. For example, the requirements include preparing a memorandum covering (1) the nature of and parties to any discussions or communication pertaining to any decision, (2) a description of the action involved, (3) any schedule of planned future discussions, and (4) details as to the responsible Federal employee. These requirements could generate a papermill in view of the millions of such decisions that occur annually. The subject of contract file documentation is a difficult one, and may not really be susceptible to corrective legislation. The degree of documentation must depend on the judgment of procurement officials based on the nature of the decisions, the dollar amounts involved, and the types of contracts. We would like to suggest that you modify the language to require GSA to promulgate reasonable regulations requiring documentation of key procurement events, and requiring the GSA Inspector General to report annually on the compliance with those regulations.

ALTERATION OF LEASED FACILITIES

With respect to the section of the bill on alteration of leased facilities, it addresses our concerns on the need

for closer congressional scrutiny of alterations to leased space. We suggest one addition to this section of the bill. That is, the 25 percent Economy Act limitation on alterations to leased buildings be repealed. We found that it is not an effective mechanism for limiting and controlling the amount expended for leased building alterations. The congressional approval procedure provided in the bill should be adequate to prevent undesirable alteration projects.

In closing, we want to give our strong endorsement to the Subcommittee's objectives of eliminating fraud, waste, and abuse in GSA procurements. We recognize that the proposed legislation is an important first step toward achieving these objectives. Framing legislation to accomplish the task requires careful effort. We will be happy to work with your staff in revising the bill along the lines as we have discussed.

This concludes my prepared statement. I will be happy to answer any questions that you may have.

[Whereupon, at 12:53 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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