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AMENDING THE FEDERAL PROPERTY AND
ADMINISTRATIVE SERVICES ACT OF 1949

GOVERNMENT
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HEARING

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 5381

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

JUNE 9, 1980



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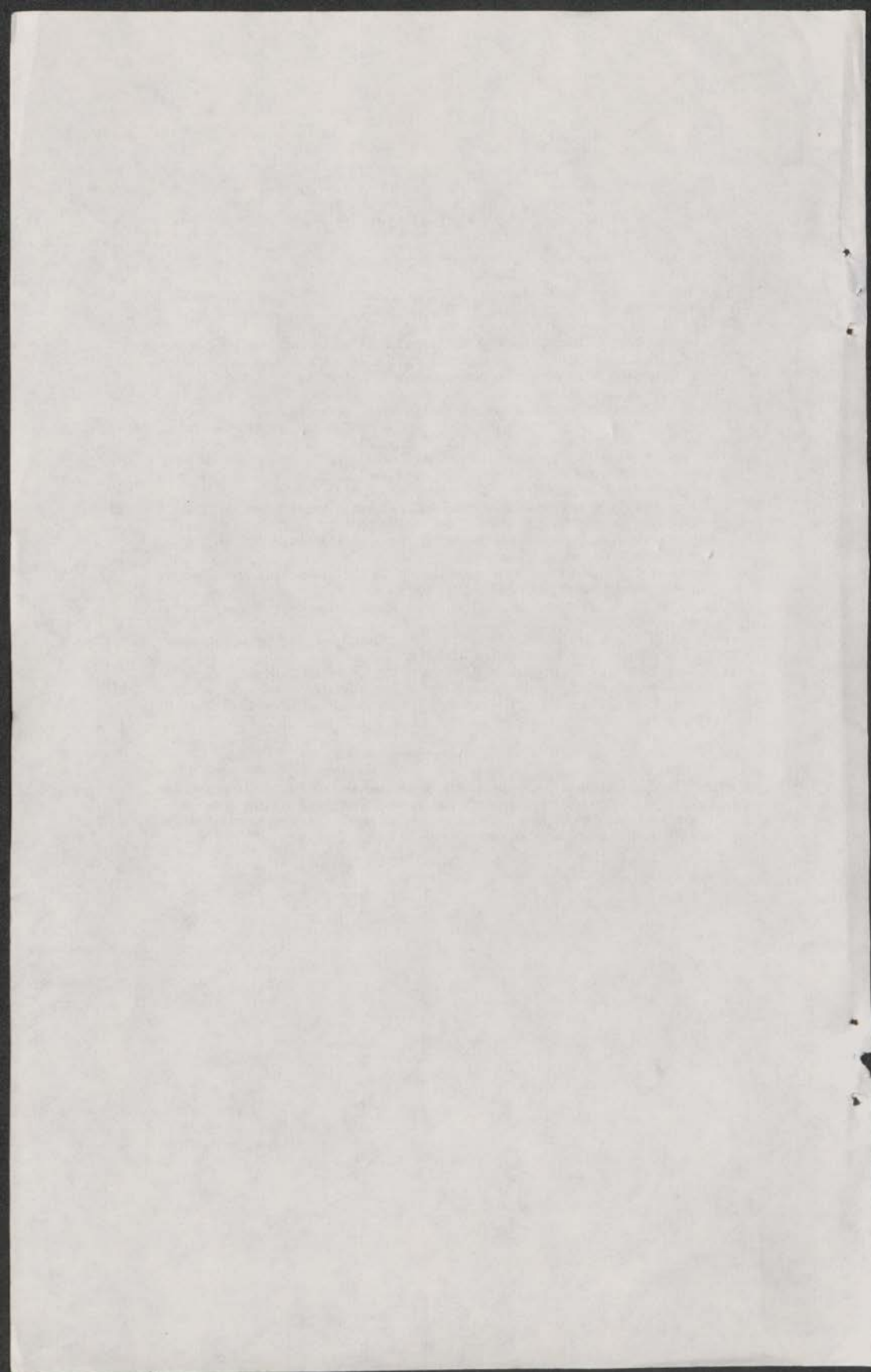
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AMENDING THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

MONDAY, JUNE 9, 1980

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

The subcommittee met, pursuant to notice, at 1:05 p.m., in room 2247, Rayburn House Office Building, Hon. John L. Burton (chairman of the subcommittee) presiding.

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

Also present: David A. Caney, professional staff member, and Rachel Halterman, minority professional staff, Committee on Government Operations.

Mr. BURTON. The hearing will come to order.

The Subcommittee on Government Activities and Transportation of the full Government Operations Committee has hearings scheduled today to take testimony from public witnesses on H.R. 5381, a bill to revise certain procurement practices of the GSA. Partly in response to highly publicized scandals over the past 2 years, the subcommittee has been investigating the question of what changes to GSA's basic statute may be needed.

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

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

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 PENALTIES FOR CONTRACTOR FRAUD

4 SECTION 1. (a) Section 209 of the Federal Property and
5 Administrative Services Act of 1949 is amended by redesignig-
6 nating subsection (d) as subsection (i) and by striking out sub-
7 sections (b) and (c), and inserting in lieu thereof the following:

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

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

10 “(B)(i) has not furnished false or misleading infor-
11 mation and has not failed to furnish information availa-
12 ble to him and necessary to prevent any information
13 previously furnished from being false or misleading and
14 (ii) will not furnish false or misleading and will not fail
15 to furnish information available to him and necessary
16 to prevent any information previously furnished from
17 being false or misleading.

18 “(2) Any person who makes a certification under para-
19 graph (1) and who knows or should know that such certifica-
20 tion is false or misleading or who willfully violates the certifi-
21 cation required under paragraph (1)(A)(ii) or (1)(B)(ii) shall be
22 liable to the United States for a penalty in an amount deter-
23 mined in accordance with a penalty assessment schedule pre-
24 scribed by the Administrator by regulation. Such schedule

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

3 “(A) a penalty of not less than \$1,000 nor more
4 than \$15,000;

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

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

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

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

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

22 “(c)(1) A penalty for a violation of subsection (b) of this
23 section shall be assessed by the Administrator through an
24 order made on the record after opportunity (provided in ac-
25 cordance with this subparagraph) for a hearing in accordance

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

7 “(2) In determining the amount of a penalty, the Ad-
8 ministrator shall take into account the nature, circumstances,
9 extent, and gravity of the violation or violations and, with
10 respect to the violator, ability to pay, effect on ability to con-
11 tinue to do business, history of any other such violations, the
12 degree of culpability, and the deterrent effect of such
13 penalties.

14 “(3) The Administrator may, by written order identify-
15 ing the reasons and need therefor, compromise, modify, or
16 remit, with or without conditions, any penalty which may be
17 imposed under this subsection. The amount of such penalty,
18 when finally determined, or the amount agreed upon in com-
19 promise, may be deducted from any sums owed by the United
20 States to the person charged.

21 “(d) Any person who requested in accordance with sub-
22 section (c)(1) a hearing with respect to the assessment of a
23 penalty and who is aggrieved by a final order assessing a
24 penalty may file a petition for judicial review of such order
25 with the United States Court of Appeals for the District of

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

5 “(e) If any person fails to pay an assessment of a penal-
6 ty (and such amount has not been deducted from any sums
7 owed by the United States to the person charged)—

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

12 “(2) after a court in an action brought under sub-
13 section (d) has entered a final judgment in favor of the
14 Administrator,

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

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

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

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

15 “(h) Any penalties assessed and collected under this sec-
16 tion (other than penalties imposed to cover the cost of collec-
17 tion, which shall be credited to the appropriation from which
18 expenses under this section are drawn) shall be deposited in
19 the general fund of the Treasury and credited to miscella-
20 neous receipts.”.

21 “(b) The amendments made by subsection (a) of this sec-
22 tion shall become effective ninety days after the date of en-
23 actment of this Act.

1 IMPROVED PROCUREMENT PRACTICES

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

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

14 “(B) Not later than nine months after the date of enact-
15 ment of this subsection the Administrator shall prescribe such
16 regulations as may be necessary to carry out the purposes of
17 this subsection.

18 “(2) The Administrator shall, not later than nine months
19 after the date of enactment of this subsection, establish and
20 maintain a system for control and coordination of all con-
21 tracts and agreements for procurement of property or serv-
22 ices under this Act. Such system shall include a requirement
23 that the Administrator (with respect to the General Services
24 Administration) and any agency head to whom the Adminis-

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

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

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

12 “(C) impose a system of accounting and internal
13 controls sufficient to provide reasonable assurances
14 that—

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

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

1 “(iii) access to funds is permitted only in ac-
2 cordance with the Administrator's or the agency
3 head's general or specific authorization; and

4 “(iv) the recorded accountability for funds is
5 compared with existing funds at reasonably fre-
6 quent intervals and corrective action is taken
7 promptly with respect to any differences;

8 “(D) provide to each such agency specific criteria,
9 procedures, and practices, for obtaining complete cost
10 and pricing data, an adequate and effective cost esti-
11 mating capability, with the capability to make reliable
12 forecasts of such factors as the lifetime costs of major
13 systems, programs, and projects, total cost projections,
14 and incidental costs.

15 “(3)(A) The Administrator shall by regulation establish
16 a system, as part of contract operations, to ensure that with
17 respect to each decision affecting such operations for a partic-
18 ular contract a memorandum is made which shall include (i) a
19 statement of the nature of and parties to any discussions or
20 communications pertaining to any such decision, (ii) a de-
21 scription of action taken or proposed as a consequence of
22 such discussions or communications, (iii) any schedule of
23 future discussions or communications proposed or agreed to,
24 and (iv) the identity, position, and personal signature or en-

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

3 “(B) The Inspector General of the General Services Ad-
4 ministration shall investigate (or refer to the Inspector Gen-
5 eral or other appropriate officer of other agencies) any allega-
6 tion concerning any officer’s or employee’s failure to comply
7 with the regulations prescribed under subparagraph (A)
8 which may arise in the course of any audit conducted pursu-
9 ant to subsection (f) or otherwise, or which may be found in
10 any inspections or investigations initiated by the Inspector
11 General. If the Inspector General of the General Services
12 Administration (or the Inspector General or officer of another
13 agency to whom the matter is referred) determines that such
14 failure is intentional or grossly negligent, he shall refer the
15 matter to the head of the appropriate agency, who shall take
16 or initiate such authorized corrective action as he deems ap-
17 propriate.

18 “(C) Each Inspector General shall include in each semi-
19 annual report required to be submitted under section 5 of the
20 Inspector General Act of 1978 the matters referred under
21 subparagraph (B) of this paragraph and actions taken.

22 “(D) The Administrator, after consultation with the In-
23 spector General, may provide by regulation for the exemption
24 from the requirements of subparagraph (A) of this paragraph
25 with respect to contracts or agreements which, together with

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

4 “(4) The Administrator shall periodically and regularly
5 review the contracting activities of the General Services Ad-
6 ministration, and of any other agency to the head of which
7 the Administrator has delegated contracting authority, for
8 the purpose of eliminating fraud, waste, and abuse. The Ad-
9 ministrator shall keep the Congress fully and currently in-
10 formed with respect to any deficiencies in such contracting
11 activities by including such information in the annual or other
12 reports provided for in section 212 of this Act. Such review
13 shall promptly be made in the case of any matter raised in a
14 semiannual report of any Inspector General under section 5
15 of the Inspector General Act of 1978 which has not been
16 substantially corrected.

17 “(5) The Administrator, within ninety days after the
18 date of enactment of this subsection, shall prescribe regula-
19 tions to eliminate practices which result in fraud, waste, or
20 abuse, including regulations—

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

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

3 "(B) to prohibit the evasion (by such means as
4 multiple contracts by the same party, change orders
5 extending the contract, or other similar devices) of pro-
6 cedural requirements based on the relatively small size
7 of any contract;

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

12 "(D) to prohibit abusive practices with respect to
13 late bidding, including regulations requiring the invali-
14 dation of any late bid which is not received by regis-
15 tered mail containing verification of its timely transmis-
16 sion;

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

20 "(F) to establish appropriate sanctions for non-
21 compliance with the regulations prescribed under this
22 paragraph.

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

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

3 “(7) As used in this subsection, the term ‘contract oper-
4 ations’ means all phases of making and administering adver-
5 tised or negotiated contracts for property or services from the
6 initial notice of contract, request for proposal, invitation for
7 bids, or the initial contact with a contractor for advertised or
8 negotiated contracts through the final settlement of accounts
9 concerning any such contract, and includes any phase which
10 involves amendments to or change orders concerning any
11 such contract or any renewal or other extension or revision of
12 any such contract.

13 “(f) The Administrator, after consultation with and
14 advice from the Inspector General of the General Services
15 Administration, shall establish a procedure for the review of
16 contracts and agreements subject to the approval require-
17 ment under subsection (e)(2)(A) for purpose of determining
18 whether, by aggregation or otherwise, such contracts and
19 agreements can be more economically and efficiently secured
20 by advertised bids or otherwise. The Administrator shall
21 report annually to the President and the Congress on activi-
22 ties under this subsection and shall make any recommenda-
23 tions concerning appropriate changes in procurement proce-
24 dures.”.

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:

13 “(2) Such regulations shall include—

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

23 “(ii) regulations to ensure that not less than
24 20 per centum of the contracts within each such
25 classification (or such other percentage as may be

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

5 "(3)(A) Regulations established under this subsection
6 shall be subject to review and approval by the Inspector
7 General of such Administration. During the first three full
8 fiscal years beginning after the date of enactment of this sub-
9 section, such Inspector General may make such variations in
10 the percentage of contracts to be audited under paragraph
11 (2)(B)(ii) as may be necessary or appropriate in the light of
12 such factors as the nature of such contracts and the availabil-
13 ity of resources for conducting such audits.

14 "(B) Each Inspector General shall include in each semi-
15 annual report required to be submitted under section 5 of the
16 Inspector General Act of 1978 an evaluation of the availabil-
17 ity of such resources for the purposes of this subsection and
18 any recommendations concerning more appropriate allocation
19 thereof.

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

1 “(g) In accordance with regulations prescribed by the
 2 Administrator, the Administrator and the Inspector General
 3 of the General Services Administration may obtain access to
 4 and examine (1) the records of any executive agency relating
 5 to any contract or agreement under this title for procurement
 6 of property or services, and (2) material records of any con-
 7 tractor or subcontractor engaged in the performance of, and
 8 involving transactions related to, any contract, subcontract,
 9 or agreement under this title for procurement of property or
 10 services.

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

15 ALTERATION OF LEASED FACILITIES

16 SEC. 4. Section 210 of the Federal Property and Ad-
 17 ministrative Services Act of 1949 is amended—

18 (1) in paragraph (8) of subsection (a) thereof, by
 19 striking out “: *Provided, That*” and everything that
 20 follows through the semicolon at the end of such para-
 21 graph and inserting in lieu thereof “, subject to the
 22 limitations contained in subsection (l) of this section;”;
 23 and

24 (2) by adding at the end of such section the fol-
 25 lowing new subsection:

1 “(1)(1) Any determination made by the Administrator
2 pursuant to subsection (a)(8) shall show that the total cost
3 (rentals, repairs, alterations, or improvements) to the Gov-
4 ernment for the expected life of the lease shall be less than
5 the cost of alternative space (whether owned or leased) which
6 needs no or less costly repairs, alterations, or improvements.
7 A copy of every such determination shall be furnished to the
8 General Accounting Office.

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

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

15 “(B) an explanatory statement of the overall work
16 including purpose, estimated cost, estimated completion
17 time, source and method of procurement, and any de-
18 termination made pursuant to subsection (a)(8), has
19 been provided in advance to the committees of both the
20 Senate and House of Representatives having legisla-
21 tive, oversight, and appropriation responsibility for
22 such activity; or

23 “(C) the estimated aggregate cost of the work is
24 less than \$25,000.”.

Mr. BURTON. At hearings last fall, all executive branch agency witnesses and GAO generally endorsed the legislation before us and offered specific suggestions. Since then, we have been working with the agencies on a staff level to refine the bill. The resulting revised discussion draft each of the witnesses has received should be the basis for today's testimony. We welcome comment from the representatives of private contractors doing business with the Government.

As some witnesses have noted in their submission, the bill does not specifically address the multiple awards schedule, and that was specifically done because that is presently an administrative operation, and we are going to give the GSA time to deal with that. We would specifically put all of that testimony into the record, but we are not, with all due respect, interested in hearing comments on something that is not before the committee today.

In addition to the private witnesses we welcome Congressman Erlernborn, Member of Congress from the 14th District of Illinois, and a member of our full Committee on Government Operations. Mr. Erlernborn is here today by invitation to give testimony on some concepts he has regarding Government contracting.

[Mr. Walker's prepared statement follows:]

PREPARED STATEMENT OF HON. ROBERT S. WALKER, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF PENNSYLVANIA

Thank you, Mr. Chairman. I want to commend you and your staff for your work on this bill and your efforts to move ahead with legislative reform of government procurement activities. As you and I have discussed, it is important that the abuses revealed by the GSA investigations are put to an end, and I believe that H.R. 5381 is a good initial step toward that goal.

As you mentioned, Mr. Chairman, we held hearings in October to receive testimony from government witnesses regarding the impact of H.R. 5381 on their activities. Today we will hear from the private sector as to how this bill will affect business dealings with the Federal Government. It is important to note that out intention in enacting reform legislation is to minimize the potential for abuse while maintaining the maximum flexibility possible in which the competitive forces can operate. Thus it is all the more important to us that we receive constructive suggestions from the private sector that can be incorporated in the bill, just as many comments and suggestions received from government witnesses were included in the redrafted version. We hope the testimony we receive today will aid us in our efforts to tighten up procedures without unduly burdening legitimate businesses contracting with the Federal Government.

Mr. Chairman, I look forward to hearing from today's witnesses, and I want to encourage you in your efforts to plug up legislative loopholes in government procurement. You have my support for H.R. 5381, and I look forward to working with you on future legislation which will address other areas of fraud and abuse in government procurement procedures.

Thank you, Mr. Chairman.

Mr. BURTON. At this time, I would be happy to yield to Mr. Jeffries for any comments he might want to make.

Mr. JEFFRIES. I have none. Thank you.

Mr. BURTON. Congressman, please proceed.

STATEMENT OF HON. JOHN N. ERLERNBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. ERLERNBORN. Thank you. I know I don't need to tell you that Federal contracting procedures are extraordinarily complicated and in many ways seem to be incomprehensible. I congratulate you

for making an effort to improve them and for trying to restructure them in a way that they are less susceptible to fraud and abuse.

Last month, when the full Committee on Government Operations considered H.R. 4717, a bill intended to curb wasteful yearend spending by Federal agencies, I advanced a proposal which has precisely the same goals as the legislation before you today. I thank you for giving me the opportunity to appear before you this afternoon and to explain how it complements your thoughts for improving the procurement process.

For some time now, there has been a great deal of concern generated about excessive spending in the last few days of the fiscal year. The charge has been made, sometimes correctly, that money is being "pushed out the door" at the end of September, in part to give agencies a reason to justify higher spending in the next fiscal year.

Regrettably, none of the solutions to this problem which have been suggested really address the heart of the issue—procurement without proper consideration and documentation.

The majority of obligations incurred near the end of each fiscal year result from sound procurement practices, including thoughtful drafting of solicitations, careful evaluations of often complex contract proposals, and negotiations designed to obtain the most advantageous contract for the Government. Often there are legitimate reasons why spending must be delayed until the last quarter.

Some of the yearend volume is caused by the failure of agencies to adopt adequate procurement plans or to adhere to such plans. The failure to distribute contract awards more evenly during the year contributes to a number of inefficiencies, placing unwarranted burdens on agency procurement personnel and contractors alike, and reducing the Government's ability to obtain clear and specific contracts at fair, competitive prices. Remedies for these management problems must be carefully crafted to avoid impeding the operation of Federal programs or discouraging careful procurement of goods and services.

An arbitrary percentage limitation on contracting in the last quarter will not discourage unnecessary spending, but will simply move some of it to the preceding quarter. And, of course, there is nothing in the proposals which have been made to limit spending which would assure that proper procurement procedures are followed or prevent ill-conceived spending from taking place. Those proposals would, on the contract, make such ill-conceived spending less visible, thus allowing more of it to occur and almost assuring that no further reforms will be made.

There are simply too many legitimate reasons why obligations necessarily occur in the fourth quarter of the fiscal year for a rigid limitation to operate fairly and reasonably, or to contribute to sound management. Limitations on Federal contracting must be directed to real, identifiable problems. They must be designed to eliminate unnecessary obligations, not obligations which happen to occur at a particular time of year.

My suggestion for cutting wasteful spending is very simple. It has two parts: With regard to a competitively-bid contract, an agency would have to wait at least 30 days between accepting bids and awarding the contract. With regard to a sole-source contract,

the agency would have to publish a notice of intent to award the contract in Commerce Business Daily—the Government publication read by contractors—and then let at least 30 days pass before making the actual award. In either case, an agency head could waive the 30-day period whenever he determines that it would seriously disrupt the execution of an agency program.

What, you may ask, would happen during this waiting period?

In the case of competitively bid contracts, agencies would be forced to take sufficient time to evaluate bids and negotiate details of contracts. The waiting period would neither delay the awarding of justifiable contracts, nor increase costs in such ways as extending the time for which bid bonds may be purchased, for virtually all properly managed contracts are not now awarded prior to 30 days after bids are accepted. The new requirement would insure, however, that all contracts are considered under good procedures.

In the case of sole-source contracts, published notice of proposed awards would alert the public, including potential competitors of awardees, to what the Government plans to do. If people think that concluding the contract without advertising for competitive bids is unreasonable, or that the job which is proposed need not be done, they can object to the award. The Government will have hired a potentially vast contract police force at no cost to the public.

In either case, enactment of my proposal would mean that agencies could no longer write contracts to dump unobligated funds in the last few days of a fiscal year. More important, it would lead to improved Federal contracting practices and decreased likelihood of wasteful spending throughout the year.

Mr. Chairman, that concludes my testimony. I would be pleased to answer any questions you may have.

[The attachment to Mr. Erlenborn's statement follows:]

APPENDIX

TEXT OF AMENDMENT PROPOSED BY MR. ERLNBORN

SEC. 5. (a) No agency may award any contract to any person until --

(1) in the case of a contract to be awarded pursuant to competitive bidding, 30 calendar days have passed between the last date on which bids for such contract may be submitted and the date on which the contract is awarded; or

(2) in the case of any other contract, 30 calendar days have passed between the date on which a notice of intent to award the contract was published pursuant to section 8(e) of the Small Business Act (15 U.S.C. 637(e)) and the date on which the contract is awarded.

(b) Notwithstanding subsection (a), if the head of any agency determines that the 30-day period requirement of subsection (a) would seriously disrupt the execution of an agency program, the head of such agency may waive the 30-day period prescribed by such subsection. Upon issuance of any such waiver, the head of the agency concerned shall notify the Director of the Office of Management and Budget, the Speaker of the House of Representatives, and the President of the Senate of such waiver.

(c) For purposes of this section --

(1) the term "agency" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; but

does not include the General Accounting Office or the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; and

(2) the term "contract" means any contract for defense procurement actions of \$10,000 or more, or for civilian procurement actions of \$5,000 or more, other than procurements (A) which for security reasons are of a classified nature, (B) which involve perishable supplies, or (C) which are of real property.

Mr. BURTON. Thank you very much for your testimony, Mr. Erlernborn. Many of the complaints about the Federal contracting procedures relate in some ways to the amount of time and delay from the instituting of the contract to the actual signing off of it.

Would your amendment add on to those time periods?

Mr. ERLERNBORN. No. As I mentioned in my prepared testimony, at the present time most competitively bid contracts are not awarded within the 30-day period, so I think at the present time most of these contracts would qualify with the 30-day limitation.

What it would do is to stop the hasty awarding of contracts at the end of the fiscal year or such other time as an agency might be trying to get funds obligated for the purpose of making their next year's appropriation as large or larger.

So I don't think it would add appreciably to the time.

Mr. BURTON. In your amendment you have some exemptions in the definitions, and if the subcommittee decided to adopt some form of your amendment, I would assume you wouldn't object to certain other exemptions like disaster relief, personnel contracts—things of that sort?

Mr. ERLERNBORN. No. I think any justifiable exemption, if it has not yet been included, certainly ought to be added.

Mr. BURTON. Your amendment would allow a waiver by—

Mr. ERLERNBORN. The agency head.

Mr. BURTON. The agency head. And then if, in effect, they did that, they would have to then stand and justify what they have done?

Mr. ERLERNBORN. That is right. They would have to show that serious disruption of the agency program would be involved without the waiver.

Mr. BURTON. Mr. Jeffries?

Mr. JEFFRIES. Do you feel there is any chance for price manipulation during this 30-day period?

Mr. ERLERNBORN. No, I really don't believe there would be. The same procurement rules would apply, the necessity of taking the lowest responsible bid in competitively bid cases, and actually you could probably save money in the sole-source contracts, because, as I mentioned in my prepared testimony, instead of the fait accompli

of an assigned contract being announced, the intention to award the contract would be announced, and potential competitors would then have an opportunity to come in to the agency and show that they could do the same work more reasonably, and chances are the Government would be the one to save as a result.

Mr. JEFFRIES. Would there be any possibility of a detrimental effect to a contractor in this 30-day wait, in terms of delays or anything like that?

Mr. ERLBORN. I don't see that there could be. As I mentioned, most of these contracts have such a 30-day or longer period in practice, anyhow. The one thing you might worry about would be something like bid bonds, but again they customarily are written for periods that extend beyond this 30 days.

Mr. JEFFRIES. No further questions, Mr. Chairman.

Mr. BURTON. Mr. Synar?

Mr. SYNAR. No questions, Mr. Chairman.

Mr. BURTON. We know that you have other matters, Mr. Erlenborn. What we will do is have the staff get together with you and your staff prior to markup. I see some merit to your approach, but I see some potential problems. I am not sure how we are going to balance them.

Thank you very much for bringing this to our attention. We will be back in touch with you.

Mr. ERLBORN. Thank you, Mr. Chairman.

Mr. BURTON. Mr. Michael Timbers, president of the Coalition for Common Sense in Government Procurement.

We have your statement, Mr. Timbers, that we will make part of the record, and if you could just highlight certain procedures and also, if you could, maybe include some comments on Mr. Erlenborn's proposal, if you picked up enough of it, and also, as I stated earlier, we will include in the record written testimony on the multiple awards schedule, but that is not before us; so if you could address yourself to the bill and then to what feelings you might have as to how Mr. Erlenborn's amendment would or would not work.

STATEMENT OF MICHAEL J. TIMBERS, PRESIDENT, COALITION FOR COMMON SENSE IN GOVERNMENT PROCUREMENT; ACCOMPANIED BY KEN MUNRO, NATIONAL MICROGRAPHICS ASSOCIATION; BRUCE McLELLAN, NATIONAL OFFICE PRODUCTS ASSOCIATION; AND KENTON PATTIE, NATIONAL AUDIO-VISUAL ASSOCIATION

Mr. TIMBERS. Mr. Chairman.

Our coalition is a nonprofit organization which was formed by a number of trade associations who are vitally interested in the Government's policy relating to the procurement of commercial products. The associations who support our group include the Business Products Council Association, and their 57 independent members; the National Audio-Visual Association, and their 800 dealers and manufacturers; the National Micrographics Association, and their 270 industry members and 9,000 professional members; the National Minority Business Council and their 350 members; the National Office Products Association and their 6,500 dealers and

manufacturers; and the National Association of Photographic Manufacturers and their 78 members.

In addition, I might mention, Mr. Chairman, we have a number of individual companies as members of the coalition, the majority of which are small business concerns.

Accompanying me today to the hearing is Mr. Ken Munro, of the National Micrographics Association; Mr. Bruce McLellan, of the National Office Products Association; and Mr. Kenton Pattie, from the National Audio-Visual Association.

Mr. Chairman we particularly commend the subcommittee for what I think has been a business-like approach to the situations arising out of the GSA investigations, and we commend the subcommittee for not resorting to the sensationalism which has characterized the hearings held by your counterpart in the Senate subcommittee.

We find that the Senate hearings have been characterized by devices solely contrived to elicit the maximum press coverage while your subcommittee has kept a clear perspective on the issues and the facts surrounding those issues.

In general, we do support the bill. We believe it is important for the Administrator of GSA to have the power to initiate actions against contractors suspected of fraudulent misrepresentation to the Government. We definitely concur with greater surveillance over contract approval procedures, and we support improved recordkeeping systems and additional contract audits. We have some concerns over the bill, and I will try to summarize them. We are concerned in the section of the bill dealing with penalties for misrepresentation that this may not be the appropriate bill for such penalties and maybe the False Claims Act might be a more appropriate place in which to handle these types of penalties.

Historically, certain problems have involved a greater percentage of small businesses who are not as adept at dealing with the Government as large businesses.

We are concerned that the definition of what is false may be clear to attorneys but may not be clear to small business firms. There seems to be no distinction between omission and commission, and because intent is not required, small business contractors could be unjustly accused and penalized due to a lack of knowledge regarding contracting procedures or misinterpretation of policies.

But I do want to make it clear that we support the concept of penalties for false and misleading information, but we believe the subcommittee should do two things: one, possibly be more specific in the types of data by contract type, be it advertised or negotiated, that will be required of contractors; and, two, let GSA and other agencies rely more on their current weapons of suspension and debarment as penalties for false certifications instead of introducing a new system of monetary penalties. In this regard, we believe that the language contained in amendment section (j)(2) dealing with partial debarments outlines an excellent concept that will make the debarment mechanism more effective. We are concerned many commercial product contractors are frustrated with excessive redtape and regulation, and we would hate to see your bill, which would penalize, and appropriately so, the small percentage of contractors who may defraud the Government, serve as any further

deterrent to the majority of honest contractors who are providing goods and services to the Government.

In the section concerning "Improved Procurement Practices," we believe that the \$10,000 level of contracts needing approval by the Administrator of GSA or agency head is too low. We realize that it is not the intent of the subcommittee that the Administrator, himself, review all of these awards, but we believe that the language of the bill will mandate a top management review. In theory, we agree with the subcommittee, but in actual practice, we believe that such a review will only result in additional cost to the Government and contractors alike through unreasonable delays in the process. We suggest a higher level—for example, \$50,000—would be more appropriate to preclude unnecessary contracting delays.

In the "Required Audit Procedures" section, we believe that the target level of \$10,000 is an improvement over an earlier draft of the bill which set a target value of \$1,000, but we still believe that this level may be unrealistically low. We are concerned that the agencies will not have the appropriate manpower to do an adequate job in audits of this sort. We believe it would be far better to have a higher audit threshold level and insure that the audits performed are more thorough than to create a system where the audit requirements are so great that the limited audit resources available will result in cursory reviews. We have no particular recommendation as to the appropriate threshold level, but we believe that the inspectors general of the respective agencies could provide guidance in this area.

One item not included in the bill but on which we would like to comment is the poor bill-paying habits of Federal agencies. We would like to see the bill incorporate a provision which directs agencies to pay small business contractor bills within 30 days or pay interest on balances. The financial burdens put upon small businesses by agencies taking anywhere from 90 to 120 days to pay bills is unjustified and highly detrimental to small firms in these inflationary times.

The National Audio-Visual Association, a member of the coalition who has been a leading spokesman for this cause, has developed proposed language for consideration as an amendment to the bill. With your permission, we would be happy to provide the subcommittee a copy of the amendment for the record.

Mr. BURTON. We would be happy to.

[See app. 1.]

Mr. TIMBERS. The last item, and I will only spend a couple moments for it is so important that I would like to mention the multiple award contracting system and particularly point out for the record that the highly publicized reports of contracting fraud concerning GSA procurements have been in the area of formally advertised procurements against Government specs. There has not been one single case, either reported or alleged, of which we have been made aware, where a multiple award contractor was defrauding the Government. There are approximately 4,000 multiple award contractors, nearly two-thirds being small business firms. Further, the majority of the one-third who are large business firms use small business dealers to sell their products. In fact, our research has shown that over 90 percent of the firms eligible to use multiple

award contracts in their sales effort to the Federal Government are small business firms.

We deplore the lack of research which has been done in this area by the normally responsible General Accounting Office and the Senate, and we are appalled by the actions of GSA Administrator Rowland Freeman. The Administrator, the GAO, and the Senate, we believe, are attacking the system without full knowledge of what they are doing. An example of this is the oft-repeated statement of the Senate and GAO whereby they refer to the fact that there are 8,000 multiple award contracts. We would ask them to do their homework. As we have previously cited, there are nowhere near 8,000 multiple award contracts—they are overstating the case by approximately 100 percent.

We would agree with critics of the multiple award system that improvements can be made and certain types of items should not be purchased under this type of system, but we would suggest that a better understanding of the system is needed by these critics before their so-called solutions create far more problems than now exist. A good example is the recent cancellation of all multiple award contracts for furniture. Senate hearings revolving around alleged fraud and mismanagement in furniture contracts centered around GSA's procedure of buying merchandise for stock, not around the multiple award system. Yet, GSA canceled all furniture contracts on the multiple award schedules, and the real cause of the problem remains. The reasoning behind such illogical steps escapes us. We wonder how GSA is able to create havoc on a segment of the industry—the majority being small businesses—without proper guidance from Congress. We strongly recommend that your subcommittee consider taking the necessary oversight actions.

We have provided an attachment for the record of a package outlining the multiple award system and providing an overview of the coalition's position as well as that of other industry representatives. With your permission, we will submit that for the record.

Mr. BURTON. Thank you.

[See app. 1.]

Mr. TIMBERS. Again, we wish to commend this subcommittee for having the good sense to approach this issue without the emotional rhetoric and self-serving dialog we have found in the Senate, at GAO and at GSA. We think the approach you are taking should lead to effective legislation and help restore public confidence in the Federal contracting system.

Mr. Chairman, commenting on Congressman Erlenborn's recommendation on no contract award for 30 days, I think there could be lots of administrative problems with that. I would agree with one of the objectives of trying to stop so much yearend spending, but I think there are more effective ways to do that than to put an arbitrary time frame on contracting.

I think there are a lot of emergency-type procurements, and so forth, that need to be performed in a less than 30-day period, and even if you put a 30-day time frame on, I am not so sure that would hit at the root cause of stopping yearend spending. It may pull it up another 30 days before the end of the fiscal year period to make sure they got it all in.

We haven't studied or considered the issue, but I would think that the subcommittee should take its time before putting such a provision in the bill.

Mr. BURTON. Thank you.

On page 7 of your statement, when you are talking about the procurement of furniture, saying how that the real cause of the problem in the multiple awards schedule remains, I wonder if for the record you could submit a statement telling us what the real cause of the problem is?

Mr. TIMBERS. We will be happy to do that.

What we are referring to here is the furniture procurements made against GSA specifications.

[The material follows:]

The problem is not in the multiple award system. It is in the TOTALLY different procurement technique GSA uses for supplying its warehouses with stock. GSA writes specifications for the furniture it stores in its warehouses. The winning contractors are those who can do the job for the lowest price. Proven history of product quality is seldom a consideration.

The GSA spec writers, not having the expertise in or full knowledge of furniture manufacturing processes and qualifications, write less than adequate specs. Furniture manufacturers and GSA quality inspectors attempt to follow the specs and the resulting products are of poor quality; products made only for government contracts and generally unacceptable elsewhere. (Afraid of not being in compliance with the spec, even if a particular aspect of the specification is known to be questionable or faulty, manufacturers follow it to the letter.)

In some cases, this spec-buying for stock procedure attracts borderline manufacturers who can quote the lowest price because they specialize in government business. They produce little, if any, products for commercial use and have limited, if any, products that have been successfully tested in the commercial marketplace. GSA currently has contracts with firms like this and user-agency complaints about workmanship, product longevity, and overall product quality have been the subject of Congressional hearings in the past.

User agencies ordering off the multiple award schedules are confident they will get excellent merchandise. Companies selling to the government off the schedules offer commercially tested and accepted products at competitive prices.

Mr. BURTON. The reason that we have gone into a series of monetary penalties is that when you get to debarment, that is a very severe penalty that the business probably would not want to see levied against it, nor an administrator want to make in certain cases, and what we are looking for is some way to stop the Government from paying more for services than it should, but not really cut off the head of the business if it is guilty of sloppy practices, as opposed to willful fraud, because whether it is willful or sloppy, it is costing the taxpayers more money than they should have to pay for the service. So that is the reason that we feel it is important to have some minimum steps in there that are monetary steps.

Now, I would also respectfully say that we feel that this legislation should give the GSA the power to impose some civil penalties which also exist, I believe, in section 209 of the existing procurement act.

I am intrigued; you say that small businesses would not understand what is false or not. I mean if somebody knows his service is worth \$100 and for some reason they charge \$105, they ought to know that, if they are good businessmen.

Mr. TIMBERS. I guess what we are concerned about is the average small business firm that deals with the Government, I feel, that doesn't totally understand the Government rules and regulations. Even though they may be selling to the Government, they don't understand the entire boilerplate of terms to which they are agreeing. I have done a lot of work with small business firms over the last few years, and generally most of them have a very vague idea of really what it is they are agreeing to, and that was the purpose of our comments.

Mr. BURTON. I understand. We have found that the number of dollars, shall we say, overrun or overprice, that are paid by the Government to small businesses may be small in the individual, but in the conglomerate it becomes quite large, and that is where we really find a great number of overcharges, whether it is intentional or sloppy, but a few thousand here and a few thousand there, as Gerry Ford used to say, the next thing you know, you have got a few thousand.

I think the businesses are, as you said, even into the multiple award or whatever, they are small contractors subbing up. There is no shortage of people vying for Government business. I think it would be their responsibility and the GSA's to make it clear in contract awards that they better really have a fair idea of what they are charging the Government for, so it is a dollar-for-dollar service, because we find the biggest beef people have is not only with the high cost of taxation, but with the fact they are never getting anything back.

They find out that the Government is paying \$10 for something on a wholesale lot that they could go down the street and buy for \$7 in an individual lot. Sometimes they would have a going-out-of-business sale down the street, and it is apples and oranges, but basically we find that is a very serious problem, especially among the taxpayers.

Mr. TIMBERS. One thing I think is a poor assumption is that there are hundreds of firms eager to do business with the Government. We found that to be quite the contrary; there are a lot of

firms, reputable firms, who don't want to have anything to do with the Federal Government because of the redtape and a misunderstanding of what the rules and regulations are. I think what the Government should be working toward is trying to simplify and make it easier for the hundreds of firms around the country so they can do business with the Government and not be concerned about that small print in the 37th page of the attachment that somehow is going to trip them up or get a Government auditor in their plant for 3 or 4 weeks, or whatever the situation is.

Mr. BURTON. This basically says if you sell us \$100 worth of goods, charge \$100, not \$106. That is just basic business sense.

Mr. TIMBERS. We have no difficulty with that, nor do we have difficulty with the concept of some sort of system of penalties for false misrepresentations to the Government. As we indicated in our statement, we kind of like the idea that was implicit in one of your sections there about some sort of partial debarment. So you might take a division of a company or lines of business or individuals who are involved in, let's say, misrepresentation and debar them for some period of time, or whatever.

I guess we feel a little more secure in a sense in looking at the debarment procedure because it has been established for some time as an administrative process.

Mr. BURTON. It has never been implemented, or very rarely.

Mr. TIMBERS. Rarely. I would say that is probably true. But we are concerned, giving an administrator, and we have seen some rather irrational acts by some of the more recent administrators, and it concerns us that some of them may impose these penalties rather quickly without proper administrative process, and I guess that has us a little concerned.

Mr. BURTON. I would say this, and I will yield to Mr. Walker, that whatever we do we will insure a proper process, but we have found, and it is not unlike in criminal law, if you have a very severe penalty, people don't convict. If the crime is one they consider not that heinous, and if the only option for the Government is debarment, we find that debarment is rarely imposed, and what we are trying to do is provide a mechanism to see that the taxpayers are protected from either sloppy computation by the provider, or by an intentioned idea to pick up a couple extra dollars, because right now the way it works, you can overcharge the Government \$100 million, and if you get caught, you pay back the \$100 million. Nothing ventured, nothing gained.

So that is a great concern that I have, that we find people that would be willing to take a chance, because all they can lose is their unjust enrichments, and nothing else, and they can probably pick up some interest on the investment on the unjust enrichment until the time there is an audit and the payback comes.

Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

Before I proceed with questions, I had a statement for the opening of the hearings. May I request unanimous consent that be included in the record.

Mr. BURTON. Yes, immediately following mine.

[See p. 19.]

Mr. WALKER. Thank you, Mr. Chairman.

One of the things that statement pointed out was the fact that, as far as I am concerned, the bill we are considering today is an initial step to begin doing something about some of the problems that have taken place in GSA over a period of years. I think it is an important initial step, because it sets the tone for some of the direction we have to go. I appreciated your testimony, Mr. Timbers, indicating that you felt the committee had responded with moderation to a series of problems.

Some of my questions flow from that because I want to make certain that what we are doing is addressing real problems and taking strong enough steps in order to assure that we deal in a meaningful way with them. Because if we are taking initial steps rather than going the route of a massive bill, it is important that the public recognize that Congress is addressing in a meaningful way the problems they have been hearing about in the press.

With regard to the amendment Mr. Erlenborn has asked us to consider, you indicated you felt that would cause unnecessary delays in emergency situations. It is my understanding that the Erlenborn amendment does have a provision in it which would allow the Administrator to waive the 30-day requirement in emergencies, so that, in fact, it would not have an adverse impact in that kind of a situation.

Are there other objections you see with it, that go beyond the nature of the emergency?

Mr. TIMBERS. I guess my question is what is the objective of the amendment? I have not read it. All I heard was the statement here of Congressman Erlenborn. If it is to stop end-of-year spending, it would just seem to me that there might be other ways to do that; by setting restrictions on agencies that a certain percentage of their annual budget can be spent in certain periods of the time, by quarter or month, or whatever the case, to stop that end-of-the-year buildup. I am concerned that the contracting process is slow enough as it is.

As a practical matter, probably a 30-day requirement wouldn't make any difference in the process. There is hardly anything that is awarded in less than 30 days, anyway. So I guess my question would be, why do it; which problem are we trying to solve? From the standpoint of stopping fraud and mismanagement, I don't see where that changes anything. You still have to award the low responsible responsive bidder, and there are tests for responsibility, tests for responsiveness, and I don't see where the timeframe has much to do with it.

Mr. WALKER. I assume that the kind of approach you are talking about is the kind of approach suggested in the Harris bill that says in the last month only 20 percent of the total amount could be contracted for—or some such percentage. The problem with that is you set the deadline back a little. If the agency knows it has only that much time in which to spend that amount of money, you take the date and move it back and still have this wave of spending to get rid of the money so they make certain that when it comes appropriation time next year all the money has been spent.

What I think Mr. Erlenborn is trying to do is find some equitable way on a year-long basis which assures that the agency simply is not dumping money out with the idea of spending it all so they

have a better argument at appropriation time the next year around.

Well, you said you hadn't had a chance to really look at it real closely. I would appreciate it, if you do have additional comments, that you submit those for the record.

Mr. TIMBERS. We will do that.

Mr. WALKER. You mentioned in your testimony there seems to be no distinction between omission and commission in providing false information on Government contracts.

Does that mean you don't feel subsection (f)(2) on page 4 of the redrafted bill offers the Administrator sufficient leeway to discriminate between serious and lesser certifications.

Mr. TIMBERS. I don't have the bill in front of me, but that sets up the standard and criteria on which he judges which one of the six remedies he has, as I recall.

I guess it might, but we would like to see it a little bit clearer than it appears to us and to those in our group who reviewed the bill. We still feel there is not a clear enough distinction between the honest error and the outright misrepresentation, and we would like to see a clearer distinction before the Administrator has this power—I guess we are not as optimistic in the judgment of the Administrator of GSA. We would like to see it a little clearer in the language of the bill.

Mr. WALKER. If you don't leave it as a judgment call for the Administrator, who is kind of the contract officer or the ultimate contract officer on all of this, it seems to me what you begin to do is write so narrowly that you then have a whole series of regulations which are precisely what you say the small businessmen don't understand. The more narrowly we draft the bill, the less discretion we put in, the more regulations that are going to flow from it.

It seems to me that is what you are saying is the ultimate problem.

Mr. TIMBERS. Possibly. I think that the bureaucrats will develop sufficient regulations whether they are narrow or broad, so in terms of scope, I doubt we will see much difference, but we would just feel a little better about it if it was just a little clearer in terms that you are really aiming at those who are giving the Government misleading information and knowingly so, as opposed to those who might provide misinformation because they didn't truly understand what the Government was asking for, and oftentimes what they ask for is not very clear.

Mr. WALKER. But, as I understand the language which is in the bill right now, it does give the Administrator the chance to take into account the nature of the violation, the circumstances, the extent, I mean; in other words, he would have a number of different areas in which to exercise exactly that kind of discretion to make certain, if this was a first instance, a small firm that never dealt with the Government before or dealt with the Government some time and had an exemplary record, he could take those things into account.

To try to draft into this bill something that would say you take into account the nature of the offense—and these are all the things that would be included in the nature of the offense—would just

leave us with either a whole series of loopholes or regulations so tight no one would want to try to comply with them.

I am just asking whether or not that isn't even a greater problem than discretionary kind of language that we have attempted to include in the bill.

Mr. TIMBERS. It could be. Of course, again, you get into the draftsmanship of the bill. And there are a couple ways to look at it in the bill, and obviously the legislative history and summary, and so forth, that would accompany the bill when it is introduced, can have a lot to do with the types of regulations and how the bill is finally actually administered.

Mr. WALKER. I think the report language should be clear on that point.

Let me try to cover what I have here briefly. You mentioned the bill should incorporate a provision relating to agency tardiness in paying bills. What are the agency excuses for late payment?

Mr. TIMBERS. You talk about excuses; I don't think the agencies generally make much excuse; I think they just pay late, and I think the experience of the firms that we deal with is it becomes a bureaucratic nightmare to go back and try to collect from an agency that, let's say, took a prompt-payment discount, as an example, 60 days after the fact, because there is no penalty on it. There is no way to go after an agency that does this, or that takes a net 30 and pays in 90 days. It is to their advantage almost to do it.

Mr. WALKER. You mention you thought that the \$10,000 figure in the bill should be raised to \$50,000.

I have a bit of a problem with your testimony in that regard, because, in examining some of the abuses that have taken place, too often we have seen somebody who is responsible for a whole series of small contracts, none of which may be over \$10,000, but it has been those people who have caused us some of the greatest problems in the system.

I am questioning if you raise the level to \$50,000 whether or not we will deal with the problems that have already been revealed within GSA?

Mr. TIMBERS. I think it is a question of where the contracts are coming out of GSA. If you are talking about contracts national in scope coming out of the central office operation, from what I have seen, and I have attended all the hearings, I haven't seen the alleged fraud coming out of that testimony at the small dollar limit. There were fairly big dollars they were talking about.

If you are talking about the fraud that came out of the operations at the self-service stores, the GSA stationery stores, that was a whole different level, and I think that kind of a fraud and abuse can be treated administratively within their system as far as controls on who can actually order material and who can account for it, and the matching process to make sure inventory is actually accounted for. But I think when you get into a situation like in the Federal Supply Service, where you probably have 100,000 contracts a year being put out, if you have that level that low, I think you are going to just slow up the process.

I am not saying \$50,000 is a magic number, either. We are concerned \$10,000 does seem a little low, particularly when a lot of

the publicized fraud has not been in the contracting process so much, as much as the releasing against orders at the very local low level within GSA.

Mr. WALKER. Mr. Chairman, I might suggest at this point that maybe one of the things we would want to find out is just what percentage of contracts there are, at, say, the \$10,000 level, \$20,000, \$30,000 level, so we know how many contracts we would be leaving in or out, based upon the figure in the bill.

Do you see anything in the legislation we proposed which hits at the real problems you mentioned that go beyond the multiple award schedule? In other words, you were talking about the furniture on the Senate side. Do you think we have addressed with this bill those problems you say exist?

Mr. TIMBERS. I think you have. I think whatever system that involves a further emphasis on penalties for misrepresentation is certainly needed. I think the fact you require a system of increased recordkeeping which has obviously been a problem from what I can determine in all of these investigations, and the fact that there is an audit threshold, where contracts do stand a greater probability of being audited, I think all of those are needed and appropriate in the GSA situation.

Mr. WALKER. If the recommendations included in your testimony were all incorporated in the bill, in the final product of the bill, would you support passage of 5381?

Mr. TIMBERS. Yes, we would support passage.

Mr. WALKER. Do you feel the legislation would act as a deterrent to shady business contracts?

Mr. TIMBERS. I think it would be.

Mr. WALKER. Do you feel it would be detrimental in any way to normal conduct of business with the Government?

Mr. TIMBERS. Not with the type of suggestions we made; no, I don't. Not at all.

Mr. WALKER. Thank you.

Mr. BURTON. How would you feel if we didn't adopt them all?

Mr. TIMBERS. We support the bill. We are making these recommendations not so much that we would go out and lobby against the bill per se if we didn't have our recommendations included in the bill. We think what you are attempting to do makes sense, and we basically support the bill.

Mr. BURTON. Thank you very much for your constructive testimony and your comments.

Let me see if I just understand this: If by Government contract they agree to pay within 90 days from delivery, say, of some typewriters, they have a history of maybe not paying for 120 days or 160 days; is that what you are saying?

Mr. TIMBERS. Two things happen. You might sell something to the Government, and it might be they are supposed to pay within 30 days, and you don't get paid for 90-120 days, or you sell something that might have 2-percent discount, prompt-payment discount if the Government paid within 20 days. They may pay within 60 days and take the 2 percent. Both cases are happening.

Mr. BURTON. The only recourse is to try to sue in a court of claims, or something?

Mr. TIMBERS. It is like the comment you made earlier: even though the dollars add up, in many cases each individual instance may only amount to a small \$50, \$100, \$200, so it probably wouldn't be worth it to a contractor to take them through that kind of process to try to collect. They would try to collect through the normal administrative process and, frankly, after a while throw up their hands and say the heck with it.

Mr. BURTON. Thank you very much.

Mr. TIMBERS. Thank you very much.

Mr. BURTON. The next witness is Mr. Vico Henriques, president, Computer and Business Equipment Manufacturers Association. We have your statement, which we will be happy to make part of the record. You could highlight whatever point you want, and also feel free to comment on Mr. Erlenborn's proposal.

STATEMENT OF VICO HENRIQUES, PRESIDENT, COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. HENRIQUES. Thank you, Mr. Chairman. It is a privilege to appear before you to discuss the views of the association on the proposed legislation. CBEMA is a trade association representing the major manufacturers of computer and business equipment in the United States. Our membership includes both large and small manufacturers of such equipment and represents an industry which in 1979 had gross revenues of over \$40 billion and a positive balance of trade of \$4 billion.

We support the objective to reduce fraud and mismanagement in the conduct of procurements and the administration of contracts by GSA. We are well aware of the publicity, congressional hearings, and other events of the past few years associated with both rumored and reported scandals within GSA. We are not aware, however, of any allegations of abuse by members of our industry.

We feel concerned that the current version of H.R. 5381 represents an "overkill" which would place an unnecessary and burdensome system of certification, penalties, and audits upon our industry. The bill, as we read it, takes a system of controls and remedies designed to protect the Government against fraud and gross mismanagement and extends it to legitimate procurement and contracting practices and procedures under which minor or inadvertent administrative errors may occur.

In section 1, "Remedies for Contractor Abuse," there is a requirement for a blanket, unqualified certification as to the completeness and accuracy of all material information required by GSA procurements and contracts. We question the practicality and the fairness of such a certification requirement in the conduct of complex procurements of high technology equipment, as provided by our industry. The experience of our member companies is that the information required by GSA's solicitation documents, or that which may be required during the life of the contract, is often not completely specified nor explicit. We feel that the certification requirement could be significantly improved through the addition of such qualifiers as:

To the best of the contractor's knowledge;

Material information explicitly and completely defined in the solicitation and/or contract; or

The contractor will not willfully withhold information or provide misleading information.

We have some basic concerns with the philosophy of section 1, which follows up the certification requirement by providing punitive powers to the Administrator of GSA, these in addition to the existing civil remedies available to the Justice Department. We understand that the rationale for such an approach is that the Justice Department currently cannot process enough of its current caseload on abuses of concern to GSA.

We are troubled that, if this is the problem, the solution should be the implementation by statute of a second system of punitive action, rather than an attempt to make existing laws enforceable. If the subcommittee still feels that it has no choice but to pursue the duplicate system of penalty by giving the proposed powers to the GSA Administrator, then we would urge that the bill be amended so that the penalties which the Administrator can impose are clearly related to the seriousness and willfulness of the violation. H.R. 5381 should clearly reserve the penalty power under section 1 for cases of fraud and not allow such penalties for inadvertent contractor errors in the process of procurement or contract performance.

Under section 2, entitled "Improved Procurement Practices," we believe that the requirement for approval by the Administrator or agency head of any contract or agreement negotiated, the value of which may exceed \$10,000, is not a practical limitation. While we are not at this time prepared to offer a specific replacement figure, I feel that such a figure can be developed based upon the contractual experience of GSA and other executive branch agencies and that the figure should be in the area of hundreds of thousands—not tens of thousands—of dollars. I will concur with the suggestion made by Mr. Walker that a reasonable study should be made of the contracting experience of the Federal Government to adopt a level which is realistic and which will not overburden the procurement system.

Regarding required audit procedures, we question whether it is necessary to extend to GSA by statute GAO's right of access to contractor records. The experience of our industry has been that GSA currently has available sufficient audit authority to administer its contracts effectively. I have two specific concerns as to the practical impact of the proposed audit procedures on the procurement of commercial products.

First, since the major portion of the pertinent information of interest to GSA relates to establishing the commerciality of the products, it would seem that the requirement for auditing 20 percent of all of GSA negotiated contracts above \$10,000 each fiscal year will place unnecessary burdens upon both GSA and the industry. The burden upon GSA will be the audit staff required to conduct this number of audits. The burden upon industry will be the requirement to review and justify—possibly with multiple audit teams—the information required to establish the commerciality of the same product or product lines.

Second, since much of the information involved in the establishment of commerciality is of a proprietary nature, I am concerned about the public document room provisions of paragraph (f)(4). I

feel this paragraph should be modified to limit the audit abstracts, in the case of commercial products, to summary findings and clearly prohibit the inclusion of detailed, backup contractor proprietary data.

Mr. BURTON. You wouldn't mind the auditor seeing it, but they shouldn't include it in their report.

Mr. HENRIQUES. They could include it in the report, but not the audit abstract.

Mr. BURTON. They would have that information available to them, but when they make the report, it could be a public document.

Mr. HENRIQUES. Certainly.

Finally, Mr. Chairman, let me turn to the subject of the multiple award schedules, simply to say that we feel that there are many appropriate procurement techniques which provide the Government with economy and efficiency in acquisition of high technology equipment, and which will allow the flexibility of procurement to executive agencies which is necessary in order for the Government to avail itself of the variety and benefits of the products of our industry.

We readily admit that some product areas should not be included within the multiple awards schedules, and have discussed these areas on several occasions with both the Commissioners of ADTS and FSS within GSA. We feel, in particular, that the multiple award schedules can be of significant value to small business firms whose major amount of activity is in Federal procurement areas.

We note, in closing, that there are differences between the Federal Supply System and the Automated Data and Telecommunications Service multiple awards, but we feel that both are appropriate, and both can be improved through joint government and industry efforts. We also feel clearly that there is no significant problem with the multiple award schedules concerned with our industry. They do not need statutory remedial action to improve them.

Thank you for the opportunity, Mr. Chairman, to present this statement. I will be glad to answer any questions you may have and may offer a couple of comments on Mr. Erlenborn's proposal.

[The attachment to Mr. Henriques' prepared statement follows:]



MEMBERS
of the
COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

3M
ACME Visible Records, Incorporated
AM International, Incorporated
AMP Incorporated
Apple Computer Inc.
Burroughs Corporation
Control Data Corporation
Dictaphone Corporation
Digital Equipment Corporation
Eastman Kodak Company
EXXON Enterprises Incorporated
General Binding Corporation
GF Business Equipment, Inc.
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Hewlett-Packard Company
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Micro Switch, Division of Honeywell Incorporated
NCR Corporation
Philips Business Systems, Incorporated
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TRW Communications Systems & Services
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The Standard Register Company
UARCO Incorporated
Xerox Corporation

Mr. HENRIQUES. First of all, on the 30-day period, which had two aspects, one relative to negotiating contracts on sole source basis, the other on competitively bid contracts, bring up two sets of problems. Sole sourcing is generally done in the interest of time and imposing a 30-day limit at the close of any particular period, including a fiscal year, might defeat the purpose of sole sourcing a particular procurement.

I can see problems at that point in time for an agency to manage to stay in operation or manage to keep its facilities in operation with the 30-day limit. Given that the head of the agency can forgive the 30-day period, according to Mr. Erlenborn's amendment, this would require that the head of the Cabinet agency or the head of an independent agency or bureau would have to focus on the fact that at the particular point in time, the sole source procurement would have to be made. And we doubt very much that you would be able to get the Secretary's attention to concentrate on things like that on some of these contracts.

In the area of competed procurements, the 30-day period after the best and final offer is a window in which proprietary data could be leaked that had been submitted in response to the invitation to bid or the request for proposal. We feel seriously that there is a need on the part of the Government to protect the proprietary data in response to procurement actions or audit actions or whatever. While this information is given cooperatively and willingly by the industry, we feel there is an obligation on the part of the Federal Government to protect this data. The 30-day period after the last, best, and final offer in a procurement might allow too much time and allow for significant data to leak out and cause unnecessary counteroffers, protests and the like. In fact, it would prolong the process.

Mr. BURTON. You urge that the bill be limited to knowing, willful, and seriously fraudulent and so forth completely defined limitation, which pretty well defines a criminal act.

Mr. HENRIQUES. Yes, sir.

Mr. BURTON. Isn't that a fairly low standard?

Would your company, the companies you represent, tolerate that as the only action they could take against a supplier who, in effect, was beating them out of money but did not knowingly, willfully, or seriously do it, but just did it because they were rather slipshod?

Mr. HENRIQUES. We feel that the remedies for erroneous data innocently supplied already exist and that no new statutory requirement need be placed upon either the contractor or GSA.

Mr. BURTON. Is that the debarment?

Mr. HENRIQUES. No; the GSA can recover what moneys were involved certainly. Debarment is certainly one way. The bill as currently read says it is an exception on the part of the Administrator to reduce penalties from the ones which are called for in the bill rather than—I do not think, was it section F(2) or F(4) which said the Administrator may adjudge an exception in reducing the penalty applied? It suggests in every case there would be a penalty applied even for inadvertent errors, clerical errors either during the contracting process or the performance of the contract.

Mr. BURTON. What we are trying to do is—it costs the taxpayers the same amount of money whether somebody does it because they

are sloppy or somebody does it because they are a thief. We are giving the Administrator the ability to not put a fine on them. That is a basic way of doing it.

Mr. HENRIQUES. I guess our intent and our reading of the bill—

Mr. BURTON. You would get started and go upwards?

Mr. HENRIQUES. No; our reading of the bill is to direct the Administrator to assess the penalties.

Mr. BURTON. Unless he deems it not worthy of assessment? In other words, he has the option not to do it. We have given what we think is pretty good flexibility to the Administrator in areas of just absolute honest mistake not to impose any kind of penalty.

Mr. HENRIQUES. It requires a decision on the part of the Administrator, rather than having the procurement process in itself make determinations, having judgments made by contracting officers, saying here we have a case of suspected fraud as opposed to having an inadvertent error or a result of an ambiguity in the contract. It should be clear at the contracting officer's level rather than at the Administrator's level, that they adjudge this a clerical error, and therefore don't have to bring all of this other mechanism into play.

Mr. BURTON. Mr. Caney.

Mr. CANEY. The decision to begin an assessment action would remain with the contracting officer under the bill. In other words, there is nothing in the bill that says upon the finding of miscertification of a material information an assessment must be brought. It says the Administrator may assess from one of those six schedules, the lowest of which is \$1,000. The threshold for material information is \$10,000. So unless you have gotten to \$10,000 or 5 percent of the contract, whichever is less, you are not even eligible for an assessment and the lowest assessment could be \$1,000.

I am hard put to understand an inadvertent mistake or clerical error that would cause a \$10,000 cost to the Government, unless you hit the zero key a lot and sent the bill off.

Mr. HENRIQUES. I guess, and I will repeat it, our concern is that as we read the bill there is an automatic requirement on the part of the Administrator—

Mr. BURTON. If he determines an assessment, we set the level of assessments, but it is up to the contracting officer to refer it to him for that. So it is not an automatic thing. If he determines to make an assessment, we are setting the level of fine.

Mr. HENRIQUES. But the contracting officer, without going to the Administrator, may determine whether or not he will declare it was a miscertification.

Mr. BURTON. Yes; an honest mistake.

Mr. WALKER. That may be something we will want to clarify in the report language to make certain that is understood by the agency.

Mr. HENRIQUES. We would feel more comfortable with that.

Mr. BURTON. Your industry I assume is under current GSA regulations requiring certification of cost and pricing for contracts over \$100,000?

Mr. HENRIQUES. That is true.

Mr. BURTON. I would assume in your industry that is probably every contract, more or less; a great deal of them.

Mr. HENRIQUES. Yes.

Mr. BURTON. So this really is not going to affect your industry that much, that certification process, except for those that are not covered? I would assume most computer—

Mr. HENRIQUES. Most of the large procurements are covered by that, yes. It is not necessarily true, however, on the multiple award schedules.

Mr. BURTON. Now, do you think that the GSA would be asking for any greater information than the GAO would ask for in an audit? In other words, if you have to prepare the material, whether it is GSA or GAO, what difference would it make?

Mr. HENRIQUES. Probably none, except we may suggest there may be multiple audit teams.

Mr. BURTON. Like GAO one day and GSA the next?

Mr. HENRIQUES. Or perhaps GSA coming in two or three times on the same or different product lines within the same organization. If the products meet the test of commerciality, then it would be unnecessary or perhaps unwarranted to have successive audits on those product lines within a company's office.

Mr. BURTON. You maybe audit typewriters one place and computers the next, different items, just happen to be made by IBM. Because you audit the computers, that means the typewriter sales is all right?

Mr. HENRIQUES. No; what I am suggesting, this is particularly true in the multiple award area, where these are commercial products offered from established catalog prices, that the looking at or auditing of a number of products within generically the same area would seem to create excessive administrative burden for the manufacturer.

Mr. BURTON. What would be a definition of generically in the same area, like several audits on typewriters?

Mr. HENRIQUES. Several audits on typewriters, word processing equipment, and data terminals.

Mr. BURTON. Well, those are three different items.

Mr. HENRIQUES. They may be according to the catalogs and schedules that the Government keeps, but they may not be according to the schedules of the manufacturer.

Mr. BURTON. In other words, the manufacturer has them all lumped together?

Mr. HENRIQUES. The same basic product may be called by the Government different things for the purposes of Government procurement and they may be coming out of the same factory and same technological design. Essentially, I think that is one of the concerns.

Mr. BURTON. In other words, the same factory would be putting out the word processors, typewriters, and terminals?

Mr. HENRIQUES. That is right.

Mr. BURTON. What they would be looking for, the commerciality of products, they would be looking at that to see that the list price and discount for the Government are valid, not just some phony figure.

Mr. HENRIQUES. That is right.

Mr. BURTON. That is a valid concern, is it not?

Mr. HENRIQUES. I think that is a valid concern, something which the industry has for some time cooperated with GSA in providing that data.

Mr. BURTON. Mr. Walker?

Mr. WALKER. Thank you, Mr. Chairman.

You mentioned in your testimony the \$10,000 figure is unrealistic. I assume you feel that the \$50,000 figure mentioned by the previous witness is also unrealistic?

Mr. HENRIQUES. As I said, I am not sure we are prepared to say what the number is. We think there is sufficient data in the executive agencies and GSA to establish a level based on the general range and the pattern of procurements to say what that number ought to be.

Mr. WALKER. I was somewhat concerned about your testimony on page 2 in which you got into the qualifiers you wanted to put in with regard to the willful intent of the contractor involved. You said that with this language the Justice Department cannot currently process enough of its caseload to deal with the abuses. That certainly is a consideration.

However, the other consideration is whether or not a lot of these things should not be addressed without addressing it in the name of criminal penalties. What we are attempting to do here is to make certain that the Government recover losses as a result of problems that have developed, but that they do not necessarily pass over into the criminal element.

Now if we put in qualifiers to the extent that you are talking about, we have once again addressed essentially criminal action. The language you are suggesting is essentially language of criminal law. Don't you think there is a place for attempting to address a problem between Government and contractor by establishing specific criminal intent and trying to within the scope of the legislation?

Mr. HENRIQUES. We may be working toward the very same thing here. I think the intent on our part is to suggest that there is a ground between what is willful or fraudulent representation or withholding of data or whatever, and to say that it is to the best of the contractor's knowledge, at the time that the contract is signed, the data are complete and full. But if it turns out later there are things which could have been or should have been included, but not at the time of the signing within the contractor's knowledge, he should not be held in that sense liable or responsible since they were not within his knowledge at that point in time.

I guess it was the absolutism of the language of the bill which gave us some concern.

Mr. WALKER. Well, I understand your concern. I was trying to reflect upon our concerns as well, because I think if we took language of the type that you are suggesting here, we basically cross that threshold into making it address specifically what is in the Justice Department purview at the present time. If there is willful intent to defraud, that comes under which the Justice Department is currently empowered to do something about. And we get right back to having to deal with all of these problems in the criminal sector.

What we are suggesting I think is that we ought to take some of them out of the criminal law sector and try to deal with them as administrative problems. I think you are right, we are probably both arriving at the same thing. I guess my concern is with the language you are suggesting.

Mr. HENRIQUES. I would be more than happy to give you a little bit more than just the three phrases and some of the philosophy that goes behind that.

Mr. WALKER. I appreciate that. It is something we are going to have to make very clear in report language what the attempt of the legislation is, once again.

We want to make certain that in fact GSA can address the problem without saying that there was willful intent involved to defraud the Government and do more than imply, actually state, that the contractor was therefore guilty of a criminal act.

If the recommendations which you include in your testimony were substantially incorporated in the bill, would you support the passage of 5381?

Mr. HENRIQUES. Yes. I think we are in agreement with the intent of the bill and it is a matter of specific language and some of the content as opposed to the intent.

Mr. WALKER. Do you see it as something that would act as a deterrent to shady business dealings with the Government?

Mr. HENRIQUES. I think that would be rather difficult for me to say because within our own industry I do not know of any that have occurred. I do not think it would change much the way business is done in our sector, other than perhaps create some administrative concerns, as I pointed out.

Mr. WALKER. That basically gets to my third question in the series. Do you feel it would be detrimental in any way to the normal conduct of business with the Government?

Mr. HENRIQUES. It has the potential of adding administrative costs to the contract.

Mr. WALKER. Thank you.

Mr. BURTON. But how does it affect your organization? One, I would think that a majority of the people you represent are doing more than \$100,000 business, that they make a certification. I think your point is very well taken and we will do our best also to see that any audits are made so that they are not coming back every day looking through the same files. I am not quite sure how we do that but I think that can be done, if not in the bill, certainly in the report, and that the proprietary information is protected. If that is so, I do not see how it affects your business.

Mr. HENRIQUES. If we can be assured of those things, I think we would feel much more comfortable with it.

Mr. BURTON. I get very nervous when I hear "proprietary information" only when it comes from the airlines. How does GAO do it now? They don't release proprietary information now, do they? Or do they? There are times when they are going to have to look at it. I would think the report should be only reactions. Do they in fact release proprietary information?

Mr. HENRIQUES. They are unable to give us the assurances that they would not, under pressure from the Congress, release propri-

etary data when they make the audits. Normally they protect proprietary data.

Mr. BURTON. Do you have any indications when they haven't? We could get your proprietary data, we don't have to have GAO do it.

Mr. HENRIQUES. I recognize that. There is no statute under GAO rules for proprietary protection, although there is a basic understanding—

Mr. BURTON. Have they ever to your knowledge violated that?

Mr. HENRIQUES. Not to my knowledge. It has only been during our discussions with their general counsel within the last two or three months, that he has—we clearly asked the question about proprietary data and he said they would be unable under statute to protect the data submitted to them.

Mr. BURTON. If we called them in?

Mr. HENRIQUES. Yes.

Mr. BURTON. So that really lies with the Congress?

Mr. HENRIQUES. Yes.

Mr. BURTON. We would not rule out our right to have that data, but as far as a document, when somebody asks for a report or audit and that is made public, I would think protection of proprietary data is not an out-of-line request.

Mr. HENRIQUES. It might be useful if the legislative history could show that for use by GSA under the Freedom of Information Act such proprietary information that was furnished could be protected by the agency head. GSA has allowed proprietary information to be released under the Freedom of Information Act on several occasions in the past few years. We think if that could be strengthened and the administrator could protect the proprietary data submitted to him, this would be of great comfort to those who provide the data.

Mr. BURTON. We will look into those few subjects. But basically, given the proprietary data protection that you have now under the GAO—all right. GAO audits you; do they audit typewriters, word processors and the terminals? I would not see the GSA audits being any more onerous than GAO.

Mr. HENRIQUES. I think our comment was that in the public reading room provision of the draft bill we suggested that only the abstracts—

Mr. BURTON. Right. I was thinking now we have eliminated that and coming to the point where you say there would be multiple audits of what in effect is the same product. You have it all in one file but one guy comes in Monday and looks at this, somebody comes in Tuesday and looks at this, instead of somebody looking at the whole file at once.

How does the GAO do that with you? Do they look at the whole file or at the component parts?

Mr. HENRIQUES. They tend when they look at things to look at and audit a specific procurement, or a specific range of things. I think they have looked at the entire range of things. They have done some reports where they look broadly across product lines.

Mr. BURTON. As far as your industry is concerned, your two basic concerns are the proprietary information and an unending stream of what in effect could be duplicate or repetitive audits?

Mr. HENRIQUES. Yes, sir.

Mr. BURTON. Thank you very much.

Our next witness is Mr. William Grote. We have your statement that, without objection, will be made part of the record.

[See p. 50.]

Mr. BURTON. If you would like to make any brief comments or just respond to questions, whichever way.

STATEMENT OF WILLIAM GROTE, FEDERAL MARKETING AND CONSULTING SERVICES

Mr. GROTE. I would like to call attention to some of the items pertaining to H.R. 5381: One, that consideration be given to eliminating the \$10,000 threshold for all of the multiple award contracts. Since you don't know at the beginning of a contract what the value is going to be, and since the price to the Government is based only on the data submitted, I think that eliminating the \$10,000 threshold might be a consideration for multiple award contracts.

Also, I think multiple award contracts require different procedures from negotiated single award contracts. I recommend that consideration be given to developing separate procedures for the two types of contracts.

Certifications: I recommend that consideration be given to requiring certifications to be made at the top level of the organization—possibly the president, executive vice president, or comptroller—to increase the probability that the data will be valid.

Service contracts are based on the time of individuals; I recommend that each invoice for that kind of a contract be accompanied by a certification from the individual that he in fact worked the hours for which the Government is being billed.

And with regard to the recordkeeping aspect of the bill, I have a recommendation on how the Government could find out exactly what they are paying for multiple award contracts. GAO says that they don't know at all—which is true.

With regard to Mr. Walker's thought about getting a breakdown on the number of contracts at 10,000, 50,000, I do not think you could find out. But one way that the Government could find out is to require the payment office issuing a payment for an invoice to capture at that time all the information needed for GSA to know how much is being paid to each contractor for the items under multiple award contracts.

Finally, I can't resist on multiple awards, I have presented 44 pages of prepared testimony documenting some things that keep the Government from getting the value that it should; I think the present policy of GSA to discontinue multiple awards completely and to buy many items only on the basis of competitive bids should be discontinued until the issues cited are taken into consideration.

Mr. BURTON. In section 2 of your testimony, you strongly question the validity of commercial prices accepted by the GSA. When you use the word "validity," do you mean the true and accurate price on the face of it?

Mr. GROTE. Yes, sir.

Mr. BURTON. Then you state that the GSA commonly advises firms to raise their commercial list prices and then discount them by a greater percentage in order to get a supply contract?

Mr. GROTE. Yes, sir.

Mr. BURTON. How does that work? Why would they do that?

Mr. GROTE. If an offeror feels that it is giving the best value, the lowest possible price to the Government, but which may not meet the benchmark discounts, many times I have been told, "Raise your commercial prices, Mr. Grote." And in cases where contractors may not have a commercial price, where they are trying to get a contract based on wholesale prices, I have been told several times that you have to manufacture a commercial price; otherwise, we can't give you a contract based on a discount from a commercial price.

So GSA in its contracting procedures really forces potential contractors into doing things which they might not have done otherwise.

Mr. BURTON. Mr. Walker?

Mr. WALKER. Let me see if I understand what you are saying.

Is that the reason why in some cases we find commercial discount houses selling products at a rate less than the Government? Was the realistic commercial price of the product artificially hiked in order to get a Government contract, but the real selling price at which the guy could make a profit is somewhat lower, therefore, he could sell it to a discount house for less?

Mr. GROTE. That could be one of the reasons.

I think in that case it is because the discount house is willing to buy a definite quantity of standard commercial items shipped to a single location—one payment, one invoice—whereas the Government is buying one at a time all over the country with many different purchase orders. So it could be any combination of reasons. My prepared testimony include recommendations on how GSA can obtain lower prices for large, definite quantity procurements of standard, commercial products.

Mr. WALKER. You are saying in some cases artificially inflated commercial prices are established in order to establish a discount price for the Government so that the Government probably is really buying at a price which is realistically under the commercial price?

Mr. GROTE. That is right—in order to meet the required benchmark to get a contract.

I have been told by people within GSA confidentially that they know that most of the commercial prices are not worth the paper they are written on and the ink isn't even dry when they serve them with the offer.

Mr. WALKER. How nice. I think you have made some good points with regard to this business of trying to establish a figure. You have probably heard us talking about why there was a figure of \$10,000 put in there in the first place.

I am fascinated by your comment that you are not sure we could find out that information anyhow. Why don't you think we could find that out?

Mr. GROTE. Many contractors don't even report their sales under multiple award contracts. Many of them possibly don't actually report all of them.

Mr. WALKER. So you are saying that the Government would not have then any access to that data at all?

Mr. GROTE. They would have access to it, but they would have to go back to the contractor to perform an audit possibly to find out how much was sold under a particular multiple award contract.

Mr. WALKER. In other words, you are talking just the multiple award contracts?

Mr. GROTE. Yes.

Mr. WALKER. That would not be true of the other types of contracts?

Mr. GROTE. No, just the multiple award.

Mr. WALKER. I take it from your testimony, and just want to establish for the record, that you feel that the \$10,000 figure is unrealistically low in the bill.

Mr. GROTE. Only for multiple award contracts. I think for all others where there is a single award, it possibly could be higher. I have no thought on that.

Mr. WALKER. Do you agree there should be something in the bill to address a penalty for late payment?

Mr. GROTE. Yes. I wholeheartedly support Mr. Timbers' recommendation on that.

Mr. WALKER. Do you find that the agencies are delinquent in this area?

Mr. GROTE. For almost every invoice. I think it is widespread, yes.

Mr. WALKER. What is the reason that they are giving for late payment?

Mr. GROTE. They don't give reasons. I do not think there is any one particular person—well, you wouldn't know which person to ask. The reason is there are so many people involved in the process.

Mr. WALKER. What effect do you think that putting some sort of penalty for late payment would have?

Mr. BURTON. Kill the bill.

Mr. GROTE. It could possibly accelerate, but it probably would result in the Government paying more for a particular order. There would be nothing wrong with that. I think the contractor should be entitled to interest if payment is not made within 30 days.

Mr. WALKER. You think what would happen is the Government would continue to pay late, they would just pay the penalty then?

Mr. GROTE. Probably.

Mr. WALKER. A lot of faith in Government out there, Mr. Chairman.

Do you think that the bill we have before us is a good initial step in curbing the abuse potential in Government procurement activities?

Mr. GROTE. I think it is.

Mr. WALKER. Would you go further than what this bill has with regard to trying to stop the abuses?

Mr. GROTE. Only in the areas recommended in my presentation.

Mr. WALKER. Thank you, Mr. Chairman.

Mr. BURTON. Thank you very much, Mr. Grote.

[Mr. Grote's prepared statement follows:]



William Grote, President

Comments on H. R. 5381, A Bill to Reform Government Contracting
Practices by the General Services Administration, and
Recommendations for Correcting Weaknesses in Current Federal
Procurement Practices and for Developing More Efficient,
Cost-Effective, and Responsive Acquisition Policies, Methods
and Criteria

Respectfully submitted June 9, 1980 by William Grote, President
of Federal Marketing and Consulting Services, before the
Government Activities and Transportation Subcommittee of the
House of Representatives Committee on Government Operations.

I am pleased with this opportunity to comment on several sections
of this bill to reform Government contracting practices by the
General Services Administration and to present recommendations
for correcting weaknesses in current Federal procurement
practices and for developing acquisition policies, methods, and
criteria that will be more efficient, cost-effective, and
responsive to the needs of the Government and using offices and
fairer to the current and potential sources of supply. These
comments and recommendations are based on 17 years of experience
in negotiating contracts with the General Services Administration,
developing and implementing Federal marketing programs for a wide
variety of products, and personal contact with hundreds of Federal
procurement offices throughout the United States and overseas.

William Grote
William Grote



Comments on H. R. 5381

The following comments pertain to Section 1, Remedies for Contractor Abuse; Section 2, Improved Procurement Practices; Section 3, Required Audit Procedures; and Areas Not Addressed.

I believe that negotiated, multiple-award negotiated contracts require legislative and administrative action different from that required for advertised and negotiated contracts resulting in a single award.

Specifically, Section (k) (page 8) establishes \$10,000 as the threshold for property services contracts or agreements requiring the certification established in Section (e) on page 2. Consideration should be given to eliminating any threshold for multiple-award contracts, inasmuch as contract prices are directly related to commercial retail and/or wholesale pricing and policies.

Either through legislation or administrative action, I believe there should be a requirement that the certifications specified in Section (e) be made at the highest level within the contractor's organization (president, executive vice president, comptroller) in order to stress the seriousness of certifications and to help achieve the highest degree of compliance. If certification is permitted by lower level officers, additional verification should be required from top-level officers. GSA might consider an advertising campaign explaining new stringent verification requirements for obtaining Government contracts and should widely publicize penalties for abuses.

There has been much publicity about fraud in consulting services contracts. Abuses would be curtailed by requiring contractors to include with invoices for the time of specific individuals certifications from each of those individuals that work was performed only on the contract and on no other assignment during the hours invoiced.

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Specific administrative remedial action is needed to correct historical abuses in area equipment service contracts awarded by GSA for items such as electric typewriters. Problems experienced with these contracts are discussed in a separate section.

Consideration should be given to adding a requirement in Section 2 that GSA take administrative action to obtain consistency in procurement practices employed by the Federal Supply Service (FSS) and the Automated Data and Telecommunication Service (ADTS), as well as by the various GSA Regional Offices assigned commodity responsibilities. Specific inconsistencies and recommendations for correcting are discussed in a later section.

Amendment Section (e)(5) requiring better Government-wide reporting on purchases from supply schedules addresses the criticism in the Comptroller General's May 2, 1979 report on GSA's Multiple-Award Schedule Program that the Federal Supply Service knows little more about its schedule customers than before its automated delivery order system was implemented. The computer printouts available at the Schedule Information Center reveal that many contractors never, or sporadically, report sales. The GAO report comments that in addition to unreliable vendor data, FSS does not have an adequate information system to provide contracting officers better data for negotiations.

Virtually 100% accuracy could be achieved and the large staff and expense now incurred to record incomplete and perhaps inaccurate data reported by contractors could be eliminated by legislation that when a check is issued to pay an invoice for a multiple-award contract order, the payment office be required to capture and transmit to GSA in machine-readable form the contract number and amount for each item number invoiced. GSA would then have a record of each contract's sale of all items numbers under multiple-award schedules. The additional cost to the payment office would be minimal, inasmuch as most of the data is already required to issue checks under the present system. The only additional data to be recorded would be amounts for individual items numbers which may be included on a single delivery order.

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The validity of multiple-award contract prices would be strengthened by including in Section 3's required audit procedures specific reference to access to commercial sales reports in both GAO and GSA audits. While the words "any directly pertinent books, documents, papers and records" certainly cover sales reports and invoices, I believe that if solicitations explicitly stated that contract award will make contractors subject to subsequent GAO and GSA audits, the validity of commercial data provided as the basis for Government pricing would be greater.

A major area not addressed by H. R. 5381 is GAO's recommendation that legislation is required "to provide GSA with sufficient authority to effectively deal with and bring Agencies into compliance with Federal procurement regulations and to promote efficient, economical, and effective procurement practices". Specific legislation may be required to define GSA's responsibility and authority for auditing Agency compliance with justifying procurements from multiple-award schedules for other than lowest priced items.

Finally, if an Act of Congress is required to return GSA to a 5-day work week, let it be done! Most GSA employees acknowledge that they are able to do their work only three days a week. On Mondays, the half-staff present are required to spend much of their time doubling up and answering phones for the other half with the day off. Likewise on Fridays. Supervisors have only three days to interact with half of those they supervise. How often is the expression heard to forget Mondays and Fridays in terms of getting anything done. I don't believe that a service Agency which interacts with other Agencies, contractors, and the public is the place to experiment with a four-day work-week.

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Comments on the following additional subjects include recommendations for correcting weaknesses in current Federal procurement practices and for developing more effective acquisition policies, methods, and criteria and for improving the multiple-award procurement process:

<u>Section</u>	<u>Subject</u>
I	Analysis of Comptroller General's May 2, 1979 Report to the Congress on "Ineffective Management of GSA's Multiple-Award Schedule Program -- A Costly, Serious, and Longstanding Problem."
II	Weaknesses in GSA's Present Benchmark System for Determining Reasonable and Fair Multiple-Award Contract Prices
III	Recommendations on How to Obtain Fair Government Prices Within Improved Multiple-Award System
IV	Self-Service Stores Policies Which Suppress Competition and Encourage Using Agencies to Bypass Procurement Regulations
V	Questionable GSA Policies Permitting Multiple-Award Contract Awards to Third Parties Without Manufacturer's Approvals and Awards to One Contractor for Competitive Products
VI	Inefficiencies in and Costliness of Area Equipment Service Contracts
VII	Reduction in Paperwork Burden for Obtaining Government Contracts
VIII	Creating Environment That Will Enable the Government and Using Offices to Benefit from the Technological and Pricing Advantages Provided by a Free, Competitive Market Through Existing Commercial Channels



Section I: Analysis of Comptroller General's May 2, 1979 Report to the Congress on "Ineffective Management of GSA's Multiple-Award Schedule Program--A Costly, Serious, and Longstanding Problem"

This report contains many valid criticisms of and recommendations for improving Federal procurement policies. It provides a number of examples of problems resulting from what Admiral Freeman described as stupidity, mismanagement, and poor management in his May 1 testimony before the Senate Committee on Appropriation's Subcommittee on Treasury, Postal Service, and General Government. However, several of the criticisms are not valid and some recommendations for correcting weaknesses will create even greater problems. A number of real problems were overlooked and therefore not addressed at all. Comments on key aspects of the report follow:

1. Lack of Adequate Input from Present, Former, and Potential Suppliers

A major reason the GAO report and recommendations miss the mark on how to obtain more efficient, cost-effective, and responsive acquisition policies, methods, and criteria is the lack of adequate input from former, present, and potential sources of supply for the kinds of products and services required by Federal Agencies to achieve assigned missions. While contact was made with a large number of Federal procurement offices within GSA and other Agencies in Washington and several Regional cities and with 12 State procurement agencies, there was very little contact with suppliers. Discussions with suppliers appear to have been perfunctory.

I believe it is impossible for GSA to improve Federal procurement practices or for GAO to make valid recommendations without meaningful input from people who have been through the negotiating and selling experiences, who know where the bodies are buried, and who can identify the weaknesses of present practices, as well as recommend ways to eliminate abuses and provide fair and lower prices for using Agencies. Consideration should also be given to how commercial organizations obtain what they consider to be fair prices for large quantity purchases of the kinds of items purchased by Federal Agencies.



It was encouraging to learn from Federal Supply Service Commissioner Morris in his May 1 testimony before the Senate Subcommittee that GSA recognizes the need to work in much closer communication with associations, a recommendation I had made earlier this year in a meeting with a member of the Office of Acquisition Policy staff. Associations provide a vital source of information and insight on how the Government can take advantage of the benefits of technological improvements, a competitive marketplace, use of commercial channels of distribution and service, and procurement practices employed by large commercial users. However, the importance of benefiting from the experience of those who have lived through the agonies of dealing with GSA cannot be overemphasized.

2. Unwarranted Criticism of the Number of Contractors for Similar Items and the Need for Caution in Purchases Based on Commercial Item Descriptions (CIDs)

The report expresses undue concern for the large number of contractors for similar items. Why shouldn't Government offices with their diversity of requirements and locations have available to them the same variety of products available to commercial users, provided that purchases can be made at fair prices and in accordance with intelligent regulations uniformly enforced? (Recommendations for developing a system for obtaining fair prices are discussed in Section III of this presentation.)

There are many Federal programs aimed at helping businesses, particularly small businesses, become sources of supply for Federal requirements:

- . The Commerce Department has active programs to help new businesses in general and in particular, on how to sell to the U.S. Government.
- . The Small Business Administration provides special assistance to small businesses.
- . A number of Federal procurements are required to be set aside for small businesses.
- . The recent White House Conference on Small Business received a pledge from the President that he will help solve the problems of small businesses.

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- . GSA has Business Service Centers throughout the country with staffs responsible for helping companies and individuals learn how to do business with the Federal Government.
- . Public Law 95-507 establishes requirements for procurements under \$10,000 to be made from small businesses.
- . GSA is belatedly amending solicitations to implement the PL 95-507 requirement for small business subcontracting in large contracts.
- . In conjunction with Commerce, GSA, and SBA, Congressmen sponsor many seminars throughout the country each year to help constituents learn how to penetrate the Federal facade.

All of these aggressive programs aimed at helping businesses, particularly small businesses, share in the Federal market are subverted by FSS and ADTS procurement policies and practices. Specific examples will be cited throughout this presentation of GSA procurement practices which discourage and make it difficult for firms to do business with the Government.

The objective of Senate bill S-5 for Federal Acquisition Reform to limit the number of firms allowed to compete for Federal business will in fact restrict competition and favor large businesses. The opportunity to sell to Federal Agencies will be concentrated in the hands of a few large firms in each product category. Except for set-asides, small businesses will be deprived of the opportunity to compete for Federal business. Single-source contracts awarded on the basis of low price for products complying with minimal functional terms that do not describe performance characteristics which might eliminate less sophisticated products will deprive the Government of the benefits available from innovative products reflecting improvements in the state of the art and technological advancement.

Particularly disturbing are the steps discussed by Commissioner Morris in his May 1 statement before the Senate Subcommittee to restrict the number of products from which Agencies may select to meet specific requirements. Commissioner



Morris expressed concern over the fact that 20 firms have Federal Supply Schedule contracts which provide Agencies a choice of 208 calculators from less than \$50 to \$1200. Aurora Calculator Company in fact offers a \$24.47 10-digit, AC/DC desk-top, display, memory model with more features than available on calculators which cost Agencies many hundreds of dollars a few years ago.

There are no two or three companies which can meet the needs of all Federal offices in widespread, concentrated, sparse, and remote locations for most similar products now available on multiple-award schedules, especially where local service is required. Federal Agencies should not be deprived of the benefits now competitively available in current commercial channels of distribution and service through companies' Branch Office or Dealer operations. Why should GSA be required to select only two or three firms for the privilege of supplying Federal Agencies and deprive all other firms willing to provide fair prices for similar items of the opportunity to sell to their Government?

Commissioner Morris stated that the FSS Acquisition Planning Team has developed Commercial Item Descriptions for electronic calculators that would restrict Agencies to a choice of only six models falling into three categories. FSS plans to obtain competitive bids for 35,000 calculators with features included in one or more of the six Commercial Item Descriptions. Following is a discussion of the imprudence and some of the dangers of this method of acquisition:

. No one in GSA has the wisdom of Solomon

GSA's track record experience with buying on the basis of prescribed specifications, whether called Federal Specifications or Commercial Item Descriptions, has been a dismal failure. Millions of dollars spent for shoddy, unusable furniture provide just one example. GSA does not, should not, and could never have a staff wise enough to dictate specifications for most of the products now available under multiple-award schedules. In addition to not having the



wisdom of Solomon needed to write and keep current meaningful CIDs, GSA lacks the strength of Sampson in terms of staff required to reduce multiple-award schedules to the level proposed by Commissioner Morris and the Senate bill.

Except for products less likely to be improved through technological advances, where service or maintainability is not a factor, and where use of low-cost workmanship and raw materials will have a minimal impact on the functional usefulness of the end product, GSA could not expect essential expertise in developing CIDs from industries whose livelihoods will be threatened by use of CID's to eliminate them from selling to the Government. GSA can expect an avalanche of costly protests based on faulty CIDs.

Exhibit A is a protest filed with GAO during GSA's initial attempt at sole source procurement of manual typewriters based on any early CID. The protest was based on a faulty description which included one proprietary feature that made the protesting manufacturer the only responsive bidder. GAO upheld the protest and required GSA to readvertise on the basis of revised specifications. During the several years required to resolve the initial protest and resulting protests by other bidders, Agencies were required to buy manual typewriters on the open market at higher prices.

. Agencies will be required by GSA to buy more expensive models with excessive features

To insure that six calculator models will encompass features now available on 178 models will require many Federal offices to use costlier calculators with more features than actually required. Offices which can use \$24.47 calculators with one memory may have to buy \$49 calculators with two memories and a whistle.

. Federal Agencies will be denied products with exclusive, superior features

To comply with the S5 restriction against including in the CID features which may be available from limited sources, GSA will be required to write



CIDs which make available products several years behind what may be available from firms offering exclusive new features. If calculators were purchased from competitive bids based on Commercial Item Descriptions ten years ago, GSA might today still be restricting Agencies to \$1,000 electro-mechanical calculators without features on electronic calculators now costing under \$100.

. The Government will be buying "Federal" rather than commercial products
In order to produce one or more of the six GSA-dictated calculators, most manufacturers will be unable to offer standard commercial models which may have excessive features. To be competitive and responsive, many may have to manufacture special "Federal" models with only the features specified. Furniture procurements again serve as dramatic examples of the wastefulness of buying "Federal" products.

. Manufacturers will be tempted to cut corners to minimize production costs or may offer commercial products complying with CIDs but with poor commercial acceptance and marketability.

The current typewriter evaluation described by Commissioner Morris in his May 1 Senate testimony is not feasible when maximum expected life, service costs, and maintainability are essential price considerations. The cost-effectiveness of the current typewriter test is questionable in terms of expense to the Government and to manufacturers, which were required to make typewriters available for the test at no cost to the Government. These test machines will have little value after the simulated 7-year usage test.

There is no evidence that those responsible for writing CIDs or life cycle test specifications have the real-world experience essential to write meaningful specifications and to keep them updated in a timely manner based on changing technologies. The initial typewriter bid solicitation included a requirement that offerors include a guaranteed trade-in value after seven years of usage. GSA may have that kind of crystal ball, but no one in the business world with profit and loss responsibility and experience can predict



exactly what the state of the art in typewriters will be seven years hence, what the inflation rate will be, and certainly not the value then of typewriters bought today. Can we afford the dangers of such naivete in writing specifications for tests of other products to predict their life cycle value?

. Life Cycle Tests have less value when local service and maintainability are factors

While the current typewriter test may have some value for the 350 known requirements for Social Security and Air Force, it may be of little or no value for requirements of other Agencies in other locations. The plan to conduct competitive typewriter procurements on a zonal basis--in which Commissioner Morris stated that availability of full maintenance service for the brand selected will be a key consideration--does not provide a satisfactory solution, because there is no typewriter manufacturer that provides satisfactory service in all locations within a given zone. For each manufacturer, the quality of service varies from location to location, depending on the caliber of its local Branch Office or Dealer service department.

Making availability of full maintenance service a key consideration for brands selected for other competitive typewriter procurements appears to be in conflict with GSA's current costly practice described in Section VI of awarding service contracts after expiration of warranty on the basis of low bid regardless of the capability or track record of the bidder.

Federal offices should be given the prerogative (within intelligent, monitored guidelines) to select a typewriter with satisfactory local service.

. In order to be price competitive, manufacturers will scrimp on compensating local Dealers and Branch Offices for service.

The National Office Machine Dealers Association (NOMDA), an organization comprised largely of small businesses and a participant in the recent White House Conference on Small Business, has long been opposed to low bid contracts



awarded to manufacturers which expect Dealers to provide service for unprofitable fees. Exhibit B is the NOMDA "Hotline" discussing the unfairness of the 1972 sole source contract for manual typewriters. Expanding this policy, with its adverse impact on office machine dealers, which comprise a large segment of the small business community, is inconsistent with the President's pledge for special aid to small businesses.

3. Validity of Question Raised in GAO Report on Variation in Prices Paid by Agencies for Identical Items Based on Blanket Purchase Agreements (BPAs)

The report raises a valid question as to why contract prices for identical items vary from Agency to Agency, depending on the existence or quantity level of a BPA. I agree that it is illogical for a smaller Agency to pay \$166.34 more for an Olympia typewriter than a larger Agency merely because the smaller Agency does not buy enough typewriters to issue a BPA. Small and large Agencies are part of the same mandatory user group for which GSA is responsible.

As the GAO report states " ...it makes little sense for Agencies to pay different prices for the same products..." Section III of this presentation includes recommendations on how lower multiple-award contract prices can be obtained by GSA by eliminating BPAs and thereby providing lower prices on a definite quantity basis for Federal offices with definite large volume requirements, as recommended in the GAO report. Under the present BPA system, an office which orders 100 typewriters for delivery to a single location pays the same price as an office that orders one at a time.

4. States Receive Lower Prices Than GSA

Exhibit C is the comparison in the GAO report of GSA contract prices with State prices for identical items (except for dictation equipment, as explained in the footnote).

The explanation of the difference is simple. Most states issue Blanket Purchase Agreements to GSA contractors so that state agencies can purchase one item at a time at GSA's maximum quantity discount.

By implementing the recommendations in Section III of this presentation, GSA could obtain the same prices for all Federal Agencies as states now receive when ordering one at a time and even lower Schedule prices for large, definite quantity requirements.

3. Evidence of Procurements of Highest Priced Items Without Required Justification

The report cites a number of instances of procurements of highest priced items without the required justifications why lower priced items would not meet requirements. GAO observed that justifications were either specious or lacking completely. Examples not cited in the GAO report but based on personal experience follow:

- . One section of the Justice Department routinely buys the most expensive electric typewriter for stock with year-end money and then issues them as required to field offices the following year. There could be no possible way of showing a valid justification in the procurement file, since the location of the using office is not even known at the time of procurement.
- . Several years ago when I questioned a Justice Department administrative aide on what justifications were required for the most expensive typewriters being bought routinely for offices of State's Attorneys, her response was that she was not about to question a State Attorney who asked for an "XYZ" typewriter. She refused to respond to the question of compliance with Federal Property Management Regulations.
- . Even though not bound by the justification requirement, until two years ago, GAO used to (and may still) buy large quantities of the most expensive typewriter.



- . GSA is responsible for buying equipment for Congressional field offices. The equipment is charged to GSA and not to the Congress, which means that GSA is required to have a justification for other than lowest priced items. Most GSA Regional Offices which buy for Congressional field offices acknowledge that they never call attention to the requirement for justifying higher priced items.
- . As discussed later in Section IV on Self-Service Stores, GSA's National Capital Region routinely orders the most expensive supplies from multiple-award contracts for stocking in self-service stores without taking the steps requiring justification why lower priced items are not satisfactory.

Commissioner Morris testified that one contractor enjoys 75% of the U.S. Government typewriter market. Failure to enforce this Federal regulation requiring justifications is the reason.

More money could be saved by publicizing and enforcing this regulation than will be saved as a result of the present life cycle cost test.

6. Incorrect GAO Conclusion that Late Offers Hamper Competition

The GAO report criticizes GSA for accepting late offers for multiple-award contracts. GSA has now implemented the recommendation for discontinuance and no longer accepts late offers.

The illogic of GAO's position on late offers is reflected in GSA's response to a letter presenting reasons that accepting late offers is in the best interest of the Government and requesting the new policy be cancelled. The request and the response of GSA's Office of Acquisition Policy are included as Exhibits D and E.

There is no question that late offers should not be accepted for negotiated single-award contracts. However, the Government and using offices would

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benefit from reverting to the policy of accepting late offers for negotiated multiple-award contracts for a reasonable time during a contract period, because competition will be increased, lower prices will be obtained for similar items, Agencies will have a greater choice from which to select, and one more obstacle making it difficult to do business with the Government will be eliminated.

A major reason cited by GAO for refusing late offers is that accepting late bids does not assure the benchmark discount selected is the most reasonable. This conclusion is fallacious. If there are significant changes from year to year on benchmark discounts, either the benchmark accepted the previous year was faulty, or there is something invalid about any new commercial price list presented to justify a significant change in discounts offered. Commercial prices may change from year based on advances in technology, competition, or market conditions, but Government discount percentages, if sound in the first place, will not vary as GAO concludes.

A few examples demonstrate the faultiness of the reasoning leading to the rejection of later offers for multiple-award contracts:

- . If five companies which sell similar items through Branch Offices have had multiple-award contracts based on a 15% benchmark discount from retail prices, it is unlikely that any would suddenly offer a 20% discount. If a company wanted to lower Government prices, it would probably lower commercial prices as well. Lower Government prices would result from the same 15% discount from a lower commercial price.
- . If the company which had established the 15% benchmark discount in previous years were to be late in submitting its offer for a new contract period, how would the other four companies know the "benchmark" company was not going to be on time? There is no reason to expect them to offer lower discounts.

It should not be necessary to re-invent the wheel each year in determining the benchmark. Fair should be fair.



Another reason cited by GAO is that late offerors have a competitive advantage because they can learn the discounts in contracts awarded to competitors.

A firm submitting an offer for a multiple-award contract, whether on-time or late, already has the ability to learn competitive discounts for current contracts from the GSA catalogs available for review in GSA's Schedule Information Centers. Knowing what discounts were required for current contracts is a good indication of what will be required for the next contract period. As previously stated, there would be something suspicious about Government prices derived from wildly fluctuating discounts from commercial prices each year.

The Office of Acquisition Policy's defense of late offer rejection (Exhibit E) stretches logic even further with the comment that "the unrestrained acceptance of late offers... would result in auctioning which is not an acceptable procurement technique." In fact, the term "auctioning" applies only to negotiated contracts which will result in a single award and has nothing to do with multiple-award contracts. As stated earlier, offerors now have the opportunity to learn previously-accepted competitive discounts.

Without even eliminating late offers, we as taxpayers are fortunate that multiple-award contractors can reduce their prices at any time during the contract period, either temporarily or until expiration of the contract. Price reductions are common, either by reducing commercial prices or increasing Government discounts. There is nothing wrong with this marketing practice. It is known as competition - not auctioning.

The Office of Acquisition Policy's conclusion in Appendix E that "experience shows that when we enforce the late offer procedure consistently, offerors generally meet the deadlines" is puzzling. GSA has never accepted late offers for negotiated single-award contracts except as provided for in FPR Subpart

1-3.602. THE NEW POLICY FOR REJECTING LATE OFFERS HAS ONLY BEEN IN EFFECT A FEW MONTHS, SO THERE HAS NOT BEEN ENOUGH TIME TO KNOW WHAT EXPERIENCE WILL SHOW. HOWEVER, I BELIEVE IT WILL LEAD TO THE LOSS OF SOURCES OF SUPPLY AMONG SMALL BUSINESSES WHICH DON'T HAVE SOPHISTICATED STAFFS REQUIRED TO KEEP A PACE OF CHANGING FEDERAL REGULATIONS.

1-3.602. The new policy for rejecting late offers has only been in effect a few months, so there has not been enough time to know what experience will show. However, I believe it will lead to the loss of sources of supply among small businesses which don't have sophisticated staffs required to keep a pace of changing Federal regulations.

An early victim of the new policy on refusing late offers is Pram, Inc., a small business which manufactures supplies for Xerox and IBM copiers in Wilmerding, Pa. Pram has a contract for the lowest price transparencies on schedule for the period ending June 30, 1980. The solicitation for the new contract period went astray somewhere between Washington and Wilmerding, so the offer for the contract period July 1, 1980 to June 30, 1981 was not submitted on time. Pram will be deprived of the opportunity to sell to Federal Agencies for a year. Agencies will pay higher prices for transparencies.

Rejecting late offers will certainly favor large businesses more likely to have staffs responsible only for Government contracts. The new policy discriminates against small businesses for which Government contracts are not a way of life. The "haves" are favored over "have nots," because firms with existing contracts can amend them at any time to add new products, whereas new firms must wait for the next cycle.

When the new late offer rejection clause was added to solicitations several months ago, offerors were advised in effect that all offers with any missing data would be rejected. This unrealistic stipulation was quickly recognized as being out of step with the real world and was eliminated.

Although not explicitly covered in FPR Subpart 1-3.8 on "Price Negotiation Policies and Techniques," it is my belief that the section on late awards was intended for proposals from offerors for negotiations resulting in a



single award. If there was any indication that this section applied to multiple-award contracts, GSA probably would never have accepted the first late offer nor have continued to accept late offers over the past 25 or so years.

The General Accounting Office has never declared invalid any multiple-award contracts based on late offers. Because common practice has accepted the legality and validity of contracts based on late offers, and because of the inequities and detrimental impact on the business community, I believe that this major change in GSA's method of procurement should be suspended until announced in the Federal Register and not implemented without input from affected parties.

GAO's observation that accepting late offers adds to the enormous volume of schedule modifications each time a subsequent contract is awarded really has no bearing on whether or not late offers should be accepted. Schedules must be amended anyhow whenever "on time" contractors add or delete items from their contracts. Furthermore, initial schedules are often so late and amendments published so infrequently that contractors' GSA catalogs serve as the primary vehicles for notifying Federal offices of new contracts for either "on time" or "late" contractors.

7. Incorrect Conclusion that Better Prices Not Obtained Because of Inadequate Time Available for Negotiations

While improved time management and allocation of personnel would expedite evaluation of offers, all the additional negotiating time in the world would not lower prices within the present benchmark system.

Lower prices will be achieved only when a system is implemented which eliminates the concept of "negotiations" for multiple-award contracts and is based



on a system for determining fair Government prices on the basis of reasonable compensation for selling costs, service, and profit. As discussed later in Section III, potential contractors should be told what is required for a contract in terms of the relationship between Government prices and verifiable commercial retail and wholesale prices. A sound system is needed to eliminate reliance on varying degrees of competence of individual buyers.

With some exceptions, present so-called "negotiations" are conducted by staff who don't know the products but who know only the numbers games passed on to them by predecessors and supervisors, most of whom have never had any experience with how fair prices are obtained by commercial buyers in the real world.

Most of what is called negotiations amounts to unreasonable demands or mickey-mouse nitpicking to justify that the buyer has played a "vital" role in getting a better deal than initially offered. Conscientious buyers are soon discouraged by the system.

8. Valid Criticism that Benchmark Technique Does Not Assure Reasonable Prices... But Not for Reasons Cited

As previously agreed, the benchmark system does not produce the lowest possible Government prices, but not for the reasons cited in the GAO Report, which criticized GSA for not accepting as the benchmark the highest discount offered. The following example shows how accepting highest discounts offered will not always result in lower net Government prices.

	<u>Brand A</u>	<u>Brand B</u>
Suggested Retail	\$ 150	\$ 100
Dealer Discount	66%	40%
Wholesale Price for Dealer	\$ 50	\$ 60
Government Discount	40%	15%
Government Net Price	\$ 90	\$ 85

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Fair prices will not be obtained by focussing on the numbers games fostered by the benchmark system. Additional documentation on the weaknesses of the system is detailed in Section II.

9. Amen to GAO's Criticism on Lack of Uniformity in Contracting, Including Establishment of Maximum Order Limitations

There is a dire need for GSA to develop acquisition policies and techniques that are consistent and uniformly applied within FSS and ADTS and at each of the regions.

The following glaring examples of inconsistencies that prevent obtaining fairest prices supplement those identified in the GAO report:

- Lower discounts are required from contractors which sell similar items through Branch Offices only than which sell through a combination of Dealers and Branch Offices. For example, Swingline offers decollators and collators whose suggested retail prices are lower than comparable competitive models. However, because Swingline sells only through office dealers, a 15% discount was required for a contract, whereas firms selling through branches were awarded contracts with a 9% discount. It doesn't make sense that contractors' branch office operations should be permitted higher profits than office machine dealers, most of which are small businesses.
- Maximum Order Limitations (NOLs) are based on complying with benchmark discounts rather than net value to the Government. Several years ago, one typewriter company introduced a basic electric typewriter without luxury features and with a low competitive commercial price. Because of the lower profit margin, the company offered lower discounts than for its luxury model. A contract was awarded on the basic typewriter with a \$10,000 NOL, while the luxury typewriter's higher discounts



qualified for a \$25,000 MOL. One Agency with a requirement exceeding the \$10,000 MOL and which found the basic typewriter acceptable for its requirements was required to purchase a more expensive competitive typewriter with a higher MOL.

FSS and ADTS Requirements are Inconsistent

When FSS administered contracts for decollators and bursters, Swingline models with a 15% discount qualified for a \$75,000 MOL. When the same products were transferred to ADTS, they qualified for a one-machine MOL. Exhibit F documents questions raised on this inconsistency. GSA's response (or non-response) is Exhibit G.

Some commodity programs permit Government Prices to be FOB Source if it is accepted commercial practice whereas others insist on FOB delivered.

The Furniture Center awards contracts FOB source to manufacturers willing to give their best wholesale price to the Government, since wholesale customers pay freight. However, Region 9 insists on FOB delivered prices from sound equipment manufacturers which offer wholesale prices even though dealers pay freight at the same prices. It is necessary to add a freight markup for the Government price. Agencies would actually get the most favorable price by paying freight for each shipment.

ADTS requires national coverage for contract awards, whereas FSS will award contracts to firms with limited service capabilities.

Exhibit F challenges ADTS's policy preventing Federal Agencies in one part of the country from being able to buy on schedule an innovative product of a new firm which has not yet developed nationwide service capabilities. GSA's response in Exhibit G does not provide a satisfactory explanation.



- FSS and ADTS have conflicting policies on providing mailing lists to contractors.

FSS requires contractors to mail Government price lists to Government offices listed in mailing lists provided at no charge by FSS. On the other hand, ADTS requires contractors to request and pay for mailing lists under the Freedom of Information (FOI) Act with the irrelevant explanation that the schedules are non-mandatory. (Why have them?)

- FSS makes contractors' Government prices available in Schedule Information Centers, whereas ADTS requires contractors to obtain competitive information under FOI.

Why can't ADTS contractors' Government catalogs be made available in Schedule Information Centers along with FSS catalogs?

These are just a few examples which demonstrate the need for GSA to develop consistent and uniformly implemented procurement policies and techniques.

10. Failure to Look at Lowest Net Price

This GAO criticism focuses on the major weakness of the benchmark system and GSA's present acquisition methods and procedures. GSA's lack of concern for the lowest net price to the Government is one of the key items discussed in Section II, which follows.



Section II: Weaknesses in GSA's Present Benchmark System for Determining Reasonable and Fair Multiple-Award Contract Prices

This Section provides additional information documenting the weaknesses of the present benchmark system in obtaining reasonable and fair multiple-award contract prices.

1. Wide Variation in Validity of Commercial Prices Accepted by GSA as Basis for Government Discounts

The validity of the commercial prices accepted by GSA as the basis for compliance with benchmark discounts may vary with method of distribution, type of industry, and individual companies.

Companies which sell only through Branch Offices can exercise absolute control over commercial prices charged by Branch Offices, since the invoicing is generally done centrally. It might be assumed that the unit commercial prices submitted by such firms provide a valid basis for determining Government discounts.

While many firms selling only through Branch Offices never permit deviations from commercial prices specified for the quantity ordered, others rarely sell any items at full, single-unit list price. An audit of internal sales analysis reports showing the number of units sold at various prices will reveal in many cases that the majority of single-unit sales are made at multiple-unit prices. Many single-unit sales are made under National Account Agreements based on discounted prices. Sales representatives who know they cannot be competitive at single-unit prices are willing to take lower commissions by "satteliting" a one-location office onto another company's National Account Agreement.

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On the other hand, firms which sell through Dealers only have no control over whether Dealers sell at discounts from "Suggested Retail." However, if the product is a good one and the "Suggested Retail" is lower than prices paid for similar competitive products and the mark-up from wholesale prices provides fair compensation for selling costs, warehousing, service, and profit, it would be unlikely for a Dealer to want to sell at a lower price.

Other firms selling only through Dealers do not publish a "Suggested Retail" price list but leave it up to Dealers to determine their own commercial prices. Still others publish inflated "Suggested Retail" prices so that Dealers can always sell at a discount.

For some firms which sell through both Branch Offices and Dealers, many Dealers are amused to see the contractor's GSA catalog showing discounts from unit commercial prices, for they know that it would be impossible to make a sale at that price.

The commercial prices of some firms may be significantly lower than those of competitors because of improved technology, willingness to accept a lower profit on commercial sales than competitors, or other factors. Meeting the benchmark established by firms with higher commercial prices for similar items may not be feasible. It is very common for GSA to tell such offerors that the only way to get a contract is to raise commercial prices.

When a member of the Office of Acquisition Policy staff commented several months ago that greater computer capability was needed to conduct more effective price analysis, my response was that the results would have little meaning because of the inconsistent validity of commercial prices submitted with offers. The staff member reacted that White Collar Crimes would be prosecuted.

While it is possible that some offerors may submit false data with an intent to defraud, most of the situations involving inaccurate commercial prices are



created by GSA itself and result, in some cases, from unrealistic demands for discounts. In recent negotiations for a manufacturer selling only through Dealers and with no Suggested Retail prices, the contracting officer was compelled by the present system to urge that a commercial price list be developed. After many months, a contract was finally awarded on the basis of lower net price to the Government.

GSA's FSS Procurement Letter No. 166 on "Benchmark Guidelines for Multiple-Award Contracting" (Exhibit H) permits Government discounts from commercial prices to be compared with wholesale discounts from commercial prices.

But what about firms which don't establish wholesale prices in terms of consistent discounts from Suggested Retail or which may not even publish wholesale prices in terms of discounts from any price? If such firms want to avoid the hassle of trying to get a contract based on discounts, they will be required to go along with the numbers game and publish a "commercial price list" and "wholesale discounts" so that FSS can mark-up its spread sheets. However, the system must provide more readily for firms not willing to manufacture commercial prices.

The certifications defined in H. R. 5381 will not correct the problems created by a Government pricing system which relies on a published commercial price list.

2. Unfair to Require Higher Discounts from Firms Which Sell Through Dealers Only

The GAO report gives several examples of the variation in benchmark discounts depending on marketing category. A specific example was provided earlier of higher discounts required from firms selling through Dealers than from firms selling through Branch Offices.



Assuming the accuracy of commercial prices submitted by firms in each category, there is no logic to requiring different discounts for each marketing category. Requiring higher discounts from Dealer-oriented firms merely reduces Dealers' compensation for sales expenses, service, and profit for Government sales while permitting Branch-oriented companies to reap higher profits. It places the manufacturer at a competitive disadvantage by reducing the incentive of Dealers to compete against contractors whose Branch operations receive greater compensation.

It is understood that GSA's real reason for reducing Dealer profits in Government sales was the fear of embarrassment if it became known that a Dealer sold at Government prices in the commercial market. This fear should not penalize all Dealers.

As discussed later in Section III, a Government pricing system based on fair compensation regardless of the marketing category is essential.

3. GSA's Consideration of Lowest Net Price - A Welcome Change

GSA's criticism concerning GSA's failure to look at lowest net prices appears to have been corrected. Commissioner Morris announced in his May 1 Senate testimony that in cases where multiple awards are continued, suppliers which do not meet the benchmark will be included in the schedule if they offer lowest net price.

This is a welcome change. However, what about firms which offer lowest net price unrelated to discounts?

4. Uneven Enforcement of Benchmark Requirements

The Exhibit H Benchmark Guidelines permit awards of contracts not meeting the benchmark by giving value to "other factors."

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Over the years, one typewriter manufacturer unwilling to meet the benchmark has received awards by providing ribbons, extra typing elements, platens, and other "goodies" which may not be needed by users.

5. Promoting Use of Blanket Purchase Agreements (BPAs) Increases Government Prices

As discussed earlier, the GAO report questioned why Agencies should be paying different prices for identical items based on BPAs.

GSA's program encouraging Agencies to expand use of BPAs, as announced by Commissioner Morris in the May 1 Senate testimony, is a disappointing step which will perpetuate a deceptive BPA system responsible for higher Government prices.

Inequities and uneconomical procurements caused by GSA's BPA policy are presented in the Exhibit I letter to the Office of Acquisition's Policy. Use of BPA's is provided for in Federal Procurement Regulations to reduce amount of paperwork for small (under \$5,000), repetitive orders on an open account basis. Rather than issue purchase orders for each requirement, ordering offices issue "calls" for deliveries and are billed monthly for all "calls."

GSA has distorted the use of BPAs by requiring multiple-award contractors to accept them. It negotiates contracts with higher discounts for larger quantities, then requires contractors to accept BPAs requiring single unit discounts at higher discounts.

As discussed in Exhibit I, contractors' more favorable quantity prices are in fact the single-unit prices, except for smaller Agencies without BPAs. Federal offices which actually have large definite quantity requirements pay



the same price as those which buy one unit under a BPA. Contractors do not give true quantity discounts to avoid the pressure of accepting a BPA at real quantity prices. The BPA system prevents Federal Agencies from obtaining the most favorable prices for large, definite quantity procurements.

Use of BPAs also requires Agencies to violate the justification requirement by making a BPA commitment in advance for what may not be the lowest priced item.

The BPA system penalizes firms which won't go along with the BPA farce and now offer to all Agencies, large and small, what used to be the BPA price. However, the BPA system places them at a competitive disadvantage against a contractor with a BPA commitment requiring an Agency to buy 100 widgets to obtain the most favorable price.

GSA's defense of its BPA monster in Appendix K doesn't answer the key question as to why an office which orders a large definite quantity of an item should pay the same price as an office which orders only one. The defense based on giving lower prices to Agencies which commit to buy large quantities over a period is ludicrous, inasmuch as in most cases, the total quantity ordered far exceeds the quantity price level.

In addition to preventing the most favorable contract prices to be obtained, the BPA system creates the added disadvantage that an Agency must create a contracting system which duplicates what should already exist in the multiple-award system. Agencies must issue the paperwork, and contractors must file monthly report of sales to each Agency under the BPA.

6. Secrecy in Requirements for Obtaining a Multiple-Award Contract Restrains Competition

When a new potential contractor asks a commodity buyer what discounts are required for a multiple-award contract, the response is that the information

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is confidential--that the offer should be based on the highest discount the firm can give for the privilege of having Agencies buy its products.

This policy is unfair and misleading.

It is unfair because, except perhaps for a firm which sells bibles, firms which are in business to make a profit establish commercial prices on the basis of production and selling costs, competitive requirements, and profit considerations. It is unfair not to provide any information on the nature of the Federal marketplace.

It is misleading because firms which know their way around can learn what discounts have been required at the Schedule Information Center.

Ground rules for obtaining a contract are available to some. Why not to all?



Section III: Recommendations on How to Obtain Fair Government Prices Within Improved Multiple-Award System

Information has been presented on why most of the products now available on multiple-award schedules can be provided to Federal Agencies in the future with the features and quality to meet their requirements only by improving the multiple-award system, not by replacing it with variations on acquisition techniques already proven to be failures.

The major issue to be resolved is how to obtain reasonable Government prices that will be fair to buyer and seller.

The weaknesses of the present system based on discounts from commercial prices were documented in Section II.

There is no magic answer presented in this Section. However, recommendations are made on approaches to developing a system for determining prices lower than those under the present system and still provide a fair and acceptable margin for the seller to cover profit and, depending on the product and method of distribution, applicable costs which may include any of the following: production or acquisition, shipping, installation, training warranty, commission, warehousing, profit for contractor, and profit for local sales/service organization, whether Branch Office or Dealer.

There is a precedent for use of this approach for determining Government prices for Dealers whose only market is the Government. Since many of these firms have no, or virtually no, commercial sales, Government prices obviously are not based on discounts from published commercial prices at which products are sold in large quantities. GSA awards contracts at Government prices based on a mark-up from Dealer acquisition cost.

I believe that reliable recommendations can be obtained from such organizations as the National Office Machine Dealers Association (NOMDA), National Office



Products Association (NOPA), Business and Industrial Furnitures Association (BIFMA), and others if they are convinced that GSA wants to develop a method for obtaining fair prices rather than unreasonable prices that will make the Government an undesirable customer which deserves poor quality merchandise and unsatisfactory service. Organizations provide vital sources of and vehicles for obtaining information on fair pricing for large-volume customers.

For contractors which sell through Dealers, wholesale prices which are now used as the basis for compensating Dealers for GSA contract sales already provide the foundation from which a fair mark-up can be developed.

For contractors which sell through Branch Offices, there is a "transfer cost" factor which is used as the basis for determining the profit or loss of the local office's operation. The "transfer cost" factor, which is now available under GAO audit, would become available to GSA under the proposed legislation and could be used to develop the Government price from a fair mark-up. Firms unwilling to provide this information as the mandatory price for access to the Government market should not be given a contract.

Large commercial users of the kinds of products bought by the Government, particularly those with numerous field offices, provide another vital source on how to develop fair prices. Many enter into National Account Agreements with several firms which offer similar products and let their field offices select.

As emphasized at the beginning, input should be obtained from present, former, and prospective contractors to determine their recommendations for how GSA can obtain fair prices.

Except for untypically large requirements, the improved multiple-award system should include reduced prices at graduated quantity levels for definite quantity purchases. As recommended in the Exhibit I letter to Acquisition Policy,

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contractors which now accept BPAs which give quantity prices for single-unit orders should be informed that the BPA price will be the basic price in new contracts and that lower prices will be required for graduated definite quantity requirements. To insure that the Government will obtain the lowest possible prices for large orders, GSA must assure contractors that the BPA game is over.

Most reputable suppliers would be gladly willing to be awarded a multiple-award contract with prices based on a fair mark-up and ground rules which would be applied to competitors as well. Most would like to avoid the present aggravation and hassle which must be experienced to get a GSA contract. Most would like to compete for Government business by demonstrating that their products are most responsive to Agency requirements.

A fair system for developing reasonable Government prices would remove the secrecy and mystery which now enshrouds multiple-award contract "negotiations." All sources of supply would know what is required to obtain a contract to sell to their Government.



Section IV: Self-Service Stores Policies Which Suppress Competition and Encourage Using Agencies to Bypass Procurement Regulations

In the May 1 Senate Subcommittee statement, Commissioner Morris described the Federal Supply Services' three methods of purchase:

- . 19,000 items purchased for 17 depots and 71 self-service stores and issued against requisitions from Federal Agencies.
- . Direct delivery to Agencies of definite quantities bought competitively.
- . Single and multiple-award Federal Supply Schedules.

Commissioner Morris indicated that purchases for depots and self-service stores are bought competitively based on past sales and anticipated demand.

In fact, however, self-service stores buy many items from multiple-award schedules - and not at the lowest price. How much is bought from multiple-award schedules, no one knows. In preparing for this presentation, I tried to determine. Exhibit K is GSA's response that no central records are kept on the volume bought under BPAs issued under Federal Supply Schedules. Appendix L is a list of multiple-award contractors with which GSA has BPAs for use by self-service stores.

Vendors with multiple-award contractors can't sell to self-service stores without a BPA. One has the mandatory schedule contract for specific ribbons. Some vendors with BPAs don't even offer quantity discounts, so what advantage does the BPA provide?

Exhibit M is GSA's August 3, 1979 policy governing stockage in self-service stores. It directed Regions "to canvas customer agencies and identify items for which there is an expressed official customer demand." It authorizes the

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procurement of "the lowest priced of similar or identical items on a multiple-award schedule."

After submitting an offer from Hilord Chemical Corporation, a small business manufacturer located in Hauppauge, New York, for a multiple-award contract for toner and dispersant used in liquid copiers, I met with the National Capital Region (NCR) self-service store staff to determine the criteria for stocking copier supplies, inasmuch as the brands stocked were the most expensive on schedule.

Exhibit N is my December 3, 1979 letter to the NCR Regional Administrator. It recaps the discussions with NCR self-service staff who expressed the position that:

- . They disagree with the national policy expressed in Exhibit M.
- . Requiring justifications for higher priced items bought from multiple-award schedules would be unworkable.
- . They are not qualified to determine what is the lowest priced item on a multiple-award schedule.

As stated in Exhibit N, if GSA personnel are not qualified to implement GSA regulations requiring justifications, how can GSA (or GAO) expect other Agencies to comply?

After receipt of NCR's response (Exhibit O), a meeting was held in January with the NCR Administrator and Assistant Administrator for Federal Supply. I explained that tests of the supplies by a number of Agencies had produced results as good as obtained with the copier manufacturer's supplies and that Hilord's prices will be lower than all others on schedule when a contract is



awarded. In response to the question as to what might prevent NCR from buying Hilord toner and dispersant for self-service stores after contract award, I was informed that Hilord would be bought for any Agency which justifies it.

Whereas Federal Procurement Regulations require justification for other than lowest priced multiple-award item, NCR buys the most expensive and requires justification for lowest priced!

Federal Supply Services' January 10, 1980 revised self-service stores stockage policy eliminates the requirement for Regions to justify higher priced items because "the Self-Service Store Committee has concluded that determination of the lowest priced brand/vendor for storage of an item is extremely difficult and generally impractical." The revised policy is in Exhibit T.

Exhibit P includes FPMR 101-26.408-4(c) which exempts GSA from the need to justify the most expensive items bought for self-service stores. If Agencies were to buy more than \$500 of high-priced items from a multiple-award schedule, they would have to justify. By asking GSA to buy, they can requisition \$499 at a time from the store and bypass the FPR.

Hilord was finally awarded a GSA contract two weeks ago! Prices are lowest on schedule. Tests at State, Commerce, Agriculture, Health and Human Services, Office of Personnel Management, Defense Supply Service, and Labor have proved Hilord supplies to be as acceptable in terms of quality of printwork and number of copies as those obtained with copier manufacturer supplies. Documentation has been obtained to support test results.

Some Agencies are told by their self-service store that they can't ask for a product which has no BPA. NCR says they won't ask Headquarters for a BPA without a specific request. Some store managers won't ask for another brand because they already stock two and don't have room for another.



The Catch 22 saga goes on and on.

Current self-service store policy not only permits Agencies to bypass regulations but favors large businesses from which CSA has been buying higher priced supplies. It discriminates against small businesses by erecting almost insurmountable obstacles to getting their lower priced items into the stores.

I recommend that legislation be considered to eliminate multiple-award schedules as a source of supply for self-service store items.



Section V: Questionable GSA Policies Permitting Multiple-Award Contract Awards to Third Parties Without Manufacturer's Approval and Awards to One Contractor for Competitive Products

This Section discusses some of the dangers of the current GSA practice which permits:

- . Award of Multiple-Award Contracts to Third Parties Without Manufacturer's Approval.
- . Award of Multiple-Award Contracts for Competitive Products to a Sole Source Contractor.

Examples of the dangers of each practice follow:

1. Award of Multiple-Award Contracts to Third Parties Without Manufacturer's Approval

GSA used to require that offers from Dealers be accompanied by a letter from the manufacturer certifying that sufficient quantities of products would be made available to the Dealer to meet the anticipated needs of the Government.

Elimination of this requirement permits any third party, not necessarily even a contractor's Dealer, to submit an offer without approval of the manufacturer. GSA's policy, when more than one offer is received for the same item (Exhibit Q), is to ask each offeror for best and final and to award the contract to the offeror with lowest net price.

This policy is not in the best interests of the Government. It permits GSA to deny a manufacturer whose offer has complied with the benchmark discount and is based on participation of all Dealers in favor of a single Dealer or other third party, thereby depriving the manufacturer of its right to determine how to market its products to Federal Agencies and depriving all other Dealers of the opportunity to participate in the manufacturer's GSA contract. There is always someone willing to make a quick buck with little effort.



The disadvantages and dangers of awarding contracts to third parties include:

- . A greedy Dealer with sales coverage in only one area may be willing to sell at a lower margin in order to be able to monopolize that area and freeze out all other Dealers and manufacturer's own sales organization.
- . That same Dealer may be willing to settle for mail order business from other parts of the country, from which he would have received no business under the manufacturer's contract permitting local Dealer participation or direct sales by company sales offices.
- . The manufacturer cannot compete effectively with other manufacturers which have their own GSA contracts and nationwide sales and service coverage.
- . Third parties which hold contracts for competitive products without approval of one or more of the manufacturers can emphasize the sales of one product and deemphasize others.
- . The practice discriminates against hundreds of small businesses which may be included in a manufacturer's Dealer network.

The disadvantages and dangers of awarding contracts for competitive products to a single contractor include:

- . The contractor can "orchestrate" the Federal marketplace by encouraging Agencies to buy more profitable brands instead of superior, more economical brands.
- . For contracts awarded without manufacturer approval, the contractor can freeze out that manufacturer.



- . When more than one brand is listed under a single contract number, there is no way to monitor the increase or decline of specific brands.
- . It is questionable as to whether the lowest Government prices can be obtained from a single source authorized by competitors to negotiate a GSA contract.
- . How can the benchmark system be effectively implemented when offers are received from the same party for competitive products?



Section VI: Inefficiencies and Costliness of Area Equipment Repair and Service Contracts

Some of the greatest Government ripoffs are many of the area equipment repair and service contracts awarded by GSA on the basis of competitive bids, especially those for office equipment. Examples of improprieties are cited in GAO's November 14, 1979 report entitled "GSA's Personal Property, Repair and Rehabilitation Program: A Potential for Fraud?"

In most cases, there is no way the successful bidder can afford to provide acceptable service at rates low enough to win the bid. Agencies have valid complaints about higher costs of longer and extra service calls and for additional equipment repairs caused by poor workmanship. It is understood that Agencies are often invoiced for new equipment parts which could only have been bought from the manufacturer, but manufacturers have no record of such sales.

Even if GSA tightens up on administration of service contracts as recommended by GAO, insuring that contractors invoice Agencies for hours worked will not insure quality of workmanship. In the case of office equipment, the Government would be better served by letting Agencies have equipment repaired and maintained by manufacturers' local service organizations under Federal Supply Schedule contracts awarded at rates charged large commercial users.



Section VII: Reduction in Paperwork Burden for Obtaining Government Contracts

Here are a few suggestions for reducing the paperwork burden involved in obtaining Government contracts:

1. Consolidate locations in bid packages for answering questions and providing required data. Current solicitations have spaces where boxes must be checked, questions answered, and information provided scattered throughout the bid package. Whoever prepares the bid or offer must put numerous pages into the typewriter, sometimes only to enter one item, such as a D and B number or a name. Preparing bids could be made easier by consolidating questions into two or three sequential pages.
2. Eliminate requirement for duplicate copies for single-award bids. An original and one copy are now required for all bids. The successful bidder's duplicate copy is signed by the contracting officer and becomes the contract. For bids where there will be only one winner, why not reduce the paperwork burden and postage cost for all bidders by letting them send in only the original? GSA could then duplicate and sign the award for the successful bidder.
3. Eliminate requests for unnecessary information. One example is that the solicitation requires that the name of offeror must be entered on seven different pages. A single entry would suffice.

Another is requesting year-end discounts. About a year and a half ago someone got the bright idea that contracts would not be awarded to firms not providing year-end discounts. Exhibit R presents reasons why the demand is unreasonable, unworkable, and unfair. The attempt at obtaining year-end discounts is another example of failure to comprehend how best prices can be obtained. The demand was dropped. But GSA still asks the question.



Exhibit S is a self-serving questionnaire on what the offeror would charge Agencies on the open market? Who knows? Who cares? Why ask?

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There are many other ways the forms could be revised to make it easier for offerors to provide essential and pertinent information.



Section VIII: Creating Environment That Will Enable the Government and Using Offices to Benefit from the Technological and Pricing Advantages Provided by a Free, Competitive Market Through Existing Commercial Channels

It is hoped that the information presented in this testimony will be considered by the Subcommittee in questioning the wisdom of GSA's implementation of the GAO recommendation for scuttling rather than strengthening and improving the multiple-award system. I believe it would be in the best interests of the Government for the Subcommittee to request GSA to suspend its program for dismantling the multiple-award programs until the issues addressed in this presentation have been examined.

Our competitive, commercial market, operating within a framework of Government regulations which protect the interests of the general public, has produced the highest degree of technological advancement in the world. Private firms which use the kinds of products used by Federal Agencies can choose from a wide variety of products available on the commercial market to meet requirements. The technology and expertise of American industry is not the result of Commercial Item Descriptions devised by any Commissar.

It is hoped that this Subcommittee will consider the issue as to when the Government may not be entitled to lower prices than large commercial users of the same products. As a taxpayer, I personally am in favor of reforms in GSA's procurement practices to assure that the Government is paying fair prices for products that meet the standards required by comparable commercial users.

However, it is hoped that the Subcommittee shares the view that there is a point of diminishing return in obtaining the lower than low prices on products for which service and maintainability are vital factors and whose usefulness and longevity are related to the quality of ingredient raw materials and



workmanship. GSA is living in a dream world if it expects lower prices for 35,000 calculators than for 15,000 calculators.

It is hoped that this Subcommittee will recognize that our Government should neither expect nor demand lower prices than those paid by large commercial users of the kinds of products used by Federal Agencies.

During the past two years since Federal Marketing and Consulting Services was established to find new sources of supply for the kinds of products bought by the U. S. Government, it has been shocking to learn how many reputable firms want no part of doing business with Uncle Sam because of previous bitter experiences with unreasonable demands for unprofitable terms and conditions, red tape, paperwork nightmare, late payments and, in general, conditions encouraging production of inferior products.

GSA has a long way to go to achieve the goal for GSA announced by former Federal Supply Service Commissioner William P. Kelly at a Furniture Industry Meeting on December 5, 1978:

"To make it a mutually advantageous place to do business, where you will want to sell to us because it's in your self-interest to sell to us, and where we will want to buy from you because it is in our self-interest to buy from you. . . I want to create the kind of competitive atmosphere and develop the kind of confidence on your part so that you think your government, the Federal Supply Service, is a legitimate organization, with legitimate purpose, with new creditability, so that we stop telling GSA jokes."

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EXHIBITS

<u>Exhibit</u>	<u>Subject</u>
A	June 8, 1972 Letter to GSA on Manual Typewriter Protest
B	National Office Machine Dealers Association "Hotline" on Inadequate Dealer Compensation for Manual Typewriter Service
C	GAO Comparison of State and GSA Prices
D	December 11, 1979 Letter Documents Why Accepting Late Offers Promotes Competition and Lower Prices
E	GSA's February 28, 1980 Defense of Rejecting Late Offers
F	June 21, 1979 Letter Questioning ADTS Policies Inconsistent With Those of FSS
G	ADTA Defense of Inconsistent Policies
H	FSS Procurement Letter No. 144 on Benchmark Guidelines for Multiple Award Contracting
I	December 3, 1979 Letter Discussing Inequities and Uneconomical Procurements Under Blanket Purchase Arrangements (BPAs)
J	GSA's February 12, 1980 Defense of BPAs
K	GSA May 28, 1980 Letter Explaining No Central Records Kept of Amount of Self-Service Stores Purchases Under Multiple-Award Contract BPAs.
L	List of Self-Service Stores BPAs
M	GSA August 3, 1979 Directive Requiring Justifications When Self-Service Stores Buy Other Than Lowest Priced Items from Multiple-Award Contracts December 3, 1979 Letter Questioning National Capital Region (NCR) Policy of Buying Most Expensive Items From Federal Supply Schedule Contracts Without Justifications
Q	NCR January 11, 1980 Defense of Not Buying Lowest Priced Items Unless Justified
P	Federal Property Management Regulation 101-26-408 on Justifications



<u>Exhibit</u>	<u>Subject</u>
Q	GSA's Procedures for Handling Duplicate Offers
R	Evaluation of Economic Advantages - Federal Supply Schedule Program
S	Letter Objecting to Requirement for Year-End Discount
T	GSA's January 10, 1980 Revised Self-Service Stores Policy Acceding to NCR Desire to Eliminate Need to Justify Costlier Items

Exhibit A

ROYAL TYPEWRITER COMPANY
Office Products

1700 Wisconsin Avenue, N.W., Washington, D. C. 20007 202 337-6316

June 8, 1972

The Honorable Arthur Sampson,
Acting Administrator
General Services Administration
18th and F Streets, N.W.
Washington, D.C. 20405

Reference: (a) Solicitation No. FPNH0-K-28592-A-5-24-72
(b) Royal May 24, 1972, Telegrams to the Comptroller General of the United States and to the General Services Administration
(c) Royal May 31, 1972, Letter to the Comptroller General of the United States.

Dear Mr. Sampson:

Notwithstanding the fact that Royal's protest before award on reference (a) is on file with references (b) and (c), we strongly urge if no award is made for this Solicitation that you consider the benefits to the Government of multiple award contracts for manual typewriters for FY 1973 as opposed to single source procurement on the basis of low bid. While we do not intend to withdraw our protest, we wish to bring to your attention the following:

1. Although there are savings in the initial cost of typewriters purchased only on the basis of lowest price, GSA has never made a study of the life span and maintenance cost of typewriters it has bought on low bid for other agencies in the past. It is possible that typewriters bought from a single source based on low bid may actually cost the Government more because of high maintenance costs and shorter life.
2. The attached copy of a July 6, 1971, report by the General Accounting Office reveals that the cheapest brand of typewriter purchased 8 and 9 years ago actually cost more because of higher repair bills and shorter life.

Mr. Larry A. Herrmann, Records Management and Services Officer for the General Accounting Office, feels that even though the data base is limited, their experience reveals that the typewriter with the lowest initial cost is not the most economical

for the Government overall. Mr. Herrmann indicated that the conclusion drawn from the study will not lead to procurement of only the most expensive typewriter on the Federal Supply Schedule. The General Accounting Office is now buying Royal electric typewriters, which are neither the least nor the most expensive typewriter on Schedule.

Although the General Accounting Office has not had widespread recent experience with the use of manual typewriters, it is Mr. Herrmann's personal opinion, as one who is involved with the selection of typewriters used by the General Accounting Office, that the purchase of manual typewriters by other Government Agencies from a single source on the basis of low price is economically questionable.

3. Agencies which have relied heavily on GSA in the past for the procurement of typewriters on low bid have abandoned that practice.
4. Veterans Administration, for which GSA used to buy thousands of typewriters on the basis of low bid, now permits contracting officers to purchase typewriters through Blanket Purchase Arrangements from multiple award Federal Supply Schedule Contracts.
5. The attached bulletin from the U. S. Postal Service, another former user of low bid typewriters bought by GSA states:

"The procurement of office machines via fixed quantity contracts has inherent drawbacks not associated with the use of Blanket Purchase Arrangements. The use of BPAs provides a larger array from which to select a machine suitable to the need and also results in procurement economy."

6. The number of higher price typewriters used by GSA is further indication of the fact that the cheapest product does not always meet the requirements of all users.
7. Only time can tell whether typewriters manufactured for sale at a low price have defects that will affect their reliability, maintainability, and longevity. Lowest price typewriters that have been purchased for some Agencies have revealed lower durability, decreased reliability, more costly maintenance, and shorter longevity factors associated with and inherent in products built to sell at the lowest price. If these same typewriters had been the single source of

supply for all Agencies, the impact on operational efficiency would have been devastating and the overall cost to the Government, staggering.

If the award is not made to Royal as the only responsive bidder for this Solicitation, Royal respectfully urges that before thousands more manual typewriters which may cost the Government more in the long run are introduced into the supply system, you once again permit Agencies to purchase manual typewriters from multiple award contracts in accordance with the Federal Property Management Regulations and thereby restore to the Government the advantages of providing effective utilization of industry production and distribution facilities and of providing selectivity from among comparable items.

Respectfully,

William Grots,
Director of Federal Marketing

US:mg

cc: General Accounting Office

Comptroller General of the United States
P. G. Dambling
L. A. Harrahn
R. Strong

General Services Administration

U. G. Haplanos
H. S. Racker
U. U. Thybony
L. E. O'Sullivan

Exhibit B

HOTLINE

GSA Contract
to Remington

According to Peter Mollica, deputy assistant commissioner for procurement at General Services Administration, the GSA one-year contract with Remington Rand for manual typewriters with carriage sizes from 11 to 21 inches, will amount to an estimated \$3,700,000. The estimated number of 27,000 units as reported in *Gayors Dealer* article was confirmed by another GSA source, and works out to an average unit price of \$137.04, as compared with *Gayors'* estimate of \$140 for last year of \$160,000 each for *Gayors'* estimate. This comes to an estimated savings of \$231,000 over last year's government system of purchasing department to choose their own manufacturer. If the GSA is correct with the results of this year's single source procurement plan for manual typewriters, it is anticipated that the plan will be applied to other office machinery.

When asked for comment on the GSA contract, Bob Welton, co-chairman of NOBMA's legislative committee, made the following statement: "The two-year purchasing program instituted by GSA has resulted in lower prices for the government, first on portable typewriters and now on manual typewriters. The program, if allowed to continue uninhibited, will cover encompass all types of office machines. Some manufacturers are blinded by the prospect of volume orders and offer extremely low prices to GSA. The manufacturers in turn are reducing the dealer's participation in sales to the point where the dealer loses money on each machine that comes into his territory for delivery, installation and guarantee to a governmental agency.

It is extremely important that the dealer realize that GSA's

two-step contract is made between the manufacturer and the government and the dealer is not a party to the contract. The contract calls for the manufacturer to deliver the machine to the using agency, not the dealer. The government agency must inspect the machine upon receipt. If the machine is not functioning properly or should there be a call on the warranty, the manufacturer, not the dealer, must render service within 24 hours or be in default of his contract. We urge each dealer to be realistic for himself whether the amount of money paid to him by a manufacturer on government orders makes it profitable for him to handle the sale of business. If the contract is made for the dealer to make a profit, then the dealer cannot be expected to understand a manufacturer's low price. The dealer should turn down this type as well as all types of unprofitable orders. The manufacturer who is a party to the two-step contract made his own deal with the government and should be prepared to live with it.

The aware independent office machine dealer will not invest his own money to get the manufacturer off the hook. The manufacturer did not consult with the dealer before negotiations and therefore cannot count on dealer support at the expense of dealer profits.

A reminder of the cost of providing warranty service is on page 5.

Exhibit C

<u>Commodity</u>	<u>Product model</u>	<u>Multiple award schedule unit price</u>	<u>State unit price</u>	<u>Difference</u>
Calculator	Sharp CS-4263	\$319.20	\$231.50	\$ 87.70
	Sharp CS-4163	279.20	226.26	52.94
Dictation equipment	Lanier ED-D	346.26	a/148.50	197.76
	Lanier ED-T	346.26	a/148.50	197.76
	Lanier ED-C	385.41	a/172.50	212.91
Typewriters	Olympia			
	GSNFR-13	495.04	342.73	152.31
	Olympia			
	GSNFR-15	518.06	352.24	165.82
	Olympia			
	GSNDR-13	518.06	359.80	158.26
	Olympia			
	GSNDR-15	541.09	374.75	166.34
Lamps	Sylvania			
	1500-99-XL	7.09	4.14	2.95
	Sylvania			
	F100-T15-CW	3.96	2.35	1.61

a/The vendor for the State said that a "bid machine" was furnished to the State. This machine is not the same one as on the multiple award schedule. Shortly into the contract period with the State, the vendor began supplying the same equipment as on the multiple award schedule, because production of the bid machine was halted. The State received the same prices for this comparable equipment. We believe that the approximate 50-percent price differential is representative, based on our review of bids of other vendors for identical equipment as on the multiple award schedule.

Contract terms for delivery, prompt payment, warranty, and minimum order under the five State contracts are mostly comparable or slightly better than terms under FSS multiple award contracts for the same products. The following table summarizes the results of our comparison.

<u>Term</u>	<u>Terms better</u>		<u>Terms identical</u>
	<u>State</u>	<u>FSS</u>	
Delivery	-	-	5
Prompt payment	3	2	-
Delivery time	5	-	-
Warranty	3	-	2
Minimum order	1	1	3

Exhibit D

FEDERAL MARKETING AND
CONSULTING SERVICES

William Grote, President

December 11, 1979

Mr. Gerald McBride
Assistant Administrator for Acquisition Policy
General Services Administration
Room 6002, GS Building
Washington, D. C. 20405

Dear Mr. McBride:

As stated in my December 3 letter commenting on the current Market Purchase Arrangement system under Federal Supply Schedule contracts, as time permits, I plan to submit recommendations for improving the Federal procurement process. I also plan to submit comments on the criticisms and recommendations included in the Comptroller General's Report No. C-114807 issued May 2, 1979 on "Ineffective Management of GSA's Multiple Award Schedule Program-- A Costly, Serious, and Longstanding Problem."

The enclosed rejection by GSA's Region 10 of an offer from J. P. Hughes International, Inc., for a contract for inflatable boats under FSC 19 has prompted the preliminary comments in this letter on my disagreement with the GAO report's criticism on page 20 entitled, "LATE OFFERS HINDER COMPETITION". (My disagreement with this criticism lies in with my conviction that the entire benchmark concept wastes time and money in so-called "negotiation", impedes competition, and fails to provide the lowest possible prices for the Government.) This letter expands on the justifications for accepting late offers discussed in my November 26, 1979 letter to Mr. Leroy Roberts, Region 10's Assistant Regional Administrator, FSS.

The GAO report states on page 20 that in one case, if two late offers had been received on time, a higher benchmark would have been established. The report failed to recognize, however, that contractors always have the opportunity and right to increase their discounts and thereby lower net prices to the Government at any time during the contract period. If the "on-time" contractors felt that the "late-offer" contractors' higher discounts gave them a competitive edge, the "on-time" contractors which had established the benchmark would certainly have increased their discounts if lower prices were necessary.

In addition to the possibility that accepting late offers with higher discounts may result in lower prices from "on-time" contractors through amendments during a current contract year, there is additional benefit of establishing a more favorable benchmark to be used the next contract year.

Exhibit D



Mr. Gerald McBride

Page Two

The schedule on page 21 of the GAO report provides the best reason for accepting late offers-- increased competition and a greater choice for Federal Agencies.

Of the total of 1,033 offers received for the schedules listed, only 474 were received on time, while 559 were received late. If late offers had not been accepted, procurements by Federal Agencies would have been restricted to less than half of the firms which ultimately received contracts. More than half of the firms would have been denied the opportunity to compete for Government business.

It is obvious that rejecting late offers would have impeded competition and stifled the opportunity for the Government to take advantage of improvements in the state of the art which new companies may have developed since the beginning of a contract year for a specific Federal Supply Schedule. In addition, failure of GSA to accept late offers would create just one more of the already almost insurmountable obstacles which discourage reputable firms from wanting to do business with the Government.

The GAO report's criticism that accepting late bids "adds to the enormous volume of schedule modifications each time a subsequent contract is awarded" has virtually no merit. The cost of schedule amendments is a small price to pay to promote competition in the economy, especially in view of the enormous amounts spent by the Government to help firms through programs sponsored by the Small Business Administration, the Commerce Department, GSA Business Service Centers counseling programs, and various categories of Set-asides.

The final criticism by GAO that GSA's acceptance of late offers "places the vendors who submit late bids at a competitive advantage because they are given an opportunity to learn what their competitors are offering prior to submitting a bid" is also an invalid criticism. The Freedom of Information Act enables potential offerors which choose to wait for the next contract year to submit an offer to determine the benchmarks established for the previous year. Any significant deviation from year to year of a benchmark for a specific schedule would correctly indict the validity of the entire benchmark concept.

Specifically concerning the last point, one of Federal Marketing and Consulting Service's clients which submitted a late offer was recently awarded a contract on the basis of having complied with the 20% benchmark discount established for that Schedules specific Item Number in previous years. However, shortly after contract award, our client increased its discount to 30%, without any GSA requirement to do so. GSA's rejection of late offers would deny the economies which a competitive marketplace can provide for the same products available in the commercial market.

I told Mr. Roberts in our telephone discussion about his rejection of the Hughes offer that I would request a ruling from your office, because of the reasons stated in this letter and my letter to him, and because of the lack of a national GSA policy on the acceptance of late offers for multiple-award solicitations at the time the solicitation was issued.

FEDERAL MARKETING AND
CONSULTING SERVICES

Exhibit D.

Mr. Gerald McBride

Page Three

Office of Contracts Procurement Operating Policy No. 4 was issued October 26, 1979 on the subject of "Firm cut-off dates - Federal Supply Schedules". The notice stated that all new solicitations for multiple award Federal Supply Schedules issued after that date must include a clause stating that late offers would not be accepted. The notice further stated that solicitations already issued where offers were not yet due or where no contracts had been awarded for opened offers could be amended to establish firm cut-off dates.

A contract for the FSC 19 solicitation (to which the enclosed Hughes offer responds) was awarded to Johnson Outboards on October 24, 1979, two days before the new policy statement was issued. Notwithstanding the fact that amendment no. 1 to the solicitation stated that "offers must be received by this office no later than 10/16/79", rejection of the Hughes offer would be discriminatory and unfair to this new small business in view of the lack of a national GSA policy on late offers at the time the solicitation was issued and opened. Central Office continues to accept late offers for solicitations issued and opened prior to the October 26 directive. It is requested, therefore that your office authorize Region 10 to negotiate the Hughes offer.

More important than the ultimate decision for this specific offer, however, is the recommendation that the new policy on not accepting late offers be reconsidered for the reasons stated in this letter. I understand from Mr. Hailey that intention to change the policy had been announced in the Federal Register. I would appreciate the opportunity to review the file on public response to this announcement to determine if there are any factors other than those cited in the GAO report to support the new policy. There appears to be greater evidence that accepting late offers is more advantageous to the Government, taxpayers, and the business community in terms of lower prices, increased competition, and decreased restrictions on firms which want to do business with the Government.

Very truly yours,

William Grote

WG/gf

cc: Mr. E. G. Hailey, Acting Director, Office of Contracts, FSS
 Mr. LeRoy Roberts, Jr., Assistant Regional (10) Administrator, FSS
 Mr. J. Peter Hughes, President, J. P. Hughes International, Inc.



General
Services
Administration

Office of
Acquisition
Policy

Washington, DC 20405

Exhibit E

28 FEB 1980

Mr. William Grote
President, Federal Marketing and
Consulting Services
3714 Manor Place, NW.
Washington, DC 20007

Dear Mr. Grote:

This is in response to your letter of December 11, 1979, wherein you expressed an objection to Region 10's rejection of the J. P. Hughes International, Inc., offer on solicitation 10PN-HRS-6564 for Small Craft and Marine Equipment because it was received after the scheduled opening.

A draft of the GAO audit report referenced in your letter was received by this office on March 28, 1979. Subsequently, on April 19, 1979, we issued direction to the Federal Supply Service to strictly adhere to the requirements of the Federal Procurement Regulations (FPRs) with respect to acceptance of late proposals. The actions taken by Region 10 were in consonance with this direction.

The need to maintain a procurement system characterized by discipline and integrity requires that we adhere to the position taken by Region 10. We will, therefore, not overrule their decision in this matter.

As to the other points made in your letter, we expect Government purchasing personnel to make maximum use of available competition to achieve the lowest practicable price for the goods and services we buy. However, the unrestrained acceptance of late offers implicit in your letter would result in auctioning which is not an acceptable procurement technique.

It is our opinion, based on many years of experience, that the Government obtains the maximum benefits of competitive marketing forces by strictly adhering to the late offer procedures set forth in the FPRs. These procedures not only assure that each offeror is treated fairly, but that our administrative burden is reduced to a minimum. Also, experience shows that when we enforce the late offer procedure consistently, offerors generally meet the deadlines.

We thank you for your interest in our contracting program and if I can be of further help, please let me know.

Sincerely,

GERALD MCBRIDE
Assistant Administrator
for Acquisition Policy



FEDERAL MARKETING AND
CONSULTING SERVICES

William Grote, President

June 21, 1979

Exhibit F

The Honorable Frank J. Carr, Commissioner
Automated Data and Telecommunications Service
General Services Administration
Room 3240 GS Building
Washington, D. C. 20405

Dear Mr. Carr:

Federal Marketing and Consulting Services is representing The Swingline Company in negotiations with the General Services Administration for a contract for Swingline decollators and burster currently classified by the GSA as "Office Machines" but to be reclassified as "General Purpose Automatic Data Processing Accessorial and Support Equipment" effective July 1, 1979.

This letter is addressed to your office because of the possibility that a protest will be filed with the Comptroller General and a request will be made that the office of the Administrator review conflicting policies of the Automated Data and Telecommunications Service and the Federal Supply Service.

As shown in the attached Federal Supply Schedule Catalog price list, Swingline holds a current contract which expires June 30, 1979 for two models of decollators awarded April 26, 1979. The contract was amended to include the Swingline burster effective May 22, 1979.

The General Services Administration had accepted the terms and conditions of Swingline's offer for decollators for a new contract for the period of July 1, 1979 through June 30, 1980. However, the attached copy of Swingline's May 17 letter withdrew the offer for decollators at the request of the Federal Supply Service because the items had been transferred to ADTS.

Swingline's offer for a GSA contract for its decollators and bursters was resubmitted to the GSA (ADTS) on May 29, 1979. The offer included Maintenance rates because Mr. Lynham had informed us that the GSA would deny Swingline a contract for the purchase of decollators and bursters without a contract for either Repair Service or Maintenance rates. As indicated in amendments to the May 29 offer requested during negotiations, Swingline has reluctantly submitted

an offer for Repair Service in spite of objections based on the reasons stated in the amendments to the offer.

The new GSA requirement for either Repair Service or Maintenance rates to qualify for a contract for the purchase of decollators and bursters provides the first reason that a request may be made for review by the office of the Administrator. The GSA has been awarding contracts to manufacturers of decollators and bursters for years without the requirement for a Repair Service or Maintenance contract rates. Contractors' catalogs for current contracts state that these services are available at regular commercial rates.

Either the Federal Supply Service is wrong in having awarded and continuing to award procurement contracts for paper-handling equipment without Repair Service or Maintenance contracts, or the Automated Data and Telecommunications Service is in error in insisting on package deals and in being unwilling to let Federal Agencies reimburse firms for providing repair service at the same rates charged commercial customers.

We are considering a request that the Administrator develop a uniform policy for paper-handling equipment applicable to both PSS and ADTS.

Swingline's current contract with the GSA for the purchase of decollators and burster is based on a discount of 15% from Suggested Retail Prices. The current GSA contract has a Maximum Order Limitation of \$75,000. This discount and MOL had been accepted by the GSA for a new contract effective July 1, 1979 before the items were transferred to ADTS.

Swingline's May 29 resubmission to the GSA included the same 15% discount which qualified for the current GSA contract for decollators and burster and, more significantly, will qualify Swingline for a new contract effective July 1, 1979 for related paper-handling equipment (collators and electric letter openers).

When informed that a contract would be denied because quantity discounts were not offered, Swingline reluctantly agreed to a 10% discount for quantities of ten or more in order to expedite a contract award effective July 1, 1979, the day after Swingline's current contract expires.

This requirement for quantity discounts provides the second reason for requesting a review by the office of the Administrator. The GSA has historically awarded and continues to award contracts for paper-handling equipment without quantity discounts. Swingline's current contract with the GSA does not include quantity discounts. IBM has never been required to provide quantity discounts.

amount even though an estimated 95% of the electric typewriters purchased by Federal Agencies are from IBM's GSA contracts.

We are considering requesting the Administrator to develop a uniform policy concerning quantity discounts applicable to both ADTS and PSS.

As discussed with Mr. Douglas A. Crone, Director of the ADP Procurement Division of the Office of Automated Management Services, after the most recent negotiations on June 20, current indications are either that Swingline will not be awarded a contract for decollators and burster or a recommendation will be made that a contract be awarded with a Maximum Order Limitation of one machine because the discounts offered were considered to be unacceptable, compared with Swingline's Dealer discounts. (We do not believe that adequate consideration was given to the \$18-20 value of the PCB destination factor offered to the Government but not to Dealers.)

The problem appears to be based on quantity discounts received by Dealers compared with discounts offered to the Government. Swingline Dealers participating in Swingline's GSA contracts are required to provide service and therefore purchase in quantities qualifying for the maximum Dealer discount. The difference between Dealer and GSA discounts are those which have been acceptable to the GSA for contractors which market through Office Machine Dealers. The spread has been accepted by those in the GSA familiar with operating expenses of Office Machine Dealers, some of which are outlined in Swingline's June 7 amendment. (The smaller Dealer quantity discounts are made available to Swingline Office Products Dealers which do not have active marketing programs for the sale of Swingline business machines and, therefore, do not incur the business expenses of Office Machines dealers actively marketing Swingline business machines. In general, Office Products Dealers buy in smaller quantities at lower discounts to fill specific orders from their customers for Swingline business machines.)

ADTS's demand for higher discounts would simply dip into the pockets of Swingline Dealers by decreasing the difference between GSA and Dealer discounts. How little profit will ADTS permit these small businesses to earn in order for Swingline to qualify for an award?

A one-machine MCL contract at discounts offered would require an Agency requiring two decollators to prepare two orders-- one citing the GSA contract and the other open market.

A protest will be filed with the Comptroller General and a review will be requested by the office of the Administrator if either the Swingline offer is rejected or an award is made with a one-machine MCL, inasmuch as Swingline's current offer includes more favorable discounts than those which qualified for the current contract with a \$75,000 MCL.

A final comment concerning the requirement by ADTS for coverage in the

48 contiguous states is not related to the current negotiations for a Swingline contract.

It is respectfully suggested that ADTS reevaluate its requirement for national coverage, because it is possible that this restriction is denying Federal Agencies in some sections of the country the opportunity to obtain under a GSA contract sophisticated and unique technology for automated data and telecommunications equipment which may be available from a new and innovative small business not yet ready or capable of providing national coverage.

This ADTS requirement for national coverage conflicts with programs of other Federal Agencies and other GSA components.

The Small Business Administration supports aggressive programs to subsidize and assist new small businesses to enter and operate efficiently in the commercial and Federal marketplaces. Some Federal procurements are set-aside for small businesses. Likewise, the Department of Commerce's Economic Development Administration provides grants and underwrites loans to help small businesses operate profitably.

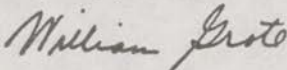
Within GSA, the Federal Supply Service awards contracts without national coverage. The GSA provides a counselling service to assist small businesses who want to obtain GSA contracts. GSA also participates in regional conferences in conjunction with other Agencies to inform local businesses on how to do business with the Government.

The enormous paperwork burden of submitting and negotiating an offer with the GSA is enough to discourage most small businesses from even trying to obtain a GSA contract. However, the additional national coverage obstacle presented by ADTS prevents high technology small businesses which may be selling successfully in the commercial market on a regional basis from doing business with the US Government. Such firms may not yet be capable of providing service on a national basis. In addition to preventing some potential small business suppliers from selling in the Federal marketplace, this ADTS requirement also denies Federal Agencies in some locations the benefits available from equipment provided by regional suppliers.

- - - - -

It is hoped that Mr. Crone's review will lead to a prompt award effective July 1, 1979 based on the terms and conditions of Swingline's current GSA contract so that Swingline Dealers will not be required to overcome the obstacle of trying to sell on an open market basis during this critical quarter of the Government Fiscal Year.

Very truly yours,



William Grote

WJ/etj

cc: Mr. Douglas A. Crone, Director
ADP Procurement Division



General
Services
Administration

Automated Data and
Telecommunications
Service

Exhibit G

Washington, DC 20405

JUL 10 1979

Mr. William Grote
President, Federal Marketing
and Consulting Services
3714 Manor Place, NW
Washington, DC 20007

Dear Mr. Grote:

Thank you for your letter of June 21, 1979, which expresses your concern over the manner in which the Government awards certain contracts.

Your letter indicates that Swingline had a contract with the Federal Supply Service (FSS), but that as a result of the equipment being transferred to the Automated Data and Telecommunications Service (ADTS), certain features of your FSS contract were not acceptable to the ADTS contracting staff. You have expressed concern regarding the "... conflicting policies of the Automated Data and Telecommunications Service and the Federal Supply Service."

During the early years of the Schedule program for automated data processing equipment (ADPE), this program was under the Federal Supply Service. Accordingly, the policy for ADPE was identical to the policy which was applicable to the other commodities which FSS contracted for under various multiple award schedule programs. During this period, the General Accounting Office made a study of the acquisition of ADPE by the Government and filed a report to the 89th Congress which was extremely critical of the then existing procurement practices. The 89th Congress considered this report to be of sufficient severity to warrant the passage of specific legislation concerning the acquisition and use of ADPE. This legislation, (Public Law 89-306), in effect, directed GSA to cease its existing procurement practices, and to develop new procedures applicable to the acquisition and use of ADPE. It follows that there are differences in the policies of ADTS for ADPE and the policies of FSS for the commodities under its jurisdiction. These differences are consistent with PL 89-306 and the needs of the Government agencies.

Your letter objects to the ADTS policies concerning:

1. Our requirement for either maintenance or repair service as part of our ADP Schedule contracts;
2. Our requirement for national coverage;
3. The Maximum Order Limitation; and

Exhibit 6

2

4. A requirement for quantity discounts.

The following quotes from PL 89-306 relate to the first three issues:

"The Administrator (GSA) is authorized and directed to provide by contract or otherwise for the maintenance and repair of such equipment."

In addition, PL 89-306, "provides for the economic and efficient purchase, lease, maintenance, operation, and utilization of ADP equipment by Federal departments and agencies."

Further answers to your questions and issues are enumerated below:

1. Our requirement for service is consistent with the requirements of PL 89-306 and the needs of Federal agencies. Tens of thousands of orders are issued for service each year under the ADP Schedule Program. If we chose not to provide centralized contracting for repair and maintenance, the Federal agencies would be forced to negotiate tens of thousands of separate annual contracts to meet their service requirements. Such a position on our part would create a tremendous administrative burden throughout the Government and would be in direct conflict with our mandate "to provide for the economic and efficient ... maintenance ... of automatic data processing equipment by Federal departments and agencies." It is interesting to note that our ADPE contractors have endorsed the concept of centralized contracting for service. This concept enables our contractors to also avoid the considerable administrative expense of negotiating a separate contract with each customer.

Furthermore, the Government is willing to reimburse vendors for such maintenance or repair service at fair and reasonable commercial rates. However, in order to determine the reasonableness and fairness of such rates, either through cost or price analysis, they must be quoted in the offer submitted. These rates must be established prior to award as such prices are awarded on a firm, fixed price contractual basis. These maintenance/repair rates are not subject to change during the life of the contract. In addition, resultant contracts are awarded to prime contractors, not to a myriad of authorized service dealers acting in behalf of the prime. Therefore, we cannot enter into a contractual arrangement for maintenance/repair services on an available-outside-the-scope-of-contract basis, as Swingline suggests.

2. Our requirement for national coverage. This requirement is also consistent with PL 89-306 and the needs of Federal agencies. PL 89-306 directs the Administrator to "provide for the economic and efficient purchase, lease, maintenance," etc. of all ADPE, not just

Exhibit G

3

that which may be located in certain parts of the United States. The requirements of Federal agencies exist throughout the 48 contiguous states and DC. The national scope of our contracts, together with the inclusion of service, also provides the Government the flexibility to relocate equipment in an economic and efficient manner. The receiving Government facility simply issues an order against the appropriate ADP Schedule contract for the resumption of service at the new location.

Your letter contends that "the additional national coverage obstacle presented by ADTS prevents high technology small businesses which may be selling successfully in the commercial market on a regional basis from doing business with the U. S. Government."

This conclusion is not correct. The ADP Schedule Program is not mandatory. One of the primary reasons for this decision was that we recognized, many years ago, that there are companies that may want to do business with the Government on a regional basis. Furthermore, our regulations explicitly require Federal agencies to consider all sources of supply, irrespective of the existence of Schedule contracts. Please refer to Special Provisions, Paragraph 1e., of the offer which you have been negotiating with our Schedule Contracts Branch.

3. The Maximum Order Limitation (MOL). The MOL is developed by GSA within the context of a particular schedule program. A MOL which is appropriate for one schedule program may not be appropriate for another schedule program. Considering the wide divergence of machine prices within the ADP Schedule Program (machine prices range from a few hundred dollars up to 1.5 million dollars), a simple dollar MOL, such as \$75,000, is obviously not appropriate. More importantly, a \$75,000 MOL would create a gross inequity between contractors under our program. A contractor whose machines cost \$10,000 would have a MOL of 7 machines. Another contractor, (such as Swingline), whose machines cost \$300, would have a MOL of 250 machines. For the reasons indicated above, we do not intend to employ a simple dollar volume MOL.

4. A requirement for quantity discounts. ADTS does not have a requirement for quantity discounts. However, the Government solicits and negotiates for economic advantage over normal commercial marketing and sales practices. Our national ADP Schedule solicitations specifically state: "ADP Schedule contracts are entered into only when the Contracting Officer determines that prices and terms are sufficiently more advantageous for the Government than the contractor's commercial selling prices and terms."

Exhibit G

4

In addition, you state, on the subject of the reasonableness of the discounts offered to the Government: "the problem appears to be based on quantity discounts received by Dealers compared with discounts offered to the Government." In determining the reasonableness and fairness of price and economic advantage to the Government, regulations require, as a minimum, that a cost or price analysis be conducted. Law and the Federal Procurement Regulations exempt established catalog prices from the need to conduct cost analysis if four conditions are met. (The act of determining that all four conditions are met is a form of price analysis). The Contracting Officer must evaluate, case by case, if the price is based on: (1) an established catalog price, (2) of commercial items, (3) sold in substantial quantities, and (4) to the general public.

According to the information provided in Swingline's proposal, the prices offered the Government are not based on sales to the general public. As shown on page 25 of Swingline's proposal, (Standard Form 33), all sales are made to dealers. Items sold to affiliates of the seller are not sales to the general public. Furthermore, your firm did not and would not submit cost data to support the reasonableness of the prices offered. Consequently, the contracting officer must determine both the reasonableness of prices and the amount of the Maximum Order Limitation on the prices and terms offered to Swingline's affiliates.

Swingline is offering its products to the Government through dealers. The Government realizes that manufacturers must offer trade discounts to middlemen in payment for legitimate marketing functions which they will perform. A price analysis will be conducted by the contracting officer in accordance with Federal Procurement Regulation 1.3-807 to determine reasonableness of prices offered the Government. These prices will be analyzed with and compared to the prices offered Swingline's affiliates. Should a manufacturer offer quantity discounts to customers to help effect real economies and efficiencies in production, selling and distribution, the Government should also receive fair and reasonable quantity discounts for similar quantity procurements which engender such economies. We agree with your contention that noncumulative quantity discounts are expected to encourage large orders from your dealers. However, many marketing expenses, such as billing, order filling, shipping and salesmen's salaries, are relatively constant whether a seller receives a large or small order. Consequently, selling expenses as a percentage of sales normally decrease as the order becomes larger. In no instance, will the Government pay an unfair share of a manufacturer's and dealer's profit, nor does the Government intend to subsidize a manufacturer's sales to its affiliates by accepting a disproportionate ratio of discounts at various quantity levels.

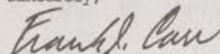
Exhibit G

5

Swingline's best and final offer to the Government is currently being evaluated by the Contracting Officer. All contracting officer decisions and recommendations are subject to review by higher level procurement officials. Such review will ascertain if the recommendations of the contracting officer are based on legal sufficiency, on applicable laws and regulations, as well as sound business practice.

If we can be of any other assistance, please let us know.

Sincerely,



FRANK J. CARR
Commissioner

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION



DATE: DEC 24 1974
REPLY TO: FPS
ATTN OF:

Federal Supply Service
Washington, DC 20406

SUBJECT: FSS PROCUREMENT LETTER NO. 144
Benchmark Guidelines for Multiple-Award Contracting

TO: All FSS Procuring Activities (FPP Distribution List)

1. Background: It has been a long-standing objective of this office to issue procedural instructions for benchmark negotiations. The evolutionary nature of the benchmark concept as well as the complexities that are implicit in multiple-award contracting have caused us to delay issuance of such procedures; but after considerable operating experience, and after obtaining the views of managers who direct multiple-award contracting programs, we have developed the attached guidelines for benchmark negotiations.
2. Instructions: These guidelines are presented in a general format because it would be impracticable to develop procedures that cover the many and varied circumstances which may arise, and, because procedures that are overly detailed may inhibit the use of innovative and case-relevant negotiation practices.

Questions will, of course, arise concerning these guidelines because some of their statements may be considered too general or because they may not readily accommodate particular conditions. However, they should prove suitable for most situations, and every reasonable effort should be made to maximize their use when negotiating multiple-award contracts.

3. Special Cases: Departures from these guidelines are authorized for special cases with the approval of the cognizant Procurement Division Directors. This office is available to advise and assist Procurement Activities in this area, as appropriate.



F. P. BUNKE
Assistant Commissioner
for Procurement
Enclosure

Exhibit H

BENCHMARK GUIDELINES FOR NEGOTIATING
MULTIPLE-AWARD FEDERAL SUPPLY SCHEDULES CONTRACTS

I. GENERAL:

Multiple-award Federal Supply Schedule contracts may be negotiated in commodity areas where an appropriate Finding and Determination has been prepared and approved. Such Schedules provide Government agencies with sources of supply for items of various manufacturers and differences in performance, which will meet their specific needs, efficiently and economically. The benchmark discount technique is used to negotiate, from established commercial pricelists, discounts that are commensurate with the Government's volume of purchases.

A benchmark is a criterion (expressed as a basic discount, a discount spread, or a discount ratio) established by the contracting officer as the minimum goal in negotiating a multiple-award contract for a specific item and marketing category.

II. COMMERCIAL PRICELISTS:

In multiple-award negotiations, established commercial pricelists are used as a measure of the quality and value. Therefore, contracting officers must ensure that the offers considered for benchmark evaluation include valid commercial pricelists, conforming to the criteria set forth in FPR 1-3.807-1 (b)(2). An offer that is not attended by such a pricelist should not be included in any of the marketing categories shown below, unless the Contracting Officer decides to accept the pricelist subsequent to receiving the offer. Although all offerors may utilize pricelists published by manufacturers, dealers may also utilize their own published pricelists.

III. GROUPING OFFERS IN MARKETING CATEGORIES:

By grouping the offers into categories on the basis of the items and marketing practices involved, the benchmark to be developed and subsequent negotiations will be tailored to offerors that are competing on a similar basis.

It is imperative that the items involved in a particular group be of a like nature. An offeror's ability to extend discounts to the Government is often determined by the applicable marketing practices. Additionally, it would be unrealistic to expect a manufacturer and a dealer to extend similar discounts because the latter is often encumbered with additional selling or servicing costs.

Exhibit H

On the basis of the information in the offers, or other reasonably available information, each offer should be identified under one of the following marketing categories:

1. Manufacturer having no established dealers, offering to sell directly to the Government.
2. Manufacturer having dealers, offering to sell to the Government with dealer participation. (The extent of dealer participation may vary; e.g. the dealers may or may not receive orders and payments directly).
3. Manufacturer having dealers, offering to sell directly to the Government without dealer participation on Government sales.
4. Dealer offering to sell directly to the Government. (From the standpoint of marketing categories, a dealer is an offeror who is not the manufacturer, but who sells an item manufactured by another firm which is identified by the name of the manufacturer).

Generally, offers for foreign-source items are not used for the purpose of establishing the benchmark, except when all the offerors in a marketing category are offering foreign-source items.

IV. METHODS OF DISCOUNT COMPARISON:

Solicitations for multiple-award contracts require that offerors submit certain sales information, and in this regard the Discount Schedule and Marketing Data format illustrated in GSPR 5A-76.313 must be used. After considering this information and the overall nature of the offers received, the contracting officer must select the method of discount comparison that he deems most equitable to the offerors and advantageous to the Government. Several methods of discount comparison are available, but once a particular method is selected, it must be used consistently in evaluating all offers for the items and marketing category involved.

The primary methods of discount comparison follow:

1. Basic discount: This method is used to evaluate offers by simply comparing the discount percentages. The highest percentage is normally considered most advantageous.

Exhibit H

It may be used for marketing category 2 (manufacturers with participating dealers) and category 3 (manufacturers with dealers not participating).

Example:

<u>Offers</u>	<u>Discount to Government</u>	<u>Discount to Dealer</u>	<u>Ratio</u>
A	10	15	1 1/2 - 1 Nearest 1 - 1
B	25	50	2 - 1
C	15	30	2 - 1
D	20	60	3 - 1

V. NEGOTIATING THE "BENCHMARK" CONTRACT:

1. A benchmark must be established for each item and marketing category, by negotiating with the offeror who appears to be most acceptable on the basis of a discount comparison. However, benchmarks should only be established for suitable items, in the sense that some items such as those for rental, repair and maintenance or items which include substantially dissimilar products are not ordinarily suitable for benchmarking. The offeror selected for such negotiations must:
 - a. Be a manufacturer or a regular dealer;
 - b. Sell the items offered in substantial volume;
 - c. Have the majority of his sales in the commercial market;
 - d. Have a reasonably complete product line, as opposed to limited or specialized items; and/or be a dominant source of supply for the items involved.
2. The offeror selected for benchmark negotiations should also be one who sells to the Government in significant volume. For example, if several offers indicate Government sales in excess of \$500,000, but one offer indicates Government sales of less than \$25,000, the latter offer generally should not be used to establish the benchmark.

Exhibit H

3. Particular attention must be given to an analysis of the discounts and terms extended to the offeror's most favored customer.

With respect to marketing category 1 (manufacturers with no established dealers) and category 4 (dealers), negotiations should be directed towards obtaining discounts equal to or better than those given to any other customer on procurements of similar quantities. However, an exception may be necessary for a manufacturer's sales to Original Equipment Manufacturers, because manufacturers may give such customers extraordinary discounts, sometimes eliminating profits entirely, in anticipation of a continuing sales advantage. For example, a manufacturer of light bulbs may give an extraordinary discount to a customer who produces lamps on the basis that those who purchase the lamps often choose bulbs of the same manufacturer when making replacements.

With respect to marketing category 2 (manufacturers with participating dealers) and category 3 (manufacturers with dealers not participating), negotiations should be directed towards obtaining discounts equal to or better than those given to dealers or to other customers. (In this regard, an effort should be made to ascertain the services which the dealers or other customers provide in light of the discounts that the manufacturer extends).

4. Particular judgement must be exercised in deciding which method of discount comparison to use. For marketing category 1 (manufacturers with no established dealers), and for category 4 (dealers), there is no alternative to using the basic discount method. But for category 2 (manufacturers with participating dealers) and category 3 (manufacturers with dealers not participating) the contracting officer may find it more appropriate to use the discount spread method or the ratio method.
5. Under the basic discount method, the benchmark is established as a percentage factor.

Under the discount spread method, the benchmark is established as a percentage factor; except that when an offeror's Government and dealer discounts are identical, the benchmark is established as "dealer discount or better".

Under the ratio discount method, the benchmark is established as "2 to 1" or as "3 to 1" -- etc; except that for ratios of 1 to 1 or better, the benchmark is established as "dealer discount or better".

Exhibit H

VI. NEGOTIATING CONTRACTS CONFORMING WITH THE "BENCHMARK":

By obtaining from subsequent offerors discounts comparable to those established in the benchmark contract, the actual prices available to the Government from the multiple-award contractors should generally be in the same relationship as the prices available commercially.

The benchmark discount represents a minimum goal to reach in negotiating with such offerors, but a vigorous attempt should be made to achieve even higher discounts and more favorable terms and conditions. Computations for "true comparative worth" should be used whenever the basic discount method of comparison is used; e.g. if the benchmark contractor provides additional discounts for quantity breaks, with supporting documentation, the Contracting Officer should endeavor to negotiate comparable discounts with subsequent offerors. When the discount spread or the ratio discount methods are used, particular attention must be given to whether or not a manufacturer has extended "true comparative worth" factors to dealers so that the offers may be compared on an equal basis.

The terms and conditions of the offers received will, of course, be different in many important respects. At times, particularly in cases where an offer does not meet the benchmark, but it is nevertheless considered in the Government interest to make an award, the Contracting Officer should try to set a value on these differences.

Since the evaluation of true comparative worth factors usually brings to bear certain subjective considerations, the Contracting Officer must exercise particular good judgement. Special care must be taken so that the offeror is not given a discount advantage for considerations (including items or services) that are of little or no value to the Government.

All offers conforming to or exceeding the benchmark for an item within a marketing category may be recommended for award.

Offerors who feel that legitimate reasons preclude them from meeting the benchmark may be afforded the opportunity to submit additional information justifying special consideration. If an analysis of that data indicates that the offer is fair and reasonable, and approval is obtained from the appropriate Procurement Division Director, an award may be made notwithstanding the fact that the offer did not meet the benchmark.

Exhibit I

FEDERAL MARKETING AND
CONSULTING SERVICES

William Grote, President

December 3, 1979

Mr. Gerald McBride
Assistant Administrator for Acquisition Policy
General Services Administration
Room 6002, PS Building
Washington, D. C. 20405

Dear Mr. McBride:

This letter discusses some of the inequities and uneconomical procurements caused by the General Services Administration's current policy concerning Blanket Purchase Arrangements (BPAs) under Multiple Award Federal Supply Schedule contracts. Recommendations for obtaining lower prices for definite quantity procurements are also included. The contents of this letter have been discussed in meetings with Mr. Theodore Kogon, Director of the General Products Center.

The following documents are referenced in this letter:

- (a) Comptroller General Report (E-114807) to the Congress on "Ineffective Management of GSA's Multiple Award Schedule Program-- A Costly, Serious, and Longstanding Problem" issued May 2, 1979.
- (b) GSFR 54-73.213 on Blanket Purchase Arrangements
- (c) Office of Contracts Procurement Operating Policy No. 1 Issued September 20, 1979 on Multiple Award Schedules - Blanket Purchase Arrangements (BPA)
- (d) Federal Procurement Regulation 1-1.406 on Blanket purchase arrangements.

References (b), (c), and (d) are attached.

The following topics are addressed in this letter:

- Comptroller General's Criticism of BPA System
- Current BPA System Established by GSA
- GSA's Deviation from Original Purpose of BPA System

Exhibit I

Mr. Gerald McBride

Page Two

- Inequities and Inefficient Procurement Practices Fostered by GSA's Current EPA Policy
- Recommendations for Obtaining Lower Federal Supply Schedule Prices at All Quantity Levels.

Following is a discussion of each topic.

1. Comptroller General's Criticism of EPA System

The current EPA system was one of the GSA practices criticized in reference (a). Page 27 of the report discusses the various prices paid by agencies for identical items based on the absence of or level of quantity commitment covered by each agency's EPA.

The report expresses the opinion that "it makes little sense for agencies to pay different prices for the same product" and that GSA is in a better position to "centrally negotiate definite quantity contracts at more favorable prices than any individual agency might obtain".

2. Current EPA System Established by GSA

Reference (b) requires the following clause to be included in each schedule solicitation and resulting schedule (included in GSA Form 2591):

"BLANKET PURCHASE ARRANGEMENTS

The Contractor agrees to enter into blanket purchase arrangements with ordering activities: Provided, that:

- (a) Only items covered by the contract are ordered under such arrangements;
- (b) The period of time covered by such arrangements shall not exceed the period of the contract; and
- (c) Orders placed under such arrangements shall be issued in accordance with all applicable regulations and the terms and conditions of the contract. (NOTE: The maximum order limitation of the contract applies solely to individual orders placed against the blanket purchase arrangement and has no bearing on the cumulative or total value of those orders."

Reference (c) introduces the element of quantity discounts and states:

"Multiple award EPA agreements in GPO 64-23,113 are not being uniformly applied when negotiating EPAs for the GSA General Stores..."

To rectify the inconsistencies, reference (c) goes on to require that the following directive be added to reference (b) for inclusion in solicitations:

"(d) EPAs may be negotiated to achieve the highest discount price (lowest net price) based on the estimated total purchases which would be achieved by the cumulative total of orders placed under the contract. In the event the cumulative total of orders placed does not reach the quantity level at which the EPA was established, the contractor may invoice at the price at the applicable quantity level."

As discussed next, relating EPAs to quantity discounts is a distortion of the EPA concept defined in the Federal Procurement Regulations.

Exhibit I

Mr. Gerald McRide

Page Three

3. GSA's Position on Federal Purchase of EPA Supplies

Reference (d) establishes policy for Blanket purchase arrangements:

"...relating to the purchase of day-to-day requirements through arrangements with vendors or dealers to furnish, on a 'charge account' basis, such supplies or non-personal services as the Government may order from such sources during a stated period of time. Generally these arrangements should be made with local sources so that individual purchases thereunder can be effected with a minimum of time and paper work...(and) may be established with Federal Supply Schedule contractors, if not inconsistent or at variance with the terms of the applicable Federal Supply Schedule Contract."

Subpart 1-3.606.5(n) of reference (d) goes on to state:

The blanket purchase arrangement method is primarily designed to reduce the amount of documentation in connection with small purchases.

Nothing in this Subpart of the Federal Procurement Regulations defining Blanket purchase arrangements requires contractors with which an ordering office has a EPA to give maximum quantity discounts regardless of the quantity ordered. The intent of EPAs is to reduce the cost of paperwork through use of a "call" system. Current EPA practice also violates prohibition against EPA orders over \$5,000.

The current practice for FSS EPAs to be issued at agencies' headquarters levels is inconsistent with Subpart 1-3.606.5 of reference (d), which defines Agency implementation as follows:

(a) The vendor-vendor relationship is that of an open account limited only by the maximum amount and time period limitations fixed by that agency.

...(d) Authority and responsibility for effecting blanket purchase arrangements should be delegated by agencies to the lowest agency level to which the responsibility is placed or assigned for providing supplies..."

GSA's current policy outlined in references (b) and (c) requiring contractors to give maximum quantity discounts for single unit orders to agencies with EPAs is clearly at variance with the provisions of reference (d).

4. Agency and Contractor Implementation Practices Violated by EPA's Current Policy

During multiple award contract negotiations, GSA correctly tries to obtain lower net prices at various quantity breaks. Most manufacturers (except IBM) give lower prices to commercial customers which order quantities of items than to customers which purchase single items.

After obtaining lower prices for greater quantity levels and awarding contracts with single and multiple unit prices, GSA then requires contractors to sell, deliver, and invoice one item at a time at the most favorable quantity price to agencies which issue Blanket purchase arrangements. Contractors which can afford to sell a single unit at the same price as for 10, 100, or 200 units have clearly not given GSA the lowest possible price for agencies which in fact order in the lower definite quantities.

Exhibit I

Mr. Gerald McBride

Page Four

Specifically, for the contract period ending September 30, 1979, one typewriter contractor gave a discount from list price of 25% for a quantity of 1-19 and 27% for quantities of 20 or more. A major agency like HHS could issue a EPA committing to buy 20 typewriters during the entire year throughout the country (a rather meaningless commitment since their actual purchases were probably somewhere between 200 and 2,000 from that contractor). The hundreds of HHS procurement offices around the country could then buy one typewriter at a time and still receive the additional 2% discount. On the other hand, smaller agencies which could not make a commitment to buy 20 typewriters were required to pay the higher price.

For the current contract period, that same typewriter contractor offers no quantity discounts, probably because it would be forced by GSA to accept EPAs requiring single unit sales at the multiple unit price. GSA's misinterpretation of the EPA concept, therefore, is depriving agencies which have larger quantity requirements from receiving more favorable prices. A number of office machine contracts have in fact eliminated multiple unit prices.

The current EPA system produces the following inequities which prevent agencies from receiving the most favorable prices possible under Multiple Award contracts:

- (1) An audit of contractors' invoices would probably reveal that 80-90% of their GSA contract sales are at the maximum discount price under EPAs. This lowest price, then, is in effect the GSA single unit price. Smaller agencies which cannot make a EPA commitment are in effect being gyped, even though they are part of the same Executive Branch for which GSA is responsible for obtaining the best possible prices.
- (2) Agencies which in fact order definite large quantities are also being gyped by the system, inasmuch as they are paying the same price as offices which order one at a time.
- (3) Because of GSA's incorrect interpretation of the EPA concept, contractors do not give their most favorable quantity prices to GSA because they realize they will be required to sell one at a time at the lowest contract price. (How many vendors which used to give quantity prices have eliminated them?)
- (4) When orders under Multiple Award contracts are placed at other than the lowest price available under a special item number when the cost exceeds \$500 per line item, ordering activities must justify the purchase of higher priced items. The current EPA system creates a climate whereby agencies make commitments to purchase higher priced items before ever having justified their purchase. (Specious justifications are also criticized by reference (a).)
5. Recommendations for Changing Lower Federal Supply Schedule Prices at All Quantities Below

It is recommended that GSA eliminate the current EPA force which requires contractors to accept EPAs that provide for single unit orders at multiple quantity prices.

Through announcements in the Federal Register and/or in all new solicitations for Multiple Award contracts, GSA should establish the following revised policies:

- Reestablish the EPA concept as defined in reference (d).
- Notify contractors which have accepted EPAs providing higher discounts for

Exhibit I

Mr. Gerald McBride

Page Five

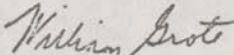
single unit orders that the EPA discount level will become the benchmark discount for single unit orders in new contracts.

- Require greater discounts for various levels of definite quantity procurements. Higher discounts should be obtained for deliveries to a single location than to multiple locations.
- Make it clear that contractors will not be required to sell single units at quantity discounts and that any such sales would invoke the Price Reduction Clause; i. e., eliminate requirement for quantity discounts under EPAs.
- Offer higher Maximum Order Limitations for contracts with greater quantity discounts, as is currently done in some cases.

I would be pleased to meet with you or others in GSA to answer any questions resulting from my comments and recommendations or to provide additional information.

I have a number of other criticisms of the Federal procurement process and recommendations for improvement. As time permits, I shall submit them to you in writing.

Very truly yours,



William Grote

WG/gf

cc: House Subcommittee on Government Activities and Transportation
Senate Subcommittee on Federal Spending Practices and Open Government

Comptroller General of the United States

Director, Office of Management and Budget
Acting Administrator, Office of Federal Procurement Policy

Administrator, General Services Administration
Director, GSA General Products Center



General
Services
Administration

Office of
Acquisition
Policy

Exhibit J
Washington, DC 20405

19 FEB 1980

Mr. William Grote, President
Federal Marketing and Consulting Services
3714 Manor Place, N.W.
Washington, D.C. 20007

Dear Mr. Grote:

This is in response to your letter of December 3, 1979, concerning Blanket Purchase Arrangements under Multiple Award Federal Supply Schedule contracts.

Blanket Purchase Arrangements (BPAs) are generally utilized by agencies on an individual basis as a means of simplifying paperwork and securing additional pricing benefits based on total anticipated needs for the year. However, we are currently studying the feasibility of negotiating area-wide BPAs for use by all Government agencies within a given area. Additionally, where agencies are now executing BPAs based on their yearly estimated requirements, we are strongly encouraging them to provide us with the necessary information to permit the issuance of a separate competitively awarded contract which should be more favorable to the Government than the Multiple Award Schedule contract.

Obviously, when dealing with an administrative vehicle designed to serve all customers, whose ordering addresses total nearly 10,000 separate offices, procurement practices may well exist that accrue economic benefits to certain classes of customers that are not realized by others. Nothing in the regulations prevents the negotiation of quantity discounts in connection with these agreements. However, as the vast majority of our customers have the ability to obtain lower prices and reduce administrative costs, we feel the BPA program serves a useful purpose.

Following are our comments specifically dealing with those topics discussed in your letter.

1. Comptroller General's Criticism of BPA System: As already mentioned, we are studying the feasibility of centralized BPA's covering all customers. Additionally, we are attempting to determine the agencies' needs in order to solicit their requirements on competitively procured contracts even the schedules' maximum order limitations. This should accrue more economic benefits than BPAs. In fact, we are currently soliciting for a definite quantity requirement covering typewriters, utilizing Life Cycle Costing techniques, for the Social Security Administration and Air Force. We are also currently soliciting agencies for their entire yearly requirements for typewriters. If successful, we plan to competitively procure our future requirements for electric typewriters in lieu of multiple awards.

Exhibit J

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2. Current BPA System Established by GSA: This clause, as you have referenced, modified as of September 20, 1979, more clearly explains the applications of BPAs as they relate to the multiple award schedule program.

3. GSA's Deviation from Original Purpose of BPA System: Although the BPA provisions are covered in FPR 1-3.606 concerning Small Purchase Procedures, the primary purpose of BPAs is to reduce the amount of documentation and cut paperwork. BPA provisions can also apply to orders being placed under the multiple award schedule program. Nothing in the regulations prevents the negotiation of quantity discounts in connection with these agreements. The use of BPAs in schedule contracts provides a simplified method of filling repetitive orders for small quantities under the most favorable prices and administrative costs. Additionally, the \$5,000 limitation applies to purchases under the Small Purchase regulations and does not apply to BPAs used in the multiple award schedule program.

We do not agree that there is a need for new policy guidelines concerning the use of BPA's in Federal Supply Schedule contracts. We are currently reviewing these regulations, as well as our practices, with the intent of effecting more efficient application of BPAs as they relate to the multiple award schedule program.

4. Inequities and Efficient Procurement Practices Fostered by GSA's Current BPA Policy: Our negotiations attempt to negotiate meaningful basic documents, quantity and dollar volume discounts, as well as BPA discount structures. Your assumption that we then require contractors to sell, deliver and invoice one item at a time at the most favorable quantity price is both correct and incorrect. The offeror may take exception to the BPA clause. Offerors sometimes cite minimum quantities for each order to qualify for the maximum discount. Additionally, separate quantity discount structures for BPA's can be offered in addition to the quantity and dollar-volume discounts. Let's keep in mind that a successful negotiation is a meeting of the minds on a contract that is satisfactory to both parties. The contractor is not arbitrarily forced to accept terms and conditions under our BPA provisions.

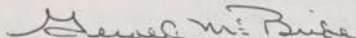
You reference the loss of quantity discounts because the offeror would be forced to accept BPA's requiring single unit sales at the multiple unit price. Presently, as already mentioned, the offeror has the opportunity to take exceptions which limit his liability under BPA sales; that is, minimum shipment, single delivery location, separate discount structures, etc. Reevaluation of BPA provisions could result in a different approach to our negotiations in this regard.

Exhibit J

3

5. Recommendations for Obtaining Federal Supply Schedule Prices at all Quantity Levels: As already mentioned, several of your recommendations are already being implemented in the BPA program. Additionally, we are currently studying this area and will use your ideas as food for thought in our future policies involving BPAs.

Your interest in our program is appreciated. Thank you very much for your ideas on such an important subject.



GERALD McBRIDE
Assistant Administrator
for Acquisition Policy

Seal of the General Services Administration
 Administration Washington, D.C. 20545

6 AUG 1975

Exhibit M

Assistant Administrator for Acquisition Policy (AP)

Self-Service Store Program

All Regional Administrators
 Commissioner, FSS(F)

Recent operational reviews of regional activities, contact with user agencies, utilizing the self-service stores, and input from the Commissioner, Federal Supply Service, revealed a preponderance of expert opinion and other comment to the effect that stockage of items in FSS self-service stores is unduly restricted. While this was necessary at an earlier time, the controls now established by FSS permit expanded supply activity in the stores. Control measures covering access to the stores, special orders, use and distribution of GSA Form 3146 (GSA Self-Service Store Shopping List/Sales Slip), identification of shoppers, stock replenishment ordering through Regional offices, restricted vendor contacts, and related procedures are operating effectively and will not be relaxed at this time.

Pending incorporation into the regular GSA directives system, the following policy will govern stockage in the self-service stores:

a. The Central Office authorized stockage list (Master Stock List - MSL) is cancelled. Regions are to canvass customer agencies and identify items for which there is expressed official customer demand. Items thus identified will be stocked in self-service stores when approved by the designated GSA official (see sub-paragraph f and g, below). Internal regional procedures and controls should be established for selecting and approving the items for stockage. Decisions regarding costs, quality, appropriateness and sensitivity of items selected for stockage rests with the Regions. Such decisions must also be in accordance with current Federal Property Management Regulations.

b. Regional listings of items approved for stockage in self-service stores, as well as all additions and deletions, will be submitted to Central Office, FSS, for consolidation and review at the national level. FSS will maintain a current, consolidated list of authorized items based on Regional submissions.

Exhibit 171

c. Federal Supply Service, Central Office, will continue to execute all Blanket Purchase Arrangements; however, pending receipt of national BPAs, Regions are authorized on an item-by-item basis to place orders for the immediate stock requirements directly with the FS Schedule vendor.

d. Sensitive items will be designated by FSS, Central Office, on a national basis, either at the time of reviewing initial Regional lists or subsequent changes thereto; or upon receipt of recommendations from appropriate sources.

e. FSS P 2900.13 or any successor document will include procedures for control of sensitive items, and prescribe criteria for identifying such items. Interim or added control procedures may be imposed by the Regions.

f. Items stocked in self-service stores will normally be those obtainable from sources which effect procurement by award to the lowest priced, responsive offeror. Acquisition through the best competitive procurement process available may be assumed if ordering from a government wholesale stock system (GSA/DLA/VA), a competitive Federal Supply Schedule, or when the item selected is the lowest priced of similar or identical items on a multiple award schedule. Authority to select items meeting the foregoing criteria for stockage in self-service stores is vested in Regional Administrators, and may be redelegated to Regional commissioners, Federal Supply Service; without further redelegation.

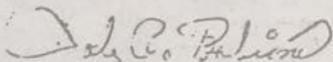
g. When user Agency documented requirements demonstrate the need for items which do not meet the criteria of f., above, the Regional Administrator may authorize the lowest priced item or items available from a Federal Supply Schedule which will meet user Agency needs. Pending final adoption of a permanent policy document, Regions will maintain files containing user agency requests/justification for items and the GSA regional approval for the items stocked in self-service stores under authority of this sub-paragraph.

Other restraints in the program which may be causing customer complaints or lack of participation in the store program, such as, access and use, special ordering, etc., are being studied by a Committee on Self-Service Stores

Exhibit M
Exhibit

which was established at the recent Regional Commissioner's Conference. Some of the constraints may be considered for relaxation when and if there is reasonable assurance that needed supply disciplines, controls, and responsibilities are continued in the program. Improved operational methods that will provide for accountability at the line item/transaction level and training materials for self-service store personnel are under development in FSS. When positive accountability is tested and proven in the proposed system, cancellation of many present controls will be considered.

Federal Supply Service will issue implementing instructions or procedures to carry out the policy set forth in this letter.



DALE R. BABIONE
Assistant Administrator
for Acquisition & Supply Policy



FEDERAL MARKETING AND
CONSULTING SERVICES

William Grote, President

Exhibit IV

December 3, 1979

Mr. Walter V. Kallaur
Regional Administrator
National Capital Region
General Services Administration
Room 7022 ROB
Washington, D. C. 20407

Dear Mr. Kallaur:

This letter requests information on the National Capital Region's implementation of the national self-service stores stockage policy promulgated in the August 3, 1979 memo of the Assistant Administrator for Acquisition Policy.

My interest in the Regional implementation is motivated by my role as a representative of the Hilord Chemical Corporation, a small business which manufactures supplies for liquid copiers. When a Federal Supply Schedule contract is awarded to Hilord, their prices will be 10%-20% lower than those of supplies now stocked in the self-service stores.

One area of interest is the Region's implementation of the following instructions in the August 3 memo:

"Regions are to canvass customer agencies and identify items for which there is expressed official customer demand. Items thus identified will be stocked in self service stores when approved by the designated GSA official.

"Internal regional procedures and controls should be established for selecting and approving the items for stockage."

The August 3 memo establishes the following acquisition sources:

"Acquisition through the best competitive procurement process available may be assumed if ordering from:

- a government wholesale stock system...
- competitive Federal Supply Schedule
- or when the item selected is the lowest priced of similar or identical items on a multiple award schedule."

Exhibit N

Mr. Walter Kallaur

Page Two

It is my understanding from discussions with members of your staff that they disagree with and have no intention of implementing the following instruction in the August 3 memo:

"When user Agency documented requirements demonstrate the need for items which do not meet the criteria of f., above, the Regional Administrator may authorize the lowest priced item or items available from a Federal Supply Schedule which will meet user Agency needs. Pending final adoption of a permanent policy document, Regions will maintain files containing user agency requests/justification for items stocked in self-service stores under authority of this sub-paragraph."

The attached copy of my October 5 letter to Mr. Weeks, Chief of the Region's Retail Operations Branch, informs him that in my contacts with Agencies which use the self-services in Washington, all indicated that GSA determines the brands to be stocked in the stores. None with whom I talked had been asked by GSA what brands should be stocked.

Mr. Weeks's October 18 response states that orders will be placed for my client's products after the receipt of a specific request from a customer agency. Mr. Weeks's response avoids the key issue, inasmuch during the period without contracts, Hilord offered the lowest prices. After Hilord receives a FSS contract, their GSA prices will be lower than those of competitors which have now been awarded contracts, and it should not then be necessary for Mr. Weeks to have to wait for a specific request.

I have also met with Ms. Jean Offholter, Retail Services Division Director, to ask about the Region's implementation of the national policy. Following is a synopsis of my understanding of the reasons presented by Ms. Offholter for Regional deviation from the national policy:

- Ms. Offholter does not agree with the national policy expressed in the August 3 memo.
- GSA Order ADM 1000.3 gives Regional Administrators the authority to override the directives in the August 3 memo. (Comment by Grote: ADM 1000.3 states, "Total operating responsibility for agency programs will be assigned to the Regional Administrators within policies prescribed by the Administrator.")
- The Regional staff is not qualified to determine what is the lowest priced items on a multiple award Federal Supply Schedule. (Grote comment: If GSA cannot implement its own regulations, how can it expect other Agencies to comply when using multiple award contracts?)
- Requiring justifications for other than the lowest priced item would be unworkable when more than one Agency uses the same store, because Agencies which had not justified higher priced items would have to be prevented from buying higher priced items justified by another Agency. (Grote comment: This objection is invalid if GSA is diligent in evaluating the validity of justifications submitted by Agencies. The Comptroller General's May 2, 1979 Report No. B-114807 on "Ineffective Management of GSA's Multiple Award Schedule Program-- A Costly, Serious, and Longstanding Problem" is especially critical of lack of justifications or use of specious ones.)
- When Agencies want an item stocked, all they have to do is send a memo. No need to bother with justifications. (No comment.)

Exhibit N

Mr. Walter Kallaur

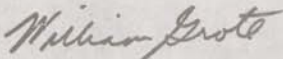
Page Three

It was my intention to meet with Mr. Boulay before bringing the matter to your attention. However when I tried to make an appointment, Mr. Boulay told be on the telephone that he does not meet with vendors at this time, that Ms. Offholter had reported our discussion to him, and that he supports her positions.

When I informed Mr. Boulay that no Agencies I had contacted had submitted justifications for more expensive copier supplies, Mr. Boulay stated that the National Capital Region is using the doctrine of "historical preference and previous usage" (or words to that effect) to justify the procurement of higher priced items from multiple award Federal Supply Schedule contracts.

Rather than continue with a written response to and commentary on the positions taken by your staff and make this letter a longer treatise than it already is, I request a personal meeting with you to discuss the National Capital Region's self-service stores procurement policies.

Very truly yours,



William Grote

WG/gf



General
Services
Administration

National
Capital
Region

Washington, DC 20407

Exhibit 0

JAN 11 1980

Mr. William Grote
President, Federal Marketing
and Consulting Services
3714 Manor Place, NW
Washington, DC 20007

Dear Mr. Grote:

Thank you for your letter of December 3, 1979, concerning the stocking policies for the Self-Service Stores of the National Capital Region.

The National Capital Region will stock items in the GSA Self-Service Stores when the following conditions are met:

- (a) A customer has a legitimate demand;
- (b) The item is controllable in terms of abuse; and,
- (c) The item fits the general description of a stationery or office supply item.

Once a request to stock an item is received from a customer agency, and provided it meets the conditions described above, the item will be considered for stockage. The purchase of items is limited to items available from multiple award and established source Federal Supply Schedule contracts and government wholesale stock systems.

In response to your specific complaints regarding the lack of orders for your product and the requirement for customer agencies to request that an item be stocked, I offer the following comments:

-Orders were not sent to your client, or any other company, during the period when the Federal Supply Schedule contracts had lapsed. The Administrative Self-Service Stores are authorized to stock only those items purchased from established sources.

-A request from a customer agency must be received before an item can be authorized for stockage in a particular store. For example, there are over 40 contractors listed on the multiple award schedule contract for toner. The stores in the National Capital Region do not have the space

Exhibit O

to stock each of the 40 brands. Further, to determine the lowest cost toner for a particular requirement necessitates an in-depth analysis not only by price, but by quantity price break and volume per container as well.

Please let me know if you require any additional information or assistance.

Sincerely,

Walter V. Kallaur

WALTER V. KALLAUR
Regional Administrator

— Mr. Grote
If you wish to have
a meeting please call
me to schedule one
Regards
W. Kallaur

Exhibit P

SUBPART 101-26.4 PURCHASE OF ITEMS FROM FEDERAL SUPPLY SCHEDULE CONTRACTS

101-26.406-4 (b)

§ 101-26.406-2 Procurement at lowest price.

Each purchase of more than \$500 per line item made from a multiple-award schedule by agencies required to use these schedules shall be made at the lowest delivered price available under the schedule unless the agency fully justifies the purchase of a higher priced item. Purchases costing \$500 or less per line item should also be made at the lowest delivered price under the schedule; however, justification for the purchase of higher priced items is not required. Agencies not required to use schedules, but which choose to do so, are apprised of the advisability of fully justifying purchases costing more than \$500 per line item when the items are not the lowest priced available on the schedule.

§ 101-26.406-3 Justifications.

(a) Justifications for purchases made at prices other than the lowest delivered price available should be based on specific or definitive needs which are clearly associated with the achievement of program objectives. Mere personal preference cannot be regarded as an appropriate basis for a justification. Justifications should be clear and fully expressed. Recital of or reference to one of the factors set forth in paragraph (b) of this § 101-26.406-3 is not sufficient.

(b) The following are examples of factors that may be used in support of justifications when used with assertions that are fully set forth and documented.

(1) Special features of one item not provided by comparable items are required in effective program performance.

(2) An actual need exists for special characteristics to accomplish identified tasks.

(3) It is essential that the item selected be compatible with items or systems already existing within using offices.

(4) Trade-in considerations favor a higher priced item and produce the lowest net cost.

(5) Time of delivery in terms of actual need cannot be met by a contractor offering a lower price.

(6) Justifications which incorporate features of the following examples must

be based on objective factors which adequately establish the advantages inherent in purchase of the higher priced item when:

(i) Probable life of the item selected as compared with that of a comparable item at a lower cost is sufficiently greater so that the additional purchase price is economically warranted.

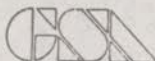
(ii) Warranty conditions of a higher priced item are sufficiently advantageous to justify the added cost.

(iii) Greater maintenance availability, lower overall maintenance costs, or the elimination of problems anticipated with respect to machines or systems, especially at isolated use points, will produce longrun savings greater than the difference in purchase prices.

§ 101-26.406-4 Placement of orders against multiple-award schedules.

(a) The possibilities of selectivity among items listed in multiple-award Federal Supply Schedules do not relieve agencies of the responsibility to place orders at the lowest delivered price available (after application of the Buy American differential, when appropriate) unless there are factors for consideration which definitely justify the purchase at other than the lowest price. The responsibility exists whether the value of an order is more or less than the applicable open market limitation. When purchases are made at other than the lowest delivered price available under the applicable Federal Supply Schedule, the delivery order file or other appropriate file should contain a complete justification for the purchase. When an agency, pursuant to an agreement with GSA, submits a request for GSA to purchase an item under a Federal Supply Schedule which is other than the lowest priced item on the schedule, the request shall be accompanied by a complete justification to support the procurement. Justification for such purchases need not accompany requests from overseas activities for overseas deliveries. However, GSA will construe such requests to mean that the justification is in fact in the ordering installation's file.

(b) Where two or more items at the same delivered price will meet the ordering agency's needs equally well, selection should be based on preference for the item of a labor surplus area concern or



General
Services
Administration

Federal
Supply
Service

Washington, DC 20406

Exhibit Q JH 4124

Date : August 5, 1977

Reply to
Attn of : FPP

FSS PROCUREMENT LETTER NO. 240

Subject: Multiple award Federal Supply Schedules - Guidance concerning contract coverage for identical items in more than one contract

To : All FSS Procuring Activities (FPP Distribution List)

1. Background. It has been determined that clarification is needed in our written policy with respect to procurement of identical items from more than one supply source.

2. Interim Procedures. Pending formal revision of GSPR 5A-73, the following instructions are effective immediately:

SUBPART 5A-73.3 EVALUATION OF OFFERS AND AWARD OF CONTRACTS

§ 5A-73.303-3 Identical products

(a) Normally, a multiple award Federal Supply Schedule contract for a specific product shall be entered into with only one contract source. For example, if the item is contracted for with a manufacturer, the same item shall not be contracted for with a dealer. Where only offers from dealers are involved, and it is found that more than one dealer has made offers on the same product, only one contract will be entered into for that specific product. When offers for identical products are identified (see par. (b), below), negotiations will be conducted with each of the offerors. The most favorable offer to the Government will be the offer which is accepted.

(b) Following are guidelines for use by the contracting officer in determining if one product is actually identical to another product:

(1) Where the manufacturer's identity is clearly labeled and the brand name or number of an item is known, all similarly identified items shall be considered as identical items and only one contract made for such item.

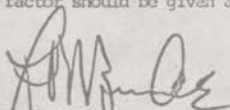
(2) Where the manufacturer's identity is known but the item is differently packaged and differently labeled as to brand name or number either by the distributor or dealer and the contracting officer has reason to believe that the item is identical to another item manufactured by the same manufacturer although differently packaged and labeled, the matter should be investigated. In such case, a plant facilities report may be requested, with a covering memorandum, outlining the contracting officer's suspicions. If it is found that the item is in fact identical to another item, although differently packaged or labeled, only one contract should be entered into for such items.

Exhibit Q

2

(3) Where the contracting officer suspects but cannot actually determine that two or more items being offered are actually the same, such items shall not be considered as being identical items.

(4) Where it is determined that a specific product is offered from more than one source but one of the sources in its marketing practices emphasizes that service benefits will result if its product is made available, this additional service benefit shall not be given any special consideration unless the contract calls for such service and is not a straight supply contract. Where such service benefit is considered necessary to meet the Government's needs, and the service is provided throughout the entire contract scope on a nationwide basis, the service factor should be given appropriate consideration.



F. B. BUNKER
Assistant Commissioner
for Procurement

Exhibit R

NAME OF OFFEROR _____

SPECIAL ITEM NUMBER(S) _____

EVALUATION OF ECONOMIC ADVANTAGE - FEDERAL SUPPLY SCHEDULE PROGRAM

Information on each of the following six questions is required for each SPECIAL ITEM NUMBER regarding the types of terms you would offer to individual Government agencies procuring in "small quantities".

If there were no GSA Federal Supply Schedule Program -
what would be the terms you would offer individual
agencies in the OPEN MARKET?

1. What discount would you have given to an individual Government agency if they procured in small quantities?
2. Would they have received prompt payment discounts for payment in 20 or 30 days? YES _____ NO _____
What percent?
3. Would they have received FOB destination terms? YES _____ NO _____ If not, what is the worth of the transportation you provide under your FSS contract - percentagewise?
4. Would they have received the same warranty? YES _____ NO _____ If not, what is the worth of the warranty you provide under your FSS contract - percentagewise?
5. Under your FSS contract, do you provide free of charge any installation, calibration or training that an agency would have to pay for if they procured on their own? What is the worth-percent?
YES _____ NO _____
6. Do you provide any extended inspection, repair or maintenance service under your contract that an agency would have to pay for? YES _____ NO _____ If yes, what is it worth-percent?
7. After July 1, 1977 (or date of your commercial pricelist used in establishing prices applicable to your current contract have you increased commercial prices on any of the products offered under this Special Item Number? YES _____ NO _____ If yes, what was the average increase percentage? %? what was the date of increased prices?

Swingline

Exhibit S
MANUFACTURERS OF
STAPLERS, STAPLES &
CONSUMER SPECIALTIES

DIV. OF SWINGLINE INC.
32-00 SKILLMAN AVENUE
LONG ISLAND CITY, N.Y. 11101
PHONE: 212 EMPIRE 1-5555
CABLE: SWINGSPEED NEW YORK

May 2, 1979

General Services Administration
IFB/RFP FPHO-R-75064-N-1-23-79
Washington, D. C. 20407

Attention: Mr. D. Holmes

Dear Mr. Holmes:

With regard to the "End-of-Contract Additional Discounts Applicable to Aggregate Sales" requested on page 21 of the solicitation, Swingline declines to voluntarily offer such discounts. However, if a contract will not be awarded without these rebates, please let us know the minimum percentage that is mandatory for a contract award.

Inasmuch as all other requirements for a contract award have been agreed to during contract negotiations, if the additional year-end rebates based on aggregate sales are mandatory for a contract award, a protest will be filed with the General Accounting Office for the following reasons:

- This requirement cannot be equitably and uniformly enforced. Contractors who are conscientious in reporting contract sales would be penalized. The computer printouts of contract sales in the Schedules Information Center indicate that many contractors do not even report sales. The cost to the Government of auditing firms which do not file sales reports would be prohibitive if conducted to enforce this requirement.
- Many contractors with contracts permitting dealer participation tacitly permit dealers to invoice under the contract, even through the terms of the contract may require invoicing by the contractor. Sales under these contracts are, therefore, grossly under-reported. It would be impossible for the GSA to investigate the records of thousands of dealers which sell under hundreds of GSA contracts in order to determine how many sales invoiced by the dealers have not been reported by the contractors.
- All contractors are required to meet benchmarks for a contract award. If these benchmarks produce contract prices which provide a fair price for the Government while permitting a satisfactory profit for the Contractor and participating dealers, it would be unfair for a Contractor

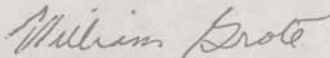
General Services Administration

Exhibit S
Page 2

with superior products which provide benefits to procuring Agencies to be penalized because of product acceptance if they were to be forced to provide relates which would deplete profits.

For these reasons, it is requested that a contract for the period beginning July 1, 1979 be awarded on the basis of the same terms and conditions agreed to for the current contract period.

Very truly yours,



William Grote
Federal Marketing Coordinator

WG/etj

General Services Administration Federal Supply Service
Washington, DC 20406

Exhibit T

Date: JAN 10 1980
Reply to: Office of Supply (FSB)
Subject: Self-Service Stores Stockage Policy
To: All Regional Administrators, GSA

*Jeannie -
The rest of the information
moves in behind NCR.
ACB 1/11/80*

The current requirement for selection of items and stockage of self-service stores, is that a "lowest price item" determination must be made for any item that the region plans to stock if the item is to be obtained from a non-competitive supply source. If the lowest priced item will not meet a customer's official requirement, a determination must be made, by the region, of each item (brand/vendor) above the lowest priced progressively to the item (brand/vendor) that does meet the customer's requirement.

After careful study, the Self-Service Store Committee has concluded that determination of the lowest price brand/vendor for storage of an item is extremely difficult and generally impractical. Therefore, the guidelines for selection of items for stockage in self-service stores are revised as follows:

- a. Regions canvass customers for requirements (needs) by item and estimated monthly/annual demand.
- b. Advise customers of items already stocked in the store(s).
- c. Non-Government distribution systems items available from such sources as multiple award schedules, should be added to stock only after (1) the requesting customer agency has been advised of similar items/brands already in stock; (2) the cost of the requested item relative to other items/brands in stock has been determined by the region based upon demand presented by the agency requesting the item; and (3) after such items have been subjected to examination for sensitivity, bulkiness, order quantities, etc. Consideration should be given to assigning responsibility for selection and approval of items in this category to Assistant Regional Administrators, FSS.
- d. Ordering techniques, i.e., ordering for several stores at once, larger quantities, etc., should be carefully administered as the controlling factor for assuring that stock is replenished at the lowest cost possible.

The above guidelines are in consonance with the mission and purpose of the self-service stores program, place responsibility at appropriate levels, involve agencies in the decision process, provide for economies through the replenishment of stores and are to be implemented within the authorities delegated for management of regional operations.

Thomas D. Morris
THOMAS D. MORRIS
Commissioner

Mr. BURTON. Our next witness is Mr. Caulfield, National Sales Manager for Federal Government Olympia, USA, Inc.

**STATEMENT OF ARTHUR CAULFIELD, NATIONAL SALES
MANAGER, FEDERAL GOVERNMENT OLYMPIA, USA, INC.**

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

The major thrust of my remarks was directed toward the multiple award system as well. You seem to have gotten quite a bit of interest in that subject in this hearing. As far as H.R. 5381 is concerned, we don't have any great deal of difficulty with it.

The concerns that I express, and I will summarize, are not major concerns. We support the intent of the legislation and the intent of assuring that corruption does not creep into Government contracting and is controlled. I expect it will have very little impact on the company that I represent, Olympia, USA, and on other major suppliers under the multiple award schedule—with multiple award schedule contracts.

I am a little bit concerned that some smaller contractors might view this as one more obstacle to contracting with the Government. Things are pretty complex as they stand.

Any time someone views rather severe penalties, it is hard to take them lightly. The increased audits also might prove a burden to my own company because we do have separate lines of copiers, typewriters, word processing equipment, dictating-transcription equipment, and calculators, which could all be audited separately. So a burden of separate audits could impact on us.

Rather than repeat recommendations, I have reviewed the testimony that Mr. Timbers has given and I am in concurrence with the points that have been made by the coalition. So if I might, I will go on to summarize the rest of my testimony.

I am very much concerned with the issue of multiple awards and do ask the committee to concern itself with that particular issue, even though it is being addressed by GSA at the moment, because the actions that are taking place at the present time threaten great damage to the small businessmen who represent Olympia and to the office equipment industry.

I do request the committee support to help improve the program and address these concerns rather than waiting for the actions being taken in GSA to take their course. I think it is important to understand that the multiple award schedule program provides an umbrella of known consistent and fair prices and terms under which agencies and vendors, small and large business might do business with the Government. If the Government realizes this ideal, I think a lot of the chaos we have seen in the procurement of commercial products would be eliminated.

I would like to quote a little bit rather than follow the full testimony. I would like to note that GSA in their own words in an earlier GAO—in response to an earlier GAO report did support the multiple award program and did state that it meets the goals of providing an effective vehicle for the procurement and supply of commercial products, and that the program supplies a high level of competition.

I would like to note that the word "competition" has been used rather ambiguously in a number of releases and statements made lately by a lot of people discussing Government contracting.

The competition under multiple awards is based on multiple aspects of doing business with the Government. I have listed 11. Others could make other lists. But the service and the responsiveness to user needs in the user's location are very important aspects. The cost of supplies and software, delivery time, cost and availability of service, the quality of repair service to back technologically-based products are all important considerations that may be judged by the user more appropriately than by a contracting officer located many miles away.

Under single awards, competition is focused on the price alone, or it is focused on the estimated life cycle cost, since that one variable will determine the award winner. This does compromise the Government's ability to demand those other factors that I have enumerated in the written testimony.

I would like to also include mention that the Treasury Department has issued an instruction to their field offices that has resulted in the purchase of economical typewriters for basic clerical tasks. This instruction has been implemented by the Internal Revenue Service at many of their field offices and has saved the taxpayers a good bit of money.

Aggregation of requirements, by contrast, often results in purchasing the most complex typewriters and the base from which we start would be the highest price. Regardless of contracting method, we may not have as low a price as an agency might have paid locally for a basic configuration of a typewriter or another piece of office equipment.

I would like to point out that with rapidly changing technology in the office equipment field, the multiple award schedule system makes new products available to the Federal Government immediately when they come into the commercial marketplace. Single award contracting impedes the introduction of new products and can cause confusion as vendors change from year to year.

Multiple award contracts provide far better geographic coverage than single award contracts. If we consider that 27 percent of Federal employees are located in 2,700 counties, in Social Security district offices, in offices of the Agriculture Department, in Postal Service locations, in Interior Department offices, and many others, where the total Federal employment for a whole county may be only 2,000 employees, we realize that having a local vendor for an office product is a very important thing.

I would like to point out that, properly conceived and administered, the multiple award contracts do guarantee qualified vendors the right to sell to Government at fair prices, but that only fair prices, quality products and good products will earn those vendors a share of the business.

Multiple award contracts may be the only opportunity that some of these small vendors have to do business on a mutually advantageous basis with the Government.

Multiple award contracts may also be their only opportunity to compete effectively with large corporations, in any industry which may be dominated by large corporations.

I would like to summarize the suggestions that I have made for improving the multiple award schedule system.

I think one of the things that we need to do in addressing this method of procurement is to develop criteria for products that are appropriately included both under the Federal Supply Service and the ADTS multiple award schedule programs. Those products that have rapidly changing technology, where characteristically numerous configurations may be used for different applications or where local service support or training is required, are surely appropriate products to go under multiple award schedules.

I would like to particularly point out that there should be some provision of incentives for dealer participation where a manufacturer is the contractor. Dealer participation should be provided for in such a manner as to allow the small businessman dealer a reasonable profit on his sales to the Federal Government. At present, negotiating lower prices under Federal supply multiple schedule contracts compromises the opportunity that these small businessmen have to make a fair profit. They have no opportunity to represent their own interests because the parties to the negotiations are the manufacturer and the Government.

Multiple award schedules should include product and support services, because repair service is very, very important. Qualified technicians are vital to provide an agency proper support after the product is placed in a Government office. And as the General Accounting Office has documented, the present system has resulted in inadequate repair and rehabilitation of office products.

Procedures should be established to allow local agencies to participate in the selection of a product on some orderly basis because they are the best ones to define their own requirements.

In talking about the legislation that is before the committee and in talking about 30-day restrictions on letting contracts, I perceive a direction that takes decisions out of the hands of the people in the local agencies. I think it would be preferable to set high standards for good management of Federal agencies and to depend more on these for proper decisions made with economy in Government in mind. In other words, to place as much responsibility as possible on the activity which must use the product for proper acquisition of that product.

I would like to thank the subcommittee very much for considering the comments that I have made and I would also like to thank the subcommittee for expressing an interest in the issues surrounding this controversy. I would be happy to answer any questions you may have at this time.

Mr. BURTON. Thank you very much, Mr. Caulfield.

If there was a high level of standard for efficiency and economy of Government in the agencies, we wouldn't be messing around with this bill. So I think we may have to set the standards for them; even people coming in without that high standard, they would know what they have to do.

Mr. CAULFIELD. Certainly.

Mr. BURTON. Do you believe the GSA should have some remedies for contract abuse that do not rise to levels of a crime; in other words, civil penalties that we are talking about?

Right now you have referral to Justice, and if Justice has a choice between an assassin, a drug smuggler and some contractor who may have ripped off \$60,000, they may never get to that contractor.

If the administrator only has the remedy of debarment, which again is kind of the capital punishment of a civil industry, they may not want to take that step. What we are trying to do is again set standards where none seem to have been either in existence or adhered to; in such a way that gives the administrator, if the contracting officer refers a contract to him, the right to impose certain monetary fines. Otherwise, these other things have been on the books and nothing has been done.

I do not see any way to have them do it every time a company enters into an overcharge, despite the administrator, just start going through debarment proceedings, which I think would not be necessarily beneficial to the company or to the Government. If it happened to be one bad apple in the company or whatever, who thought he might be doing a good thing for the company by ripping off the taxpayers.

Mr. CAULFIELD. Certainly the punishment should fit the crime. I have no difficulty with this bill from the standpoint of my own company because I do not expect it to impact upon us. I have worked most of my career in marketing to the Federal Government with large manufacturers, minority suppliers in most instances, but with large companies who depend primarily on commercial business. I believe the latitude does not exist, nor the intention, nor the inclination to defraud the Government in order to put money in their pockets.

Mr. BURTON. What have we been reading about?

Mr. CAULFIELD. I believe problems—

Mr. BURTON. It is only a handful, I would stipulate that. But it is there, there is a lot of what you might call legal fraud. In other words, people can engage in practices where their only penalty is if they get caught they lose their unjust enrichment?

Mr. CAULFIELD. In the multiple award program there is a direct relationship to the commercial price and the commercial practices of a supplier. The major suppliers of office equipment that I know of have a well-established base in the commercial marketplace that is easily comparable to their Government prices and there exists little room for these kinds of fraud.

Mr. BURTON. This bill does not address multiple awards at all as far as penalties and all. Every witness has said that this will impose more redtape on the provider. All the provider has to do is certify to the best of his knowledge that these are accurate figures, contain accurate information. That is not a lot of redtape. That is what is implied if you sign a contract. That is what would be implied if Olympia signs a contract with whoever sells you your ribbons, your suppliers. I don't view that as a redtape imposition. That is just a certification that they make. It might make them sharpen their pencil a bit. That is the only redtape we are interested in.

Mr. CAULFIELD. As I say, I do not believe there would be any impact of the penalties of this bill upon the company that I work for.

Mr. BURTON. I mean any company. In other words, it does not impose anything on them. They have to sign a contract anyway. There is a certification clause in the contract that says to the best of their knowledge and belief the above figures and information are true.

Mr. CAULFIELD. Certainly, that is a reasonable requirement.

Mr. BURTON. Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman.

You mention in your testimony that H.R. 5381 will have very little impact on most of the contractors dealing with GSA. Does this mean the bill as it stands basically has your approval?

Mr. CAULFIELD. Yes, it does; I would concur with the comments Mr. Timbers made. I would feel more comfortable if some of those changes would be made. I have no objection to the bill in its present form, however.

Mr. WALKER. How do you think manufacturers would react to a system if we could include it in the bill regarding consequential damages, where it involves something that was included in your product that goes bad that causes the Government expenses later on, do you think there should be some provision for the Government to obtain damages on a consequential basis of that type?

Mr. CAULFIELD. I do not know if I can answer that question on the spur of the moment. I have not given it any thought.

Mr. WALKER. That was a recommendation that the Justice Department made to this committee when we originally had hearings on this bill. They suggested that kind of thing is done under medicare—medicare fraud where consequences do result from an error made to the Government, that some sort of damage recovery is there.

Do you see a problem with having that in this bill?

Mr. CAULFIELD. Would this be strictly relating to damage resulting from fraud?

Mr. WALKER. Yes, it is fraud, primarily, that we are trying to address.

Mr. CAULFIELD. I would have no difficulty with it if it were strictly damages resulting from fraud.

Mr. WALKER. What is your reaction to the proposed amendment to have a 30-day waiting period for contract awards?

Mr. CAULFIELD. The 30-day waiting period would tend to slow down an already slow process.

Quite often the processing of all types of documents that must move through the bureaucracies is unreasonably slow. The 30-day restriction would just give legislative approval to that slow processing. It probably is shorter than the period of time normally taken at the moment to produce a procurement document, on the average. However, it does give that much more of an excuse for delay.

Mr. WALKER. I was going to say, in your experience is that an unreasonable time with regard to what the Government is now doing? Can you expect the contracts to be processed in less than 30 days, as it is now?

Mr. CAULFIELD. For some emergency requirements contracts or purchase orders, delivery orders under contracts are processed much more quickly.

Mr. WALKER. As I pointed out, there are provisions within the amendment to deal with the emergency kind of circumstance as it is. I think we are basically talking regular kind of business here.

Mr. CAULFIELD. I find that quite a few times the emergency provisions are not taken advantage of in circumstances where perhaps they should be. It seems that many pieces of legislation, many regulations that should not provide an inconvenience wind up doing so, either through a misunderstanding or unresponsiveness of those involved in the process of producing a document.

Mr. WALKER. What percentage of contracts in your experience would you say take less than 30 days to get processed?

Mr. CAULFIELD. I would have to specify that—

Mr. WALKER. Has it been 10 percent?

Mr. CAULFIELD. I wouldn't know. My experience is limited primarily to delivery orders under multiple award schedule contracts. I would say 30 days is a pretty good guess at an average time for processing.

I would say that no more than 15 or 20 percent, to place a guess on the record, would be processed in a shorter period of time than that.

Mr. WALKER. In less time than the 30 days?

Mr. CAULFIELD. That is correct.

Mr. WALKER. Of course the attempt here is to assure that there simply is not money dumped at any given period of time, so that if in fact 80, 85 percent of all contracts are already in that time schedule, it might be something that the committee would be wanting to look at, if that is within the time schedule which is already being met by the Government.

Mr. CAULFIELD. I am not sure that this 30-day restriction as it is written addresses delivery orders under multiple award schedule contracts where many, many dollars are spent. I am not sure that it would prevent obligation of funds on September 30 and later issue of delivery order.

Mr. WALKER. I think that is a good point. Maybe that is something that Mr. Erlenborn will want to look at too, because I think his intent is to assure that the money is not obligated either, that you simply do not have all of the money spent in the last few days of the fiscal year, as is obviously the intent.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you very much. Thank you very much for your testimony, Mr. Caulfield.

Mr. CAULFIELD. Thank you.

[Mr. Caulfield's prepared statement follows:]

TESTIMONY BEFORE THE HOUSE SUBCOMMITTEE ON

GOVERNMENT ACTIVITIES AND TRANSPORTATION

by

Arthur D. Caulfield

National Sales Manager--Federal Government

OLYMPIA USA INC

June 9, 1980

Mr. Chairman, my name is Arthur D. Caulfield. I am National Sales Manager for Federal Government for Olympia USA Inc, an office machine manufacturer distributing through independent dealers. My other affiliations include acting as Advisor to the Government Relations Committee of the National Office Machine Dealers Association, and as the District of Columbia State Chairman for the Coalition for Common Sense in Government Procurement.

The testimony I am presenting today represents my own views, rather than the official position of any of the organizations I have mentioned. However, I believe that these views are consistent with the interests and opinions of these organizations, those office machine dealers who represent Olympia, and the industry as a whole.

In my opinion, the bill, H.R.5381 will have little impact upon the contracting of most manufacturers with GSA. As has been indicated, it is aimed at those who perpetrate fraud upon the Government.

However, I am concerned that some may inadvertently violate provisions and suffer severe penalties. Rather than repeat recommendations, I would like to express concurrence with the comments of Mr. Timbers regarding the penalty provisions of the bill.

I am also concerned that the bill fails to address much more pressing issues relating to GSA contracts. The environment created in the wake of the GAO report on GSA's Multiple Award Schedule Program and revelations of other contracting irregularities has resulted in confusion and great

harm to numerous suppliers. Further actions now being taken to eliminate multiple award contracts to the greatest extent possible threaten further damage to the interests of suppliers and agencies.

It is in this context that I request that the committee support and help improve the Multiple Award Schedule Program. This one procurement program offers small businesses the best--and in most cases the only--opportunity to do business with Federal agencies on a mutually advantageous basis.

Ideally, the MASP provides an umbrella of known, consistent, and fair prices and terms under which agencies and vendors--small or large--may do business. If this ideal is realized, the Government will be spared much chaos in the procurement of commercial products.

The General Accounting Office and the Senate Subcommittee on Federal Spending Practices vigorously oppose multiple award contracting. GSA is now proceeding to replace selected multiple award contracts with contracts which result in awards to only one vendor for a given item. These developments require that vendors and agency personnel who consider multiple award contracts essential to the interests of Government, suppliers, and potential suppliers must express concern over the irreversible damage being done.

GSA's own words, contained in the response to an earlier GAO report (PSAD-77-69), provide one excellent defense of this program:

"The multiple award program, as a method of supply, utilizes commercial

distribution channels and enables Federal agencies to purchase commercial, off-the-shelf, products that have an established market acceptability and, as such, provides an effective vehicle for implementation of the OFPP policy concerning procurement and supply of commercial products.... Furthermore, the program provides for a high level of competition in that it takes advantage of or fosters competition..."

While GSA may no longer agree with the above statement, the competition fostered by multiple awards is more broadly-based than that stimulated by single award contracting. Under multiple awards, agencies benefit from competition based on:

1. Responsiveness of product to user's application
2. Quality of product
3. Quality of instruction, programming, or other support services
4. Warranty provisions
5. Availability and quality of repair service provided during the warranty and thereafter
6. Availability of special features or capabilities
7. Cost of supplies, software, or services
8. Delivery time
9. Consistency of contractor's past performance
10. Net acquisition cost
11. Other factors the using agency considers important

Under single awards, competition is focused on price (or estimated life cycle cost), since that one variable will determine the award winner. This compromises the Government's ability to require proper performance of the other functions listed above.

Under multiple awards, agencies are allowed to let users participate in

the choice of brand and configuration. As an example of how this works in favor of the Government, many District Offices of the Internal Revenue Service, under an instruction issued by the Treasury Department, have been purchasing typebar electric typewriters at a lower cost than the more frequently requested single element machines. Typebar electrics are equally productive (or more productive) in the numerous applications which do not require interchangeable type styles. Based on studies which indicate lower initial cost, lower supplies cost, and less frequent failures for typebar machines, good management at Treasury and IRS has resulted in savings to the taxpayer.

By contrast, aggregation of requirements for centralized purchase often results in specifying the most versatile, highest priced product in order to assure that a maximum number of varied applications will be met by each unit purchased.

Allowing agencies to select from among numerous products on multiple award contracts assures that new technology available to the commercial sector will be available to the Government. This consideration is particularly important in view of initiatives in OFPP and other agencies designed to take advantage of rapidly-changing information management technology. Single award contracting would impede introduction of new products and cause confusion as vendors change from year to year.

Multiple award contracts provide far better geographic coverage than the single award contracts which GSA intends to use more extensively. Realizing that over 87% of Federal employees are located outside of the Washington area and, further, that over 27% are located in 2,700

counties with fewer than 2,000 employees per county emphasises the need for coverage of remote locations with contract products and services.

Properly conceived and administered, multiple award contracts would guarantee all qualified vendors the right to sell the Government, but only fair prices, quality products, good service would earn vendors a share of the business.

The right to sell their full line at fair prices is particularly important to those vendors who do not dominate their industries and to the dealers who may represent them. Only by having this opportunity can they compete effectively with the corporate giants who sell similar products.

Fortunately, this Subcommittee has expressed a willingness to consider the viewpoints of those affected by contracting changes. The interests of Government as well as large and small suppliers will be served by retaining multiple awards, even in their present form. The interests of all three will be served even better if needed reforms are instituted. The Subcommittee's support and assistance are needed to bring about this action.

Among the improvements and reforms needed are:

1. Development of criteria for products which should be included in multiple award programs under FSS and ADTS. Products which have rapidly changing technology, numerous configurations for different applications, or which require local support activity to facilitate use should qualify.

2. Determination of appropriate vendors. GSA should contract with the manufacturer or his designee, to assure that all requirements for nationwide distribution and support may be met by the party ultimately responsible for the product.
3. Provision of incentives for dealer participation. Dealer participation as a manufacturer's representative should be recognized and encouraged.
4. Methods of negotiation should allow sufficient revenues for dealers to make a reasonable profit. National Office Machine Dealers Association studies show that dealer revenues from Federal sales under present multiple award contracts often fail to cover costs of doing business with the Government.
5. Multiple award contracts should include both product and support services, to assure efficient repair service by qualified technicians at fair prices. Problems with the alternative, single award contracting by GSA Regions, are documented in GAO report #PSAD-80-5.
6. Procedures allowing users in local agencies to select the best brand or vendor for their application. New guidelines, information, and tools of analysis will be needed to allow this to be done properly.

On behalf of numerous suppliers and potential suppliers, I thank the

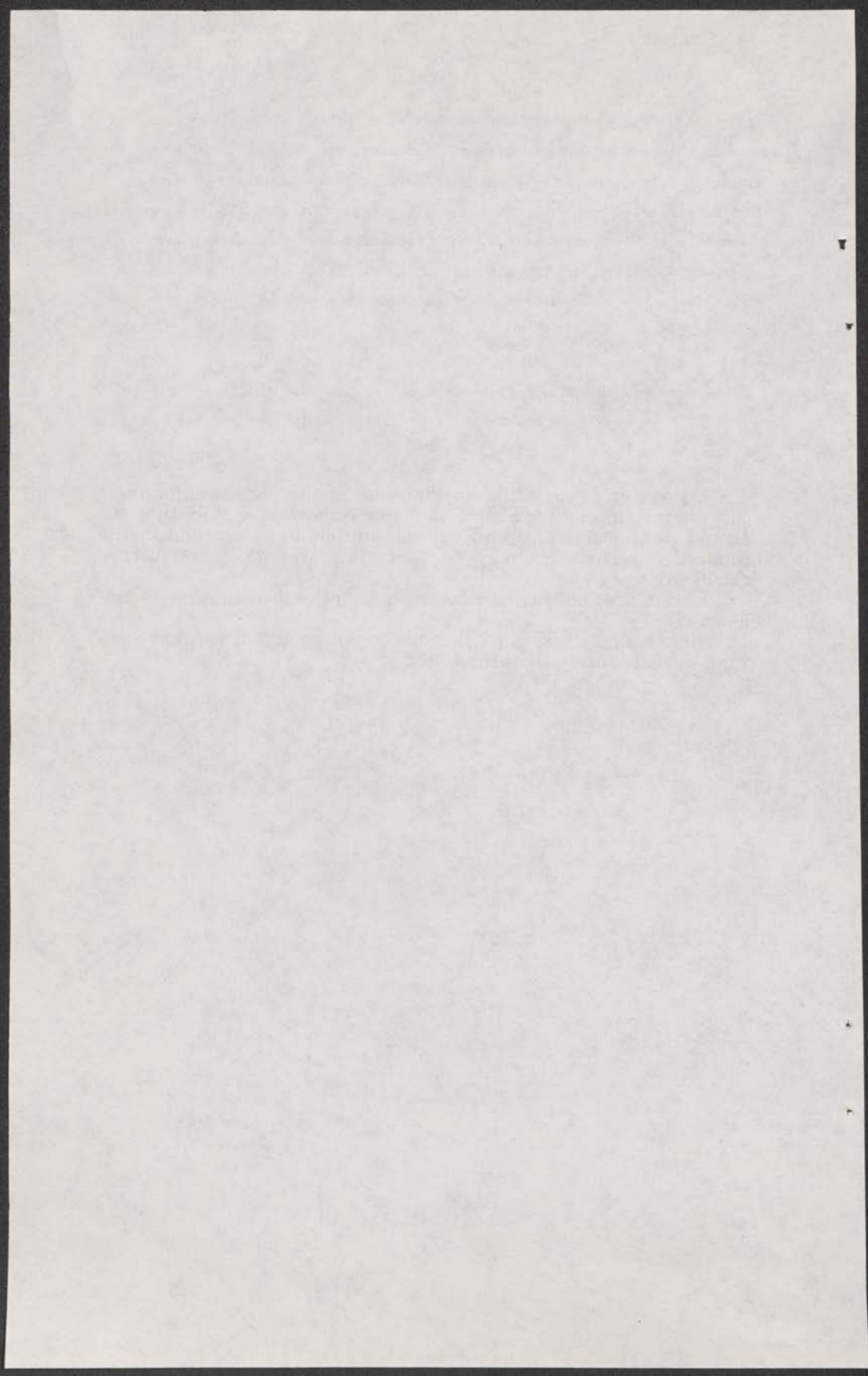
Subcommittee for giving thoughtful consideration to needed reforms of Federal contracting and procurement practices. In keeping with the Subcommittee's concern for economy in government and fairness of dealings with suppliers, I respectfully request that you study the issues surrounding the multiple awards controversy, and initiate such action as may be necessary to retain and improve this program. I will be happy to consult further with the Subcommittee staff regarding the suggestions made in this testimony.

I thank you, Mr. Chairman, and the Members of the Subcommittee, for this opportunity to testify. I will be happy to answer any questions you may have at this time.

Mr. BURTON. I would like to thank all of the witnesses for their suggestions, most of which I feel are constructive and that we should be able to address in our markup deliberations and in the committee report. We may be contacting you for some further clarification.

If there are no further comments, the subcommittee is adjourned.

[Whereupon, at 2:55 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]



APPENDIXES

APPENDIX 1.—EDUCATIONAL PACKAGE ON THE MULTIPLE AWARD CONTRACTING SYSTEM PREPARED BY COALI- TION FOR COMMON SENSE IN GOVERNMENT PROCURE- MENT

Educational Package on the

MULTIPLE AWARD
CONTRACTING SYSTEM

Prepared by

COALITION FOR COMMON SENSE
IN GOVERNMENT PROCUREMENT

Contact

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SUMMARY: Background data on the MULTIPLE AWARD
CONTRACTING SYSTEM

I. DESCRIPTION

The multiple award schedule system is the principal contracting method for the Government to buy commercial products. The General Services Administration (GSA) negotiates annual multiple, indefinite quantity contracts with contractors who offer similar, but not identical, products. The contractors give the government discounts off their commercial prices and certify that the government receives prices as low as or lower than their most preferred customers. Multiple award contracts are used to purchase items for which it is impracticable or unnecessary to develop specifications.

After GSA negotiates these contracts and establishes standard terms and conditions, as well as preferred prices, user agencies within the Federal government can then order directly from the multiple award schedule contractors. Agencies are required under existing procurement regulations to order the lowest priced items to meet their needs.

The system offers government users commercially accepted quality products which are competitively priced and technologically up to date. Industry storage and distribution facilities are utilized and agency requirements are filled quickly.

II. MAKE UP OF CONTRACTORS

There are approximately 4,000 multiple award contracts. Of that figure, approximately 2,360 -- or 62% -- are let to small business firms. The number of small firms able to utilize multiple award contracts increases to over 90% when you add small business dealers who are able to use contracts of large company manufacturers. These firms sell between \$2 and \$3 billion to the government off of the multiple award contracts.

III. THE PROBLEM

The General Services Administration is attempting to remove the multiple award contracting system from being a contracting alternative without examining the system to measure its real value. In eliminating the system, as evidenced by the statistics in II above, small business firms will feel the most impact and will no longer have an equal opportunity to sell their products to the government.

- 2 -

GSA Administrator Rowland Freeman is being supported, if not urged and directed, by Senator Lawton Chiles. Senator Chiles has demonstrated a limited, distorted understanding of the multiple award contracting system. He has confused it with spec buying for stock and is unreceptive to industry attempts to discuss the issue. Administrator Freeman is also reluctant to personally discuss the issue with industry.

A number of Senate hearings on the multiple award system have been held, but industry is repeatedly exempt from presenting its testimony. What has been heard most often are the findings of a May 1979 General Accounting Office report of the problems which GAO found with the system. Industry has refuted these findings with documented evidence but the Senate and GSA repeatedly ignore this evidence.

Administrator Freeman demonstrates no willingness, nor has he offered any plans, to correct the problems in the existing multiple award system. Instead, he is blindly planning a lengthy, unnecessary and costly contract system reorganization, virtually leading to the elimination of the multiple award system. His objective, he says, is to convert over 80% of the dollar volume currently covered under the multiple award program over the next two to three years to a buying program utilizing unique government specs.

IV. IMPACT OF ELIMINATION

If Senator Chiles' and Administrator Freeman's efforts to dismantle the system are successful, the primary means by which small businesses can participate in selling to the Federal government will be cut off. Small firms will be thrown into competition with firms many times their size. They will also be forced to compete with foreign firms which are able to undercut domestic small business prices.

V. REASONS FOR GOVERNMENT OPPOSITION

GSA says it is opposed to multiple award schedules because they:

- Offer too wide a variety of items;
- Have too many suppliers of similar items;
- Offer limited competition;
- Are not monitored sufficiently by ordering agencies;
- Do not allow the government to utilize its purchasing volume efficiently to get the best prices;
- Contain questionable items.

As can be seen from this list, the criticisms center on management responsibilities, not on the system.

In addition, because he confuses the multiple award system with spec buying for stock, Senator Chiles says the schedules are:

- Invitations for fraud by contractors;
- Abused by ordering agencies;
- Fraught with poor quality products.

VI. REASONS FOR INDUSTRY SUPPORT

Industry acknowledges that improvements are needed to the multiple award system, but it adamantly disagrees with Senate and GSA plans to discard the system prior to examination, modification where necessary, and appropriate testing. Rather than create a new system for commercial products, industry favors renovating the existing system so the government can fully benefit from all that which is inherently advantageous in it. Industry believes that most of the criticism leveled at the system has been motivated by Senator Chiles' efforts to capitalize on favorable publicity by attacking so-called government waste.

This is the most popular method for commercial product producers to sell their off-the-shelf products to the Federal government. Industry supports the system because it offers government the ability to get commercial products that are:

- Commercially tested and accepted;
- Competitively priced;
- Technologically current;
- Quickly available in small quantities;
- Delivered to agency doors, alleviating government storage and distribution requirements.

In addition to eliminating small businesses from having an equal opportunity to contract with the government, GSA will be encouraging the growth of single award contracting, thereby reducing competition; encouraging negotiation on price only, discarding the value of product quality; encouraging the proliferation of the marketplace by companies manufacturing for-government-only products which, in the long run, will increase the cost for commercial products the government will spend annually.

VII. APPENDIX

The attached appendix offers a detailed look at the multiple award contracting system...its advantages and disadvantages, comments made by the Coalition in support of the system to various Federal government organizations, as well as additional reasons for supporting the multiple awards program as a worthwhile and cost efficient contracting method.

A listing of the material follows.

APPENDIX CONTENTS

- A Paper prepared by the National Office Products Association, National Micrographics Association and the National Audio-Visual Association entitled "The Government's Commercial Product Policy - What's It All About?"
- B White Paper by the National Micrographics Association entitled "How Should the Government Buy Commercial Products?"
- C National Office Product Association, National Micrographic Association and National Audio-Visual Association joint rebuttal to General Accounting Office's 1979 report "Ineffective Management of GSA's Multiple Award Schedule Program -- A Costly, Serious, and Longstanding Problem."
- D Comments by the Computer and Business Equipment Manufacturers Association of a report of the Congress, by the Comptroller General of the U.S. entitled "Federal Supply Service Not Buying Goods at Lowest Price Possible."
- E Testimony of Michael J. Timbers before the Subcommittee on Federal Spending Practices and Open Government regarding S. 1264.
- F Suggestions of factors to be considered by GSA before any large scale change is made in the multiple award contracting system.
- G Excerpt from Government Executive magazine entitled "GSA's Commercial Spec Founded on a Myth."
- H Coalition's recommendations (partial) to the White House Conference on Small Business.
- I Partial statement by Mike Timbers at the public hearing held by the Office of Federal Procurement Policy regarding its Uniform Procurement System.
- J Excerpt from Government Purchasing Outlook newsletter entitled "S.5 Examined at Hearing."
- K Fact sheet on the Coalition for Common Sense in Government Procurement.
- L Sample GSA multiple award contract.

APPENDIX A

THE GOVERNMENT'S COMMERCIAL PRODUCT POLICY - WHAT'S IT ALL ABOUT?

Prepared by the National Micrographics Association,
the National Audio-Visual Association, and the
National Office Products Association.

Q. How does the government buy commercial products?

A. The government normally buys commercial products in one of two ways. It employs a multiple award schedule system whereby all suppliers in one particular product category receive a contract and each individual agency is free to select the item from that supplier which best suits its needs. Or it makes a single award to one manufacturer based upon a product specification. The multiple award system, which is the largest centralized procurement system for commercial items, is administered by the Federal Supply Service (FSS) within the General Services Administration (GSA). The principal requirements for obtaining a multiple award schedule contract is that the items offered are sold commercially and not just to the government and that the company desiring a contract will give GSA an attractive discount off its regular commercial prices.

The Federal Supply Service and the Defense Logistics Agency administer the largest centralized procurement programs for commercial items that are bought against a specification. In both these government activities, single awards to one supplier are made on the basis of lowest bid price; and most of these items are then warehoused and distributed through government facilities.

There is one other method of selling commercial products to the government, and that is by dealing directly with a user agency without one of the centralized procurement agencies acting as a middleman. This type of government purchase is often referred to as an "open market" purchase, and agencies will normally buy this way when the supply systems of neither GSA nor the Defense Logistics Agency are able to meet their needs.

Q. What are the government's policies concerning commercial product procurement?

A. The Office of Federal Procurement Policy (OFPP), part of the Office of Management and Budget, is the principal procurement policy making body within the Federal Government and, as such, it has the responsibility to develop the government's commercial product procurement policies. Its policy in this area was first announced in May 1976 and has been restated in numerous policy documents since that date:

"The government will purchase commercial, off-the-shelf products when such products will adequately serve the government's requirements provided such products have an

established commercial market acceptability. The government will utilize commercial distribution channels in supplying commercial products to its users."

- Q. Why are commercial product manufacturers so concerned about government specifications?
- A. The real concern of many commercial product manufacturers is not the fact that the government has specifications for commercial products, but the fact that the government uses these specifications as a basis for single awards. In many product categories where technology is rapidly changing and there are numerous competitors in the commercial marketplace, the government's policy of making a single award deprives many manufacturers and dealers from being able to participate in the government market. Furthermore, when the government buys a commercial product against a specification, it is freezing the technology at that point. Specifications also generally call for the lowest level of product quality and often exclude higher quality and more cost effective products on a life cycle cost basis.

Recent trends within the government toward functional or performance specs and away from detailed design specs have been positive steps, but it will be impossible for many higher value products to compete when price is the only basis for award. In product categories where the technology is stable and everyone in the industry is basically producing the same type product, the rationale for a single award based on the lowest price is very logical. However, as the majority of government specifications are over five years old, the use of a specification as the basis for a single award in those areas where technology is constantly changing guarantees that the government will be getting old, outdated and inferior products.

- Q. Won't single awards produce better prices for the government?
- A. That's a very common misconception. In many cases where we are talking about a rather standardized product (e.g. paper clips), this is probably true. However, in any product category where technology is constantly changing (e.g. office machines, audio-visual products or micrographic equipment and supplies), this is not the case. Almost all government specifications in these areas make it impossible for a manufacturer or a dealer to offer an off-the-shelf commercial item as most government specifications require some modification -- whether it be in design, tests, marking or packaging. These modifications drive up the price of the off-the-shelf product.

Even if the government does receive a lower price for an item under a single award, that does not necessarily mean that it is minimizing the total cost to the government for that particular item. Often, items which may appear to have a higher initial cost are actually less costly to the government on a life cycle costing basis because of lower operating or maintenance costs. Further, often when the government makes a single award, it forces manufacturers to exclude their dealer networks from participating in the government contract so that the manufacturer can bid low enough to have the lowest price and win the award. Therefore, the item then does not receive the benefit of the full service and training which a dealer network normally provides to commercial customers.

There is still another factor which also influences the total cost to the government. Many times, by making a single award, the government will encourage little-known manufacturers with no commercial product experience to develop unique government items to meet particular specifications. User agencies within the government will not be satisfied with these unknown brands and will buy on an "open market" basis, often without the benefit of any government discounts, the items which they really need from the established, brand name manufacturers. So while the GSA believes it is saving 20 percent on a particular item, it may be saving that 20 percent on only 10 percent of the actual government requirements while the other 90 percent of the government requirements are being bought at normal commercial prices.

- Q. Doesn't the government have to make single awards based on low bid price?
- A. This is another popular misconception. Actually, regulations which GSA itself has developed require GSA to make single awards based on lowest price if an adequate specification is available. The real dilemma comes in attempting to define what is an adequate specification. Take the case of overhead projectors. For over five years now, without success, GSA has been working on developing a specification as a basis for a single award on overhead projectors. It has been unable to come up with an adequate specification because technology in the industry is changing so fast.

This argument of being required to make single awards is one that the spec writers continue to perpetuate as it provides continuing justification for their existence. In fact, procurement regulations give contracting officers a fairly wide latitude in determining their method of procurement if they are willing to question the adequacy of their outdated specifications.

Q. What is the effect of single awards for highly competitive commercial products on government users?

A. Single award contracts for highly competitive commercial products have very detrimental effects on government users. Government agencies often do not get what they really need to fulfill their missions. They are often forced to pay higher prices for items they are forced to buy on an "open market" basis. Generally, technology of single award products is one to ten years behind what can be obtained just from buying off-the-shelf on an "open market" basis.

But the most disturbing effect is that the buyers within the centralized supply system are, in essence, telling the technical personnel within the various agencies what they need to run their various operations. Many agencies will just sit back and grumble privately, but many are forced to buy what they need directly. A 1974 General Accounting Office report revealed that some \$3 billion worth of commercial products are being bought directly by the agencies themselves in those areas where GSA is supposed to provide all the products to meet their needs.

Q. What is the effect of single awards for commercial products on industry?

A. Here again, the effects are negative. There is less competition within the government marketplace as many companies feel that their higher quality, more technology-oriented products do not have a chance of selling within the government market. These companies ignore the government marketplace as a potential sales area for their new technology. Further, it's another source of irritation between the business community and government as many industry people are frustrated with the apparent illogical acts of the government in continuing to buy lower technology, outdated and less cost-effective products.

Q. Why doesn't GSA, as the major commercial product buyer, change its procurement policies?

A. Many within GSA would like to see their procurement policies changed and have been advocating reform for years. However, as within any bureaucracy, there are strong forces which cling to the old traditions. When policies have been followed for years, it becomes very difficult to convince people that change is needed. At the present time, the spec writers within GSA have been able to convince upper management that specifications for many types of highly competitive commercial products are in the best interests of the government.

APPENDIX B

HOW SHOULD THE GOVERNMENT
BUY COMMERCIAL PRODUCTS?

Prepared by:

The National Micrographics Association

The subject of the federal acquisition of commercial products has received a great deal of attention recently. Both the national and trade press have had numerous articles extolling the virtues or condemning the abuses of various acquisition practices. With all the emotionalism surrounding most publicized accounts of government procurement, it is difficult to separate fact from fiction and to objectively evaluate the different acquisition techniques used by the federal government.

The objective of this paper will be to discuss the pros and cons of the current acquisition techniques used by the federal government, to provide background on recent developments in acquisition policy and to suggest approaches for the future acquisition of commercial products.

ACQUISITION METHODS

Federal acquisition is based on two underlying statutes, the Federal Property and Administrative Services Act of 1949 and the Armed Services Procurement Act of 1947. These acts allow for three methods of acquisition.

1. The Sealed-Bid System

Both of these laws indicate that the preferred method of procurement is the competitive sealed-bid approach. This approach requires the development of a product specification and an award to the lowest responsive and responsible bidder.

The sealed-bid technique is used extensively within the federal government to procure commercial products. It is most often used to procure products that are warehoused and distributed through the government's own depots, although often the commercial contractor will perform the warehousing and ship directly to government users. It is the traditional government procurement practice that has served the nation well since Revolutionary times.

The sealed-bid technique requires a clearly understood specification or product description to be effective. It requires a definition of the government's requirements that allows anyone an equal opportunity to compete without favoring any particular proprietary product. It is especially effective to procure items that generally are not subject to technological improvements. Manufactured items such as paper, paint, packaging materials and hand tools; raw materials like steel; and agricultural products are all procured very effectively by the sealed-bid technique.

The sealed-bid technique has the following advantages:

1. It allows all bidders to compete on exactly the same basis since the products they offer are all the same, and price is the only criteria for award.
2. It is quick and easy to evaluate bids when price is the sole determinate.
3. It is easily understood by government purchasing officials.
4. It encourages standardization.

However, there are some disadvantages to the sealed-bid method.

1. It requires the government to maintain specifications that are current with the state-of-the-art.
2. It does not allow the government to correct any errors (e.g. poorly written spec) that may be noticed after the bids are opened--it must either make an award or cancel the entire procurement.
3. It often provides the government with items that are similar to commercial products but are actually a little different. By attempting to write a specification that does not favor any one manufacturer, the government may require an item that no one can provide without modifying his standard item. In essence, a unique government item is created.
4. It is a costly and time consuming technique that may involve months between identification of a requirement and subsequent award.
5. In most cases, it virtually eliminates the value of commercial product warranties because products may sit in government warehouses for most of their warranty period before they are put into use.
6. It encourages the development of contractors who exist solely to produce items for the government.
7. It stifles the effective development of new technology since it provides no incentive for a contractor to improve his product.
8. It tends to perpetuate the usage of obsolete products by government agencies.
9. It discourages competition as it tends to favor long standing contractors who have amortized their equipment on prior awards.
10. It usually eliminates the use of established dealer and manufacturer owned service outlets for training and equipment repair.
11. It encourages government buyers to deliberately "stretch" their requirements in order to justify what amounts to a sole source procurement of the item(s) they actually prefer.

2. The Multiple Award System

In addition to the sealed-bid method, the government also employs a technique called the multiple award schedule system to acquire commercial products. The roots of this system can be traced back to the Treasury Department in the 1920s where indefinite quantity requirements contracts were negotiated with multiple contractors. In today's system, the General Services Administration (GSA) negotiates multiple, indefinite quantity, annual contracts with contractors who offer similar (but not the same) products and who will offer the government preferred discounts off their commercial prices. The system is authorized under existing procurement regulations as an exception to sealed-bid contracting in those cases where it is "impracticable to develop an adequate specification."

After GSA negotiates these contracts and establishes standard terms and conditions as well as preferred prices, user agencies within the federal government then order directly from the multiple award schedule contractors. However, they are required under existing procurement regulations to order the lowest priced items to meet their needs.

Items in highly competitive markets where there are continuing technology advancements are well suited for multiple award contracts. Products and systems in such fields as micrographics, audio-visual, duplicating and technical equipment lend themselves to multiple award contracting.

The principal advantages of the multiple award schedule contract system are as follows:

1. It provides a way to competitively procure products where technology is changing rapidly and it is impossible to write "fair" specifications that reflect current state-of-the-art technology.
2. It assures the government of receiving commercial off-the-shelf products.
3. It utilizes the commercial distribution system and local service facilities.
4. It assures that the government receives prices, terms and conditions equal to or better than any commercial customer ordering in similar quantities.
5. It provides a simple, quick way to order relatively small quantities of commercial products and receive rapid delivery.
6. It allows user agencies to select the item which best suits their particular needs.
7. It allows contractors to compete in the government marketplace in the same fashion in which they compete in the commercial marketplace.
8. It allows small business manufacturers and dealers to compete effectively against large businesses for a share of government business in their geographic area.

On the other hand, the multiple award contract system has the following disadvantages:

1. It may not provide prices as low as definite quantity, sealed-bid awards.
2. It gives agencies wide latitude in product selection, and agencies may choose higher priced items than they really need.
3. It makes it difficult for the government to standardize, as every contractor offers a somewhat different product.
4. It requires the submission of extensive pricing data by prospective contractors for the government to ensure itself that it is getting the best possible prices.
5. It is often misunderstood by government ordering personnel who are more familiar with the traditional sealed-bid approach.

3. The "Open Market" System

There is one other technique of acquiring commercial products for the government. In this system, the requiring agency deals directly with contractors without availing itself of either a centralized government-wide requirements contract or a governmental depot system. (The General Services Administration (GSA), Veterans Administration (VA) and Department of Defense (DOD) all operate centralized depot systems for different commodities.) This type of government procurement is most often referred to as "open market" purchasing. In making open market purchases, using agencies may use either a sealed-bid method, competitive negotiation or small purchase procedures (these allow simplified procurement techniques--telephone quotations--for purchases under \$10,000.)

The extent of "open market" purchasing is unknown since the government has no centralized record keeping for this sort of activity. However, the General Accounting Office (GAO) has estimated that the volume of "open market" purchasing may equal the volume of purchasing under both the sealed-bid or multiple award system conducted by the centralized supply activities. This fact seems to support the premise that user agencies clearly do have different requirements and that they will ignore the centralized supply systems if these systems do not meet their needs.

DEVELOPMENT OF CURRENT ACQUISITION POLICY

In December 1972, the Commission on Government Procurement (COGP) published its findings after a comprehensive review of the entire federal procurement system. One significant recommendation was that the government should make greater use of commercial distribution systems and should purchase commercial off-the-shelf products. The Commission made a strong appeal for the government not to create its own "almost commercial" products but to utilize what is already available from industry.

Further, in May 1976, the Office of Federal Procurement Policy implemented this key COGP recommendation with the following directive which still provides the major policy guidance for the purchase of commercial products:

"The government will purchase commercial, off-the-shelf products when such products will adequately serve the government's requirements provided such products have an established commercial market acceptability. The government will utilize commercial distribution channels in supplying commercial products to its users."

In April 1977, Sen. Lawton W. Chiles, Jr., introduced the Federal Acquisition Act of 1977 (S. 1264) which was intended to provide additional implementation to many of the COGP recommendations. Specifically, in the area of commercial product acquisition, this bill provided for the increased usage of functional or performance specifications in lieu of detailed design specifications to promote the use of off-the-shelf commercial products. The bill also recognized the fact that competitive negotiation was just as valid an acquisition technique as competitive sealed bidding and indicated that the multiple award schedule system was an acceptable competitive negotiation technique.

While this bill was not passed into law during the 95th Congress, the philosophy expressed within the bill is reflective of present day procurement practice, and the bill is expected to be reintroduced during the 96th Congress. Further, the directions indicated in S. 1264 are already shaping the acquisition policies of the Office of Federal Procurement Policy which has been supportive of using both functional or performance specifications and multiple award contracting.

OPPOSING POINTS OF VIEW

This subject, the best way for the federal government to acquire commercial products, produces equally vocal advocates on both ends of a spectrum that runs from single, sealed-bid awards based on design specs on one end to multiple awards on the other. Basically, the sealed-bid advocates will argue that specifications can be developed for every government requirement, and single awards can thus be made. Part of this group is also moving away from the use of design specifications and is advocating the use of functional or performance specifications. They believe that simplified, shortened purchase descriptions can be developed to assure maximum competition and sealed-bids without the need to maintain detailed federal or military specifications. There is also a great deal of support for the concept of "two-step" procurement, whereby prospective contractors offer a proposed product design in response to a functional specification in the first step, and then those product designs which the government deems acceptable are eligible for price competition during the second step.

Advocates of the opposite point of view will argue that the multiple award system is the only way to acquire commercial products. They believe that the government inhibits the introduction and use of new technology by developing specifications--whether design or functional--and making single awards. They believe the multiple award system is a competitive negotiation system that provides the government technologically superior products at lower prices than commercial users of the same products. They argue that it also allows the government to take advantage of off-the-shelf delivery, local service and better warranties.

Those in favor of multiple awards also point out that the system is a boon to small business manufacturers and independent dealers who would be unable to compete in a sealed-bid situation. It allows small businesses all around the country the opportunity to compete for government business in their geographical area in the same way they compete for commercial business. On the other hand, the sealed-bid method excludes unsuccessful bidders from participating in government business. It deprives the government of taking advantage of the highly developed commercial distribution system which exists in this country.

WHO'S RIGHT?

We would suggest that neither group is completely right--nor completely wrong. Rather, we believe that both techniques are valid and appropriate in different situations. The problem is picking the procurement technique that best fits the needs of the government and peculiarities of the product and/or industry which is involved.

We recommend that the following be considered before a decision is made as to the appropriate acquisition technique for a particular product:

1. What is the total value of the procurement?
2. How many items are normally ordered at one time? How often are they ordered during a given time?
3. What is the nature of the market situation for the product? Is it a highly competitive market? Is it an area where technology is moving quickly or is it marked by rather gradual changes in product function and design?
4. Is there a recognized commercial distribution system? Can the product be purchased economically in numerous locations?

5. What are the needs of the user agencies? Do they have different requirements based upon their mission requirements, or can they all use the same item?
6. Is the product one that requires a large capital investment to manufacture, or is it a product that is primarily labor intensive?
7. How have the government's requirements previously been supplied? Are small or minority businesses dependent upon the government business?
8. And, probably most important, what is the most cost-effective system to supply government users considering all costs to acquire and deliver an item to the ultimate user?

In some cases, it will be more efficient for the government to utilize specifications and make a single award. In others, multiple award schedules will make more sense. In still others, agencies should purchase their needs on an "open market" basis.

We caution those in government and industry who believe that only one technique will solve all the government procurement problems. For example, it would be a mistake to believe that short, simple performance specifications are the answer to buying commercial products. Adequate performance or functional specifications may actually be more difficult to develop than the more traditional design specifications. In some situations, they may work extremely well; in others, they may be a disaster. Well written functional specifications may actually be longer than the design specifications they seek to replace.

Likewise, multiple award contracts should only be utilized where there are obvious cost advantages to the government. If a commodity is readily available at numerous commercial outlets and is subject to frequent price-cutting market pressures (e. g., hand-held calculators), it is probably not cost-effective for the government to have a centralized multiple award type contract.

We recommend that the procurement policy makers in Congress and the Executive branch give government buyers the greatest flexibility in determining the method of acquisition that best suits their needs. It is easy to be swayed by stories of increased cost utilizing one technique or another, but we believe that all recognized approaches are needed. We also believe that all the existing techniques can be improved. Both the sealed-bid and multiple award contracting techniques need to be continually re-evaluated and strengthened.

The problem facing government procurement officials is not to pick one technique for commercial product acquisition over another, but to establish the most appropriate criteria that makes a particular technique more preferable in a given situation. We hope that policy makers in both the Legislative and Executive branches keep this in mind as they develop further acquisition policy. The decisions which are made over the next few months are critical to the thousands of small and large businesses who supply the government's requirements of commercial products.

APPENDIX C

April 27, 1979

NEW GAO REPORT DRAWS OPPOSITION FROM TRADE ASSOCIATIONS

The National Audio-Visual Association (NAVA), the National Micrographics Association (NMA), and the National Office Products Association (NOPA) are objecting to a new General Accounting Office (GAO) report entitled, "Ineffective Management of GSA's Multiple Award Schedule Program--A Costly, Serious, and Longstanding Problem." The GAO prepared the report at the request of Rep. John L. Burton (D-California), Chairman of the Subcommittee on Government Activities and Transportation.

In a joint statement, the trade associations said, "We had hoped that the GAO would take an objective and balanced look at the multiple award contracting system. Instead, what the GAO has presented is a poorly researched, sensationalized report that is not up to its usual standards of unbiased reporting." NAVA President Robert Gordon said, "We all want to see improvements at GSA. GSA does have management problems. But when GAO wants to give year long monopolies to single companies instead of relying on the multiple awards system--that's throwing the baby out with the bath water."

The associations maintain that "the conclusions in the report were reached before the study was performed, and the study team researched only those contract situations that support their pre-conceived notions. They attempt to portray the most ludicrous examples

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of inefficiency they could find and lead the reader to believe that the examples are typical of the entire program."

NAVA, NMA, and NOPA agree with the GAO that improvements are needed in management of the multiple award schedule system. "We have stated publicly on previous occasions that more attention should be given to the types of items put on schedules, that government buyers need more market research to familiarize themselves with the industries they are dealing with, and that improved management controls should be established over the program. However, we are appalled at the so-called facts which GAO uses to support its conclusions," the associations said. The NAVA, NMA, and NOPA joint statement gave the following as examples:

- On page 11, GAO refers to a study that indicated \$180,000 a year could be saved if overhead projectors were purchased on a single award basis utilizing a government specification instead of under the multiple award system. GAO is incorrect because GSA actually estimated savings from \$39,500 to \$61,500 a year. Further, GAO fails to mention that this savings contains numerous errors. It was prepared by the GSA spec writers, who at that time were advocating giving all the overhead business to a single firm. In fact, using the numbers generated by the spec writers, NAVA proved that the government is already saving \$80,000 under the multiple award system. Ignoring the savings under multiple awards, the Army attempted to buy overhead projectors which had to be specifically built to a government specification, but the project was a total disaster. Some five years after the Army attempted this type of single award procurement, only 2,000 of 6,000 projectors have been delivered. Had the Army stuck to off the shelf projectors commonly used throughout the United States, this would have never happened. We think that GAO ignored the Army case because it doesn't support the GAO thesis.

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- On page 24, GAO implies that a vendor can just raise his list price if a GSA bureaucrat demands a greater discount. What GAO does not say is that to legally raise a price, a company would have to raise its prices to all customers and not just to GSA. Further, a company cannot get a multiple award contract unless the majority of its sales are to commercial customers. So, raising prices just to comply with a government discount would be unwise business practice in most cases.
- On page 30, GAO reports the case of a manufacturer and dealer selling the same item on a GSA schedule at different prices. Besides the fact that the prices quoted by GAO are last year's prices and thus out-of-date, GAO fails to mention that GSA has a firm policy against awarding contracts for the same item to two different vendors. We agree with GAO that this should not occur, but we find it interesting that only one example of this was shown when GAO indicates that it reviewed approximately 1,000 contracts covering tens of thousands of items.
- On page 42, GAO implies that the government is one customer, and industry should deal with the government as if all of government were located in one place. In fact, there are well over 100,000 separate agency ordering activities, and the schedule program was developed to service the varied and relatively small orders from all of these thousands of locations.
- On page 46, GAO indicates that GSA saved \$2 million by switching from multiple to single award on 16mm microfilm. The truth of the matter is that the price of 16mm microfilm had dropped 75 percent in the commercial market over a year before GSA changed its procurement practices. The switch in procurement method had absolutely nothing to do with the so-called saving which GAO references. The prices dropped because of market conditions and not because of GSA. Then on page 46, using faulty assumptions such as, "GSA made the prices drop," GAO estimates total savings that might be obtained by changing the entire multiple award program.
- On pages 48-56, GAO, based on a sample of 24 items, concludes that the states are getting better prices than GSA. However, GAO conveniently overlooks those situations where GSA is getting better prices than the states.

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Further, GAO virtually ignores the fact that the states' contracts are definite quantity while GSA operates an indefinite quantity contracting program. This whole section compares apples and oranges and is statistically invalid.

- On page 51 and 52, references are made to price differentials between state and federal prices on Sharp calculators. However, GAO again ignores that the state prices are based on definite quantity commitments while the federal prices are based on indefinite quantities.

APPENDIX D

PRODUCT PRICING UNDER MULTIPLE-AWARD
FEDERAL SUPPLY SERVICE CONTRACTS

CBEMA comments on a Report of the Congress by the
Comptroller General of the United States
"Federal Supply Service Not Buying Goods at Lowest Possible Price"

The General Accounting Office has stated in a report issued March 4, 1977 that:

o Some contractors charged the Government more for their products than they charged commercial customers who brought smaller or comparable quantities of those products.

o If the Federal Supply Service had sought and obtained prices comparable to those given other customers, the Government could have saved \$1.2 million on products bought from five contractors.

The above statements, which appear on the cover of the report along with the title, are misleading, and do a disservice to the Federal Supply Service (FSS), the contractors involved, and the multiple-award contracting program itself.

The discussion in this paper is presented as follows:

o Multiple-award contracting: The need. The System. The alternatives.

o Multiple-award contracts versus commercial sales under annual aggregate purchase agreements.

o Multiple-award contracts versus commercial sales to original equipment manufacturers (OEMs).

o Multiple-award contracts versus single-award contracts.

o Contractors pricing data provided for multiple-award negotiations.

o Conclusions and recommendations.

Multiple-award Contracting

The Federal Supply Service (FSS) has established a program consisting of multiple-award term contracts for indefinite quantities of commercial products. The products can be ordered directly from suppliers by any Federal activity in the United States.

The contracts are for off-the-shelf products sold to the general public through dealers or manufacturer outlets. The contracts often include customer service, operator instruction, warranties for one or more years, maintenance service, and supply requirements. At an FSS-negotiated discount, the contracts provide Federal users throughout the United States with item selection and customer service comparable to that available on the commercial market.

This program simplifies the purchase process for all Federal user activities by centralizing the negotiation of terms and conditions and by assuring reasonableness of price for any item bought under the contract. The user agency simply places a one-page delivery order with a local dealer or manufacturer outlet and pays for items received or service rendered in accordance with the terms and conditions of the FSS contract.

With a few exceptions every item in each multiple-award contract is subject to a maximum order limit. The contracts are designed to simplify the process and paperwork for the purchase of small quantities of commercial products required by user agencies at or near the place of need. Very large procurements are not permitted, requiring other methods of procurement.

The contracts are called multiple-award because they are executed with several suppliers for each product line. This method of support is generally the most cost effective for off-the-shelf products that are widely available through commercial outlets that serve the general public. Since the supplier's product description is the basis of the contract, development of Government specifications is unnecessary. The use of established commercial distribution systems also eliminates the costs of Government storage and distribution. Both the purchase of commercial items and the use of commercial distribution systems are consistent with the policy set forth in OMB memorandum, May 24, 1976, Subject: Procurement and Supply of Commercial Products.

Some of the seldom recognized benefits of multiple-award contracts are that they:

- o Provide for a way to meet variations in agency requirements due to mission needs and changes in operating conditions.
- o Enable selection of the supplier with the best or most responsive service organization at a particular user location.
- o Provides array of devices and material with widely varying features.
- o Eliminates the enormous burden of an untold number of separate contracts.
- o Eliminates expense of preparing and maintaining specifications or purchase descriptions.

o Attracts many contractors to doing business with the government which is vital in the event of mobilization or other emergencies.

Many State and local government purchasing activities use the multiple-award contracts as pricing standards for procurement. Thus, the FSS multiple-award contract system has a beneficial ripple effect on non-Federal government units.

One alternative to multiple-award contracting is a single-source exclusive contract of a given commercial product for direct delivery to Government agency installations. This approach requires the development of product specifications and conditions for delivery, warranty, and service to enable solicitation and award to a single supplier. The unit price resulting from a single-source contract for a large quantity of a of off-the-shelf items, but the total cost of the process to the Government is significantly higher and the timeliness of support to thousands of Federal users is reduced.

The first alternative, a single-source term contract, requires the use of Government specifications and reduces the range, and often the quality, of items available, causing many users to ignore the Federal contracts and make expensive open-market purchases.

A second alternative, i.e., the purchase of quantities of an item under a Government specification for stock in Government warehouses and distribution to users as needed, is exceedingly expensive. Studies by the Commission on Government Procurement have shown that such a system frequently costs as much or more to administer than the savings in price achieved by consolidating requirements.

It is self evident that due to the disparity in delivery requirements and other contract items and conditions, a fair comparison of multiple-award contracting with the foregoing alternative methods cannot be made on price alone, even when only the Government interests are considered.

Multiple-award Contracts Versus Commercial Sales Under Annual Aggregate Purchase Agreements

The GAO report cites three examples of an alleged disparity between the discounted prices given to FSS and those given to other customers under annual aggregate purchase agreements.

In each example the quantity discount given to the commercial customer was for a firm purchase commitment with delivery to one or a very few locations. The multiple-award contract identified by the GAO guaranteed no quantities and was available to thousands of customers throughout the United States. The terms and conditions of the non-Government sales contracts differed significantly from those in the multiple-award schedules.

It does not appear reasonable or fair for FSS to expect the same prices offered to other volume customers when the delivery conditions and other contract terms significantly differ from the terms of the Government solicitation. The Government should not be authorized to use noncomparative prices in negotiations without appropriate adjustment. The rationalization that the great volume of business done by the Government collectively compensates for the difference in terms and conditions is not valid. For the most part, this volume accrues from many small purchases by a staggering number of ordering locations. However, this type of price information should be obtained for the Government's consideration in evaluating alternative contract approaches.

Multiple-award Contracts Versus Commercial Sales to Original Equipment Manufacturers (OEMs)

The GAO reports several examples in which suppliers gave original equipment manufacturers (OEMs) better prices than they gave the Government on multiple-award contracts. These OEM sales are exclusive contracts for large quantities often delivered to a single assembly point. There is little customer service (because the purchasing company is not the ultimate user) and generally no warranty is required.

The terms and conditions for these agreements, as well as the quantity commitments, differ so greatly from those of Federal multiple-award contracts that a fair comparison is not possible. As in the case of annual aggregate purchase agreements, the base for negotiations is the terms and conditions set forth in the solicitation and not simply the total quantity or volume involved.

Multiple-award Contracts Versus Single-award Contracts

The U.S. Forest Service example cited by the GAO was for a quantity that exceeded the maximum order limitation of the referenced multiple-award contract. The example shows the benefits in prices to a single using activity that was able to identify specific requirements, develop specifications, and solicit bids for a single award. For proper comparison, the cost of the buying process should be computed to determine total savings to the agency. In other words, "Total Economic Cost" as developed by the Commission on Government Procurement should be considered, not just the purchase price.

The multiple-award contract program requires all agencies to solicit bids or proposals on specific requirements that exceed the maximum ordering limitation (MOL) or to have these purchases made for them by the FSS. For large quantity purchases, this feature of the contract ensures that the Government customer seek more favorable prices through separate solicitation. The terms and conditions of multiple-award contracts restrict contractors from accepting orders that exceed the MOL.

Contractors Pricing Data Provided for Multiple-award Negotiations

The GAO report indicates that proposals did not always show the extent of discounts contractors give to other customers. This conclusion was made on the basis of "A comparison of contractor sales records that showed numerous instances of better discounts given to other customers than to FSS."

Federal Procurement Regulation 1-3.801-1 states that:

It is the policy of the Government to procure property and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Sound pricing depends primarily upon the exercise of sound judgement by all personnel concerned with the procurement.

It appears to us that "fair and reasonable prices" relate to the terms and conditions of the solicitation and the resulting contract. The terms and conditions with respect to FSS multiple-award contracts include prepaid delivery to any user activity in the United States and the customer services normally associated with retail sales. The prices solicited and the marketing data supporting the prices clearly relate to the terms and conditions of the proposed contract and not to other sales that a company makes under varying circumstances to other customers.

The GAO inference that the Government should be given the same or better prices than any other customer regardless of cost, delivery conditions, and other contract terms is an issue that needs to be resolved. Price information on contracts with different terms and conditions will generally be provided by our member companies for the purpose of evaluating alternative methods of procurement. However, if a member prefers not to include data unrelated to the solicitation, it should not be considered as incomplete or inaccurate submission of pricing data. For large single procurements (exceeding the MOL) the contractor may not be able to disclose the prices because they may not be established in advance.

Conclusions

We do not agree with the GAO recommendation that FSS develop procedures to enable it to obtain discounts and/or refunds equal to those obtained under non-Government aggregate purchase agreements or original equipment manufacturer discount, unless the terms and conditions of the contracts are comparable.

In determining appropriate contracting methods, it is essential that the using agencies' needs be recognized and that significant costs associated with the buying process and use of the products be considered and the timeliness of response to the user should also be a major consideration.

The competitive nature of multiple-award contracts (1) in the marketplace, (2) by FSS in negotiating discounts, and (3) throughout the period of performance, needs to be recognized.

The bottom line is the total economic cost of the Government at the point of use. As outlined by the Commission on Government Procurement, this cost includes significant factors beyond price. Many of these factors, such as the costs of development of specifications, are generally ignored in formally advertised purchasing. Thus, the benefits of competition obtained through the negotiation of multiple-award contracts are just as significant as those obtained in formal advertising.

This analysis stresses the advantages of multiple-award contracting, but CBEMA does not recommend its use exclusive of other purchasing methods. CBEMA endorses use of the procurement and support method that yields the least total cost to the Government. Our recommendation is that the optimum method be determined by consideration of all significant cost factors, not simply the contract unit price.

APPENDIX E

FACTORS TO BE CONSIDERED BY GSA BEFORE ANY LARGE SCALE CHANGE IS MADE IN MULTIPLE AWARD - INDEFINITE QUANTITY PROCUREMENT METHOD.

1. What is the affect on small business
 - . Extent of small business participation currently
 - . Extent of small business participation in definite quantity procurement
 - . Viewpoint of small business toward system
2. How would it affect using Agencies
 - . Manpower (How much additional procurement manpower would be required..)
 - . Could agencies meet needs on a timely basis
 - . Would a sudden significant change result in another fiasco
3. Is it known where the current method is most effective? Is it for large and small or small quantity procurements involving:
 - Equipment purchase
 - Equipment rental
 - Maintenance of Government-owned equipment
 - Supply purchase
4. Has it been determined that any significant combining of agency needs is feasible particularly for the wide variety of higher technology items, widely varying features, and service support.
5. Is it feasible to consider definite quantity-advertised procurement of
 - . Rental of relatively low cost high technology items considering Federal inability to make a long term commitment.
 - . Purchase of relatively low cost, high technology products which require training and service support in both metropolitan areas and, more importantly, in the more remote Federal installations.
6. Has it determined under what circumstances or for what products the use of definite quantity-advertised procurement is most cost effective.

7. Definite Quantity-Advertised are awarded on lowest price. Is lowest price the most cost effective for all products, particularly equipment rental and purchase considering support requirements (service availability, training).
8. Is it feasible to force the agencies to increase sharply the open market contracting for many small procurements in view of the many Federal Socio-economic contract requirements (SCA, Affirmative Action, Small Business subcontracting, and the like).

APPENDIX F

Testimony of Michael J. Timbers at hearings held before the Subcommittee on Federal Spending Practices and Open Government (Committee on Governmental Affairs), July 18, 19, 22, 26, and 28, 1977 regarding S.1264

TESTIMONY OF MICHAEL J. TIMBERS, PRESIDENT, THE
WASHINGTON MANAGEMENT GROUP

Mr. TIMBERS. Mr. Chairman, I am very happy to be here. As you indicated, I am president of the Washington Management Group, which is a consulting firm specializing in governmental procurement issues.

I am also on the staff of the graduate school of business at Michigan State University, where I teach a course on public sector procurement.

I am very pleased to testify on S. 1264, the Federal Acquisition Act of 1977, in order to share with the committee some of my frustrations and concerns with the current method of procuring commercial-type goods within the Federal Government.

The observations I will express today reflect my previous experience as Commissioner of the Federal Supply Service from 1973 through 1975, and my work in the private sector since leaving public service.

My remarks this morning also have the endorsement of the National Audio Visual Association, the National Micrographics Association, the National Office Products Association, and the Computer and Business Equipment Manufacturers Association.

Before I get into my specific comments concerning the bill, I would like to take this opportunity to praise the efforts of this committee through the leadership of its chairman for the tremendous strides that have been made in the procurement area since the Commission on Government Procurement issued its report in 1972.

Such achievements as establishment of the Office of Federal Procurement Policy; reform of major system acquisitions; creation of the Federal Procurement Institute; oversight investigations into the Department of Defense's beef procurement program and the Small Business Administration's 8(a) program; and implementation of the recommendations of the Commission on Government Procurement are just a few examples of what this committee can point to with justifiable pride.

This bill is but a continuing example of the effective and innovative leadership which you personally, Mr. Chairman, your committee, and your excellent staff have brought to the procurement field.

I am particularly interested in the effects of this proposed legislation upon the commercial product manufacturers and distributors of this Nation.

Current governmental acquisition policies are forcing many of our leading commercial product manufacturers and distributors out of the Government marketplace.

These policies are resulting in excess costs and outdated technology within the Government's supply system. It is my hope and the hopes of hundreds of commercial product manufacturers and distributors that your bill can return common sense to the Government's purchase of off-the-shelf commercial products.

My testimony is divided into two parts. First, I have a number of textual recommendations on specific sections of the bill.

And, second, I would like to focus on an area that I feel is not adequately covered in the bill; the need for a strong statutory base for the multiple award contracting system.

However, in the interest of time, the textual recommendations are attached to my testimony and, with the chairman's permission, I will provide them for the record and not go through them in detail.

Senator CHILES. It will be included in full in the record.

Mr. TIMBERS. Thank you, Mr. Chairman. Turning now to the subject of multiple award contracting, I think it is important to first provide some background on what has been occurring in the procurement of commercial products over the last few years.

When I was Commissioner of the Federal Supply Service in December of 1974, the General Accounting Office published a report on improving the procurement programs of the Federal Supply Service.

This report pointed out that the Federal Supply Service was only providing about 50 percent of the commercial-type goods and services that they could potentially be supplying to other agencies.

Or to put it another way, agencies were buying 50 percent of their commercial goods and services on their own, without coming through the Federal Supply Service.

As Commissioner at that time I was obviously concerned; as a taxpayer, I remain concerned, because I see the tremendous loss of governmental purchasing power as each agency does its own thing and pays regular commercial prices for its commercial goods.

My investigations into the problem at that time and my experience with commercial product companies and governmental users since leaving public service have convinced me that the basic reason for this problem is the fact that the Federal Supply Service is generally not providing the commercial items that other agencies really want and need.

Under their interpretations of current procurement law and regulation, Federal Supply is convinced that they should be writing specifications and making single awards for all types of commercial items.

And, for many types of low technology, high volume, rather generic types of items such as paperclips, pencils, paper products, packaging materials, simple hand tools, and the like, this policy makes sense.

However, they are mistakenly applying that same approach to commercial items, where there is intensive competition in the marketplace, fast-moving technology, important maintenance and service considerations, and numerous slightly different product models to reflect different requirements and applications.

Attempting to write a single Government specification to satisfy all user needs just to make an award to one manufacturer is ridiculous.

This policy has led to many minimal quality, outdated products being bought by the Government at excess prices. It has driven higher quality products provided by established commercial product manufacturers and distributors, both large and small businesses, out of the Federal Government marketplace.

An obvious question is: How did the Government get into this position? I think a large part of the answer goes back some 10 years ago when the Government wrote a specification for the procurement of computer tape.

Within 2 years after the introduction of this specification and the resultant single award, the Government's price for computer tape had dropped by 50 percent.

The Government specification and procurement personnel assumed that their specification was responsible for this apparent savings, in the millions of dollars, and this apparent success provided the incentive to write more and more specifications for other high technology products.

However, the Government made an assumption in this case that a minimal amount of investigation would have shown to be completely fallacious.

What really happened during that time period was that a tremendous range of competition in the commercial marketplace coupled with savings in raw materials and normal manufacturing efficiencies as the product matured created the downward price pressure.

Actually, the Government, who represented only 10 percent of the total marketplace, was getting prices that were only slightly better than any normal commercial user was getting by buying in small quantities and, in fact, Government prices were actually 30 percent higher than what large commercial users were paying for the same tape, but without the unique Government testing, marking, and packaging requirements.

I might add that 10 years later with thousands of dollars still being spent every year to maintain a specification and perform special Government testing, Federal Supply still pays more than large commercial users for the same product.

A few other more recent examples that might be of interest to the committee include the following: Government agencies are supposed to purchase audio cassettes, the kind you would use in any tape recorder, from Federal Supply.

Federal Supply purchases these cassettes against a specification that, incidentally, the largest commercial cassette manufacturer in this country does not meet, and offers a standard 60-minute cassette in their supply catalog for 79 cents.

A higher quality, 60-minute cassette is available to any Government agency off the shelf at 73 cents and below. Under a single award contract in the summer of 1976 Federal Supply awarded all of the audio cassette business to a relatively unknown manufacturer who produces all their cassettes in Haiti in a plant that Federal Supply never inspected before the contract award.

Nine months later, the manufacturer was delinquent on 400,000 cassettes. In this situation, it is no wonder that a far higher percentage of Government users purchase cassettes on an open-market basis directly from the eight highly competitive and well respected commercial manufacturers rather than through Federal Supply.

Likewise, on many lengths of one-quarter inch sound tape, Government agencies can purchase a state-of-the-art, off-the-shelf product through normal commercial distribution channels at lower prices than the product Federal Supply offers.

A product, incidentally, that reflects technology 10 years behind the times. For example, the lowest bid price on the most recent solicitation for a 2,500-foot reel of this tape was \$8.30, while a better off-the-shelf product can be purchased at hundreds of locations around the country for approximately \$7.

Another example of this blind dedication to trying to develop unique Government products for well-established commercial items—and one that Bob Judson mentioned a few minutes ago—is the Government's continuing efforts over the last 5 years to develop specs for overhead and super 8 millimeter projectors.

Here are product areas with intensive commercial market competition and rapidly moving technology that are sold and serviced by hundreds of small, independent dealers throughout the country.

Yet the Army continues to purchase overhead projectors against an outdated purchasing description for stocking in their depots and Federal Supply continues relentlessly to develop a unique Government specification for overhead projectors.

Incidentally, it is my understanding that the Army's most recent purchase of overhead projectors for their depot program was at a price higher than the retail price for a comparable off-the-shelf machine from a major manufacturer.

With the Chairman's permission, I would also like to provide for the record a resolution adopted at the annual meeting of the National Audio Visual Association which speaks to the issue of Government specs in this projector area. This association represents some 800 manufacturers and dealers in the audiovisual industry.

Procurement

HIGHLIGHTS

- Writers of Government specifications for products claim, as a result of their work, Government buys "commercial-like" products of better quality and/or at less cost than similar products on the commercial market.

- Fact is, they probably force the Government to spend more money, dilute competition, and end up with poorer products than what any "man-on-the-street" could buy at the corner drugstore.

By Michael J. Timbers
President
The Washington Management Group, Inc.

The last year and a half have been frustrating for many commercial product makers and/or their dealer outlets. Their hopes of moving into or increasing a share of the Federal Government market had been pumped up back then by an Office of Federal Procurement Policy (OFPP) directive.

It said, essentially, that Government agencies should start to buy commercial off-the-shelf products, if they existed, to perform needed Government functions—and stop creating unique, Government-only, "commercial type" items. For hundreds of firms, that was a heartening sign the Government might be about to show a little sound, common sense.

However, as the months rolled by, industry expectations have sagged. They have seen precious little evidence any Government specification writers have changed direction (from writing technical, engineering specifications to writing "function" ones).

True, there have been pronouncements about "this new initiative" or "that new project," but most of it appears to be lip service with little substantive action behind it. Little wonder many commercial product people harbor strong skepticism that anything or anybody can stop the tremendous momentum built up by the bureaucracy in the commercial product area.

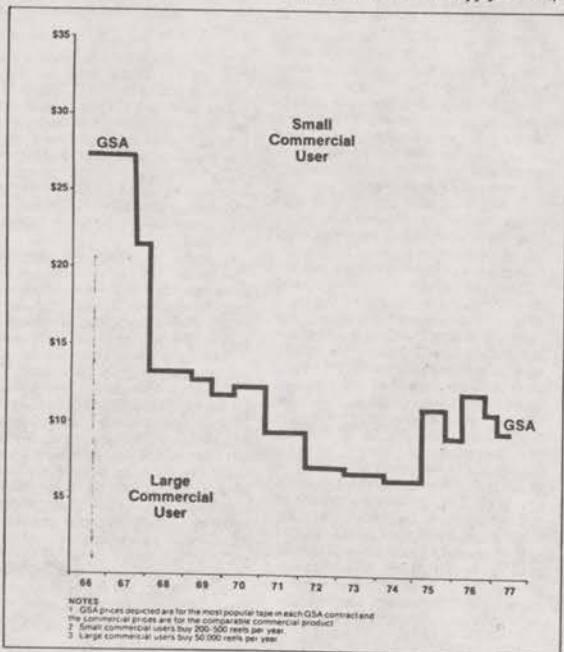
- **Stops Innovation**—This lack of response to the OFPP efforts is particularly frustrating to companies which deal in those product areas where the competitive pressures foster rapid technological change. These firms have found that they are, in

Exploding The MYTH Of Government Specifications

effect, penalized for being innovative because they find themselves locked out of the federal government market—locked out because they are trying to offer their products against specifications that reflect outdated technology and require non-standard testing, marking, packaging and handling.

Is there some conspiracy to make it more difficult to deal with the Federal Government? And, if so, why? I suppose that many companies could offer up enough horror stories to lend some credence to that theory. However, I don't believe it is anything so sinister.

From my experience as Commissioner of the Federal Supply Service, I



have found government procurement and specification people to be hardworking, often overworked, intelligent professionals who are truly dedicated to reducing federal government expenditures. I have found that the vast majority of them have strong convictions that their actions are truly in the best interests of the Government.

They think that way, in part, because industry has neglected its responsibility to them and itself; has done, in short, a poor selling job.

While at GSA, I seldom heard an industry case presented with facts and figures. They tended to talk in generalities, instead, without providing hard, cold data that speaks for itself.

Since I left government service, I have become very familiar with the problems that commercial product companies have in dealing with the Federal Government. Many companies who were reluctant to speak candidly with me when I was with GSA have convinced me now that some of the policies which seemed right to me when I was a GSA official are, in fact, increasing government expenditures instead of reducing them.

• **Mag Tape**—A good example of this is the way the Government buys computer tape. For years, the Federal Supply Service (FSS) has made sole source awards on computer tape. They have pointed to the tremendous savings that they have realized through the development of a specification which allowed them to make a single huge award each year. It was one of the favorite examples that I would cite whenever I was extolling the virtues of specifications.

In fact, computer tape is still considered to be the classic example of why the long-standing policy of writing more specifications in high technology areas is particularly valid.

However, based on some recent research into the history of the Government's procurement of computer tape, I find that the Government has not done as well buying computer tape as have many commercial users. In fact, it appears that the Government's use of a specification with its special requirements has cost the Government thousands of dollars over the years.

As you can see from the attached chart, the GSA price for the most popular type of computer tape in each of the last 11 years has been lower than what a small commercial user would pay. However, GSA has consistently paid more for their "specification product" than have large commercial users for an off-the-shelf product. The only period of time when GSA

received a lower price was the 1972-74 period. But those familiar with the period know that GSA had tremendous delivery problems and many of their Agency customers were forced to purchase tape on the open market. In sum, GSA, with its specification-based single award system, has generally paid more for computer tape than large commercial users—without even adding in the Government's warehousing cost.

It is worth examining the situation back in the 1966 through 1968 time frame to more clearly understand what created the enormous price reductions. There were three major factors.

First, eight new manufacturers of computer tape entered the market during the mid-sixties.

Second, there was an approximately 60% drop in the cost of reels and cases.

And third, the price of polyester (a key raw material) dropped over 60%. Based solely on the response to their solicitation and lacking the inside information of what was actually happening in the marketplace, GSA made a reasonable assumption, at that time, that their specification was responsible for the drastic price reductions. Based on that assumption, GSA continues to pursue a vigorous specification policy in this and other areas.

• **Go Commercial**—What are the implications of all this? To me, it seems to indicate that GSA needs to take a hard look at their specification policy. It certainly seems to point out that the Commission on Government Procurement and the OFPP were right on target in their recommendations to buy commercial off-the-shelf products and not to continually create new, government unique products.

It seems to bolster the argument that many trade associations, manufacturers and dealers have been saying: "The Federal Government should utilize the multiple award system to purchase highly competitive commercial items in those areas where technology is continually changing."

If these voices are not loud enough, I would urge the FSS to heed the cries of their own customers. It is common knowledge that many agencies will not use Federal Supply single award contracts for high technology items because more cost-effective items are available off-the-shelf from regular commercial distribution channels. As a Federal Supply official related to me recently:

"We spend all our time trying to save 20% off the tip of the iceberg while forcing the bulk of our agency customers to go around the supply

system and buy what they really need at commercial prices from the established commercial manufacturers and dealers. If we had multiple award contracts on all these items, we would be better servicing our customers and providing a lower total cost system for the Government. I would much rather see us receive a 10% discount on 100% of all the purchases by the Federal Government than 20% of just the tip of the iceberg."

In December of 1974, the General Accounting Office published a report on improving the procurement programs of the Federal Supply Service. This report pointed out that Federal Supply was only providing about 50% of the commercial type goods and services that they could potentially be supplying to other agencies.

Or, to put it another way, agencies were buying 50% of their commercial goods and services at regular commercial prices on the open market without coming to Federal Supply.

We didn't realize it at the time, but it seems to me that the current specification policy is the root cause for GSA falling short of fulfilling its agency support mission.

• **An Absurdity**—Under their interpretation of current procurement law and regulation, Federal Supply is convinced that they should be writing specifications and making single awards for all types of commercial items. And, for many types of lower technology, high volume, rather generic types of items such as paper clips, pencils, paper products, packaging materials, paint, simple hand tools and the like, this policy makes sense.

However, they are mistakenly applying that same approach to commercial items where there is intensive competition in the marketplace, fast-moving technology, important main-

"... mood is ripe for procurement reform."

tenance and service considerations, or numerous, slightly different product models to reflect different requirements and applications. Attempting to write a single government specification to satisfy all user needs just so Federal Supply can make an award to one manufacturer is ridiculous.


This policy has led to many minimal quality, outdated products being bought by the Government at excess prices. It has driven out of the Federal Government marketplace higher quality products provided by estab-

lished commercial product manufacturers and distributors, both large and small business.

I think the climate is right for a basic shift in procurement policy; one that would be applauded by industry and government users alike. Although in office for less than four months, the very capable Joel Solomon, GSA Administrator, has already focused on this problem. This was obvious in his recent testimony in front of the Senate Committee on Federal Procurement where he supported a strong multiple awards program.

Bob Graham, the new FSS Commissioner, has demonstrated in a few short weeks a common sense approach to solving supply problems. And at OFPP, we are already seeing the positive effects of aggressive leadership. Les Fettig of OFPP obviously understands the procurement system and the need for improvement.

With all these individuals under the watchful eye of the "Sunshine Senator from Florida," Lawton Chiles, who recently introduced the excellent acquisition bill (S. 1264), the mood is ripe for procurement reform.

I urge GSA to buy "higher technology" commercial items on a total cost basis by returning to the more flexible, economical and customer-oriented multiple award system. 

APPENDIX H

COALITION FOR COMMON SENSE IN GOVERNMENT PROCUREMENT

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RECOMMENDATIONS

OF THE

COALITION FOR COMMON SENSE IN GOVERNMENT PROCUREMENT

BEFORE THE

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

JANUARY 14, 1980

* Package contains only those references
to multiple awards.

Statement of the Coalition for Common Sense in Government Procurement
Before the White House Conference on Small Business

My name is Bruce McLellan and I represent the Coalition for Common Sense in Government Procurement. The Coalition is a non-profit association composed principally of small business firms who are interested in pursuing more effective governmental procurement practices.

The Coalition is sponsored by four trade associations who are represented on the Coalition Board of Directors. I am the member from the National Office Products Association and the Board also has representatives from the National Audio-Visual Association, the National Micrographics Association, and the Business Products Council. All of our operating revenues are derived from individual company contributions.

We appreciate the opportunity to testify here today, and applaud the efforts of the Administration to assist small business.

There are a number of issues on which we wish to comment. These include:

1. the importance of the multiple award
schedule contract program to small
businessmen;

2. the significance of the recent definitional change for small businesses for procurements under Public Law 95-507;
3. the slowdown in contracting at GSA;
4. the unfair competition to small business resulting from federal grants, particularly in the training and educational area;
5. the problem of slow payment by Federal agencies;
6. the establishment of a two-tier procurement regulatory system;
7. the unfair competition to small business resulting from services provided by governmental units, workshops for the blind and handicapped and academic institutions.

I will briefly discuss each of these issues.

 Multiple awards

The multiple award schedule system is the principal contracting method for commercial product firms to sell products to the Federal

Government. GSA negotiates some 5,700 contracts of this type every year of which 66% go to small business firms. Further, the majority of those contracts that are awarded to large business firms also allow for the participation of small business dealers around the country. When these participating small business dealers are added to the small business firms which hold contracts directly, over 90% of the firms eligible to sell under the multiple award system are small business.

For example, in Federal Supply Class 58 which covers all types of communication equipment and supplies including projectors and recorders, there are 425 prime contracts of which 272 or 64% are with small business firms. However, when one examines the contracts held by the large business firms, you find that 2,378 small business dealers are eligible to use the large company contracts. Overall, some 2,803 companies can sell to the government off of Class 58 multiple award contracts and 2,650 or 95% are small business.

The multiple award system has been under attack by Senator Chiles in the Senate, Congressman Burton in the House, and newly appointed Administrator Freeman of GSA. All of these individuals are advocating a single source procurement procedure for commercial products which utilizes detailed or functional specifications. This type of system which has historically led to the development of unique government products will deprive thousands of small business manufacturers and dealers throughout the country from participating in government business.

We recommend that this Conference take a strong position in support of the multiple award contracting system. We ask this Conference to go on record as supporting the continuation of the multiple award schedule system as the most effective system for commercial product manufacturers and dealers to sell their off-the-shelf items to the Federal Government.

APPENDIX I

PARTIAL STATEMENT OF MICHAEL J. TIMBERS ON THE OFFICE OF FEDERAL PROCUREMENT POLICY'S UNIFORM PROCUREMENT SYSTEM AT OFPP HEARING HELD ON MAY 6, 1980 on behalf of the Coalition for Common Sense in Government Procurement.

My name is Michael J. Timbers, and I am President of The Coalition for Common Sense in Government Procurement. The Coalition is a nonprofit organization composed of primarily small businesses which was formed by a number of trade associations who are vitally interested in the government's policies relating to the procurement of commercial products. The associations who support our Coalition include the following:

- Business Products Council Association (BPCA) and their 57 independent members in 46 states,
- National Audio-Visual Association (NAVA), and their 800 dealers and manufacturers,
- National Micrographics Association (NMA), and their 270 industry members and 9,000 professional members,
- National Office Products Association (NOPA) and their 6,500 dealers and manufacturers,
- National Association of Photographic Manufacturers' (NAPM) and their 78 members, and
- National Minority Business Council (NMBC) and their 350 members.

We welcome the opportunity to comment on OFPP's Uniform Procurement System and to offer suggestions which we hope your office will find helpful.

There are a number of issues on which we wish to comment.

These include:

1. The importance of the multiple award schedule contract program to small businessmen.
2. Proposed small business size standards.
3. Inconsistencies in P.L. 95-507 application.
4. The use of commercial item descriptions in the procurement of commercial products.
5. Proposed ADCoP policy.
6. The problem of slow pay by government agencies.

I will briefly discuss each of these issues.

Multiple Awards

The multiple award schedule system is the principal contracting method for commercial product firms to sell products to the Federal Government. GSA negotiates some 4,000 contracts of this type every year of which 62% go to small business firms. Further, the majority of those contracts awarded to large business firms also allow for the participation of small, independent business dealers around the country. When these participating small business dealers are added to the small business firms which hold contracts directly, over 90% of the firms eligible to sell under the multiple award system are small business.

The multiple award system has been under attack by Senator Lawton Chiles and GSA Administrator Rowland Freeman. These individuals are advocating a single source procurement procedure for commercial products which utilizes detailed or functional

specifications or commercial item descriptions and essentially removes the multiple award system from being used as a contracting consideration. The type of system they are endorsing for commercial products has historically led to the development of unique government products produced by sub-standard contractors and will deprive thousands of reputable small business manufacturers and dealers throughout the country from participating in government business.

Administrator Freeman and Senator Chiles appear to be blindly attacking the system without full knowledge of what they are doing. An example of this is the oft repeated statements of GSA and Chiles whereby they refer to the fact that there are 8,000 multiple award contracts. We would ask GSA and Chiles to do their homework. As we have previously cited, there are nowhere near 8,000 multiple award contracts -- they are overstating the case by approximately 100%. We would agree with critics of the multiple award system that improvements can be made and certain types of items should not be purchased under this type of system, but we would suggest that a better understanding of the system is needed by its critics before their so-called solutions create far more problems than now exist.

The Coalition is deeply concerned that Senator Chiles and Administrator Freeman are preparing to dismantle a contracting system without advice from the Office of Federal Procurement Policy.

It is our understanding that OFPP is supposed to provide procurement policy direction and guidance for the Federal agencies' procurement actions. Why, then, is GSA being allowed to independently pursue its plans to destroy the primary means of small business contracting opportunities? Just last Friday, for example, GSA

virtually cancelled all the multiple award contracts for furniture. It seems somewhat unbelievable to us that multiple award contracts are cancelled when all the highly publicized scandal testimony in front of Senator Chiles has centered on furniture bought to unique government specs.

We suggest that OFPP examine a May 1979 General Accounting Office report on multiple awards which the Senate has adopted as its primary justification for condemning the multiple award system. Examine it with the knowledge that industry has continuously pointed out the fallacies existing in the report. And, in light of this evidence, question the Senate and GSA logic of forging ahead with their plans.

For example, why does the GAO, GSA and the Senate still insist on promoting the purchase of overhead projectors by specs rather than off the multiple award schedules when the Army has already attempted and failed to do this successfully? Five years after their attempt, only 2,000 of 6,000 projectors had been delivered via this single award technique.

There exists additional glaring examples where the benefits of the multiple awards system have been ignored and the Government has gone to single awards. The first example concerns manual typewriters. A few years ago, GSA moved manual typewriters from the multiple award schedules to the single award schedules, chasing American manufacturers away from bidding on any manual typewriter contracts. For the past two years, the low bidder has been a distributor selling typewriters manufactured in East Germany.

Although the approximate annual sales are only \$1,250,000 -- a healthy sale for a small business -- domestic firms are unable to compete in the low price range the communist country is able to offer, and GSA has significantly reduced the competition in bidding for manual typewriters.

A second example is in regard to instrumentation tape. In spite of industry's warning to GSA that using single awards to procure this product was severely destroying competition and increasing prices, GSA continued to use single awards instead of multiple award schedules, and now there is only one manufacturer of this highly sensitive product still bidding on the GSA contract.

We strongly recommend that OFPP step in and require Administrator Freeman to further analyze and examine the actual operation of the system before he moves to withdraw it from being a viable contracting option. Small businesses deserve the protection of OFPP to ensure that their chances to contract with the Federal Government are not destroyed.

We have included additional background information on the multiple award system in our appendix of this report for your review.

excerpt from:

APPENDIX J

GOVERNMENT PURCHASING OUTLOOK, April 16, 1979

Page 6

S.5 EXAMINED AT HEARING

The objective of a recent Senate subcommittee was to gather criteria for the further development of S.5, the Federal Acquisition Reform Act.

The Subcommittee on Federal Spending Practices and Open Government held its hearings to get feedback from those most familiar with multiple awards: the Office of Federal Procurement Policy, represented by Administrator Les Fetting; the General Services Administration, with Assistant Administrator for Acquisition Policy Dale Babione as spokesman; industry associations' representative Michael Timbers, president of The Washington Management Group. Those associations he represented were the: Business Products Council Association, Computer Business Equipment Manufacturer's Association, National Audio-Visual Association, National Office Products Association, and National Urban League.

All three representatives spoke for the inclusion of Section 303(e) of the Act, which provides for the use of multiple award type schedules as a competitive negotiation technique. But Babione and Timbers expressed their dissatisfaction over a couple of key issues.

Said Babione, "As we understand it, rather than have a large number of items over a broad quality range available from a number of contractors, there is a limited number of prescribed quality ranges, one item within each range, and one contractor supplying that item." Under this definition, he said he was concerned that "there would be instances where use of the method will not be the most overall or total cost effective method of acquiring needed items." He suggested GSA have flexibility in permitting waivers in those cases where using the schedule contracting would not be cost effective.

He added that a test program is necessary not only to develop procedures to comply with the intent of this section, but also to develop guidelines to identify those areas where its use would not be cost effective. He noted that he asked William Kelly, Commissioner of the Federal Supply Service, to identify high dollar volume groups of items currently on the schedules. This information, Babione explained, would then be used to develop procedures and guidelines for evaluating the feasibility of such an approach to the acquisition of widely differing types of items. This would be followed by attempting to develop simple purchase descriptions for two or more ranges of quality for each group.

Timbers disagreed with the bill's language which "appears to place responsibility on the contracting officers establishing the schedules to determine which contractors on an individual schedule should receive a multiple award contract." Timbers

suggested that the Act include language which would "promote the idea that the user agencies make sure that what they are buying are the lowest total cost items to meet their needs rather than leaving the decision up to contracting officers." Timbers notes that "the using agencies are in a far better position to determine their needs than GSA."

Timbers also took issue with the portion of Section 303(e) which directs the use of multiple award contracts "to obtain the lowest competitively priced items which meet the minimum essential needs of Government. By using the term 'priced' it appears S.5 was moving away from the 'lowest total cost' concept." He also took exception to the word "minimum," which he said also seemed to "imply that the Government should seek the lowest quality item with the least number of features to meet its needs, and as we all know, when life cycle costs are considered, this may not be the best value." He contended that the language would have a detrimental impact on new technology and will encourage the purchase of substandard products. It would also have a harmful effect on local independent dealers "who sell off multiple award contracts at the local level and provide the maintenance service and operator training which is so critical on the majority of terms contracted for under multiple awards."

As to the subject of functional specifications, Fettig said he would want to ensure that detailed specs are used in an absolute minimum number of occasions but at the same time facilitate their use when there was reasonable need.

Timbers emphasized that while his clients agree that the two-step and performance specs are useful and "certainly have their place in the acquisition of commercial products," he suggested that "they not be too highly touted as the miracle solutions to commercial product acquisition for like every other acquisition technique, they are appropriate in certain situations and not appropriate in others."

APPENDIX K

COALITION FOR COMMON SENSE IN GOVERNMENT PROCUREMENT

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FACT SHEET

- COALITION COMPOSITION** We are a nonprofit alliance of small and large businesses who derive a portion of our profits from sales of products and/or services to the Federal Government.

Approximately 80% of our members are small business. Member firms are located in 30 states, with about 15% in the Washington, D.C. metropolitan area.

In addition to a small support staff headquartered in Washington, D.C., we have a number of associations offering expertise and direction with members serving on our Board of Directors. These associations are listed to the left.

State Representatives are located throughout the country to lend help in communicating with members on a more regionalized level.

- COALITION OBJECTIVE** The Coalition was initially organized to monitor and respond to Federal Government attacks on the Multiple Awards Schedule system. While this continues to be our primary focal point, we have realized that a number of other issues require our scrutiny in our goal TO ENSURE EQUAL OPPORTUNITIES FOR ALL BUSINESSES TO SELL TO THE FEDERAL GOVERNMENT.

- ISSUES TO DATE** Among those issues we have focused our attention on recently are:

- Senate and General Services Administration (GSA) moves to dismantle the multiple award schedule system.
- Service Contract Act inclusion on computer and non-computer equipment service contracts.
- GSA and OMB (Office of Management and Budget) furniture moratoriums.
- H.R. 4717 (anti contracting-out bill).
- GSA's reclassification and transfer of automated data processing equipment.
- P.L. 95-507, e.g. small purchase procedures and sub-contracting plans.
- Small business size standards.
- Federal Acquisition Regulation (FAR) segments adversely impacting members.

**COALITION
FUNCTIONS**

- Continuously monitor Federal agency and Congressional procurement regulation and policy making activities.
- Respond to proposed or actual policy changes emanating from the Government which have harmful ramifications on members.
- Meet with Federal agency or Congressional key personnel to register Coalition positions on issues of concern.
- Circulate status reports to members to keep them up-to-date on procurement issues and Coalition activities.
- Provide educational packages on issues so members can fully understand them.
- Provide suggestions for members to personally contact their elected representatives to inform them of the facts on procurement issues.

FEDERAL SUPPLY SCHEDULE

Multiple Award

741

FSC 74 PART I
CLASSES 7110 & 7430
OFFICE MACHINES

**NON-PORTABLE ELECTRIC & ELECTRONIC TYPEWRITERS, VISUAL
DISPLAY PREPARATION DEVICES & SOUND REDUCTION EQUIPMENT**

OCTOBER 1, 1979 - SEPTEMBER 30, 1980

ISSUED DECEMBER 5, 1979

GENERAL SERVICES ADMINISTRATION
FEDERAL SUPPLY SERVICE

00SC 7401

081C

E-1

74

GENERAL INSTRUCTIONS

1. **INFORMATION CONTAINED IN THIS SCHEDULE.** This Schedule lists brand names which have been awarded. Brand names which were listed in the previous Schedule but have not been awarded are not listed herein and, if awarded, will be published in subsequent editions to this Schedule. New information will be identified by a vertical line to the right hand margin. Ordering offices should review this Schedule to determine: special item numbers; item name and description; brand name offered; contractor's address, telephone number, and contract number; effective date of award; and ordering instructions.

A matrix of models awarded for selected special item numbers has been included in this schedule. This matrix identifies some salient characteristics of the models awarded. A Government price for a quantity of one each has been included. This price is the contract price at time of award and may have subsequently been reduced. Also prompt payment and quantity discounts may apply. For firm price information you should consult the contractors' price lists.

2. **INFORMATION CONTAINED IN THE CONTRACTOR'S PRICE LIST/QUOTE.** Ordering offices should review the price list to determine: ordering address; payment terms; delivery price; delivery time; discounts; prices; business class; foreign items; maximum order limitations; models offered; and, if applicable, warranties, terms and conditions of rental, maintenance, and/or repair; export packing and price of production.

3. **GEOGRAPHIC COVERAGE.** The 48 contiguous States and Washington, DC, also Alaska, Hawaii, and Puerto Rico, if indicated in the contractor's price list.

4. **MANDATORY USES.** All departments and independent establishments, including wholly-owned Government corporations, in the executive branch of the Federal Government (except the U.S. Postal Service).

Exemptions from mandatory use, unless otherwise required by regulations of the ordering department:

- (1) Purchases in Alaska, Hawaii, and Puerto Rico.
- (2) Purchase of repair parts.

5. **NONMANDATORY USES.** The following activities are authorized to use this Schedule on a nonmandatory basis:
- (i) Federal agencies other than those covered by the mandatory use provision and nonmandatory fund activities as prescribed in FPMR 101-26.300, (ii) Government contractors authorized to sell to a Federal agency pursuant to 41 CFR 1-5.9, (iii) award ownership Government corporations (as defined in the Government Corporation Control Act) and (iv) the Government of the District of Columbia. Contractors are encouraged to honor orders from these activities. In the event the contractor is unwilling to accept such an order, the contractor will return it by mailing or delivering it to the ordering office within seven working days after receipt. Failure to return an order will constitute acceptance whenever all provisions of the contract shall apply with respect to such order.

NOTE: Questions regarding agencies/activities authorized to use this Schedule should be directed to the Schedules Information Center. (See Paragraph 1a, ORDERING INSTRUCTIONS)

6. **MULTIPLE AWARDS.** Multiple award Federal Supply Schedules cover contracts made with more than one supplier for comparable items at either the same or different prices for delivery to the same geographic area.

7. **CATALOGS AND PRICE LISTS.** If catalogs and/or price lists have not been received and are required or if additional copies are required, ordering offices should communicate directly with the contractor for copies of such material. See LIST OF CONTRACTORS for telephone numbers.

8. **PARTS PRICE LIST.** Contractors are not required to furnish parts price lists for general distribution. Prices for repair parts are obtainable from the contractor upon request. Prices will be accepted and payment made based on the contractor's prices listed in such listing reflects the contractor's prices listed in his catalog to effect on the effective date of the contract, unless otherwise specified, and the applicable discount deducted therefrom.

9. **INCORPORATION OF FORMS.** The following forms apply to this Schedule:

- a. Standard Form 32, General Provisions (Supply Contract), April 1975 edition, with the following modification: Article 15 is amended by deleting the words "at hard labor".

- b. GSA Form 1424, Instructions to Users of Federal Supply Schedules, September 1978 edition, with the following modification:

- (1) Clause 4, Variation in Quantity, is deleted and no variation in quantity is permitted in deliveries.

- (2) Clause 2, Changes - Delivery Options and Adjustments in Transportation Costs, Line 17, is amended by deleting the words "except where the adjustment is less than \$25," and substituting therefor "when freight charges exceed \$100".

- c. GSA Form 2880, Instructions to Users of Federal Supply Schedules, May 1977 edition, except Paragraph 8 is modified to include the following:

- (4) Standard Purchase Arrangements may be negotiated to achieve the highest discount price (lowest net price) based on the estimated total purchases which would be achieved by the cumulative total of orders placed under the contract.

ORDERING INSTRUCTIONS

AUTHORIZATION TO PURCHASE IDENTICAL ITEMS(S) WHEN AVAILABLE AT LOWER PRICE(S). When an ordering agency finds that an identical product (make and model number) or service is available from another source at a delivered price lower than the contract price, such agency is free to purchase such items at such lower price without violating the contract requirements. Those agencies that purchase items at lower prices are required to furnish a copy of the ordering document to General Services Administration, Federal Supply Service, at the address shown in 1(c) below.

1. **USA ASSISTANCE.**

- a. For information of a general nature write or call:

GENERAL SERVICES ADMINISTRATION (FPMR)
SCHEDULE INFORMATION CENTER
WASHINGTON, DC 20406
Telephone: (703) 557-8177 8:00 - 5:45 pm
Autodial: 275-9666 1:00 - 5:45 pm

- b. For additional copies of Schedules or for copies of the Federal Supply Schedule Program Guide, write or call:

GENERAL SERVICES ADMINISTRATION (FPMR)
PUBLICATIONS DISTRIBUTION CENTER
DENVER, CO 80229
Telephone: (303) 274-6199

- c. Contracting Officer mailing address:

GENERAL SERVICES ADMINISTRATION (FPMR)
CONTRACTING OFFICE (FSC 74 PART 1)
WASHINGTON, DC 20406
Telephone: (703) 557-8319

2. **PAYMENT DISCOUNTS.** All discount terms should be shown on all ordering documents.
3. **POINT OF DELIVERY.** At destination within the area defined in GENERAL INSTRUCTIONS, Paragraph 3, Geographic Coverage.
4. **TIME OF DELIVERY.** See contractor's catalog/pricelist.
5. **SMALL REQUIREMENTS.** No ordering activity is obligated to place orders amounting to \$50 or less.
6. **MINIMUM ORDER.** See contractor's catalog/pricelist under "Small Requirements" for lowest value order which will be accepted.
7. **MAXIMUM ORDER LIMITATIONS.** Purchase orders cannot exceed the amount(s) shown in the contractor's pricelist/catalog.
8. **INSPECTION.** This Schedule provides for inspection at destination.
9. **PACKAGING AND PACKING.** Standard commercial practice (Level C of Federal Standard 102).
- If special or unusual packing is required, such packing requirements should be arranged with the contractor by the ordering activity.
10. **BUY AMERICAN DIFFERENTIALS.** Buy American differentials must be applied by the ordering activity before placing an order if foreign and domestic products are listed under the same special item number and both products will satisfy the requirement.
11. **RECEIVING DOCK HOURS.** State on the purchase order the time (local daylight or standard) that material can be received at destination.
12. **RECEIVING DOCK LIMITATIONS.** If there are limitations on size (height, width, or length) or weight of vehicle that can be accommodated at delivery point, state them on the purchase order.
13. **DELIVERY ADDRESS.** If delivery address is vague, include instructions on the purchase order that will assist the carrier in reaching the delivery point.
14. **JUSTIFICATION.** When orders are placed at other than the lowest price available under a special item number and (1) the cost is more than \$500 per line item, ordering activities must justify the purchase of the higher priced item; (2) the cost is \$500 or less per line item, ordering activities should refer to their agency procurement regulations to determine if justification is required.
15. **BRAND NAMES AND CONTRACTORS.** Under each item in the LIST OF SUPPLIES AND SERVICES listed in the first column is the brand name(s) offered and in the second column, the contractor.
16. **COPIES OF INVOICES.** If more than one copy of the invoice is required, state clearly on purchase orders the number of invoices needed.
17. **AGENCIES SUBMITTING REQUISITIONS TO GSA FOR PURCHASE.** For items contained in this Schedule, the requisition, if citing National Stock Numbers, must also contain Special Item Number, as shown in the Schedule, manufacturer's name or manufacturer's code, brand name, model, and/or part number.
18. **ORDER ACKNOWLEDGMENT.** Contractors shall acknowledge only those orders which state "Order Acknowledgment Required." These orders shall be acknowledged within 10 days after receipt. Such acknowledgment shall be sent to the activity placing the order and contain information pertinent to the order, including the anticipated delivery date.
19. **BLANKET PURCHASE ARRANGEMENTS.** Blanket Purchase Arrangements are authorized under this Schedule. The overall dollar value of a Blanket Purchase Arrangement may exceed the contract maximum order limitation; however, no single order or series of orders placed within a short period of time under the Blanket Purchase Arrangement may exceed the contract Maximum Order Limitation.
20. **PARTS.** All small parts furnished in connection with machines covered under this Schedule shall be packed in envelopes, sealed, identified with part number and quantity contained shown on the outside of envelopes; larger parts are to be individually tagged and identified with part number on face of tag.
21. **IMPREST FUNDS (PETTY CASH).** The contractor agrees to accept cash payment for purchases made under the terms of the contract in conformance with FPMR 1-3.604.
22. **WARRANTY.** All equipment procured hereunder is guaranteed for a period of six (6) months from date of acceptance. During the guarantee period, all adjustments must be made, and all broken or defective parts not caused by accident or misuse through fault or negligence of the Government must be replaced. Contractor will render service within three (3) working days after written or oral notification. All necessary equipment adjustments and replacement of broken or defective parts must be made at the contractor's expense, including labor, parts and transportation cost, if any, except typewriters for overseas use, priced separately.
- EXCEPTION:** Special Item Numbers 47-155 and 47-275. Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract or any provision of this contract concerning the consequences thereof, the Contractor warrants that for a period of ninety (90) days from date of initial usage, provided that initial usage occurs within one year after delivery, all supplies furnished under this contract will be free from defects in material and workmanship and will conform with the requirements of this contract and fully comply with manufacturer's technical specifications.
- When return, correction, or replacement is required, Government shall return the supplies or part thereof, where feasible, and transportation charges and responsibility for such supplies while in transit shall be borne by the Contractor. However, the Contractor's liability for such transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the designated destination point under this contract and the Contractor's plant, and return.
- Any supplies or parts thereof corrected or furnished in replacement pursuant to this clause shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.
- Failure to agree upon any determination to be made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.
- The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.
23. **REDUCTION OF ELECTRIC SHOCK HAZARD.** For such ordering offices as may require electric equipment with 3-wire and grounding conductor plug, in accordance with Federal Specification J-C-175, it is desired that the contractor state in pricelist any additional cost for furnishing such cable assemblies. In addition, the contractor must describe all types of 2- and 3-wire power plug.
24. **PURCHASE OF TYPEWRITERS.** Executive agencies shall purchase typewriters through use of Federal Supply Contracts only after compliance with the provisions for utilization and replacement of Government-owned personal property contained in GSA Federal Property Management Regulations, Subpart 101-25.403.
25. **WORKMANSHIP.** Any item contracted for must be new and current model, unless otherwise specified. Each article shall be constructed of first-class material and workmanship and must perform the functions for its intended use.
26. **SECURITY.** In the event such is necessary, the ordering office will arrange for the required security clearance, if satisfactory security arrangements cannot be made with the contractor, the service may be obtained from other than the schedule contractor.

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LIST OF CONTRACTORS

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CONTRACTS AWARDED AS A RESULT OF NEGOTIATION PURSUANT TO SECTION 302 (C)(10) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949, 63 STAT. 393, AS AMENDED (41 U.S.C. 252 (C)(10))

Listed in the Contract Number column is the business size indicator "s" for small business and "o" for other than small business "a" for minority business enterprises, and "b" for other than minority enterprises.

CONTRACT 65-005-	CONTRACTOR, ADDRESS & TELEPHONE	CONTRACT EFFECTIVE	CONTRACT 65-005-	CONTRACTOR, ADDRESS & TELEPHONE	CONTRACT EFFECTIVE
s/b 03058	ACOUSTICAL CONTRACTING 2602 W MAGGOWAN FORT WORTH, TX 76110 (817) 921-4094	24 OCT 79	s/b 03057	OLIVETTI CORP OF AMERICA 1768 OLD MEADOW RD MCLEAN, VA 22102 (703) 356-0420	25 OCT 79
s/b 03067	ADRESSOGRAPH MULTIGRAPH INT'L CORP VARITYPER DIV 1500 WILSON BLVD ARLINGTON, VA 22209 (703) 529-1000	9 NOV 79	s/b 03018	OLYMPIA USA INC BOX 22 SOMERVILLE, NJ 08876 (201) 722-7000	11 OCT 79
s/b 03001	ADLER-ROYAL BUSINESS MACHINES INC 150 NEW PARK AVE HARTFORD, CT 06106 (203) 523-4881	4 OCT 79	s/b 92876	OVERVIEW SYSTEMS 2511 VINDOBREAK DR ALEXANDRIA, VA 22306 (703) 765-7900	1 OCT 79
s/b 03060	OSG INC 1727 CHESTNUT ST PHILADELPHIA, PA 19103 (215) 564-6310	29 OCT 79	s/b 03002	REKINGTON BUSINESS SYSTEMS INC 103 COLLEGE RD E PRINCETON, NJ 08540 (609) 799-8950	4 OCT 79
s/b 03041	FACIT INC FEDERAL GOVERNMENT SALES OFFICE 2139 WISCONSIN AVE NW WASHINGTON, DC 20007 (202) 333-5343	22 OCT 79	s/b 92878	SCH CORP 8601 LITTLE RIVER TURNPIKE SUITE 100 ALEXANDRIA, VA 22312 (703) 941-5111	1 OCT 79
s/b 92870	FEDERAL SALES SERVICE INC 205 S WHITING ST ALEXANDRIA, VA 22304 (703) 823-1191	1 OCT 79	s/b 03034	TERMINAL DATA CORP 11878 COMELEY CIRCLE ROCKVILLE, MD 20857 (301) 881-7655	17 OCT 79
s/b 03004	GATES ACOUSTINET INC BOX PP SANTA ROSA, CA 95403 (707) 584-7360	5 OCT 79	s/b 03074	3M BUSINESS PRODUCTS SALES INC 3M CENTER - GENERAL OFFICES ST PAUL, MN 55103 (617) 733-1110	2 NOV 79
s/b 03033	GESTETNER CORP GESTETNER PARK YONKERS, NY 10703 (914) 968-6666	17 OCT 79	s/b 03030	VIRKING ACOUSTICAL CORP AIRLAKE INDUSTRIAL PARK LAKEVILLE, MN 55044 (612) 469-3405	18 OCT 79
s/b 03039	IHM CORP OFFICE PRODUCTS DIV 10215 PERNWOOD RD 2ND FLOOR BETHESDA, MD 20034 (301) 897-3306	18 OCT 79	s/b 03025	VISUAL GRAPHICS CORP 5701 NW 94TH AVE TAMPA, FL 33621 (305) 722-3000	17 OCT 79

CONTRACTOR MODEL		FOREIGN (F) DOMESTIC (D)	
Platen Width		Writing Line	
No. of Characters		No. of Repeat Keys	
No. Line Space Settings		A/C Current	
D/C Current		Single Pitch Machine	
10		Multiple Pitch Machine	
12		Proportional	
18		10	
Proportional		12	
10		18	
Fabric (Reversible)		Proportional	
Fabric (Nonreversible)		Fabric (Reversible)	
Carbon		Fabric (Nonreversible)	
Fabric and Carbon		Carbon	
Half Space		Fabric and Carbon	
Variable Spacing		Half Space	
Expand Spacing		Variable Spacing	
Express Back Space		Expand Spacing	
Decimal Tabulation		Express Back Space	
Index		Decimal Tabulation	
Index Reverse		Index	
Page End Indicator		Index Reverse	
Paper Injector		Page End Indicator	
Paper Ejector		Paper Injector	
Multi Copy Platen Control		Paper Ejector	
Impression Control		Multi Copy Platen Control	
Touch Control		Impression Control	
Card Holder		Touch Control	
Buffered Key Board		Card Holder	
Integral Correcting Capability		Buffered Key Board	
Repositioning Indicator		Integral Correcting Capability	
		Repositioning Indicator	

Either 10 or 12 pitch is available for single pitch machine. Specify designated pitch at time of order.

CONTRACTOR MODEL		FOREIGN (F) DOMESTIC (D)	
Platen Width		driving Line	
No. of Characters		No. of Repeat Keys	
No. Line Space Settings		A/C Current	
D/C Current		10	
12		Single Pitch Machine	
18		Proportional	
10		Multiple Pitch Machine	
12		Proportional	
18		Fabric (Reversible)	
Fabric (Nonreversible)		Carbon	
Fabric and Carbon		Half Space	
Variable Spacing		Expand Spacing	
Express Back Space		Decimal Tabulation	
Index		Index Reverse	
Page End Indicator		Paper Injector	
Paper Ejector		Multi Copy Platen Control	
Impression Control		Touch Control	
Card Holder		Buffered Key Board	
Integral Correcting Capability		Repositioning Indicator	

47-143 STANDARD LIGHTWEIGHT NON-PORTABLE, TYPEBAR AND SINGLE CYCLE

APPENDIX 2.—STATEMENT OF KENTON PATTIE, SENIOR
STAFF VICE PRESIDENT, NATIONAL AUDIO-VISUAL ASSO-
CIATION, CONCERNING H.R. 5381

National
Audio-Visual
Association, Inc.

3150 SPRING STREET • FAIRFAX, VIRGINIA 22031 • (703) 273-7200

June 13, 1980

JUN 16 1980

Honorable Robert S. Walker
1028 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Walker:

As mentioned following the hearing on Monday afternoon, June 9, 1980, I do not agree with the answer you received when you asked Mr. William Grote about the effect of a slow pay amendment to H.R. 5381.

You very thoughtfully suggested that I provide a statement for the hearing record on that subject. As promised, enclosed is our statement.

Sincerely,



Kenton Pattie
Senior Staff
Vice President

KP/cu

Enc: NAVA Statement for H.R. 5381 Hearing Record

National
Audio-Visual
Association, Inc.

3150 SPRING STREET • FAIRFAX, VIRGINIA 22031 • (703) 273-7200

Statement
by Kenton Pattie
Senior Staff Vice President
National Audio-Visual Association
Concerning H.R. 5381

June 13, 1980

Getting Federal Money Managers
to Pay Bills on Time

During the June 9, 1980 hearing, Congressman Walker asked witness William Grote what effect a "slow pay" amendment to H.R. 5381 would have on government purchasing practices. Mr. Grote seemed to support the amendment as fair to vendors, but the answer given implied that the proposed amendment would not cause government bureaucrats to pay their bills any faster.

When I told Congressman Walker that we disagree with this particular aspect of Mr. Grote's testimony, he encouraged me to provide our views for the Committee hearing record.

Government money managers do not pay bills more promptly today because there are no penalties for late payment. The government employee suffers no embarrassment, no pressure from higher levels, and his or her program is not affected negatively in any way. Because government managers refuse to pay penalties on overdue accounts, their program funds are not affected--they really don't mind whether the bill is paid in September or February, as long as it is paid in the proper Federal fiscal year.

In 1978, the General Accounting Office reported that 39 percent of Federal agency bills were being paid later than 30 days after delivery. Thirty-nine percent was entirely unacceptable at that time but little has been done to improve the situation. In fact, small businesses in this association and in seven other associations report that they continue to have substantial problems in getting Federal agencies to pay bills on time.

The Treasury Department has already tried to correct the situation by publishing U.S. Treasury Transmittal Letter No. 267 (May 7, 1979). However, small businesses feel that the Treasury memo has not solved the problem. The reason: there are no teeth in it. Neither the agency nor the money manager suffers in any way when bills are paid late.

What we recommend that your Subcommittee do is to add the teeth that the Treasury Department and Office of Management and Budget are reluctant to add: When an agency does not pay its bills within 30 days after delivery, the agency must pay normal and accepted interest penalties assessed by the vendor.

Statement by Kenton Pattie
Concerning H.R. 5381
Page Two

This is no new idea. Interest penalties for overdue accounts is a common commercial practice in the United States. Virtually every company buyer of commercial products pays interest payments except Federal agencies.

In our opinion, if interest penalties are to be paid, agencies will rapidly reform their sloppy payment practices. Most money managers do not want to see program money diverted into interest payments--by paying bills on time, they can avoid this. Furthermore, no Federal executives want to report to Congress that they paid substantial sums in overdue account penalties. If Congress were to ask each agency each year, "Of your appropriated funds, how much did you spend on penalties because you didn't pay your bills on time?" I am convinced the slow pay problem we face today would dry up quickly.

I felt during the June 9 hearing that Mr. Grote took an excessively cynical view that no matter what Congress does the bureaucrats will continue to do business as usual. In contrast, we think Congress can legislate a change in bill paying practices.

We are not alone in our views. Here is a list of Members of the House who have introduced or sponsored legislation which would force agencies to pay penalties on overdue accounts:

Rep. Michael D. Barnes (D-Md.)	Rep. Larry J. Hopkins (R-Ky.)
Rep. David R. Bowen (D-Miss.)	Rep. Henry J. Hyde (R-Ill.)
Rep. Clair W. Burgener (R-Calif.)	Rep. James M. Jeffords (R-Vt.)
Rep. John J. Cavanaugh (D-Neb.)	Rep. Robert J. Lagomarsino (R-Calif.)
Rep. James C. Cleveland (R-N.H.)	Rep. Jim Leach (R-Iowa)
Rep. Tony Coelho (D-Calif.)	Rep. Dan Lungren (R-Calif.)
Rep. Robert W. Daniel, Jr. (R-Va.)	Rep. Richard L. Ottinger (D-NY)
Rep. Edward J. Derwinski (R-Ill.)	Rep. Charles Pasayan, Jr. (R-Calif.)
Rep. Robert F. Drinan (D-Mass.)	Rep. John J. Rousselot (R-Calif.)
Rep. John N. Erlenborn (R-Ill.)	Rep. Keith G. Sebelius (R-Kans.)
Rep. Thomas B. Evans, Jr. (R-Del.)	Rep. Gladys Spellman (D-Md.)
Rep. Joseph L. Fisher (D-Va.)	Rep. G. William Whitehurst (R-Va.)
Rep. Wayne Grisham (R-Calif.)	Rep. Larry Winn, Jr. (R-Kans.)
Rep. Sam B. Hall, Jr. (D-Tex.)	Rep. Joe Wyatt, Jr. (D-Tex.)

And here is a list of associations which are currently supporting the above legislation calling for interest penalties to be paid on delinquent government accounts:

National Audio-Visual Association (NAVA)
National Office Products Association (NOPA)
National Micrographics Association (NMA)
National Association of Wholesaler-Distributors (NAW)
Independent Media Producers Association (IMPA)
Association of Reproduction Materials Manufacturers (ARMM)
Coalition for Common Sense in Government Procurement (CCSGP)
Association of Editorial Businesses (AEB)

Statement by Kenton Pattie
Concerning H.R. 5381
Page Three

Most of the members of these organizations are small firms. Most do less than 10 percent of their business with the Federal government. However, all complain that this 10 percent or less of their business gives them most of their biggest headaches: repeated phone calls, unfulfilled promises of payment, referrals from person to person, and months of paperwork. . .all to get payment on bills which most other customers pay promptly.

No company wants to tell the Federal government, "I won't do business with you." Afterall, it is our government. But, in fact, many companies prefer to avoid Federal business because of the slow pay problem. Several Members of Congress have told me recently that they were surprised to find that Federal slow pay is keeping some of their leading companies from dealing with local U.S. government agencies.

Therefore, we strongly support the amendment recommended to the Subcommittee during the testimony of Mike Timbers, President, Coalition for Common Sense in Government Procurement. This amendment is reasonable and fair. And it will be welcomed by thousands of small business people throughout the nation who have been frustrated by the government's inability to pay its bills in a decent and fair way.

If we can assist you in any way in connection with this proposed amendment to H.R. 5381, please let us know.

Attachment: Recommended Amendment to H.R. 5381 to be inserted in the appropriate place.

AMENDMENT TO H.R. 5381

Sec. ____ . When a department, agency, or instrumentality of any branch of the United States Government buys or leases property or services from a business concern, or when a person (including a governmental entity) buys or leases property or services from a business concern for a program, project, or activity any part of which is supported with financial assistance from the United States Government, and the department, agency, instrumentality, or person does not make payment for each complete item of property or services by the 30th day after receiving an invoice for the amount of the payment due for the item or services delivered, the department, agency, instrumentality, or person shall pay interest to the business concern for the period during which the payment for the item or services is not made. A mailed invoice is deemed to have been received on the earlier of (1) the date on which the department, agency, instrumentality, or person buying or leasing the property or services receives the invoice, or (2) the 5th day after the invoice is mailed.

(b) Interest to be paid under subsection (a) of this section--

- (1) is computed beginning on the day after the day on which the payment is first due;
- (2) is computed through the day on which payment is made;
- (3) shall be at least 1 percent, but not more than 2 percent, for each 30-day period that payment is not made with the rate of interest to be determined by the business concern;
- (4) that is not paid at the end of each 30-day period is added to the amount of the payment due, and interest for each subsequent period is computed by multiplying the interest rate by the amount due and all interest amounts for prior 30-day periods not paid; and

(5) for a period of less than 30 days is computed by computing the interest for the 30-day period and dividing the result by a fraction whose numerator is a number equal to the number of days in the period of less than 30 days and whose denominator is 30.

(c) This section applies to lease and sales agreements made on or after the date of enactment of this Act.

Sec. ____ . If a department, agency, instrumentality, or person referred to in the first section of this Act has an agreement with a business concern providing for a discount on the amount due the business concern for payment made within a period of time specified in the agreement, the department, agency, instrumentality, or person is entitled to the discount only if the payment is delivered or mailed to the business concern by the last day of the specified period.

