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FEDERAL USE OF CONTRACTORS AND CONSULTANTS

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON LIMITATIONS OF CONTRACTED AND DELEGATED AUTHORITY

OF THE

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

FEDERAL USE OF CONTRACTORS AND CONSULTANTS

SEPTEMBER 25 AND OCTOBER 7, 1980

Serial No. 96–95

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FEDERAL USE OF CONTRACTORS AND CONSULTANTS

THURSDAY, SEPTEMBER 25, 1980

U.S. SENATE,
SUBCOMMITTEE ON LIMITATIONS OF
CONTRACTED AND DELEGATED AUTHORITY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met pursuant to notice, at 9:35 a.m., in room 5110, Dirksen Senate Office Building, Senator Max Baucus (chairman of the subcommittee) presiding.

Senator BAUCUS. The hearing will come to order.

OPENING STATEMENT OF SENATOR BAUCUS

Senator BAUCUS. This subcommittee has looked into Federal contracting and consulting abuses for more than a year and a half. Our previous hearings into GSA and the Department of Education's title III program have revealed significant abuses of the contracting process.

As we expanded our inquiry to encompass additional Federal agenices, we found that virtually every agency and department examined has its own unique methods of abusing the right of utilization of outside contractors and consultants.

At the Small Business Administration, we have discovered that a program designed to aid potential entrepreneurs from previously disadvantaged minority groups has become encrusted with undeserving participants.

Long after they should have been graduated from this program, as was intened, they have been allowed by a compliant agency to remain under the Federal umbrella, sheltered and profiting from this program.

As a result, deserving potential participants must stand in a never-moving waiting line, prevented from gaining admittance to this program.

SBA's Inspector General has reported on this situation at length and in depth, discovering that over one-third of all participating small businesses in the 8(a) program are either abusing their participating status or are undeserving of continuing in the program.

The subcommittee is releasing its report today, complete with accompanying specific SBA documentation.

It is still a mystery why multimillionaires enjoying incomes of a quarter of a million dollars a year and convicted criminals are allowed to remain in this program in the face of SBA's IG's findings and recommendations.

At the Environmental Protection Agency, we have looked into the office of radiation programs, whose head seems to view the contracting-out process as a private preserve. Federal regulations governing competition for contracts have been ignored.

Contracts amounting to several million dollars have been let without competition, several to former colleagues and acquaintances who have not been required to go through any competitive bidding process.

At a policymaking level, so many outside consutlants have been brought in to supervise career Federal employees and perform related work, that they actually outnumber career people at those high levels where the most substantive work is done.

There is every indication that specific policymaking initiatives have been undertaken by an outside contractor, though these are at substantial variance with recommendations and misgivings of competent professional people in other Federal departments.

There is much more to these situations, all of which we will seek to bring out at today's hearings. Appropriate, supplementary documentation will be made available as the hearings proceed.

A substantial number of honest and able public servants have cooperated with this investigation. Several career Federal employees will be appearing as witnesses at these hearings.

It is no secret that Federal workers who cooperate with oversight subcommittees, willingly or inadvertently, are often subjected to reprisals by their agencies. I know that the fine men who run EPA and SBA would never countenance such retaliation. With that in mind, I open these hearings.

Public attention paid to various abuses involved in the use of contractors and consultants by the Federal Government—this situation has not improved. Frequent violations of Federal regulations continue to occur on a wide scale.

Three months ago, an excellent five-part series in the Washington Post focused attention on the extent of this problem. Apparently in response to these articles, the Office of Management and Budget sent a memorandum to all agencies establishing and clarifying guidelines for the procurement and consultant-hiring system.

Today's hearing is part of this subcommittee's continuing review of contract and consultant abuses and efforts to curb them. At our September 26, 1979, hearing, this subcommittee revealed that the General Services Administration continued to grant questionable contracts despite evidence of fraud. On November 14 and December 12, 1979, this subcommittee introduced evidence at hearings that the Office of Education used questionable procedures to give grants to colleges. At these hearings and others, we have discussed the role of the Department of Justice in coordinating the Government's effort in controlling fraud.

In addition, Senator Pryor, through work on his Governmental Affairs Subcommittee, has introduced the Consultant Reform Act of 1980. I fully support the disclosure requirements of his bill as an effective means for making sure Government contracting procedures are open to public scrutiny.

I have just introduced two bills dealing with enforcement of contract law and contract procedures. The first is designed to insure that

the Department of Justice is capable of monitoring and reporting back to Congress on the status of both criminal and civil fraud cases, plus other cases referred to the Department by its client agencies. My past oversight experience convinces me it is essential that the Department of Justice closely monitor referrals.

The second measure addresses a series of clearly perceived loopholes in the way Federal procurements are handled; gaps that have allowed much of today's situation to come into being. I want to assure more open competition for Government contracts, stronger assurance that an acceptable work product is submitted, more accurate determination that each contract is necessary and a specific line item in agencies' budgets for use of outside contracts and consultants.

Today, this subcommittee will examine the Small Business Administration's 8(a) program, a set-aside program involving contracts for firms owned by members of previously disadvantaged minorities. We will also review the Environmental Protection Agency's Office of Radiation Programs, which is responsible for setting environmental standards designed to protect the public from radiation.

At this point, I wish to reiterate my support for the 8(a) program and the principles behind its efforts. There is no intent on the part of this subcommittee or its members to harm the program or bring it into disrepute. Rather, there is an intent to insure that it works efficiently to aid those minority and disadvantaged entrepreneurs it was created to assist in the first place. Because of certain abuses we have discovered, many deserving people are standing in a waiting line that almost never moves. It is to get that movement started that we are addressing these problems. My commitment to equality of opportunity for members of minority groups is as strong as ever.

Senator Gaylord Nelson, of Wisconsin, chairman of the Senate Small Business Committee, has previously identified 8(a)'s problems, encouraged our oversight work, given me his assistance, and guaranteed followup on his part to our oversight work. Given his knowledge, position of authority, and command on the subject, I am certain our efforts will be complemented in an effective manner by his follow-through, resulting in substantial reform.

The 8(a) program is designed to provide Federal support for minority small business men and women who are economically or socially disadvantaged. It began in 1967 as an outgrowth of President Johnson's test cities program, which was initiated to provide jobs and training for the unemployed.

On April 16, 1974, the General Accounting Office issued a report about the first serious problems in the 8(a) program. In its report, entitled "Questionable Effectiveness of SBA's 8(a) Procurement Program," GAO found that numerous 8(a) firms were controlled by nondisadvantaged and nonminority business entities.

During 1977, Senator Lawton Chiles held hearings into abuses in the program. Subsequently, SBA Administrator A. Vernon Weaver imposed a moratorium on all new entries into the 8(a) program. That moratorium was rescinded 7 months later.

As a result of serious questions raised regarding the program, SBA's Inspector General began a comprehensive review of all 8(a) firms. The final report contained several disturbing findings. Of the

1,505 firms reviewed, 526—36 percent—were found to have substantive deficiencies ranging from eligibility problems to criminal fraud. Twenty-one percent of the firms were headed by individuals who did not appear to have management control of the companies or owners who did not appear to be socially or economically disadvantaged individuals.

A year has passed since the Inspector General notified top SBA officials of the 526 problem firms. Yet the SBA has been slow to terminate these problem firms from the 8(a) program.

This subcommittee has spent several months examining the 526 problem firms pinpointed by SBA's Inspector General. The subcommittee selected several case studies, representing examples of these broad-ranging problems uncovered by the Inspector General.

The subcommittee recognizes that the Federal Government, and all Americans, have a responsibility to correct the history of discrimination against minorities.

The saddest aspect of the 8(a) situation is that minorities, the very groups the program was designed to help, suffer most. By retaining undesirable or unqualified firms, the SBA is denying the rights of those responsible minority businesses that seek Federal aid.

In fact, the 8(a) program alone is not enough. Deserving minority businesses need even more support and encouragement. But the SBA should at least insure that the 8(a) concept works effectively. Once and for all, it is time the SBA cleaned house and guaranteed legitimate minority firms a chance to succeed.

Of course, SBA has a responsibility to all taxpayers, minorities included, to guarantee that Federal contract funds used by the 8(a) program are used wisely. This is an immense program. Since 1968, 4,353 firms have received 24,798 8(a) contracts valued at nearly $4.7 billion.

Only 174 of these firms have graduated from the 8(a) program, a woeful record of 4 percent.

The case studies reviewed by the subcommittee include:

Chucko, Inc., Columbus, Ga.—According to an Inspector General audit report, the firm allegedly misappropriated Federal funds on numerous occasions. SBA provided the firm with $69,994 in advance business development expenses. However, the firm deposited only $44,-345 in its account. When questioned, firm officials could not explain the missing $25,649. In addition, the firm diverted SBA funds into a company tax account by altering a check. It also misused a substantial portion of a $500,000 SBA advance payment by using $228,974 of that sum to pay off debts unrelated to the purpose of the payment. The Inspector General noted in this case that SBA regulations were violated when SBA officials authorized business development expenses after a contract was in progress.

Information Planning Associates, Inc., Gaithersburg, Md.—According to an Inspector General report, this firm's disadvantaged owner drained the company by increasing salaries while the company was losing money. The firm's net worth decreased from a positive $32,-285 in 1974 to a debit of $108,515 by the end of 1978. Yet total company officers' salaries increased from $41,124 in 1975, to $164,571 in 1977. During this same period, the principal owner, Alfred Black, increased his salary from $25,000 per year to $73,900 and increased his personal assets from $153,350 to more than $1.1 million.

Luther Benjamin Construction Co., Inc., St. Thomas, Virgin Islands—The Inspector General found several problems with this firm. It entered the 8(a) program in March 1973, receiving one contract to construct a Federal court house and office building on St. Thomas. That contract, worth $7,368,480, was performed as a joint venture with a non-8(a) company. Apparently, the firm applied for the 8(a) program at the behest of the non-8(a) firm, which wanted to obtain the contract but was unable to because the contract was earmarked for the 8(a) program.

SBA referred portions of the *Luther Benjamin* case to the Internal Revenue Service because the joint venture reported income of $92,000 less than the amount paid by the General Services Administration for work performed.

At the time the firm entered the 8(a) program, Luther Benjamin, the disadvantaged owner, was worth nearly $1 million. In February 1974, Benjamin's high net worth did not escape GSA auditors. They wrote SBA in wonderment. "It strikes us as rather unusual," wrote a GSA auditor, "that an individual with a net worth of almost $1 million can qualify as an 8(a) subcontractor."

According to a statement submitted to the Governor of the Virgin Islands by Benjamin, the joint venture with the non-8(a) firm. Rodriguez & Del Valle, Inc., was formed solely to obtain that contract on the Federal building. SBA's Inspector General questioned the ability of Luther Benjamin's firm, which previously had performed construction contracts no larger than $325,000, to share half of a $7.7 million contract. There are indications Rodriguez & Del Valle did most of the work on the project, according to the Inspector General.

Maddox and Stabler Construction Co., Inc., Los Angeles, Calif.—The Inspector General questioned Albert Maddox' eligibility for disadvantaged status. On December 31, 1979, Maddox' net worth was listed as $3,410,290, with an annual income of $286,295. Maddox is also president and 50 percent owner of two non-8(a) firms. Since SBA requires 8(a) owners to devote full time to 8(a) firms, the Inspector General also questioned the ability of Maddox to work full time with the 8(a) firms.

Multi-Max Service Corp., Hampton, Va.—Although this firm is defunct, its history illustrates how a member of a minority group loses when used by a nonminority businessman. Ernest McNeal worked for 15 years with the Kleen-Rite Janitorial Service. Kleen-Rite's white owner, Harold Greenspan, helped McNeil established Multi-Max. In exchange, Greenspan and other nonminority individuals were granted ownership of Multi-Max, along with McNeil. When the firm entered the 8(a) program, Kleen-Rite and Multi-Max negotiated a management agreement whereby Greenspan would have authority to process and distribute Multi-Max's payroll, maintain records, handle the 8(a) firm's bank account, and assist in contract solicitations.

In August 1976, McNeal alleged to SBA that Greenspan was draining Multi-Max funds for personal use. As a result, SBA ordered McNeal to buyout the nondisadvantaged, nonminority owners, or be terminated from the 8(a) program. McNeal's attempts to buyout his partners were futile. He decided to form a new corporation and apply to the 8(a) program for assistance. His application was rejected. Today, McNeal works as a security guard, earning $3.25 an hour. At

the time of the Inspector General report, Multi-Mac was still listed in the 8(a) program.

SBA's Minority Small Business office is required to act on Inspector General recommendations for termination of the firm mentioned, in addition to hundreds of other firms examined by the Inspector General review. It appears that, despite IG findings, SBA officials are still reluctant to terminate or graduate these firms.

The Boston Regional Office of SBA has recommended Grimes Oil Co., an 8(a) firm in Dorchester, Mass., for graduation several times, but its recommendations have been ignored, based on the firm's "heed for additional exposure." According to the Inspector General, Grimes has received approximately $34 million in 8(a) support. "How much additional exposure is needed," asks the Inspector General.

Although SBA requires 8(a) firms to seek non-8(a) contracts and not rely on Federal support, Systems and Applied Sciences of Riverdale, Md., has performed $18,233 in non-18(a) work compared to more than $6.2 million in 8(a) contracts. However, SBA has not terminated this company.

Other Federal agencies also appear unwilling to take punitive or corrective action regarding impropriety in the 8(a) program. Of 20 possible criminal matters recently referred by the SBA, Inspector General to the Justice Department, IRS or SBA's own criminal investigations office, punitive measures were applied in only one case. In that case, the firm was simply terminated from the program. No prosecutive action was taken.

Today's hearing will seek to find answers to the troubling questions raised by the case studies I have referred to.

The second part of today's hearing will deal with the abuse of Federal agency must deal with the proliferation of noncompetitive, sole-source contracts and the extensive use of private consultants. In terms of these abuses, it is impossible to single out any one agency as the worst. The Office of Radiation Programs at the Environmental Protection Agency, however, is a valid example of many of these abuses. This single office represents the Federal contracting and consultant system in microcosm.

ORP is responsible for EPA's mandate to promulgate and enforce regulations to protect Americans from health hazards of radiation exposure. The radiation office has been plagued by jurisdictional challenges to EPA's authority, missed deadline for promulgating standards, limited cooperation with other agencies and staffing problems.

In addition to these problems, during the past year, the Deputy Assistant Administrator for ORP has hired more consultants than there are professional staff in his office and has issued more than $2 million in sole-source contracts. Apparently, in several cases, the use of consultants and the methods used in procuring contractors have violated agency rules and regulations.

ORP has hired 49 consultants and experts, many of whom apparently supervise and do the work of the permanent career EPA professional in the office. We will be questioning witnesses today about the effect of such hiring practices and EPA's own order on "Employment of Experts and Consultants," that states consultants shall not be em-

ployed for jobs that can be done by regular employees or to perform duties of a full-time continuing position.

We will also question witnesses concerning the implementation of President Carter's "Limitation on Federal Civilian Hiring," that states, "Individuals will not be hired on a temporary basis as a substitute for full-time permanent employees to evade this limitation."

In addition, we will discuss the contract procurement procedures used in sole-sourcing 30 contract files of many of these contracts, and we are concerned that Federal regulations have apparently been violated or ignored.

In several cases, the Deputy Assistant Administrator apparently contacted potential contractors and asked them to submit unsolicited proposals in specific areas. Federal regulations define an unsolicited proposal as a "written offer to perform a proposed task or effort, initiated and submitted to the Government by a prospective contractor without a solicitation by the Government . . ." In addition, section 205 of Executive Order No. 11222, "Standards of Ethical Conduct for Government Officers and Employees," states "an employee shall not directly or indirectly make use of, or permit furthering others to make use of, for the purpose of furthering a private interest, official information not made available to the general public." We will question witnesses concerning the impact of these rules on actions taken by ORP personnel.

Federal regulations also state that:

> All procedures and contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

In several cases, negotiated contracts were awarded without the benefit of even limited competition.

Several of these sole-source contracts have been criticized by Bureau of Mines radiation official, Dr. George Niewiadomski. Regarding an ORP contract with Harvard University for studying methods to control radon decay products in buildings, he wrote:

> The work described in this proposal appears to be duplicative of various other efforts * * * it's not at all clear that the approach, discussed in the proposal, to aerosol attachment or air-cleaning will tell us anything new.

In reference to a study of field monitoring techniques for radon and radon daughter isotopes to be performed by California Institute of Technology, Niewiadomski concluded:

> The content of the Cal Tech proposals reveals that the authors have no significant experience in this area of nuclear radiation research. There is no clear indication that they are aware of what has been done * * *.

Regarding a contract to study impact of pollution-emitting devices for the University of Pennsylvania, the Bureau of Mines official stated:

> We agree with the intent of this research; however, the sole-source justification is not defendable. Since a number of institutions and research organizations are capable of doing this type of work, we cannot understand why proposals cannot be solicited from various technically competent organizations.

Dr. Niewiadomski's letter raises serious questions about the accuracy of the "justification for noncompetitive procurement" on these contracts. We will be questioning the witnesses today about the specific Federal requirements for a sole-source procurement.

One additional areas of concern is the role contractors and consultants may have had in making governmental policy decisions.

In the case of ocean dumping of radioactive waste, Mitre Corp. has displaced EPA staff, seemingly creating controversy by steering ocean dumping policy on a different course, one that some sources feel could be more environmentally hazardous.

A memorandum written by a State Department ocean disposal expert in reference to an analytical position paper prepared by Mitre contained disturbing comments. It stated:

> The paper omits key issues, treats other incompletely, and is not an example of the objective, technically rigorous analysis that the U.S. requires for future, environmentally sound ocean disposal * * * the paper risks disregarding the headway the U.S. has made and open the door to possible regression away from scientific balance and environmental soundness.

These issues and others raise serious questions about the enforcement and effectiveness of contract laws and regulations. No single office or agency can consider itself above these laws and regulations.

Senator BAUCUS. The first agency that we will be discussing this morning will be the Small Business Administration, and before we have our regularly scheduled witnesses, I understand that William Mauk, the Deputy Administrator, has a statement he would like to make.

Mr. Mauk, I understand you have a prepared statement. Perhaps you want to summarize it or maybe you want to read it in full, whatever you desire. At the conclusion of your statement I will ask Mr. Boucher and Mr. Clement to give their statements.

STATEMENT OF WILLIAM H. MAUK, JR., DEPUTY ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION

Mr. MAUK. I have a very short statement that I would like to make, Mr. Chairman.

I believe it would be useful to the subcommittee to set out the general framework in which the Small Business Administration provides Government contracts and other types of assistance to its portfolio of disadvantaged small businesses.

The objective of the 8(a) program is to provide special assistance to socially and economically disadvantaged business owner/operators to give them the opportunity for full participation in our free enterprise system. There are various social reasons for this program deeply rooted in our history that I need not go into today. It is a business development program, designed to provide economical opportunity for social reasons.

Our potential for success has to be measured in juxtaposition to the fact that the failure rate for all small business in our economy is quite high. As a society, we hold this economic system to be of vital importance; the freedom to enter the competitive arena is necessarily linked with the possibility, the "freedom" as it were, to fail. It is the responsibility of our Government to see that all who wish to enter, have a fair opportunity to do so.

The program requires rather difficult judgments be made by the Government, in both the executive and legislative branches. The social,

economic, and business reasons underlying the program sometimes interact in a conflicting manner. In addition, because of the ease of providing contracts through sole source provisions, some people perceive the program as a procurement effort solely, not a development effort. Racial prejudice and cultural bias also influence assessments.

Some people are against the effort and others feel uncomfortable when they see minorities start to acquire the material benefits of being a business owner. Others have a vested interest in the outcome of a particular decision. Therefore, our decisions are subject to much speculation depending upon which aspect you place the most emphasis.

This program has all the management difficulties of a development effort combined with conflicting perspectives and impediments because of racial prejudice. A high degree of judgment is required, which leaves much room for good and bad judgments as well as honorable disagreements.

Two years ago, the program was in serious difficulty. Past abuses and mismanagement had seriously compromised its development aspects. We have taken strong, corrective action within the framework of countervailing influences.

Much has been accomplished as mentioned in the statements of Mr. William Clement and Mr. Paul Boucher. Much remains to be done.

Our Inspector General has been of invaluable assistance and should the need ever arise, we would fight hard to keep this function and the high level of professional audit and inspection capability it brings to our effort.

I must be candid and note that there are disagreements between the Inspector General and program officials on the nature and scope of action taken on a number of identified firms. This is quite understandable in a program as complex as this one.

What has been demonstrated, however, is the value of an independent and objective Inspector General's office. His recommendations and findings may, at times, disagree with MSB–COD staff responsible for the management of the program, in an effort to insure that proper attention is focused on matters which should be addressed by SBA. This "constructive tension", if you will, should do much to give us a better managed program.

Any program that provides advantages will be used, at times, for improper purposes. Our role is to maximize the benefits to disadvantaged individuals and minimize the improper practices. I believe we are doing much in both areas and have firm plans for the future.

Mr. Chairman, we will be happy to answer any questions. Thank you.

Senator BAUCUS. I agree with the part of your statement that the program is very noble. The point of this hearing is to make sure the program accomplishes its intended purpose. We all know that this program is designed to help socially and economically disadvantaged people. And it is our feeling, based upon the investigation that we have made thus far, that some people have taken advantage of the program, and in so doing, the people who were intended to be helped are not being helped. Many minorities are not allowed to participate in the program because undeserving people are in the program.

I want at the outset to make it very clear that as far as I am concerned, the intent of the program is laudable. I have no intention at all of changing the program; trying to reduce it in any way, or curtailing it.

My whole purpose of the hearing is to make the program work better than it has thus far, and I hope you understand my intention.

Mr. MAUK. Mr. Chairman, this is exactly the same motivation that the executive branch has. Over 2 years ago the Administrator and the President met on this very subject. The resources that were committed to the audit that Mr. Boucher has conducted and completed over a year ago were, in fact, committed by the President himself. That audit, obviously, came up with significant findings and with significant recommendations for change, in order to provide better practices and management for the programs.

We believe we are moving to aggressively implement those changes. We are here today to not only be given advice and counsel from you as to where we should make change, but also indicate where we are going to make the program much better.

Senator BAUCUS. The first witness will be Mr. Boucher.

STATEMENT OF PAUL R. BOUCHER, INSPECTOR GENERAL, SMALL BUSINESS ADMINISTRATION

Senator BAUCUS. Mr. Boucher, do you have a statement you wish to make at this time?

Mr. BOUCHER. I do, Mr. Chairman, a very short one.

Mr. Chairman, I welcome the opportunity to explain the findings of the Office of Inspector General and the recommendations which have been made in the course of several, specialized reviews of the Small Business Administration's 8(a) business development program. These reviews covered the administration of advance payments and business development expenses as well as an exhaustive eligibility review of 1,505 firms in the portfolio.

As a result of these efforts, this office issued a report in April 1979, which was critical of the administration of advance payments and predicted losses to the Government of up to $19 million, the vast majority of which would accrue in the New York region.

Several 8(a) firms have been referred to the Department of Justice for further investigation and possible prosecution for violation of Federal criminal laws. Earlier, in January 1977, a report was issued which raised questions about the management of business development expenses. In both the advance payment and business development reports, this office made substantive recommendations designed to enhance the operation of these two aspects of the business development program. These recommendations have been implemented by program officials and are now a part of program operating procedures.

The most extensive review of the 8(a) program involved a 16-month effort to verify the eligibility for 8(a) association of some 1,505 firms. This review absorbed virtually all in-house audit personnel and eventually required the assistance of 90 auditors who were detailed to SBA from other departments and agencies. As a result of this review, 526 firms were identified as having deficiencies of varying degrees of significance requiring the attention of program officials.

Not all deficiencies were believed to be disqualifying and all firms identified as having deficiencies are being reviewed by program officials in accordance with a process which Mr. Clement has described in his statement for the record.

Additionally, our report made 21 recommendations for program modifications, all of which have been concurred in by program officials. All of these recommendations have been implemented, save one dealing with the development of criteria for economic disadvantage and program termination. These subjects are currently under active study by a contractor. I would note that copies of these three audit reports and voluminous other files and records relating to the 8(a) program have been provided to the committee.

We plan, in fiscal year 1981, to conduct a followup audit addressing the deficiencies we found in all three areas—advance payments, business development expenses and eligibility.

I want to emphasize that a followup audit is a routine step in the audit process designed to make sure that agreed upon changes were actually implemented and, equally important, that those changes were truly improvements. Close attention will be paid during the followup audit to those specific deficiencies we noted in the eligibility criteria of 8(a) companies. The results of those followup audits will be included in a future semiannual report of the Office of Inspector General.

That concludes my prepared remarks. I would be pleased to answer any specific questions you may have concerning our findings.

Senator BAUCUS. Thank you, Mr. Boucher. I understand you have another hearing you have to attend this morning so we will try to be as expeditious as possible.

Could you set the stage and briefly describe the history and the purpose of the SBA's 8(a) program?

Mr. BOUCHER. Mr. Chairman, I believe section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with Federal procurement agencies. The intent is to subcontract the performance thereof to small business concerns.

Since 1968 the authority by administrative regulation has been used to channel Federal purchase requirements to economically or socially disadvantaged individuals. Until the enactment of Public Law 95–507, Congress had not extended legislative control over the activities of the 8(a) program. Its purpose, as I believe it, is viewed by Congress by some of the reports accompanying Public Law 95–507, is to assist the companies which are owned and controlled by persons who have suffered unfair disadvantage in the business world and to assist them to become fully competitive and not require artificial support.

The program objective, I should say, should be achieved, according to Congress, by creating the artificially protected environment in which Federal contracting and financial and technical assistance can be provided to the companies.

Senator BAUCUS. As I understand, the standard requires the owners of the firm to be socially and economically disadvantaged; is that correct?

Mr. BOUCHER. That is the current standard.

Senator BAUCUS. Could you give me an idea what constitutes a socially or economically disadvantaged firm? What does that mean?

Mr. BOUCHER. I can give you my idea, Mr. Chairman. There are many ideas of what that constitutes.

Senator BAUCUS. The first question we should ask is, as near as you can understand, what standards does the SBA utilize in determining what constitutes a socially or economically disadvantaged firm?

Mr. BOUCHER. I believe SBA's operating procedures follow almost to the word the language used in Public Law 95–507 delineating certain groups as being socially disadvantaged and then going on to describe economic disadvantage in terms of individuals who have been denied access to capital, access to markets and so forth. As people who would be classed as economically disadvantaged individuals, there are a variety of standards which could be used.

Senator BAUCUS. In your opinion, are those standards adequate? Are they too loose?

Mr. BOUCHER. I think the standards are much too loose and one of the recommendations we made was that serious study be given particularly to the economic disadvantaged criteria to try to come up with a test which would bring more objectivity to the assessment process.

Senator BAUCUS. In your judgment, then, to what extent are the problems that we have uncovered in the 8(a) program attributable to inadequate regulations, inadequate standards; that is, standards that are too loose rather than problems of personnel or any other reason?

What I am trying to do at this point is to focus only on the standards right now.

Mr. BOUCHER. They are too vague. They are too vague and I think when standards are vague it puts an increasing burden on program officials to try to make judgments as to what the standards really mean and what facts would constitute, shall we say, adequate basis for making a determination the person is economically disadvantaged.

Mr. MAUK. It would be useful to note that under the program prior to Congress passing Public Law 95–507 the criteria was socially or economically disadvantaged. Obviously, there are a number of people who are presently in the program who came under the previous standards.

We testified over a year ago in front of Senator Chiles and Senator Nunn that we were having a phaseout of those people who were in the program who were not socially disadvantaged. A large number of the companies which have been identified as being owned by people with large net incomes as well as net assets, in fact, were admitted into the program under previous standards. We have a systematic approach to ease them out of the program which, in fact, was fully disclosed over a year ago.

Senator BAUCUS. I appreciate that. I have some questions that I want to ask Mr. Boucher and then we will get to you a little later. Let me ask Mr. Boucher questions first. He is the scheduled witness. You just walked up here this morning, plunked yourself up here and wanted to be a witness. Frankly, this hearing will focus on the Inspector General.

Mr. MAUK. I appreciate that. We did notify you several days ago of our interest and involvement and wanted to make sure that the information——

Senator BAUCUS. I appreciate that. This subcommittee is conducting its hearing and will conduct it fairly. One portion of the hearing I want to focus on is the Inspector General's investigation in this whole area. Unfortunately we only have so many hours and so many days. If we had an unlimited number of days in Congress and an unlimited number of weeks and months, we could talk to everybody about everything, but this morning, unfortunately, due to the constraints of time, I will have to focus the hearing primarily on Mr. Boucher and Mr. Clement.

Mr. Boucher, to what extent does SBA's management contribute to the problems in the 8(a) program, in your judgment?

Mr. BOUCHER. As to the operating procedures for the 8(a) program, there are no clearly defined standards. There were, at the time of our audit report, no clearly defined standards by which one could measure or define economic disadvantage, visability, or graduation.

As a result of inadequate management attention, coupled with vague and inadequate regulations, SOP's, if you would, management has contributed to the problems which have been associated with the 8(a) program.

I think when you couple inadequate resources to the task of managing some 1,500 to 2,000 firms, when you couple vague and inadequate rules and regulations which must be interpreted by numerous people in the field and at the central office, as well as the type of subjective judgments that must be involved, you are looking at trouble when trying to manage a program.

Senator BAUCUS. One potential problem you identified is inadequate resources. Your feeling is that with greater resources both in the Washington office and in the field that some of these problems would not occur; is that correct?

Mr. BOUCHER. I think some of the problems might be alleviated if we had more resources, but that is not the only problem.

Senator BAUCUS. In addition to lack of resources, could you be more specific and identify other management problems?

Mr. BOUCHER. I think because of these rules and regulations you will find management decisions being made in an inconsistent manner. There is no uniformity in the decisionmaking process as to who is eligible for the program or who is not eligible for the program. You see seemingly similar facts and circumstances, but two differing decisions as to what should be done under these same facts and circumstances.

It has been very loosely run and perhaps that is probably the single most problem, loose, vague criteria and inadequate management oversight.

Senator BAUCUS. How much control does the SBA Administrator have over this 8(a) program?

Mr. BOUCHER. The SBA Administrator at this time, Mr. Chairman, the way the public law is written, has virtually no control over the key decisions that are made in the 8(a) program.

When I say that, I mean that the Congress has placed the Associate Administrator for Minority Small Business and Capital Ownership Development in the position of having the sole responsibility and sole authority for making decisions on eligibility as well as graduation and termination.

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There is no appeal to the Administrator possible, therefore the program is really in its essential form run by the Associate Administrator for Minority Small Business.

Senator BAUCUS. I take it from your statement, you feel that there should be stronger oversight by the Administrator of the 8(a) program; is that correct?

Mr. BOUCHER. I believe so, Mr. Chairman. I don't quite clearly understand why Congress felt that they had to create this unique provision in the law.

My concern is that the Administrator of SBA is responsible for SBA and its programs, and I think that there should be written into the law a provision whereby the Administrator of SBA has some say in some of the important decisions that are made in that program.

Senator BAUCUS. What can the head of the 8(a) program do to deal with problems that he feels exist? What remedies does he have at his disposal under law?

Mr. BOUCHER. Let me say this. I think one of the things that the Associate Administrator has done is implement virtually all of the recommendations which we made to improve the management and control of the 8(a) program as a result of our audit findings.

Senator BAUCUS. When where they implemented?

Mr. BOUCHER. I think about a year ago, almost the same time we testified before Senator Chiles.

As I indicated to you, however, they have been implemented.

Senator BAUCUS. As I recall, you said they have all been implemented but for one.

Mr. BOUCHER. That is correct, and that is the one that deals with ascertaining graduation criteria and economic disadvantage criteria. That task has been given to a contractor to develop standards by which the program officials can be guided to make these decisions as to economic disadvantage and graduation.

Some of the other remedies available, depending upon the nature of the activity by 8(a) firms, we can have a prosecution or criminal violation. Some of the 8(a) firms have been referred to the Department of Justice for prosecution. We could have under some circumstances probably civil proceedings to require any money the Government lost under a contract, if this was the case. We can have termination from the program for program reasons. You can have denial of future benefits as a result of this termination. You can deny 8(a) benefits. You can have graduation and completion for those firms the Associate Administrator believes have met their business plan goals. You can have a cure of any defects, many of which we raised, cured by agreement with the firms.

Not all defects are disqualifying. Some can be corrected and the firm can be retained in the program. So, I think these are the remedies that are available in addition to implementing and forcibly overseeing the recommendations which I believe will improve the 8(a) program. These have been done.

Senator BAUCUS. How many of the referrals to the Justice Department are now open cases? Have there been any prosecutions among the cases referred to Justice?

Mr. BOUCHER. Mr. Chairman, I believe several are pending in the grand jury at this time. I don't have a specific list for you, But,

I believe we referred between 21 and 22 cases to the Department of Justice and IRS. In certain occasions our audit raised questions about the financial practices of small business concerns which we thought ought to be referred to the IRS.

Senator BAUCUS. How does SBA determine which corrective action to take; that is, whether a firm should be terminated or whether a firm should receive management assistance?

Mr. BOUCHER. Mr. Chairman, that decision is solely in the hands of the program officials.

Senator BAUCUS. How do they make that determination?

Mr. BOUCHER. I beg your pardon?

Senator BAUCUS. Based on your investigation, how do program officials decide which action to take? Is it a matter of judgment? Do they have certain standards?

Mr. BOUCHER. They have the standards which they are following now to make these decisions. The field district director, regional administrators are involved in the decisionmaking process to determine whether or not firms should be terminated, should be graduated. But the final decision, as I understand it, is vested with the Associate Administrator for Minority Small Business.

Maybe I am missing something. Maybe Mr. Mauk would like to clarify.

Mr. MAUK. The law is very specific and it says that no such firm:

> Shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chaper 5 of title 5 of the United States Code.

Congress is very specific in terms of setting up an Administrative Procedure Act to deal with terminations for companies. The formal process is very deliberate. The Administrative Procedure Act says in order to deny a company access to the benefits of the program, you not only have to do what Mr. Boucher indicated, if the company desired, you also have to go in front of an administrative law judge. That law judge has to make a determination and recommendation, and only after that can the Associate Administrator for Minority Small Business make a decision when the company is denied access to the program or denied any benefits that the program provides.

Congress spoke very clearly on that point.

Mr. BOUCHER. I don't think we are disagreeing. However, I believe he asked me how SBA determines which action should be taken.

Senator BAUCUS. That is correct. We are not talking about the process after a decision is made to terminate. I am first concerned about how a decision is made.

Mr. BOUCHER. The determination as to whether or not a firm is proposed for termination or graduation is made by program officials.

Senator BAUCUS. You indicated in your opening statement that about 1,500 firms have been studied. As I read your statement, about 526 deserve some kind of corrective action.

Mr. BOUCHER. That is correct.

Senator BAUCUS. Could you flush that out a little bit? Give this committee a better feel for the categories of problems that you encountered with those 526 firms. They amount to about a third of those that were studied.

Mr. BOUCHER. I want to clarify, Mr. Chairman, exactly what the 1,500 represent and the 526 represent.

There were 1,505 firms reviewed. These are the firms which were in the portfolio as of April 30, 1978. We didn't review all 8(a) firms in the portfolio. We did file reviews on every single one of these firms and we did field reviews, onsite visits in approximately one-third of those cases.

As a result we identified 526 8(a) companies, as I say, which have varying degrees of problems. Of that number, approximately 323 were identified as having dual problems of either questions as to the true ownership and control of the firm or questions as to whether or not the firm was owned and controlled by an individual who was truly socially and economically disadvantaged.

And I want to be candid here that there are probably some 100 or so firms in that 323 which entered the program at a time when the standards were economic or social disadvantaged. So, we are talking in terms—we tried to examine them in terms of the criteria Public Law 95–507—of about 200 or so firms which had potential problems under that law.

These 100 or so are the firms which I believe we have testified in the past about our intentions to terminate or grandfather.

Senator BAUCUS. You are saying that leaves about 200 where there is some problem of ownership or control.

Mr. BOUCHER. Exactly.

Senator BAUCUS. Let's talk about a few of the specific findings. First, could you describe the audit findings on the Maddox & Stabler Construction Co. of Los Angeles, Calif.?

Mr. BOUCHER. Yes.

The Maddox & Stabler Construction Co. was admitted to the 8(a) program in October 1972. Again at a time when SBA regulations said social or economically disadvantaged. We did audit the Maddox & Stabler Co., as you know.

We found that at the time of the audit, 1979, records available in SBA showed that the net worth of the business of Maddox & Stabler was $1.5 million. We found that in 1976 Mr. Maddox had a personal net worth of $540,000. As of 1978, the latest period covered by our audit, Mr. Maddox had a net worth, a personal net worth, of $3.4 million. And he had a personal income, according to our records, of $286,000.

We raised questions about this particular company to the extent that we felt that he would be beyond needing the help of the 8(a) program. He had achieved viability.

We also questioned the economic disadvantage of this particular individual and sent this particular finding to the program officials.

Senator BAUCUS. What happened?

Mr. BOUCHER. The program officials reviewed Maddox & Stabler and I believe a decision has been made to send that particular company to the completion and termination committee, which is a process which Mr. Clement has set up.

What happened is, Maddox & Stabler was reviewed by the program officials and a decision has been made to submit that firm to a special committee to decide whether it should be completed or terminated from the program.

I want to add, however, that the mere reference to the CTC does not mean a final decision has been made to terminate. That committee can review the facts and disagree with the referral and say that the firm ought to be retained. It then goes to the next level of procedures, if you would.

Senator BAUCUS. I don't understand the process. Who decides that a firm should be terminated?

Mr. BOUCHER. I believe I understand generally what occurs. We sent the 526 companies to Mr. Clement's office. People on Mr. Clement's staff review these firms. They go to the field to get additional information to try to resolve the issues and questions raised by the Inspector General's audit. The answers come back, recommendations from the field and so forth, and then Mr. Clement's staff has a determination to make, I believe, that the firm either be retained in the program because of the defects and problems having been cured or the problems are substantial enough to merit referral to the completion and termination committee.

Senator BAUCUS. When was the decision made to review Maddox & Stabler?

Mr. BOUCHER. When was the decision made?

Senator BAUCUS. Yes.

Mr. BOUCHER. I don't have that date, Mr. Chairman.

Senator BAUCUS. Mr. Clement, I will ask you questions later, but can you answer that question?

Mr. CLEMENT. That was in February of this year, February 1980.

Senator BAUCUS. How long has Maddox & Stabler been in the 8(a) program?

Mr. BOUCHER. I believe we said they entered the program in 1972.

Senator BAUCUS. So it has been an 8(a) firm about 8 years.

Mr. BOUCHER. That is correct.

Senator BAUCUS. And during that time the principal's net worth has risen from $540,000 to $3.4 million.

Mr. BOUCHER. That is correct.

Senator BAUCUS. Drawing a salary of $286,000 you're saying?

Mr. BOUCHER. Mr. Chairman, as I pointed out, I want to make this clear. This is one of the problems we have with the pre-Public Law 95–507 criteria. A program official could basically turn his or her head on the economic question because it was irrelevant so long as you find the individual was socially disadvantaged. That was the weakness in the system.

Senator BAUCUS. The law now is socially and economically disadvantaged?

Mr. BOUCHER. That is correct.

Senator BAUCUS. And when was the law changed?

Mr. BOUCHER. October 1978.

Senator BAUCUS. Have you found many examples in your audit of this kind of problem involving firms that joined the program since 1978?

Mr. BOUCHER. I don't know of any, Mr. Chairman. I am not prepared to speak to that at this point.

Senator BAUCUS. While we are on the subject, do you personally believe that the law is correct that firms must both be economically and socially disadvantaged to participate in the program?

What I am getting at is whether you think somebody with this much net worth and this much salary and this much wealth, if he is socially disadvantaged—whatever that means—could also be economically disadvantaged?

Do you think millionaires should be allowed to participate, even if they are socially disadvantaged?

Mr. BOUCHER. That is a difficult question. There are exceptions to any rule. If we made a rule that millionaires could not participate in the 8(a) program, I am sure somebody along the way would find some justification saying why a particualr millionaire ought to be in the program. Aside from that fact, I will take my chances.

I have a hard time reconciling the term "economically disadvantaged" and the term "millionaire." I would have a difficult time as a person, not just the Inspector General, describing to somebody what an economically disadvantaged millionaire was. It is rather difficult. I think the majority of Americans might have some difficulty identifying that person as having a problem. This is an abstract notion. People might say this is a business development program and he didn't make his or her millions as a result of having success in the business world.

I think, quite frankly, that since the 8(a) program can provide, in relative terms, so little help to so few people that I don't think Congress intended for millionaires to participate in the 8(a) program.

I think that our marketing efforts, if you would, ought to be directed to people more in need of help, people don't appear to have overcome any economic disadvantage.

I think program officials agree with me either willingly or otherwise, because in our review we only found 5 companies out of 1,505 whose individuals had net worths in excess of $1 million. So, I think perhaps many other people may share my views in this respect since we had so few millionaires, if you would, in the program. Those are my thoughts.

Senator BAUCUS. Let me ask Mr. Mauk. Do you think there can be economically disadvantaged millionaires?

Mr. MAUK. In relationhip to the total population, obviously not. The question is, from our point of view, providing minorities mainstream participation in our system. And if you are talking about that, you are talking about getting minorities involved in automobile assembly, in the steel business, high technology, pushing the state of the art, and in whatever industry it may be. I would think that there could be circumstances in trying to get minority participation in a particular sector of the economy that they have been denied where you may want to provide assistance to someone.

Senator BAUCUS. It is a difficult question. If carried to its logical end, one could argue that minority assistance should be provided to firms to compete with General Motors.

Mr. MAUK. Exactly.

Senator BAUCUS. Or with Lockheed Aircraft, and the Boeing Aircraft Co. You would have to be a billionaire to compete with those companies. You could be an economically disadvantaged billionaire. It seems to me you ought to draw a line somewhere. We are trying to balance the budget. I am curious where you think the line should be drawn. It is nice to say it depends on the facts and circumstances, but

that is kind of a cop-out. We have to force ourselves to think a little more critically.

Mr. MAUK. I don't think it is high powered at all. This is a socially oriented program to try to do some specific things. I think in general I would say Mr. Boucher's answer I would endorse. I think I indicated some areas in the economy that we may be interested in helping minorities get into where they have been denied access. I think, however, that our ability to do that is very limited and, therefore, the SBA would generally not be involved in that type of activity. Therefore, high-net-worth and high-income individuals generally would not be in the program. But, I think there may be a particular opportunity sometime down the line to help a minority disadvantaged company get into a particular sector of the economy where they have been socially blocked.

I think, in general, what Mr. Boucher said is operable and I think it is the way we have been running the program. I think Mr. Clement can indicate we have not had that type of question since we have been operating under the new procedures.

Senator BAUCUS. Mr. Boucher, could you discuss the Grimes Oil Co. in Dorchester, Mass., and give us an outline of the problems you uncovered with that firm?

Mr. BOUCHER. Yes. The Grimes Oil Co. was also covered by the eligibility report. That company has been in the program since 1971. We raised questions about the viability of Grimes Oil and again whether or not they are now beyond needing the help of the 8(a) program to develop into a competitive business.

We pointed out in our audit report that non-8(a) sales now exceeded 8(a) sales, that non-8(a) sales had gone from $480,000 in 1971 to $5 million in 1978.

It seems to us, at least in our opinion, that the firm seemed quite capable and viable on its own merit, if you would, and should have been graduated as a success story, persons who have done well in the 8(a) program.

Senator BAUCUS. Why, in your judgment, was it not graduated?

Mr. BOUCHER. I don't think there is a clear answer to that, Mr. Chairman. I believe the record will show that there were attempts, or at least recommendations, made by the Boston office of SBA to graduate or to complete the firm. That the program officials in Washington agreed that the firm ought to be completed at the end of fiscal year 1981.

I think the disagreement was, I thought they ought to be terminated now. That is where we have room for disagreement. I felt what more can we do for Grimes Oil Co.?

Senator BAUCUS. So in this case, a firm has developed a lot of non-8(a) sales, it looks like it is doing well on its own and it looks like it should be graduated. Is this a common problem?

Mr. BOUCHER. As a result of our audit we identified approximately 38 firms who appeared to have the capability to operate separate and apart from the 8(a) program. On 16 of these 38 we pointed out that their projected sales goals had been significantly exceeded and yet they were still in the program. We just pointed out these problems to the program officials.

Senator BAUCUS. I understand SBA intends to retain this firm in the 8(a) program; is that correct?

Mr. BOUCHER. That is my understanding, through 1981, fiscal year 1981.

Senator BAUCUS. Do you know of any decision to graduate this firm?

Mr. BOUCHER. No, sir, I don't.

Senator BAUCUS. And in your personal opinion, that firm should be graduated?

Mr. BOUCHER. That is my personal opinion.

Senator BAUCUS. It is my understanding that this firm has already received about $34 million in 8(a) contracts; is that correct?

Mr. BOUCHER. I believe that is correct, Mr. Chairman.

Senator BAUCUS. Do you believe there should be a limit on the amount of dollars that individual 8(a) firms can receive from SBA?

Mr. BOUCHER. A limit on the number of dollars?

Senator BAUCUS. Yes, dollar assistance that 8(a) firms can receive.

Mr. BOUCHER. I don't think I can put any limit in dollar terms, Mr. Chairman. It depends on what industry, what sector of the economy it is operated in, whether or not it might be a little bit more developed when it entered the program than another business. I am not sure I can answer that question.

Senator BAUCUS. Do you believe we should sunset these firms? The mood here in the Congress is to sunset agencies and programs. Should there be a fixed limit on the number of years the 8(a) firms can participate in the 8(a) program? What is your personal view on fixed limits, the number of years that a firm could participate in 8(a)?

Mr. BOUCHER. Mr. Chairman, one of the things I would point out with respect to the 8(a) program, and I think our audit graphically points this out in some respects that there are virtually no incentives to succeed in the 8(a) program. Individuals have stayed in the program for 9, 10, or 11 years. The lack of incentive is a problem.

I believe if we did have a fixed term, I won't say the number, and the 8(a) firm knows at the time it enters the program that it has 5 years based upon your sales projection that SBA would provide them not only contractor but management assistance and so forth, I believe you would build in a considerable incentive for that 8(a) firm to succeed because they would have to see the light at the end of the tunnel. They are given a fixed term period of time and they know when they get in the program they have to work hard and succeed in 5 years, they get only one bite of the apple. That is my opinion.

Senator BAUCUS. I tend to agree with you. We discovered the same problem in title 3 with developing institutions in the Department of Education. Title 3 colleges tend to like the program. But they don't develop very quickly because of the continued assistance they receive. There is also a parallel with us in the Congress. We are only elected for 2 or 6 years and theoretically I think it helps us to be a little more responsive than if we served longer terms. I think the same principle applies to 8(a) firms as well.

Mr. BOUCHER. I think there has to be some flexibility built into the system. If you say when you come in the program you have 5 or 6 years, but for reasons beyond the control of that business concern, things don't go well for a year or two, for instance, adequate amount

of Government contracts are not available, I think you should have built-in standards which must be met for granting continuances, a justification for nongraduation if you would.

Senator BAUCUS. Do you have any sense of the number of potential 8(a) firms that are not allowed into the program because too many nondeserving firms are in the program?

Mr. BOUCHER. I don't have any sense for the numbers, but I suspect from what little I do hear there are a number of people who would like to get into the 8(a) program.

My concern is, perhaps we have had too much emphasis in the past on quantity and not developing quality. As Mr. Mauk indicated, we are trying to develop a business development program and not a program to give out contracting opportunities. Maybe we ought to look hard at the number of firms and insure that the number of firms in the program have adequate support by way of contracting opportunities, management assistance, and so forth.

Senator BAUCUS. Could you describe your findings on Great Lakes Research in Minneapolis?

Mr. BOUCHER. Great Lakes Research, Mr. Chairman, I believe that Great Lakes Research was let into the 8(a) program in 1979. We conducted our audit and ascertained that the disadvantaged individual in whom eligibility vested, again the test was economic or social, was a full-time medical student who spent no time controlling or operating the firm and that another individual, a nondisadvantaged individual, was actually running the program.

There was no training given to the disadvantaged individual and so forth so he could develop the business.

Senator BAUCUS. In this case, was a particular SBA rule being violated or was it just a matter of judgment?

Mr. BOUCHER. No. I believe the rule was in 13 CFR, section 124.8. It says the disadvantaged owner, the disadvantaged individual upon whom eligibility rests, must own and control the firm. We never saw the individual.

Senator BAUCUS. This individual was a full-time medical student. I understand he is receiving a salary of $4,500.

Mr. BOUCHER. Something like that. I believe he has also been recommended for termination.

Senator BAUCUS. Is this a typical problem? Is it common enough to warrant consideration?

Mr. BOUCHER. What we are talking about is ownership and control. This is one form, or one piece of evidence that the firm that was let into the program was not truly owned and controlled by the disadvantaged individual. We raised questions in some 200 or more cases related to ownership and control.

Senator BAUCUS. What was the problem? Did somebody look another way or was it inadequate personnel in the program? What happened?

Mr. BOUCHER. I can only speculate that a good hard look was not given to determine who actually would be running this firm, whether or not this individual had any expertise by which to run a research corporation and that perhaps program officials were lax for not taking a hard look at this company before program entry.

Senator BAUCUS. So your suggested remedy to prevent this kind of problem from reoccurring is to get personnel who are tighter and more vigilant in insuring that ownership and control is proper?

Mr. BOUCHER. You have got to have very understandable regulations so there is no doubt in anybody's mind what is expected in the 8(a) program. Then you have to have a management commitment to have these rules and regulations followed to the letter so they can always document and verify and confirm the basis for the action that they took.

Senator BAUCUS. What happened in the case of Information Planning Association in Gaithersburg, Md.?

Mr. BOUCHER. Our audit pointed out, Mr. Chairman, our concern over the fact that the net worth of the company appeared to be plummeting considerably while at the same time the personal net worths and the salaries of the officers, disadvantaged individuals, were going up.

We raised it as a problem because it appeared to us when you see the situation that maybe more interest was being paid to developing their own personal net worth than developing a viable company. It raises a flag.

An additional problem was that the firm had failed to submit audited financial statements for a number of years. One could probably say there was a reason for that, because of what the audited financial statements might have shown.

Senator BAUCUS. Was there a specific SBA regulation violated in this case?

Mr. BOUCHER. I believe it goes back to 13 CFR again about inadequate management performance. If you see individuals who are in the 8(a) program who are taking a lot of money out of the company which they are trying to develop, this should trigger some concern about whether or not they are adequately managing the business with a view to developing that business.

Senator BAUCUS. Do the administrators of the 8(a) program have enough financial information to determine these kinds of problems; that is, enough information to show that the net worth is plummeting while at the same time the salary and the net worth of the managers are increasing?

Mr. BOUCHER. The requirements are for the submission of the annual financial statements, which were not received in this case.

Senator BAUCUS. Who never got them?

Mr. BOUCHER. SBA.

Senator BAUCUS. Did SBA request them?

Mr. BOUCHER. In some cases we requested them and never received them.

Senator BAUCUS. Does SBA have a file system or a check system to determine whether or not they are receiving the necessary documents?

Mr. BOUCHER. I would have to defer to Mr. Clement as to what processes are in place. Companies are required to have that information in on a timely basis.

Senator BAUCUS. Please describe the case of Chucko, Inc., Columbus, Ga.?

Mr. BOUCHER. As a result of our audit of Chucko, we raised questions about substantial misuse of BDE and advanced payments. We believe that advance payments, at least portions of advance payments, had been used to pay expenses, if you would, which are totally unrelated to the 8(a) contract for which the advance payment was awarded. This is typical, if you would, of the problems we found in New York when we did our advance payment audit.

Senator BAUCUS. Could you describe that a little more fully? I don't understand. You say there were advance payments made to the firm?

Mr. BOUCHER. Yes, sir. I will try to explain. The firm has a contract, it may be some period of time before the Government agency for which that firm is doing the work will begin to make payments on that particular contract. So that the company can show profit, meet its payroll, the Government will give advance payments on that particular contract to the contractor which he is supposed to use in furtherance of this particular contract.

We found in certain cases that the money was diverted from 8(a) contract purposes to other, say, commercial accounts. It was not used for the purposes for which SBA made the payment.

Senator BAUCUS. I assume that is a violation of a specific SRA regulation?

Mr. BOUCHER. Yes; it is. Again, it is inadequate management performance. And, quite frankly, it could also be a violation of Federal criminal law if we can show the individual intended to defraud.

Senator BAUCUS. Is this a typical problem?

Mr. BOUCHER. I couldn't say typical. I think the advance payment audits showed two things. It showed that in one particular region we had significant problems, that is the New York region. It also showed that in a number of other regions we were not victimized, if you would, by the lack of adherence of advance payments rules.

The system itself would allow for this to happen as it existed then. The most serious problems, though, were in New York.

Senator BAUCUS. Do you know if this company that we are talking about will be retained in the program?

Mr. BOUCHER. I believe so.

Senator BAUCUS. We are talking about Chucko.

Mr. BOUCHER. I believe Chucko is being retained, Mr. Chairman.

Senator BAUCUS. Do you know why?

Mr. BOUCHER. I don't, because we have not reviewed the determinations made by the program officials to retain that particular firm.

Senator BAUCUS. Could you explain how business development expenses work in the 8(a) program. Are business developing expenses the kind of advance payments we talked about?

Mr. BOUCHER. Two different things.

Senator BAUCUS. What is the difference?

Mr. BOUCHER. They are basically an outright grant of Federal funds in support of a particular contract which is being awarded to the 8(a) firm. It has various purposes. It could make up the difference between a fair market price contract and a reasonable price required by the 8(a) contract to make a profit. It is used in some cases as price differential. It can be used by them to purchase capital equipment which is essential to the contract performance when other means of financing

is not available to acquire the equipment. It is basically used to assist the 8(a) firm in the startup process or in price differentials on the contract.

Senator BAUCUS. Are there instances where these business development expenses are misused?

Mr. BOUCHER. As I said, we did an audit, the results reported in 1977. What we showed is that there were areas in the management and control of business development expenses which needed tightening up. We showed in some cases where individuals were receiving business development expenses which were double and maybe even triple the value of a contract for which the business development expense was given. I think that the current SOP has been tightened up considerably to the point BDE is permitted only up to 50 percent of the contract price. But that can be waived given justification.

Senator BAUCUS. Could you tell us what you think the one or two most significant suggestions would be to help prevent and correct these abuses from occurring in the future?

Is is crackerjack management? Is that what we need?

Mr. BOUCHER. It is a combination of a couple of things. It is going to be a combination of a firm commitment by the program officials to insure that the program does assist those people it is intended to assist. With that you must have the types of rules and regulations or procedures to which people must adhere. They should be such that you or I or anybody else coming in could look at the rules and regulations and come up with a plausible explanation for why something was done or was not done.

I think it is a combination of putting the program on track with sound rules and regulations, addressing the net worth questions, addressing the viability questions, addressing and making the hard decisions about whom we are suppose to be helping in this program.

Once we do that, we then say, now we are going to run this program in a professional business manner. There would be justification for decisions that are made; we will be able to backup those decisions in this particular program.

Senator BAUCUS. How do we assure that all this is done? What you are saying is we should rely upon and trust the good intentions of SBA, which is fine. We have to trust somebody in this world, but how are we going to make sure that SBA does this? Good intentions are one thing, actions are something else. Should we have monthly hearings like this? Do we need criminal statutes? What do we need to help encourage SBA? Should SBA itself self-destruct every 6 or 7 years? I am trying to find some way to hold SBA's feet to the fire, our feet to the fire and make sure the job gets done so that 2, 3, 4 years from now we are not back again with the same old problems.

What kind of process do we establish to help make sure these recommendations are pursued?

Mr. BOUCHER. Mr. Chairman, I think it is safe to say, and I feel convinced myself, the present management of the SBA has learned a lot from the problems of the 8(a) program, not just the problems I have pointed out but also those which GAO has pointed out in the past.

I believe there is a commitment by the Administrator, by the Deputy Administrator, by SBA, certainly a commitment by my office, to try

to do all we can to insure that the 8(a) program does succeed. It is a valuable program. It can pay great dividends to people who participate in the 8(a) program. I think a combination of commitment to it with a strong, independent Inspector General—with a plug in for my office, who will conduct followup audits, who will alert the management teams to problems that we see, and who will report twice a year to Congress in my semiannual report the problems that we are still finding in the 8(a) program. I think that is what is needed. I think some legislative changes are needed as well.

Senator BAUCUS. Mr. Boucher, do you think your office is sufficiently independent now to conduct proper investigations?

Mr. BOUCHER. Yes, sir, I do. There is no doubt in my mind about that.

Senator BAUCUS. Do you have sufficient resources?

Mr. BOUCHER. That is a good question.

Senator BAUCUS. I will be surprised if you say yes.

Mr. BOUCHER. I won't surprise you. I can always use more auditors and more investigators. There are many, many things that I think must be reviewed in SBA. I am going to another hearing after this on another SBA program. I can always use more auditors and investigators in SBA. I also have to be reasonable on what I could expect to gain in the budgetary process during these times of fiscal restraint. But I do have a shortage of auditors and investigators. I am working with the Administrator and the Deputy Administrator to try to resolve these shortages and I think, to some extent, we can resolve them.

Senator BAUCUS. Do you think that there should be more vigorous action by the Justice Department against these firms? Are there civil remedies?

Mr. BOUCHER. I believe there are but I am not ready to delineate what they are.

Senator BAUCUS. Do you feel Justice puts 8(a) problems in the back burner? Does Justice spend a sufficient amount of time, in your judgment, looking at SBA cases?

Mr. BOUCHER. As a former member of the Justice Department, I would have to say that Justice receives cases from every Federal agency to prosecute. I have no personal complaints with the level of service we have been receiving from the Justice Department. We do have differences of opinion as to whether or not a case merits prosecution or not.

Bear in mind many of the cases we refer to Justice particularly in the 8(a) program are very complex cases to develop—intricate financial transactions are involved; many, many subpenas have to be served. I have no fault with the relationship my office has with the Justice Department, but we do have differences of opinions on whether cases ought to be prosecuted or not.

As you know, the Attorney General has the final say as to whether or not cases would be prosecuted.

Senator BAUCUS. It seems to me that if somebody sets up a front firm, that raises questions of intent. I understand the complexity of prosecuting white-collar cases. It seems to me Justice could be more vigorous on some of these cases.

Mr. BOUCHER. You raised a case and I feel I want to give you all the facts. The case in point is Chucko. What happened in that particular one, we did an audit and we did an investigation and we found that advance payments were in fact diverted. We brought it to the attention of the U.S. attorney's office. The U.S. attorney's office declined to prosecute because, after the information was brought to the attention of program officials, they continued to award contracts. They condoned the activity.

The U.S. attorney said, if you are not going to do something about the program, why should I expend my prosecutorial resources on the problem?

Senator BAUCUS. In that case, Justice wouldn't prosecute because the agency condoned the violation?

Mr. BOUCHER. In effect. Because the program, the way it has been managed, there are several U.S. attorneys who have indicated, "My gosh, in light of all this, you are still dealing with that individual?" And I have to explain to them what the difficulties are in the 8(a) program. You just don't remove somebody from an 8(a) program without proof; you need a due process hearing. And there is a delicate balancing test whether or not the program officials feel that a particular finding is a sufficient violation on program responsibility to merit removal. It is a very delicate balancing test.

Senator BAUCUS. Do you feel the Justice Department has a sufficient tracking system to monitor the status of investigations you are conducting? Are you aware of the recordkeeping and tracking system of Justice?

I ask the question because I have discovered in the last couple of years that the Justice Department has a very antiquated retrieval system. It often doesn't know the status of many of its cases. In your experience, have you found the same kind of problem?

Mr. BOUCHER. I did not while I was at Justice. I defer to Justice for that.

Senator BAUCUS. In your opinion, did political pressure contribute to some of the problems we have today?

Mr. BOUCHER. I have no evidence of political pressure. I think the 8(a) program is subject to the same types of pressures, if you would, that any other Government program is subject to when you have people who are vigorously arguing for their particular position, arguing why they should get the contract as opposed to somebody else getting the contract.

That type of politics you are referring to.

Senator BAUCUS. I was curious whether a political entity applied a little pressure on SBA to allow a firm to participate in 8(a).

Mr. BOUCHER. I have no evidence, but I think I can speak to the general concern.

If you are talking about favoritism, cronyism, this type of thing, I would have to point out that the 8(a) program, like so many other programs in the Government, is a sole source procurement-type program, therefore it is fraught with the very risks which the competitive system was designed to meet and to head off. That being the case, I think allegations of favoritism and so forth are very easy to make, very difficult to prove.

I would have to say that what has to happen in the 8(a) program or a program like this is that it must be managed in a professional business like manner with sound rules and adequate justifications for actions which were taken so that these actions can withstand scrutiny after the fact.

This is the only way, I think, that you can get around the perception by some people that favoritism is involved.

When you see people remaining in the program for 8 to 10 years who could seemingly make it on their own, reasonable people would ask the question, Why are they still in the program? But, these are problems which are part of the program and many other programs in the Government.

Senator BAUCUS. Do you have any legislative recommendations to help prevent these abuses in the future?

Mr. BOUCHER. I addressed the problem, Mr. Chairman, of lack of incentives in the 8(a) program. I believe there is legislation pending right now which I would support in some respects. This legislation would set a fixed term for association in the 8(a) program. As I testified earlier, I think that is important to develop an incentive for succeeding in the 8(a) program. I also believe that the Administrator of SBA ought to be given authority over the very, very important decisions which are made, at least as an appeal level, to review some of the very, very important decisions that are made with respect to the 8(a) program.

I also believe that within the 8(a) program, I am not so sure that this is something legislation should address or not, that we might want to consider an element of competition among 8(a) contractors within the program. As they develop, perhaps after they have been in the program for 2 or 3 years out of a total of 6, that they start competing among one another for certain contract opportunities provided that this is not perceived as a way of cutting the 8(a) pie any thinner.

But, I think an element of competition would be healthy even among 8(a) contractors in the program.

I think Congress perhaps can help us out if they would tell us or give us some guidance as to what Congress really meant when they said "social and economically disadvantaged." Give us some idea of what Congress had in mind. Maybe they can give some help in terms of defining "viability" or what a net worth figure ought to be or give parameters within which SBA can operate.

Mr. MAUK. Mr. Chairman, if I may, the two recommendations, the first two that he made in terms of authority within the program as well as graduation, we have been working very closely with Senator Morgan on both of those issues and there should be a bill either later today or tomorrow on the floor which you could vote on which in fact would provide much better guidance for graduation as well as the authority issue in the agency, and we would hope that you would do that.

Senator BAUCUS. I believe I will. Thank you very much.

Mr. Boucher, I want to thank you for your thoroughness and candor and your cooperation. You have been very, very helpful and that is a good example of a very fine public servant and I wanted to let you know. I appreciate your efforts and your testimony today.

Mr. BOUCHER. I lot of work went into the 8(a) program and I think my staff did an excellent job in developing areas for review by the program officials.

There are several people in the room I would like to identify on the record who have been associated with this program for 2 years on my staff who have done a tremendous amount of work.

I would like to identify Raymond Randolph, Assistant Inspector General for Audit; George Smith, Director of Internal Audits; Fred Burkert, regional audit manager, Internal Audit; and Richard Snyder also of the audit staff. These are the people who have been in the trenches and have worked and worked and worked in the 8(a) program, and I did want to make sure they were properly recognized.

Senator BAUCUS. Thank you, gentlemen, for being here. Mr. Boucher, I understand your desire to commend your staff. I personally know how much I rely on my staff.

[Material pertaining audits and reviews of various 8(a) firms appear in the appendix.]

[The prepared statement of Mr. Boucher follows:]

PREPARED STATEMENT OF PAUL R. BOUCHER

I welcome the opportunity to explain the findings of the Office of Inspector General and the recommendations which have been made in the course of several, specialized reviews of the Small Business Administration's 8(a) Business Development Program. These reviews covered the administration of Advance Payments and Business Development Expenses as well as an exhaustive eligibility review of 1505 firms in the portfolio.

As a result of these efforts, this Office issued a report in April of 1979, which was critical of the administration of Advance Payments and predicted losses to the Government of up to $19 million, the vast majority of which would accrue in the New York region. Several 8(a) firms have been referred to the Department of Justice for further investigation and possible prosecution for violation of Federal criminal laws. Earlier, in January 1977, a report was issued which raised questions about the management of Business Development Expenses. In both the Advance Payment and Business Development Expense reports, this Office made substantive recommendations designed to enhance the operation of these two aspects of the Business Development Program. These recommendations have been implemented by program officials and are now a part of program operating procedures.

The most extensive review of the 8(a) program involved a 16 month effort to verify the eligibility for 8(a) program association of some 1505 firms. This review absorbed virtually all in-house audit personnel and eventually required the assistance of 90 auditors who were detailed to SBA from other departments and agencies. As a result of this review, 526 firms were identified as having deficiencies of varying degrees of significance requiring the attention of program officials. Not all deficiencies were believed to be disqualifying and all firms identified as having deficiencies are being reviewed by program officials in accordance with a process which Mr. Clement has described in his statement for the record.

Additionally, our report made 22 recommendations for program modifications, all of which have been concurred in by program officials. All of these recommendations have been implemented, save one dealing with the development of criteria for economic disadvantage and program termination. These subjects are currently under active study by a contractor. I would note that copies of these three audit reports and voluminous other files and records relating to the 8(a) program have been provided to the committee.

We plan, in fiscal year 1981, to conduct a followup audit addressing the deficiencies we found in all three areas: Advance Payments, Business Development Expenses and Eligibility.

I want to emphasize that a followup audit is a routine step in the audit process designed to make sure that agreed upon changes were actually implemented and, equally important, that those changes were truly improvements. Close attention will be paid during the followup audit to those specific deficiencies we noted in

the eligibility criteria of 8(a) companies. The results of those followup audits will be included in a future semiannual report of the Office of Inspector General.

That concludes my prepared remarks. I would be pleased to answer any specific questions you may have concerning our findings.

Senator BAUCUS. Our next witness will be Mr. William Clement, Associate Administrator responsible for the 8(a) program.

Mr. Clement, would you please raise and take the oath.

Mr. Clement, could you summarize your statement. We are never going to get through here today if we maintain the present pace. Your entire statement will be included in the record.

STATEMENT OF WILLIAM CLEMENT, ASSOCIATE ADMINISTRATOR FOR MINORITY CAPITAL OWNERSHIP AND DEVELOPMENT, SMALL BUSINESS ADMINISTRATION

Mr. CLEMENT. We welcome this opportunity to testify before the subcommittee on the management of the SBA business development program. Although, Mr. Chairman, the authority of SBA to use section 8(a) of its act is approximately 10 or 12 years old, the institutionalization and management of this effort as a truly business development program is only 2 years old, since the passage of Public Law 95–507 was passed in October 1978.

Although, Mr. Chairman, the concept to the business development as a goal at SBA is approximately 7 to 8 years old, it has only been since Public Law 95–507 that SBA has had a statutory and a legislative mandate, and second, had public rules and regulations and standards of operating procedures for this program, and lastly, has had some framework for making some very difficult decisions with regard to contractual support, financial assistance, eligibility, et cetera.

Although, Mr. Chairman, SBA has provided contracts and loans and management assistance to 8(a) firms over the past 10 to 12 years, it has only been since the passage of Public Law 95–507 that all of these resources have been coordinated and centralized in one program office.

Although, Mr. Chairman, there have been allegations of abuses with regard to eligibility and ownership and control of certain 8(a) firms in the past years, none have been made in the last 2 years since the passage of Public Law 95–507. Since then approximately 400 firms have been certified for the 8(a) program.

Although, Mr. Chairman, SBA has not entirely completely terminated those few individuals and companies that have abused the intent and purposes of this program, we have identified and have moved vigorously toward the formal adjudicatory process to eliminate those few bad apples that have tainted a very creative and worthwhile socioeconomic program in this Government.

Although, Mr. Chairman, the SBA 8(a) business development program as it is now constituted is only 2 years old, we think we have made some significant, positive and substantive changes in the management and delivery of resources to those persons and individuals to whom this program is intended.

In conclusion, we have slowly changed and institutionalized this program consistent with the mandate in Public Law 95–507 to simply

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promote business ownership to individuals who have not had the full opportunity's to freely participate in this country's free enterprise system.

Senator BAUCUS. Thank you.

Could you please describe your responsibilities regarding the 8(a) program?

Mr. CLEMENT. Mr. Chairman, generally my responsibilities are in the area of policy and program management. They are more detailed in Public Law 95–507 section 7(j)(11) and also SOP, page 10.

Senator BAUCUS. You generally run the program; is that right?

Mr. CLEMENT. Yes, sir.

Senator BAUCUS. You are the head man; is that correct?

Mr. CLEMENT. Yes, sir.

Senator BAUCUS. How long have you been associated with 8(a)?

Mr. CLEMENT. I was appointed to this position in November 1978.

Senator BAUCUS. To whom are you responsible?

Mr. CLEMENT. I report directly to the Administrator or in his absence his designee, Mr. William Mauk.

Senator BAUCUS. You heard Mr. Boucher testify that there is virtually no oversight control by the Administrator of your office. Is that a correct assessment?

Mr. CLEMENT. That is not entirely correct, Mr. Chairman. There are certain aspects of the program that the Associate Administrator has control over, for example, eligibility which is a very key decision. But in terms of overall program responsibility, direction, administrative changes, proposed legislative changes, we work very, very closely with the Administrator's office which includes both Administrator and the Deputy Administrator on the management and direction of this program. But there are one or two key decisions that are vested solely in the Office of the Associate Administrator.

Senator BAUCUS. Eligibility is one?

Mr. CLEMENT. Yes.

Senator BAUCUS. That is the main one, the key one. You decide what firms are allowed to participate and which are not. Is that correct?

Mr. CLEMENT. That is correct.

Senator BAUCUS. Only you can make a determination as to eligibility, no one else. Is that correct?

Mr. CLEMENT. The authority is vested in the Associate Administrator.

Senator BAUCUS. Do you think that is a good way to run a railroad, based upon your experience? You have been with the program now a year or two.

Mr. CLEMENT. I hope the subcommittee does not have the impression that I singularly review each and every case and individually make a decision in regard to the eligibility.

I would like to describe the process. The initial point of contact between an 8(a) firm and the SBA is at the SBA District Office. The application is reviewed by the District Office Evaluation Committee, the finance department, the management department, our contract support department and also the district counsel's office. Each review a document called the business plan which includes all pertinent information on that firm, such as the historical financial information, proforma statement of the disadvantaged with regard to their respective individuals et cetera. It should be a very complete document.

The district office forwards the application with its recommendation to the regional office. At the regional level the application goes through another review with another committee or is reviewed singularly by the regional administrator and/or the regional counsel.

Then the file comes into the central office of the SBA where we have a very competent office of eligibility that once again reviews the file for compliance with the eligibility criteria that we have set forth in our rules and regulations that were published in 1979 and upon their recommendation, Mr. Chairman, I then make the final decision. But only after it has gone through that very length process.

Senator BAUCUS. Do you think appeals of your decisions to the Administrator should be allowed?

Mr. MAUK. Mr. Chairman, I think it should be of interest to note that sometimes a legislative recommendation, as time goes by, is viewed in a different light.

The main reason for centralizing the decisionmaking by Congress in the Associate Administrator was a complete lack of consistency in making eligibility determinations. So that what we have is one individual ultimately responsible for that.

Now, whether that particular decision was the correct one to exactly change the problem—the point is, Congress was pinpointing a very critical problem in the way SBA was.

Senator BAUCUS. That is not the question I was asking.

The question is whether Mr. Clement feels there should be a right to appeal decisions from the Associate Administrator to the Administrator.

Mr. CLEMENT. I think the compromise that was worked out in the bill sponsored by Senator Morgan maintains the authority and the responsibility of the Associate Administrator and adds the language with the concurrence of the Administrator is certainly a worthwhile situation. But I would point out, Mr. Chairman, that in the last 2 years during the period that we have certified approximately 400 firms, there have been no allegations of any abuses with regard to eligibility, control or ownership of those 400 companies.

Senator BAUCUS. What about the firms that are presently in the program, those that have problems associated with them? You heard some of the problems itemized this morning. You read about some of the others and I am sure you are aware of many others that we have not even discussed or read about in the paper.

What is being done about those firms?

Mr. CLEMENT. I think it is very, very important that we view this progress——

Senator BAUCUS. Have you terminated any firms?

Mr. CLEMENT. No, sir; we have not as of today.

Senator BAUCUS. You have not terminated any of these that we have heard about? They are still getting 8(a) assistance?

Mr. CLEMENT. Of the 526 companies that were recommended by the Inspector General's Office as being "problem" companies, we have reviewed each and every one over the last 11 months.

Mr. Boucher indicated in his statement that of the 323 that were cited for either eligibility, ownership or control, that approximately 100 were cited for economic reasons and he also indicated that these

firms were certified in the program prior to 1978, which was the year the Public Law 95–507 was passed.

So, that leaves approximately 200 firms that we felt had problems based upon the time, date, and place of the audit. Of the remaining 200 companies, there were varying degrees of deficiencies, as Mr. Boucher indicated. An example would be a stock certificate had not been issued in each and every company. In one case the attorney still had them, in another case there was a volunteer fireman who was working on the weekends, in another case the spouse of the principal was working in the Federal Government and did not obtain a waiver. So, there were varying degrees of problems in these firms. Presently our records indicate there are approximately 138 companies that have been referred to the Completion and Termination Committee out of which 52 have been referred to the Office of the General Counsel. Of the 52, 12 show-letters have been sent, the earliest in July of this year, which is the first point in the formal adjudicatory process mandated in Public Law 95–507.

In addition the Completion and Termination Committee is aware of five voluntary withdrawals of the 526 companies cited by the Inspector General.

Senator BAUCUS. To date there have been no nonvoluntary withdrawals?

Mr. CLEMENT. That is correct.

Senator BAUCUS. When do you expect there to be some nonvoluntary withdrawals?

Mr. CLEMENT. Mr. Chairman, the first step in the adjudicatory process is the issuance of the formal show-cause letter. Twelve letters have been sent to date. There are four letters in the office of General Counsel awaiting issuance. An additional 68 firms are currently under review in the central office which is the continuance of the process we have been undergoing for the past 10 to 12 months.

I would expect within the next 30 days, which is the time frame for seating of the administrative law judge, that we would then begin to see decisions coming out of that process and also some terminations.

Senator BAUCUS. I understand what you are saying and it sounds good to hear about 100 or so firms referred to some office and out of that a certain number referred to another process, et cetera, et cetera. Still, the fact of the matter is not a single firm has been withdrawn nonvoluntarily, and second, it has been some time since SBA began investigations to see whether any firms should be terminated. It has been a year.

Don't you think this termination process can be expedited somehow? It appears that some of these firms should be withdrawn. Would you agree?

Mr. CLEMENT. Yes; some firms have voluntarily withdrawn.

Senator BAUCUS. How many of the present firms that have not been withdrawn do you think should be withdrawn?

Mr. CLEMENT. Mr. Chairman, I wouldn't comment because the Administrative Procedures Act gives due process to those firms that are incumbent contractors in the 8(a) programs, and we are adhering to the procedures set forth under the Administrative Procedures Act.

Senator BAUCUS. How long under the process as set forth in the Administrative Procedures Act would it take before there is a final determination?

Mr. CLEMENT. That particular process is handled by the administrative law judge. He or she sets the hearing date at which time the firm comes forth with their case and the SBA comes forth with its case and the decision is made by the administrative law judge with regard to retention, completion or termination.

Senator BAUCUS. Does it take too long to terminate a firm?

Mr. CLEMENT. Mr. Chairman——

Senator BAUCUS. We should afford due process. Every American is very sensitive to due process of law. Americans are also sensitive to bureaucratic delay and taxpayers are sensitive to the taxes they pay every year. And these are competing principles and rights and obligations, they have to blend together.

I am curious that in your personal judgment whether you think the summation of the total process to terminate an unworthy firm just takes too long?

Mr. CLEMENT. Mr. Chairman, prior to October 1978, there was no formal procedure. As I indicated before, this is a standard operating procedure, which does give due process. Perhaps there are administrative and bureaucratic procedures that we have to adhear to, but there are several firms that have been cited by the Inspector General's report which is very well constructed and well done, that have not received any contracts over the last 4 years and because of this process they are now being moved toward termination, but they must be accorded due process.

Mr. MAUK. Congress has been given two problems. It says formal process is required; second of all it indicates total participation by the firm must continue until the process is completed.

If we have a problem with a particular company, it is very hard for us to stop dealing with that company even thought we know, and a reasonable person would know, that in fact that there are significant problems and this company should for all practical terms be terminated.

Senator BAUCUS. Can SBA speed up the internal process?

Mr. MAUK. That is a problem. As a matter of fact, the first case that we brought under this proceeding, the administrative law judge ruled against the Agency. And part of it, I must admit, was we did not have everything together, we had not done the job properly and we had not taken the time to make our case. So, we have one experience which is an unfortunate one.

Senator BAUCUS. How many firms will receive 8(a) contracts in fiscal 1980?

Mr. CLEMENT. Approximately 65 percent of these firms in the portfolio will receive contract support this year.

Senator BAUCUS. How many is that?

Mr. CLEMENT. We have approximately 2,000 firms and I would say between 1,100 and 1,200.

Senator BAUCUS. How many firms are there on the waiting list to receive 8(a) contracts?

Mr. CLEMENT. Mr. Chairman, in checking with our regional offices, there are approximately 560 applications that are passed the minimum threshold and there were in the system 340 waiting a final review by Office of Eligibility. So, approximately 600 firms.

Senator BAUCUS. On the waiting list?

Mr. CLEMENT. Yes, sir.

Senator BAUCUS. Is it fair to say that there is considerably more demand for 8(a) contracts than is available?

Mr. CLEMENT. I think that is a very accurate statement. There is certainly more demand. We have also seen a trend in the type of contracts and requirements, for example, coming from the Federal agencies. At the inception of the program we were getting a lot of requirements for services but we have noticed this has declined and there has been an increase in the requirements now for goods or products that are manufactured. We have in the last 2 years emphasized nontraditional firms, such as manufacturing firms. In fact, we certified 95 manufacturing firms just in the last 2 fiscal years which represents 45 percent of the total manufacturing firms in the portfolio.

So, while there is more demand, we want to make sure that we match the type of firm with the type of requirements that are being offered by the Federal agencies.

Senator BAUCUS. There is more demand than there is assistance available. That seems to indicate that you undertake an even greater effort to terminate the firms that shouldn't be in the program.

Mr. CLEMENT. We are moving on, as I explained before, and there is a formal process. But we are vigorously moving toward eliminating those firms that are abusing the program or should not be in the program.

Senator BAUCUS. How many firms shouldn't be in the program?

Mr. CLEMENT. I would say approximately the 138 firms that have been recommended by our program office to be considered for completion and/or termination.

Senator BAUCUS. It seems like a fairly large number.

Mr. CLEMENT. Of the original 526, 323 were cited for eligibility. ownership or control, but the citations for economic disadvantaged were for many individuals certified in this program prior to Public Law 95–507 when the criteria was only social or economic.

Now we have six or seven criterial levels and the present process under Public Law 95–507 as I indicated to the best of my knowledge this process has not produced any noncomplying firms.

Senator BAUCUS. So there are 100-some firms that should probably not be in the program?

Mr. CLEMENT. My statement was that there were approximately 100 firms that were cited for economic status when the criteria for the eligibility at the time they came in the program was either social or economic.

Senator BAUCUS. But that left 200.

Mr. CLEMENT. Yes, sir. Under the agreement we made with the Senate last year, is that those firms that were certified prior to 95–507 would be grandfathered into the program, but each would have gone through a review such as any new firm would prior to 95–507 between last year and September 31, 1981. We will review all of these firms

that have been grandfathered in and they will be subject to the stringent criteria of the public law.

Senator BAUCUS. When will you complete review of all firms?

Mr. CLEMENT. By September 31, 1981.

Senator BAUCUS. It takes that long?

Mr. CLEMENT. You are talking about the firms that were grandfathered into the present program or the firms in the IG report?

Senator BAUCUS. The firms grandfathered in.

Mr. CLEMENT. Some of those will be recommended for completion and/or termination prior to that. By the date of September 31, all of the firms will have been reviewed and some final decision on eligibility under the new criteria will be made by September 1981.

Mr. MAUK. We have formally requested for your people who do the review to have that done by December of this year. We anticipate, because of the formalized process that it would take until September 30, 1981, in terms of getting these companies out of the program.

Senator BAUCUS. I hope you speed it up because it sounds like a lot of people are taking advantage of the program during the interim. They are sitting back, they are clucking and smacking their lips knowing, "Before they get at me there is going to be another 2 years." I think that is wrong. I understand the due process. Believe me, I understand that. But I think it is incumbent upon you to recommend changes in the law to speed up the process.

I assume you think the process should be expedited. It is incumbent upon you to recommend specifically during the normal course of business what those changes should be.

You know the program better than we do.

Mr. Clement, you have heard Mr. Boucher discuss his Inspector General audit report. Do you substantially agree with his findings?

Mr. CLEMENT. Mr. Chairman, there were approximately 22 recommendations that the Inspector General made. We concurred with 21 of the 22 and as I indicated earlier, have been incorporated in our new standard operating procedures. Concerning the last recommendation Mr. Boucher's office made, we have delayed a final decision, and the issue here is the criteria for eligibility and completion pursuant to the term "economic status" and what constitutes viability for a firm that has been in this program.

We would like to have our current study completed and then get back to the management and the Inspector General prior to making a final decision on the last recommendation. But 21 out of the 22 have been implemented.

Senator BAUCUS. Are you familiar with the audit findings on Del Green Associates?

Mr. CLEMENT. Yes.

Senator BAUCUS. Should they be retained in 8(a)?

Mr. CLEMENT. Mr. Chairman, we have reviewed this firm, and the SBA and the contractor have agreed the firm will complete the program in July 1981.

Senator BAUCUS. Will complete in July 1981?

Mr. CLEMENT. That is correct.

Senator BAUCUS. Why can't they complete today?

Mr. CLEMENT. Well, in the opinion of the program people, that firm is not viable at the present time——

Senator BAUCUS. It was not what?

Mr. CLEMENT. Viable—in its ability to compete in the private sector without any assistance from the SBA, and that 1 additional year of contract support would be needed for this firm.

Senator BAUCUS. Would you describe the audit findings of this company, Del Green Associates?

Mr. CLEMENT. The Inspector General pointed out several problems. First, that the firm had been in the program for approximately 8 years, that the owners' net worth had increased from $41,000 to $220,000. There was an overreliance on the 8(a) program because of the high percentage of 8(a) sales to total revenues of the business, which was approximately 82 percent. Further, the firm received a contract in 1978 in the amount of $1.4 million.

Senator BAUCUS. Let me read the Inspector General's summary. The Inspector General disagreed with the action taken by your office. His office reviewed this firm and found that you have not addressed the facts presented as related to viability; namely, the firm's enrollment in the program for 8 years increased the owner's net worth from $42,000 to $220,000.

Why aren't these sufficient grounds to recommend termination today?

Mr. CLEMENT. Mr. Chairman, I think the issue here is viability. Whether or not the firm has benefited sufficiently from the program, whether it can compete on its own. In our opinion, looking at the financial statements, we felt that one additional year of contract support from SBA would enhance that. We have agreed along with the owner for program completion by July 1981.

Senator BAUCUS. SBA regulations stipulate that firms in the 8(a) program should not rely solely on 8(a) contracts. Should there be a percentage figure or some more precise guideline to clarify what constitutes reliance?

Mr. CLEMENT. I think that the 8(a) program addressed this very stark problem in this country, that firms owned by certain individuals in the country have not had the ability to market and generate sales in the marketplace in general and to say that because a firm has an overreliance of 8(a) to total sales should not be an indication that there has not been an effort to market their products in the private sector.

Some people say that the 8(a) program at the present time is the only game in town.

Senator BAUCUS. Please explain the *Grimes Oil* case?

Mr. CLEMENT. Mr. Chairman, this is a very unusual industry, the oil industry. The Grimes Oil Co. has been in the program since 1972. It is a very capital-intensive industry. The contract dollars which you eluded to are their normal contract dollars for oil companies, high in dollar amount but low in terms of profit margin.

We have agreed, because of the increase in non-8(a) sales to 8(a) sales that we are phasing down our support in the region and the contractor has agreed upon a completion date of September 1981.

Senator BAUCUS. Why does it take so long? Why can't they be terminated today?

Mr. CLEMENT. Once again, Mr. Chairman, is the issue of viability and I think the Inspector General eluded to the high-dollar contract

dollars that the particular firm was getting out of the 8(a) program, but as indicated earlier, that is normal in that particular industry but the profit margins in the oil industry is very, very low and it takes——

Senator BAUCUS. The profit margin in the oil industry is low?

Mr. CLEMENT. For the dealers, not for the Exxons, but——

Senator BAUCUS. Mr. Grimes, what does he do?

Mr. CLEMENT. He is an oil dealer in Dorchester, Mass. He markets up in the Northeastern part of the country.

Senator BAUCUS. He has approximately $34 million in 8(a) support; isn't that correct?

Mr. CLEMENT. That is correct, Mr. Chairman.

Senator BAUCUS. Was this an example of somebody relying too much on 8(a) contracts?

Mr. CLEMENT. I think to the contrary. He has demonstrated that his non-8(a) sales has progressed steadily each year, that he has been able to penetrate the private market and with the present mix of 8(a) and non-8(a) sales has agreed to successfully complete the program in September 1981.

Senator BAUCUS. Do you think there should be a dollar limit on receiving 8(a) contracts?

Mr. CLEMENT. Mr. Chairman, I think it would depend on the type of industry.

For example, in the oil industry, which is the industry that Mr. Grimes is in, that the contract dollars are normally very, very large. In other types of industry which might be service industry, the dollar amount may tend to be nominal and much smaller, and I think that it ought to be done on an industry-by-industry basis and then subsequently further broken down company by company before we put an arbitrary dollar amount on any contract support for any firm in the program.

Senator BAUCUS. What is your view as to millionaires in this program? Should millionaires be allowed to participate?

Mr. CLEMENT. I think we have to look in the composition and the quality of assets that make up the net worth. I happen to be a banker by training and quite often in receiving personal financial statements from individuals they would show, for example, the equity that they own in a very small privately owned company. The stock which is shown as an asset and makes up in most cases for 8(a) contractors a large percentage of their net worth generally has no demand market value.

On the statement you may find the resident which as real estate was bought several years ago and has appreciated in value over the years.

The point I am trying to make, I think we need to look at the composition, market demand value, and the quality of the assets that make up the net worth and not just view a specific number.

Senator BAUCUS. I understand what you are saying, but I am sure most people who have $3 or $4 million in net worth in a closely held corporation would very much rather have that than not have it. There is something to what you are saying, but it is not a simple issue.

Mr. MAUK. Mr. Chairman, I think all of the issues that you are talking about are very difficult decisions to be made independent of anything.

But when you get back to the question of how long a company should be in the program, getting back to the whole graduation issue of time, many of these issues fall by the wayside.

If in Senator Morgan's bill, which you indicated you will vote for, we, in fact, set a time period with only one appeal right for a small period of time for extension, the questions of net worth, the question of how many contracts you should get, many of those issues dissolve when you finally set up a fixed period of time to be in the program.

Obviously, the question of viability is the toughest we have. We have markets in this country where people make decisions every day on what they think the viability of a particular issue is and it is a tough, tough issue. And the evaluation process that Senator Morgan has come up with, I think that it will solve many, many of the questions you are raising.

Senator BAUCUS. The graduation process doesn't address the question of millionaires.

Mr. MAUK. But if you are in the process.

Senator BAUCUS. I am talking about the question of eligibility in the first place, not whether a firm is viable and should graduate. I am not as concerned with that point right now as I am with entry into the program in the first place.

Mr. MAUK. The question about Grimes and other individuals who have been in the program and their net income, as well as their assets, have risen over a period of time. There is a question of a fixed period of time or some grace period, depending on the economic situation.

Senator BAUCUS. That is the question I am more concerned with. How do we get a better handle on that?

As I listen to you, you are doing what most administrators like to do: give us complete discretion depending on facts and circumstances.

The trouble is, when the Administrator uses too much discretion there is a greater potential for abuse. I am trying to find out how we can minimize the abuse. I think you agree there has been abuse. That is, some people that are too wealthy shouldn't be in the program while deserving people are denied entrance.

Mr. CLEMENT. In the 400 cases we have looked at and certified in this program over the last 2 years since the passage of Public Law 95–507, there have been no millionaires receiving 8(a) program support.

Senator BAUCUS. Are there any millionaires in the 8(a) program today?

Mr. CLEMENT. According to the Inspector General, there apparently are some contractors who show net worth in excess of $1 million. All of these were certified before Public Law 95–507.

Senator BAUCUS. But there are millionaires in the program today?

Mr. CLEMENT. That is what their statements indicate.

Senator BAUCUS. You agree with that statement?

Mr. CLEMENT. I would have to look at personal financial statements and look at the composition and quality of the assets that make up the net worth.

Senator BAUCUS. But you have no reason to disagree with that statement?

Mr. CLEMENT. If he says his net worth is $1 million, I would say more power to him.

Senator BAUCUS. Are you familiar with the audit findings on Great Lakes Research?

Mr. CLEMENT. Yes, sir, I am.

Senator BAUCUS. What happened in that case?

Mr. CLEMENT. Mr. Chairman, that firm is no longer in the program. It voluntarily withdrew February 16, 1979.

Senator BAUCUS. But that is a case where a full-time medical student was a front for an 8(a) firm; is that right?

Mr. CLEMENT. That is the allegation that was made. I am not personally familiar with the case and it was, once again, certified prior to Public Law 95–507.

Senator BAUCUS. How could that have happened? This doesn't involve the question of economic and socially disadvantaged status. It gets to the question of control and ownership.

How could that have happened? How can a full-time medical student be set up as a front so that others can reap the benefits of 8(a)?

Mr. CLEMENT. Mr. Chairman, I frankly do not know the answer to your question, and would question this particular firm based on the facts given to us by the Inspector General.

Senator BAUCUS. But you run the program.

Mr. CLEMENT. This firm was certified prior to Public Law 95–507.

Senator BAUCUS. That has nothing to do with Public Law 95–507. That is irrelevant.

Mr. CLEMENT. As I indicated before, I do not know the facts at all because this was prior to our being involved with the program, but the firm is no longer in the program and has withdrawn as of February 1979.

Senator BAUCUS. I am asking you as the head of the program, how could the program have allowed this to happen? Is it inadequate recordkeeping? Is it inadequate effort on the part of the 8(a) program to scrutinize financial statements? You are a banker. You have some familiarity with financial statements. So, how did this happen?

Mr. CLEMENT. Mr. Chairman, I don't want to appear to defend them, I just don't know the answer to that question.

Senator BAUCUS. Have you gone back and talked to your people and set up some kind of a study, some kind of investigation within your office to determine how these problems occurred in the first place and how they are going to be corrected in the future? And if you have, what did you learn regarding this case?

Mr. CLEMENT. I think that Mr. Boucher eluded to the fact as a result of this audit, that we have made many, many changes in the administration and management of the program. For example, we require now that the individual be a full-time participant and also demonstrate ownership and control.

Senator BAUCUS. You have read about this in the newspaper, you knew I was going to ask about it. I am curious about the reason you didn't go back to your people, those that are still there or were there, to find out what happened. How did this happen? This has nothing to do with the law that was passed in 1978.

Is there any reason why you didn't go back and see what happened in this case and other cases?

Mr. CLEMENT. I went back to the point I found out they were no longer in the program.

Senator BAUCUS. That is nice. I think we are all happy to hear that. But what you are saying is that you are relying upon voluntary withdrawals to clean up the program. I don't know why they voluntarily withdrew. But the point is that once you found out that they voluntarily withdrew, you did nothing.

Wouldn't it be better for your office to learn what happened so that you can prevent these kinds of problems from recurring?

Mr. CLEMENT. This was 18 months ago when they withdrew from the program and I just do not have an adequate answer to that.

Senator BAUCUS. Did you try to check?

Mr. MAUK. Mr. Chairman, I think that we have learned from this. It isn't that we don't know about it. You have to look at the genesis of the program and what it was originally used for and where it came from. This program was paraded with the riots in the cities in 1968, it was used by various Presidents for their own purposes, particularly in 1971. There were various initiatives that were taken and there were certain procedures, there were certain expectations that arose out of it.

We are very vigorously attempting to change that. As you have to permeate your organization to change the behavior of your employees, that is in fact what we are doing, obviously, in this case, a hard, agressive review. It was a lax program, there is no question about that.

I think if you look at our review now, if you look at the centralization of our review determination, you will see that in fact those types of problems have been significantly overcome—that is not to say there are not going to be judgment questions that can be questioned in the future. But, that type of issue, in fact, we have addressed.

Senator BAUCUS. Obviously, Mr. Clement, you have not gone back to see what happened in this case and there may be reasons for that, but I would just hope you do go back and look at each of the major problems and try to determine what did go wrong. I think that will help in the future.

Mr. Clement, when you allow an ineligible applicant into the program, doesn't that hurt the truly economically and socially disadvantaged individual waiting to get into the program?

Mr. CLEMENT. When we admit an ineligible individual?

Senator BAUCUS. Somebody that shouldn't be there. Doesn't that hurt somebody who is deserving of entering the program?

Mr. CLEMENT. Yes, I would agree with that. We have limited resources and if that particular slot is taken by somebody who should not be in the program, and we have indicated before there is more demand than support for the program, I would concur.

Senator BAUCUS. Are you familiar with the audit findings on Information Planning Associates?

Mr. CLEMENT. Yes.

Senator BAUCUS. Could you describe those findings?

Mr. CLEMENT. Mr. Chairman, this file has been subpenaed by the U.S. attorney and on advise of our General Counsel we are not in a position to comment on this particular case.

Senator BAUCUS. According to the IG report, IPA's net worth decreased from a positive $32,285 in 1974 to a negative $108,000 by the end of 1978, and the principal owners, according to the IG report, were drawing high salaries and bonuses during these loss periods. One per-

son, a principal in the company, increased his salary from $25,000 in 1975 to $74,000 in 1977 and total officers salaries increased from $41,000 to $165,000 during the same period.

Is this, in your experience, a typical problem that warrants our attention?

Mr. CLEMENT. I would hope that certain aspects would be typical, increased in the draws and salaries of the principals, but I would also hope there would be a parallel increase in the assets of the stockholders and equities and net worth of the particular firm.

I would say this is not a typical case of our portfolio firms.

Senator BAUCUS. Do you know whether your office offered specific management advice to this firm to help them turn around?

Mr. CLEMENT. Mr. Chairman, could I request that perhaps we could submit, in response to your question, correspondence in writing at a later date the facts on this particular case.

Senator BAUCUS. Sure. If a firm won't accept management service as a general rule, and continues to do poorly, what do you do and what can you do in that situation?

Mr. CLEMENT. Under the 26 or 27 causes for termination, that particular one is cited. If there is repeated refusal by an 8(a) firm to not accept any type of assistance from the SBA and they have demonstrated that they are not able to show any significant progress, that is a basis for termination of that particular firm.

Senator BAUCUS. You said you began to implement the 22 recommendations of the IG and the law is different now than it was a couple of years ago. That might improve the future management of the program.

Do you have any other recommendations as to what the Congress should do or what your office should do or Mr. Mauk's office should do to help prevent these problems from reoccurring?

Mr. CLEMENT. I think if you look at the record over the past 2 years, that you will note there have been several significant changes. As I indicated before, prior to October 1978 there were no published rules and regulations. I think there were three pages in the CFR. We have published very lengthy rules and regulations setting forth the objectives, goals, criteria, for this program. We have also rewritten on two occasions the standard operating procedures that we used in the management, the day-to-day management of this program. We have also made a significant increase or commitment in people resources to this program. Prior to 1978, October, there were about 125 people in the program. Today there are 385 in the program operating at various levels; business developing specialists, contract negotiators, and central office people.

So, we have made significant improvements, we think. Our agency, as Mr. Mauk indicated, has been involved in some legislative changes. But I have no specific recommendations and we have not discussed prior to this hearing what we would like to recommend.

Senator BAUCUS. You do agree with graduation periods?

Mr. CLEMENT. Sunset.

Senator BAUCUS. Do you agree with the termination date plan, that a firm can stay in the program for 5 or 6 years?

Mr. CLEMENT. No; I do not agree with a fixed time limit.

Senator BAUCUS. Why is that?

Mr. CLEMENT. I think it varies according to industry. I think it varies according to the company. I think it varies according to the economy. Who would want to be graduated in the climate we are now in? I think there should be some flexibility where we can add a year or two to the graduation date that was previously agreed to.

I think the compromise of the language at the time the firm comes into the program should have a target graduation date. However, as we get closer to the date SBA should have and needs a few years of additional contract financial assistance.

Senator BAUCUS. You would agree that if there is no fixed termination date that there is much less incentive to perform?

Mr. CLEMENT. We have been instructed by Congress to have graduation dates agreed upon at the time the firm is certified and or during the annual review that we subject each of our 8(a) firms to.

Mr. MAUK. It is a change in the concept of the program which you will be voting on. The concept of the program that was legislated previously was to produce viable firms. By placing a limited period of time for a firm to be in the program, what you are doing is providing firms the opportunity to succeed or fail on their own.

Senator BAUCUS. But you seem to agree with that.

Mr. MAUK. I think that the opportunity aspect as opposed to guaranteeing viability, as has been stated by many, is the way to go and will provide significant ability to manage the program in a much better way.

Senator BAUCUS. I take it there is a difference of opinion between you two. You, Mr. Mauk, are more concerned with opportunity and Mr. Clement is more concerned with viability.

Mr. MAUK. I think the difference is very close. I think he agrees it should vary by industry and individual. In fact, the way the bill is now coming to the floor, it will allow us to do just that. I think we will still have some problems in making all of these independent judgments, but at least it is in the right direction.

I would raise two other issues. One is some consistency in terms of the objectives of the program which would be helpful, and one other thing, besides the legislative changes we have already made, is the best way to manage a program to put good people in it, effective managers, professional managers who are willing to make decisions.

The current pay caps that have been legislated on the executive branch prohibit or inhibit significantly our ability to hire good, experienced professional managers. This is obviously reflected not only in SBA but throughout the Goverment in terms of who is at the top and what is their experience and how good they are.

Senator BAUCUS. That is a problem we are all addressing. We are all trying to get good people in the Government. Pay is certainly one of the main factors in keeping quality people.

Mr. MAUK. I should mention that all of the people that Mr. Boucher indicated helped him and did such a fine job all received bonuses from the SBA to try to assist them and entice them to stay.

[Laughter.]

Senator BAUCUS. I think that wraps it up for this part of the hearing, Mr. Clement. I want to thank you very much for your help today

and I hope that in a year or two, when we again cast our eye to the SBA, we will see that a lot of these good intentions are actually reaching fruition. I will be looking back at SBA in a couple of years comparing the words of today's hearings with the results.

Mr. CLEMENT. We appreciate your interest in the program and it certainly is one of the most innovative creative and worthwhile socioeconomic programs in the Government as it attempts to bring certain groups into the economic mainstream. We appreciate your interest in the 8(a) business development program.

Senator BAUCUS. We have to realize that people have confidence in the intent of the program and it's going to work only if people don't lose interest in it. I was in Pennsylvania over the weekend and one person walked up to me, a small business man. He is losing interest in it. And he said his friends are too. It behooves all of us to do the best job possible. Thank you.

The next portion of the hearing concerns the Environmental Protection Agency. The first witness will be Mrs. Inez Smith Reid, Inspector General, Environmental Protection Agency.

Mrs. Reid, would you please stand and be sworn.

STATEMENT OF INEZ SMITH REID, INSPECTOR GENERAL, ENVIRONMENTAL PROTECTION AGENCY

Senator BAUCUS. Mrs. Reid is here to discuss her findings regarding consulting and contracting problems by the EPA Office of Radiation Programs. I want to thank you very much for appearing today, Mrs. Reid, and before we begin I want to compliment you and your staff for your cooperation. I think that your office, as well as the Inspector General offices of many other agencies, are doing very exemplary work, and in your case, particularly in the face of a low budget and lack of manpower.

Mrs. Reid, as of this week I understand that there are 49 consultants at ORP, but there are only 39 ORP employees doing work at similar levels. It appears that these consultants were hired because ORP management is relying upon nongovernment personnel.

Your office has interviewed many key staff members at ORP and I am wondering, according to your investigation, why it is that so many consultants have been hired at ORP.

Mrs. REID. Senator, before I answer that question directly, let me just introduce Mr. Richard Cambell who is my Assistant Inspector General for Investigations, and Mr. Jim Hagen who is the principal investigator in this particular matter. Also present are my legal counsel, Mr. Barry Hill, and my special assistant, Miss Laphalia Gause.

Let me also say by way of preliminary comment that our investigation in this matter is not yet complete. As you pointed out, we do have limited resources and resource constraints have made it impossible to proceed any faster in this case. We find ourselves juggling high-priorities and juggling staff to address these priorities. So my statements today will be based upon written documentation and they will also be based upon testimony which we have taken to date. We have not completed all of our interviews. In fact, we have not talked with Mr. Rosenbaum, but we do hope to complete this investigation as quickly as possible.

As to your question, indeed, there are a large number of consultants and experts in the Office of Radiation Programs. Most of these consultants and experts are located in the immediate office of the Deputy Assistant Administrator. We have testimony from at least one EPA employee stating that the Deputy Assistant Administrator's philosophy is not to trust EPA employees, therefore he hires consultants and experts.

In my experience, I should also point out that many EPA program managers believe that their staffs are inadequate, inadequate in the sense that they do not contain enough manpower or womanpower to get the job done that has to be done, therefore they resort to the hiring of consultants and experts.

Senator BAUCUS. You said that Dr. Rosenbaum has stated he doesn't believe his own staff has enough capability to do the job and that is why he has gone outside his office?

Mrs. REID. I have not yet talked directly with Mr. Rosenbaum. My last comments are based upon the experience that I have had generally within EPA in talking to a number of different program managers.

In other words, I believe as a result of those conversations, it is at least clear to me that a number of them rely upon consultants and experts because they do not believe they have adequate staff power to do the job that has to be done.

I should hasten to add that I have not had an opportunity to investigate those comments. I am relating to you the comments that have been made to me.

Senator BAUCUS. Would you please explain the difference between an "expert" and "consultant"?

Mrs. REID. Let me respond to your question, Senator, by referring to the guidance which is set forth in EPA Order No. 3110.4A on employment of experts and consultants, and let me also refer to your question in terms of guidance which is set forth in the Federal Personnel Manual.

The EPA Order 3110.4A refers to a "consultant" as an adviser to an officer or instrumentality of Government. The order also says that a consultant is usually an expert but not a specialist, that a consultant does not perform or supervise performance of any operating functions.

On the other hand, that order defines an "expert" as one who has mastered a field or an activity or a specialized area, as one who reveals a high-degree of attainment in a professional, scientific, technical or other field. In other words, as one whose knowledge or mastery must be clearly superior to the knowledge and mastery of a competent person. To put it another way, he must be an authority.

The Federal Personnel Manual defines a "consultant" as one who is adviser to a Federal official, as one who must not perform operating functions and that Federal Personnel Manual also defines an "expert" as one who has excellent qualifications, a high-degree of attainment, superior knowledge, an individual who may perform operating functions under circumstances where the services of an expert are required for a limited period of time.

Let me finally say that the EPA order specifies the circumstances under which neither a consultant nor an expert can be hired. It is not

proper to hire a consultant or an expert to do the job that can be done as well by regular employees; to perform the duties of a full-time continuing position; to avoid competitive civil service requirements and employment procedures; and to avoid statutory pay limitations.

That, in essence, is exactly how the EPA order defines a "consultant" and an "expert" and how the Federal Personnel Manual also attempts to define a "consultant" and an "expert."

Senator BAUCUS. I understand generally what you are saying: Experts are most knowledgeable and on occasion can supervise and manage; consultants offer advisory services and are not quite as expert or knowledgeable.

Mrs. REID. As knowledgeable as an expert, that is correct.

Senator BAUCUS. That is a fair summation?

Mrs. REID. Most emphasize the distinction between performance of supervisory duties and the nonperformance of supervisory duties. It is clear the expert is deemed to be a little more knowledgeable than a consultant.

Senator BAUCUS. Do these experts come from parts far way? The longer you travel in coming to a location, the more of an expert you are?

[Laughter.]

How many experts are doing supervisory work at EPA?

Mrs. REID. I do not have the exact number.

Senator BAUCUS. Do you have a rough idea?

Mrs. REID. We have not had an opportunity to examine the functions of all of the experts and consultants at EPA. Let me say, however, that I am acquainted with at least one example of an expert who is doing supervisory work. We have had also at least one allegation concerning the fact that consultants are being used to do supervisory work, but again because of our limited resources, we have not yet had a chance to survey the entire universe.

Senator BAUCUS. Are there a good number of experts doing supervisory work? Is it a significant number? Even though you don't know the exact number; is it significant?

Mrs. REID. I simply don't have the data upon which I can even speculate about that.

Senator BAUCUS. I understand Mr. Wendell Webber is an expert at ORP; is that correct?

Mrs. REID. Yes.

Senator BAUCUS. What areas does he supervise?

Mrs. REID. I have looked at the personnel action form for Mr. Webber and the personnel action form indicates that Mr. Webber is to provide overall coordination of ORP, the Office of Radiation Programs. And within that office he is to provide overall coordination of ocean disposal activities insuring that in-house efforts are meshed with outside contracts. He is also to serve as a project officer on some contract efforts. Also, he represents ORP and EPA in selected national and international meetings concerning ocean disposal of radioactive waste.

Specifically in terms of his assignments, we understand that Mr. Webber is assigned to the Innovation and Surveillance Branch under the Administrator but he is not under the technical supervision

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of the branch chief. He is also, as we understand, a project officer on the Mitre Corp. contracts. He does supervise at least the employee who broke him into the Agency, as we understand it. And he has been hired to address the disposal of nuclear waste.

Senator BAUCUS. Did Mr. Webber have experience in the areas he was hired for prior to coming to EPA?

Mrs. REID. Senator, we have had testimony that Mr. Webber had to be trained by an EPA employee because he was not an expert in nuclear waste disposal. Indeed, that he had little knowledge about radiation and radiation disposal.

I have checked Mr. Webber's 171 form, his job application form, to see exactly what he was doing before he came to EPA. In his last job I have noted that he worked for a private company, he also worked as a consultant and a technical adviser on ocean engineering, salvage research, and recovery activities. He was involved in designing programs for underwater demolition operations in the salvage of an oil tanker in Ireland, and in the 3 years preceding that he was the president of a company that he formed and he seemed to have placed emphasis upon maritime security and maritime sabotage guard systems. Prior to that he spent a year as the Washington representative of a private company. His area of emphasis appeared to be marketing and consumer liaison. He was also involved in decontamination studies in naval mine countermeasures system and ocean salvage search and recovery. Earlier in his career has was involved in naval warfare.

In short, as I read the form 171, there was no specific mention of activities involving radiation disposal.

Senator BAUCUS. Did he have to be trained?

Mrs. REID. We do have testimony that an EPA employee had to train him in the subject matter.

Senator BAUCUS. Did your investigation uncover any evidence or any indication that Mr. Webber was not an expert?

Mrs. REID. We have testimony to that effect, Senator.

Senator BAUCUS. It sounds like he is not. If the allegation that he had to be trained is true, it sounds like he is not an expert according to the definition of EPA guidelines. He doesn't seem to be one of the more knowledgeable people in the area of radioactive ocean waste disposal.

Mrs. REID. If in fact he had to be trained by an EPA employee and if I am reading his form 171 correctly, then I would say, Senator, there is a presumption he may not have been an expert.

Senator BAUCUS. Was he supervising in any significant way any substantial part of the office of ORP?

Mrs. REID. Senator, Mr. Webber came on board EPA as a consultant on October 3, 1979. He was then switched to the category of expert on October 23, 1979. Now, we have tried to find out the reason why he was switched from consultant to expert. We have testimony to the effect that an employee in the Office of Radiation Programs reviewed the EPA order on experts and consultants, noticed the difference between an expert and consultant, discussed the order with EPA personnel in the Office of the General Counsel, then discussed the order with the Deputy Assistant Administrator, and at that point Mr. Webber was converted to an expert apparently so that he could supervise employees.

Senator BAUCUS. Has ORP used experts or consultants to work on contracts for universities or firms where that same employee is employed?

Mrs. REID. Senator, as we examined some of the university contracts, we concluded that there is some of that practice. Let me describe it.

Senator BAUCUS. If you could. Mitre Corp. is one example.

Mrs. REID. We are talking about university contracts now.

Let me address two situations and then mention a few others. Let me first talk about a contract involving the California Institute of Technology and then a contract involving the Massachusetts Institute of Technology.

With respect to the California Institute of Technology contract, we have testimony and documentation to the effect that in April of 1980 the Deputy Assistant Administrator gave a proposal from Cal Tech to a contract specialist for processing. The contract specialist told the Deputy Assistant Administrator that the proposal really was not for the purpose that the Deputy Administrator had stated.

The Deputy Administrator then asked Cal Tech to revise its proposal.

A request for noncompetitive procurement for Cal Tech was submitted on April 30, 1980, and it was approved on July 11, 1980. The revised Cal Tech proposal was received on May 1, 1980. The contract was scheduled to be awarded around September 25, 1980.

As I understand it, it is to be a 2-year contract with $285,000 in the first year and the remainder in the second year.

Now, the senior investigator on the Cal Tech proposal is a professor of physics at Cal Tech. He is a specialist in nuclear science and nuclear physics. On May 18, 1980, the professor entered EPA service as an expert at the rate of $192.72 per diem. He is not scheduled to receive any compensation under the contract.

Now, there are other senior investigators under the contract who are to receive $6,352 to $8,100. As a expert for a period of 130 days the professor could receive up to $25,053.60.

Now, this professor is also classified as intermittent, that is to say, not as a temporary employee. This means that he gets the full daily rate for each day that he performs services, which effectively interrupts his ordinary pursuits for substantially the entire day.

In contrast to an intermittent, a temporary employee is paid only for the hours of service actually performed.

Now, the subject of the Cal Tech proposal is a study of the field monitoring techniques for radon and radon daughter isotopes. The professor's responsibilities as an expert are listed on the personnel action form for him. He is to assist ORP in the analysis of and the development of regulations for high- and low-level radioactive waste and uranium mill tailings. He is to contribute to ORP's study of other problems such as radon and natural radioactivity in general, where a thorough knowledge of the properties of radioactive materials and their interactions with geological structures and with manmade materials is essential.

Senator, I do not personally know whether this professor will drop off the Cal Tech proposal as senior investigator or whether an as EPA

expert will work with the Cal Tech contract. We believe that there is an overlap between the subject of the Cal Tech proposal and the professor's position description as an expert.

Now, let me turn to another university contract which is still pending and that is the contract with MIT. Senator, we have documentation and testimony to the effect that the MIT Department of Mathematics has submitted a technical proposal in response to RFP–WA80–82–72, dated July 30, 1980. The subject of that proposal in a study of the health effects of radon in water in the New England States. The proposed contract price, as we understand it, is $150,000. In terms of the MIT personnel who are to be involved in that proposal, there are at least three professors. These three professors have been hired by EPA as experts, as intermittents.

One professor is scheduled to get no compensation under the proposal. Two are listed for compensation under the proposals.

Professor A—and let me identify them only as A, B, C. Professor A was hired by EPA on August 12, 1980, for up to 130 days at a rate of $192.72 per diem. In terms of a description of his duties, his personnel file says he is to assist ORP and provide expert advice in evaluating the health effects from exposure to low level ionizing radiation. He is also to do a statistical analysis of data concerning human response to radiation exposures. In terms of his background, he is a professor of applied mathematics, a prolific writer.

Professor B was hired by EPA on July 1, 1980, up to 130 days at a rate of $192.72 per diem. A description of his duties—he is to provide expert advice on the analysis of data on the presence and effects of radon on the environment. There are also three very specific tasks listed including that of analyzing geographical patterns of radon in water from New England wells and design of a study to determine the health effects of radon.

In terms of his background, he has a degree in physics, he is a department chairman in mathematics, he is a consultant for GAO and NRC and he has a number of publications.

Professor C was hired on December 30, 1979, for up to 130 days at a rate of $139.36 per diem. In terms of Professor C's description of duties, he is to provide expert consultation to ORP in the areas of theoretical and applied statistics and data analysis in support of radiation standards development. As far as his background is concerned, he has a background in statistics and mathematics. He has numerous publications. He is also an expert for GAO.

Senator, I do not know whether or not these professors and EPA experts will be investigators under the contract, if it is awarded to MIT. Two of the professors are mentioned in the justification for noncompetitive procurement and the justification refers to them as principal investigators.

Finally, on the university contracts, there are some which we have not yet examined in detail. A contract to the University of Wisconsin which is pending, a contract to the University of Texas also pending, the Wharton School of Business at the University of Pennsylvania, also pending is one at the University of Minnesota, and there are a number of other sole source contracts which we do need to examine but have not yet had a chance to examine.

Senator BAUCUS. As I understand what you are saying, in many cases the EPA utilizes consultants or experts to oversee certain programs in the Office of Radiation Programs, and those same people are university professors or people employed by the universities at the same time. These are people who are not only paid a salary by EPA but also paid a salary by the university and there is a potential conflict of interest. Is that what you are saying?

Mr. REID. There are three things that have been investigated. The university submits a proposal. The principal investigators are listed on the proposal. EPA hires professors as experts. The same professors being hired as experts are listed on the proposal submitted by the university and the professors are being paid by the university.

In the case of the Cal Tech professor whom I mentioned earlier, we checked with the university personnel and the personnel office would not confirm whether or not he is a full time employee for the academic year. We also checked with some one in his own office who did confirm that he is a full time for the entire year.

In the case of the three MIT professors, we checked with MIT University personnel and they have confirmed that these men are full time members of the faculty and that none has asked for a leave of absence during this particular academic year.

So, you have a situation where they can be principal investigators on a contract, they can be experts in the Office of Radiation Programs doing work which is related at least to the contract, and they can be full time university professors.

Senator BAUCUS. But the problem here is conflict; is that right?

Mrs. REID. It may be a conflict. But at this point what we are trying to do is collect the facts and then you can sit down and analyze them.

I must say that the facts we have collected are troublesome and we are going to have to take a closer look to see if in fact there is some kind of a conflict of interest or some kind of irregularity in procedures here.

Senator BAUCUS. So you have not completed your investigation?

Mrs. REID. No; we have not completed our investigation.

Senator BAUCUS. Could you describe similar problems that occurred with Mitre Corp?

Mrs. REID. Yes; we have testimony to the effect that the Deputy Assistant Administrator has personally contacted some contractors. Now, we have not posed this question directly to the Deputy Assistant Administrator. But, we do have testimony to the effect that the Deputy Assistant Administrator wanted to give the Mitre Corp. a contract, that indeed he asked an employee on his staff to prepare papers for the Mitre contract, including a sole source justification.

Further, we have testimony that one of the Deputy Assistant Administrator's employees called the Mitre Corp. and requested a proposal.

We also have testimony that the Deputy Assistant Administrator wanted to hire a scientist at Mitre as a consultant with EPA. However, the testimony is to the effect that the scientist did not want to come to EPA as consultant. Later he was hired by EPA as an expert on December 30, 1979 for up to 130 days, but at no compensation. A contract was then awarded to Mitre on May 27, 1980, the contract price being $127,472.

Now, the Mitre scientist's duties were described as to provide expert advice and consultation to ORP in the areas of disposal of radioactive waste and the development of a standard, particularly in the area of ocean disposal. These were the descriptions of his duties in terms of his role as an EPA expert.

The subject of the Mitre Corp. contract was technical assistance and recommendations for the development of ocean disposal regulations. So at least the two were overlapping in terms of the emphasis upon ocean disposal.

Senator BAUCUS. The allegation is, that perhaps the Assistant Deputy Administrator sole sourced a $127,000 contract on ocean disposal at his personal instruction to Mitre.

Mrs. REID. Yes, that is the allegation.

Senator BAUCUS. And you are saying you are not in a position to know the truth of the allegation.

Mrs. REID. We have testimony to that effect but we have not completed our interviews. In fact, we have not talked with the subject of the allegation. I am reluctant to draw firm conclusions. But there is that testimony.

Senator BAUCUS. When will you have completed your investigation? When will you have firm conclusions?

Mrs. REID. As I explained earlier, we have enormous resource constraints. We are moving on this as fast as we can. I would hope that we can bring this investigation to a close within the next couple of months.

Senator BAUCUS. Did Mr. Rosenbaum work for Mitre before joining EPA?

Mrs. REID. From 1974 to 1976 Mr. Rosenbaum was senior staff analyst at Mitre Corp., according to the résumé.

Senator BAUCUS. Has Mitre Corp., taken over most of the leadwork on ocean disposal, according to your testimony so far, at least testimony you have uncovered so far?

Mrs. REID. Senator, we have testimony related to that question. However, I do not think that we are in a position to evaluate the testimony which is essence says that the Mitre Corp., represented EPA at a major meeting on nuclear disposal in the fall of 1979 and no regular EPA employee was permitted to attend that particular meeting. As I said, I don't think we have gone far enough on this to be able to comment on whether or not there was in fact a takeover of nuclear waste disposal policy by the Mitre Corp.

Senator BAUCUS. I understand that several EPA employees have testified that Mitre Corp., has significantly changed EPA policy on radioactive waste dumping; is that correct? Have EPA employees so testified?

Mrs. REID. EPA policy on nuclear waste disposal is not an area in which I am really competent to speak. However, we do have testimony from two individuals relating to a change in EPA policy on waste disposal after the Mitre contract was executed. The allegation concerns the U.S. position on the subject in relation to the position taken by another country. So, we do have testimony to that effect. But, again, I am simply not an expert on EPA policy on nuclear waste disposal and I believe we have to do more interviews to even come close to being able to answer that question in a realistic way.

Senator BAUCUS. Do you know whether the Assistant Deputy Administrator has personally ordered most of the sole source contracts granted or proposed by ORP since he joined EPA?

Mrs. REID. We have testimony to that effect.

Senator BAUCUS. That he has personally ordered most of the sole source contracts?

Mrs. REID. We have testimony to that effect.

Senator BAUCUS. Do you know whether he signed many of the justifications for sole source contracts?

Mrs. REID. Yes. Our testimony and our review of the written documentation indicates that he has. Let me also say, Senator, that in at least one case that of the Mitre Corp., the additional sole source recommendation was rejected by the contracts office and a second sole source justification was developed for at least approval by a committee of individuals.

Senator BAUCUS. Do you have any sense of what the caliber and the competence of EPA employees are in this area? Apparently in many cases administrators will go outside the agency and hire consultants and experts. Are you in a position to assess the quality and the competence of EPA personnel within this office as to their knowledge, their caliber and their quality to undertake this work?

Mrs. REID. Senator, I have not looked at résumés or the backgrounds of the career people in that particular office. We have testimony to the effect that people in that office are qualified to address the subject, but I personally have not looked at their backgrounds.

Senator BAUCUS. Have ORP employees testified that some of the reasons in contract justifications are inaccurate?

Mrs. REID. Yes, Senator, we have testimony to that effect. The testimony reflects the views of some employees that the university selected for work on a sole source basis or noncompetitive basis was not the only entity that could perform the work, that others had done the work particularly on radon and that the work being sought was not needed immediately, therefore they allege that there were inaccuracies on the sole source justification.

Senator BAUCUS. I take it those same employees have indicated to your office that these contracts could have been performed by sources other than the ones they were given to?

Mrs. REID. Two things in response to that. The employees allege that there are people in ORP as regular employees who could perform the work, and that entities other than those selected could perform the work. That is correct.

Senator BAUCUS. When are sole source contracts justified, according to EPA regulations?

Mrs. REID. The major thing, as I understand it, and I think someone who is getting to testify later is a better source for this.

Senator BAUCUS. Well, we will have other witnesses. I will ask the same questions of them.

Mrs. REID. As I understand it, the emphasis is on the fact that no other entity can perform this particular work.

Senator BAUCUS. I understand, time constraints is also a justification for a sole source contract; is that correct?

Mrs. REID. Yes, that is correct, Senator. We do have testimony from some EPA employees questioning whether or not the work sought

through the sole source route in this particular matter needed to be done immediately. We also have testimony to the effect there was some concern that it would take too long to get the contract through the competitive mode. We have attempted to assess the amount of time it takes to get a noncompetitive contract through compared to the time it takes to get a competitive contract through. As far as we have been able to discover, it takes 90 days to get a noncompetitive contract. It takes 165 days to get a competitive contract through.

In answer to your question, time restraints are one justification of sole source.

Senator BAUCUS. Are there indications that the Deputy Assistant Administrator violated Federal or EPA procurement and consultant procedures?

Mrs. REID. Let me say, Senator, that initially our investigation focused upon two particular allegations. First the hiring of close associates as experts and consultants. Second the hiring of experts and consultants to do the work that could have been done by EPA employees and using consultants to supervise EPA employees. Our investigation unfolded other questions concerning EPA procedures and rules in the area of procurement.

I should state that thus far in our investigation there is nothing that we have come up with that is of a criminal nature. However, there are some serious questions surrounding the procurement process and we consider some of these questions to be very serious and particularly troublesome since there is testimony in the records that the Deputy Assistant Administrator was warned about the procedures that he was using and chose for one reason or another to ignore those particular warnings.

So, we are beginning to take a look at whether or not certain EPA rules and regulations have been violated in this matter.

Senator BAUCUS. Would it be your office who would have warned him?

Mrs. REID. No, Senator. We have testimony to the effect that at least two contract specialists with the Office of Radiation Programs attempted to explain to the Deputy Assistant Administrator the proper procedure for soliciting proposals prior to procurement.

Senator BAUCUS. So it would have been contract officers who would have warned him?

Mrs. REID. Yes. The individuals designated to know the rules of the game in terms of contracting and procurement.

Senator BAUCUS. Do you feel your office is getting recognition from EPA?

Mrs. REID. I believe that the job of an Inspector General is an extremely lonely journey. I believe further that the requirements of independence and objectivity often dictate isolation from normal colleagues. Sometimes I also believe it is human nature for employees to fear an IG rather than to welcome the assistance of an IG or the assistance an IG can bring to an agency.

Having made these less than profound and ambiguous statements, let me say in some cases we have received very good support from some EPA staff—especially personnel and those responsible for space at EPA buildings. We have also received some good moral support from some middle level and high level EPA employees.

In one area I do not believe that we have received good support from EPA. That is in the area of budget and resources. In terms of our resources, we have 96 auditors and 16 investigators for the entire country. Now it is true that we do have some contract auditors, but these contract auditors tend to shy away from audits that will involve serious question of management and serious fiscal questions. Obviously the 96 and 16 cannot address the proper expenditure of billions of dollars plus the increasing number of floor investigations we are asked to look at.

Senator BAUCUS. I am going to have to interrupt you. I have to get to the floor for a vote. It is 12:15.

I am wondering if you could supply the answer to the question I just asked for the record. In addition to that, give me your recommendations not only to help your office, but generally what you feel we can do to help prevent some of the problems that you seem to be uncovering thus far. And if you want to come back when we return, that is fine, but I really have no more questions.

Mrs. REID. I don't think that is necessary, and I will supply the answers for the record.

Senator BAUCUS. The hearing will recess until 1 o'clock.

[Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at 1 o'clock, the same day.]

AFTERNOON SESSION

Senator BAUCUS. The hearing will come to order.

In this portion of the hearing we will discuss various EPA operations beginning with a contracting panel.

We have with us this afternoon Mr. William Mathis who is the Director of the Procurement and Contracts Management Division for EPA, and Alfred Smith, contracting officer, and also Irene Galatis, contract specialist.

Will the three of you please rise and be sworn.

PANEL OF EPA OFFICIALS:

STATEMENTS OF WILLIAM E. MATHIS, DIRECTOR, PROCUREMENT AND CONTRACTS MANAGEMENT DIVISION; ALFRED R. SMITH, CONTRACTING OFFICER; AND IRENE GALATIS, CONTRACT SPECIALIST

Senator BAUCUS. I will address my questions primarily to Mr. Mathis, and Mr. Smith and Miss Galatis can interject responses at any point.

Mr. Mathis, would you please give your name and title for the record?

Mr. MATHIS. William E. Mathis, Director, Procurement and Contracts Management, EPA.

Senator BAUCUS. Mr. Smith.

Mr. SMITH. Alfred R. Smith, contracting specialist and contracting officer of the contract.

Senator BAUCUS. Miss Galatis.

Miss GALATIS. Irene Galatis, contract specialist.

Senator BAUCUS. Do both of you perform roughly the same responsibilities, Miss Galatis and Mr. Smith?

Mr. SMITH. Primarily, with the exception that I am contracting officer and Miss Galatis is not.

Senator BAUCUS. Mr. Mathis, would you please describe the role of contracting personnel at EPA?

Mr. MATHIS. We are responsible for procuring the goods and services that are essential to carrying out EPA's mission. Basically we are under the Federal Procurement Regulations. We have as our primary mandate the conduction of competition, the selection of sources, and awarding contracts.

Senator BAUCUS. Would you please describe the basic procedures with respect to competitive contracts and noncompetitive procedures.

Mr. MATHIS. The procedure that is followed in the competitive solicitation is that as requirements are being defined and as programs are in process of determining the capabilities of industry, the state of the art, we encourage and programs do have frequent contact with the industry to determine what the capabilities are.

Once the requirement is formulated, then all communications with industry are ceased by the program. The requirement, the budgetary estimate for that requirement, is then forwarded with the procurement people together with the evaluation criteria that is to be used in the evaluating proposals that are submitted as a result for our request for proposals.

At that time all communication with industry is limited to the contracting officer. Proposals are solicited. We have the proposal packages broken into two segments, one is the technical proposal and the other is the cost proposal.

When the proposals are received, we send the technical people for evaluating criteria which has been predetermined and pushed in the industry.

At the conclusion of that evaluation and while that technical evaluation is going on, there is a business evaluation that is conducted evaluating the cost, looking at the contractor's past record, assessing the reasonableness of the cost, in some cases audits are initiated to determine whether or not the costs are reasonable, what projected over rates things will be, and to evaluate subcontracting procedures for reasons of price and whether the competition was obtained in a subcontract.

After technical evaluations are completed, then cost and technical evaluations are then brought together and for the first time we permit the program people to see the cost estimate. Because we want the proposals evaluated for their technical merit and not to be in any way judged based on the cost that it will ultimately cost, at least initially.

When we bring those two evaluations together, then we are looking at technical merit and the cost of performance of service. At which time we develop the competitive range. We go back out to the industry, we notify those firms that are within the competitive range, they have an opportunity to at that time resubmit their technical proposal and make any revision they wish to their cost proposals.

Those come back in. If there are significant changes they are evaluated by the program people. Then the costs are further evaluated.

We complete our audits and then go through the process of final selection. We are looking at who can do the job as best described and then that is where cost comes into play to see once you meet the technical threshold of meeting a certain level of competence, then you are looking at the efficiency that would be present in the cost proposal. Then we make a selection considering technical proposal, cost, and other factors as they come into play. Other factors could be such things as whether they are a small business, minority business, woman-owned business, what their past performance record had been, and things of that kind, and proceed to make a selection.

And that is basically the way the competitive process operates.

Senator BAUCUS. I appreciate the description you gave for competitive procedures. I wonder if you can describe the procedures with respect to sole source procurements.

Mr. MATHIS. This is a complex business.

Senator BAUCUS. I gather.

Mr. MATHIS. In order to explain it sometimes we have to be a bit thorough.

The basic difference in a sole source procurement is that the program recommends a single source who has competence to perform that function. In other words, to make that determination they usually have to—they do have to make a certification that they have a patent and they are the only ones that can perform.

Performance requires some unique equipment or facilities that only this source has or that they have some unique capabilities that are only present in that firm within the time that is required to perform the service.

Senator BAUCUS. Does the sole source contractor initiate the interchange or discussion?

Mr. MATHIS. The initiation of discussions come from the people who have the requirement, the program people within EPA and with the contracting officer of EPA. That is where the basic discussions start. Quite often program people will come to contracting officers and say, "I have a sole source requirement."

After having discussions with the contracting officer, understanding the case they have to make, quite often they decide to go competitive, depending on the case.

This morning it was testified that requirements were coming to the contracting office in the spring and it was until midsummer before the requested for proposals went. What was occurring in that time frame was an interim process on the justification for the sole source procurement on what it was precisely that operated to make this requirement a single source or only one firm that could provide the goods or services within the time frame allotted.

Senator BAUCUS. When can a sole source contract be used?

Mr. MATHIS. The sole source contract can be used when that firm is the only one within the time frame allotted that can perform those services.

Senator BAUCUS. Do sole source contracts require justification, that is, some written justification as to why this is a sole source contract?

Mr. MATHIS. The program people are required to provide the con-

tracting officer with those circumstances that make that source the only one that can provide those services. In the case of the radiation programs, that justification would come first to Miss Galatis, who would review it, it would then be reviewed by Mr. Smith, and then depending on the dollar signs, if it is $100,000 Mr. Smith would submit it to his supervisor, if it is over $250,000 it would go to Mr. Smith's section head to the branch head and from the branch head to my review staff and ultimately I approve it.

It gets several levels of review on approval.

Senator BAUCUS. Are there guidelines for writing sole source justifications?

Mr. MATHIS. Yes, there are. We have a project officer's handbook that contains those guidelines.

Senator BAUCUS. Are there several guidelines that you can summarize briefly?

Mr. MATHIS. Those guidelines would be that they held a patent, that they had some unique equipment or facility capability or that they had some expertise within that company that operated to make them sole source.

Senator BAUCUS. As I understand, the contract office must approve all sole source justifications; is that correct?

Mr. MATHIS. That is correct. And I would like to go on record in saying fiscal 1979 as an agency 79 percent of our procurement is competitive; 79 percent of all of our procurement in fiscal 1979 were awarded as a result of competition.

Senator BAUCUS. Seventy-nine percent?

Mr. MATHIS. Seventy-nine percent.

Senator BAUCUS. Your offering that statement must indicate that is a change from a prior year, or it is a high percentage compared to some other agency or some other program.

Why did you say that?

Mr. MATHIS. We are of the opinion that as an agency our posture in completing contracting is exemplary.

Senator BAUCUS. Is that 79-percent figure also applied to ORP?

Mr. MATHIS. It does now.

Senator BAUCUS. What is the percentage at ORP?

Mr. MATHIS. I have not seen their percentages this year.

Miss GALATIS. I don't really know.

Mr. SMITH. Right now the percentage on sole source requirements for ORP is 49 percent.

Senator BAUCUS. About half.

Mr. SMITH. Correct.

Senator BAUCUS. Do you know what it was last year?

Mr. SMITH. No, sir, I do not.

Senator BAUCUS. Was it higher or lower?

Mr. SMITH. I was not serving the program last year so I am not familiar with the requirements within ORP.

Mr. MATHIS. Senator, this program is just getting started and the statistics are just beginning to take form.

Senator BAUCUS. What is just getting started?

Mr. MATHIS. The radiation program is just getting funded and getting its major——

Senator BAUCUS. Does the contract office have procedures for determining the validity of sole source justifications?

Mr. MATHIS. Yes. There is discussion conducted on the part of the contracting officer and contract specialist as to the statement, as to what is required and sufficient questioning to understand the basis of the justification for recommending a single source.

Senator BAUCUS. I am trying to get a feel for how much effort is undertaken to verify justifications. Does the contracts office look at the papers that cross their desks and stop there or do they spend 90 percent of their time going beyond that and calling up references and looking at other documentation?

I am curious as to the degree the contracts office verifies the justifications.

Mr. MATHIS. It depends upon the nature of the sole source.

First of all, we do not question the veracity of our senior technical people. When they make a certification to us, we accept it.

Senator BAUCUS. When who makes a recommendation?

Mr. MATHIS. When the program people have the requirement, make a recommendation to us as to the capabilities of various firms and the exclusion of that firm to any other firm, unless we have some specific knowledge to the contrary, we accept those statements.

Now, what normally happens is that when we get a justification they have not justified in our minds to the exclusion of anyone else that is in fact, the paper itself normally does not justify the sole source and because of that there will be questions back and forth between the contracts personnel and the program people on zeroing in on specifically what it is that makes this a sole source.

And quite often the documentation has to be improved to stand the test of independent review.

Senator BAUCUS. I don't quite understand. Whose statements do you take?

Mr. MATHIS. The program director, the program manager.

Senator BAUCUS. Why would that be? Maybe I don't understand your mission sufficiently.

As I understand it, the mission of the contracting officer is to be the contracting officer and to make sure the contracting procedures are adheared to, apart from the job of the program manager trying to administer the program.

Why don't you check when the program director indicates in the justification that this should be a sole source contract? That is unclear to me.

Mr. MATHIS. Quite often we are dealing with experts in the fields. They are sometimes the only experts, sometimes international experts. So, therefore, there is a high reliance on their judgment and expertise as to what exists in the industry, what exists domestically and where the expertise resides.

Senator BAUCUS. So your office doesn't have significant capability in determining what other experts there might be, whether there are other firms that could just as easily if not in a better manner, perform the mission? As I understand it, you really don't have the wherewithall and expertise yourself to determine if there are other experts who can handle this?

Mr. MATHIS. That is true. We do maintain source lists that are independent of the program people where the industry does come in and fill out forms that indicate capability in various fields, and we do have access and quite often we will offer that data to the program people for consideration.

Senator BAUCUS. Do you feel you need more resources to have an independent basis from which to determine that there are other experts?

Mr. MATHIS. No. We need to rely upon the experts in the field who are in the program to tell us those things.

Senator BAUCUS. It seems to me, a novice, that you would also want some outside independence, some independent analysis to see whether or not a contract should be sole source.

Mr. MATHIS. We are all civil servants. We are performing a service. We are experts in the procurement process, the Federal procurement regulations and what is needed to conduct competitions and how to conduct them in a way that meets all of the standards for the Federal Government.

We consider ourselves a support and a part of the program and we do not see ourselves in an adversary role with the program. It is a joint effort. We are all guided under the same regulations. It is our job to interpret what the Federal procurement regulations are, what you can and cannot do, what you must do. So, I do not feel that I need a staff to question the facts the program people have offered me because I feel I am part of that program.

Senator BAUCUS. I don't mean to be difficult here. But that raises in my mind a question of what is the purpose of your job. If the program director has signed off that this contract should be a sole source contract, then why do we need a contracting officer in your part of the program, and you are part of the same team? You don't want to undertake an objective independent analysis to any degree to see whether in fact there should be a sole source contract, or whether the contract is in fact in compliance with the procedures.

Mr. MATHIS. I serve as the expert in what the justification has to consist of and whether in fact it meets the test. And I do provide an independent review of that. But I do not hold myself out as the expert in any of the given fields that we support of solid waste, toxic substances or radiation.

Senator BAUCUS. Is it the policy of the Government to competitively bid as many contracts as possible?

Mr. MATHIS. That is the basic premise we have. It is competitive.

Senator BAUCUS. What is the reason, the basis for that policy?

Mr. MATHIS. The basis for that policy is that we are spending public funds, that competition does secure the most advantageous prices to the Government. Quite often we uncover sources as a result of competition that we were unaware of.

Senator BAUCUS. Do you have any feeling for the propensity of ORP using sole source contracts to the degree that is has, roughly 50 percent? Does that concern you at all? If the basic policy of the Government is to bid competitively as many contracts as possible, and when ORP's bidding is only 50-percent competitive, does that raise any questions in your mind?

Mr. MATHIS. Yes.

Senator BAUCUS What questions does it raise?

Mr. MATHIS. Well, the question is, are they aware the sources that are out there, what is there about this program that makes it so unique that there aren't many industrial sources that are able to perform these services, should we initiate any programs to generate competition?

Senator BAUCUS. Mr. Smith, and Miss Galatis, do you think there is undue propensity at ORP to sole source?

Mr. SMITH. Based on the percentage I would say, yes. But the percentage was not something that was frank, and each independent was judged on its own submission. I was only aware of 49 percent of the sole source based upon accumulation of the total requirements upon an independent basis. I was not aware of the high percentage.

As I indicated, each justification was supported on its own and it so happened it totaled 49 percent.

Senator BAUCUS. Unfortunately the bells have rung again. I have to go vote and I will return in about 15 minutes.

[A short recess was taken.]

Senator BAUCUS. The hearing will come back to order.

Mr. Mathis, would you please define an unsolicited proposal?

Mr. MATHIS. I think it is a proposal submitted to the agency as a result of someone from industry or university that had an idea to a problem that we are either aware that we have or unaware that we have.

They submit a technical proposal and the costs associated therewith.

Senator BAUCUS. Would you outline the steps such a proposal must follow in order to be funded?

Mr. MATHIS. It is submitted to our Grant Application Division for peer review or experts in the field to review the proposal. They assess its validity and determinations have to be made as to whether it represents the needs of the agency and whether it is meritorious of being funded.

Senator BAUCUS. How does that procedure differ from other contract procedures with other proposals?

Mr. MATHIS. One is solicited and one is unsolicited.

Senator BAUCUS. What different treatment is accorded to each?

Mr. MATHIS. After it is determined that it has merit, then a sole source justification would be prepared, generally it is for an item that is unbudgeted so a budget justification has to be developed and then it is submitted for negotiation.

Senator BAUCUS. And I take it that the firm or university would initiate the unsolicited proposals?

Mr. MATHIS. That is correct.

Senator BAUCUS. The agency would not?

Mr. MATHIS. That is right.

Senator BAUCUS. Can a Federal official initiate a request for an unsolicited proposal?

Mr. MATHIS. That would make it solicited.

Senator BAUCUS. The answer is, no?

Mr. MATHIS. Correct.

Senator BAUCUS. Speaking hypothetically, if a Federal official suggested the content of an unsolicited proposal to a contractor, would that violate any Federal rules or regulations with respect to proper contracting procedures?

Mr. MATHIS. That is difficult to answer. It would depend on the nature. I don't know why a Federal official would suggest an unsolicited proposal unless it was during a conversation with someone saying, I have an idea of how to solve this problem. The response to that could be: Why don't you give an unsolicited proposal and we will look at the merit. If it were given subject matter and technical problems on how to proceed with the solving of that problem, then it would certainly appear to operate against the competitive solicitation that is our policy.

Senator BAUCUS. Are you familiar with a contract that ORP proposed to the Wharton School of Business?

Mr. MATHIS. No, I am not.

Senator BAUCUS. Are either Miss Galatis or Mr. Smith aware of this contract?

Mr. SMITH. Yes, I am aware.

Miss GALATIS. Yes.

Senator BAUCUS. What was the purpose of that contract?

Mr. SMITH. I am not familiar with the technical requirements of that particular contract.

Miss GALATIS. I may have something with me.

Mr. SMITH. Mr. Chairman, I can read a brief description of what the requirements for the University of Pennsylvania, Wharton School were. This is part of the justification.

The proposed effort for which the University of Pennsylvania Wharton is uniquely qualified to perform is the critical and usual methods of analyzing environmental pollution data, particularly data for radio nucleus and to develop new methods as appropriate.

That is primarily the description of the requirement to be performed.

Senator BAUCUS. This is listed as an unsolicited proposal, isn't it?

Mr. SMITH. No, sir; it is not listed as an unsolicited proposal.

Senator BAUCUS. I have a procurement request rationale and it is titled "Project Impact of Pollution Devices." I give you a copy.

Are you familiar with this document?

Mr. SMITH. Not that one in particular, sir.

Senator BAUCUS. It is signed Alfred R. Smith, Jr. and is dated June 5 of this year. I will just describe it and have staff take it down to you and you can look at it.

The third page is titled "Unsolicited Proposal." This proposed procurement is based upon an unsolicited contract proposal. Does that make it unsolicited?

Mr. SMITH. Let me explain something to you, if I possibly can. The Office of Radiation to my knowledge does not have many, if any, individuals who are very familiar with the procurement process or the terminology used in the procurement process. Therefore, I think the use of the word "unsolicited" was erroneously used. This was a situation where as a proposal was requested, however it was not requested through the procurement process. The program was in receipt of a

proposal and was forwarded on along with the procurement package.

In this particular instance the university was contacted and a written request was made for an official proposal. I am not sure but I can check with Miss Galatis as to whether or not the university resubmitted a proposal or verified that the proposal submitted was in accordance with our particular needs.

Senator BAUCUS. Why was it originally marked "unsolicited"?

Mr. SMITH. The proposal itself or the request?

Senator BAUCUS. The request.

Mr. SMITH. Miss Galatis just reminded me, we have a format for the procurement rationale which is called a 12-point document. One of the items on the 12-point document is unsolicited proposal. And I think in this instance the Office of Radiation, since they had a proposal and it was not solicited through the procurement process, identified it as an unsolicited proposal.

But in the procurement terminology of an unsolicited proposal, this contract did not result on the basis of the unsolicited proposal.

Senator BAUCUS. So you are telling me that the bottom line is, regardless of the terminology of the document, that this was not an unsolicited proposal?

Mr. SMITH. That is correct, sir.

Senator BAUCUS. How did it originate?

Mr. SMITH. That, sir, I cannot specifically say as to how it originated. The proposal was submitted with the request from the program. So I would have to rely on the program to identify how they were in receipt of it, but the proposal was submitted along with the procurement request.

Senator BAUCUS. Does that circumvent normal procedures?

Mr. SMITH. Yes, sir, it does.

Senator BAUCUS. In what way?

Mr. SMITH. That the normal procedures would be that the program would submit a requirement to the contracts operation and in the instance of one for which a sole source justification has been approved, it is the responsibility of the contracts operation to solicit proposals from that particular vendor.

Senator BAUCUS. Has a contracting officer or specialist warned the Deputy Assistant Administrator, Dr. Rosenbaum, that he cannot contact contractors personally in advance of the procurement process?

Mr. SMITH. In a meeting, sir, that I had in May 1980 with Dr. Rosenbaum, I personally informed him that he did not have the authority to go out and solicit proposals and that was the responsibility of the Contracts Management Division.

Senator BAUCUS. Why did you tell him that?

Mr. SMITH. I told him that because I was aware at that particular meeting that we were currently in receipt of proposals that had been solicited through someone within the Office of Radiation Programs, not that of Contracts Management Division.

Senator BAUCUS. So you told him because essentially someone in his office, either he or somebody else, had been contacting contractors personally in advance of the normal procurement process?

Mr. SMITH. Yes, sir.

Senator BAUCUS. And to such an extent that questions were created in your mind as to propriety of those contracts?

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Mr. SMITH. Correct, to the point they were verified with the source soliciting the proposal.

Senator BAUCUS. Miss Galatis, have you also warned Dr. Rosenbaum not to contact?

Miss GALATIS. Yes, I did. I don't remember the date but I would like to go on record that I did mention to him that it was improper for him to go out and ask proposals and I don't remember when I did, but I did.

Senator BAUCUS. Roughly, about a year ago? Two years ago?

Miss GALATIS. It must have been around May or June, just about the time Mr. Smith came on board to work with me.

Senator BAUCUS. May or June of this year?

Miss GALATIS. Yes.

Senator BAUCUS. To the best of your recollection, how many times has he been warned?

Mr. SMITH. To my knowledge I know of two occasions.

Senator BAUCUS. Does that include Miss Galatis'?

Mr. SMITH. Excluding.

Senator BAUCUS. That is three. Could there be others? Could other contracting personnel have warned him?

Mr. MATHIS. Senator, I might volunteer here that in the spring—we have a cutoff for which time procurement must be submitted to Procurement and Contracts Management Division for processing within the year and that date is in May. At that time we received several sole source procurements. And there were discussions within my staff that there should be some discussion with the program on the need for competition and weakness for some of the justification for single source.

At one time it was suggested that I personally talk to the program, but it was concluded as a result of that that we would send the section head, along with Mr. Smith, to go over and explain the process, explain that we thought we were seeing an inordinate number of single source procurement and they did have a meeting as a result of that. I think it was about a 2-hour meeting.

Mr. SMITH. That is correct.

Senator BAUCUS. When was that meeting?

Mr. MATHIS. I believe it was in May of 1980.

Mr. SMITH. The latter part of May or the first part of June.

Senator BAUCUS. Mr. Smith, if you had known that investigators on contracts were also consultants, would you have stopped the contract?

Mr. SMITH. Would you repeat that?

Senator BAUCUS. If you had known that investigators on contracts were also consultants at EPA, would you have stopped the contract?

Mr. SMITH. Yes, sir, I would have stopped it to the point where I would have gotten counsel from the Office of the General Counsel.

Senator BAUCUS. And Miss Galatis?

Miss GALATIS. I confirm that.

Senator BAUCUS. Why would you have stopped it?

Mr. SMITH. Because I would not be positive as to whether that would create a conflict of interest.

Mr. MATHIS. And our operating procedures require that.

Senator BAUCUS. Were you aware that this was happening?

Mr. SMITH. No, sir, I was not.

Senator BAUCUS. Why would you not be aware?

Mr. SMITH. One, I would not be familiar with the staffing of ORP nor would I be familiar with the individuals identified in a proposal.

Senator BAUCUS. In your normal contracting operations you would not be familiar with the names of the people involved, is that correct?

Mr. SMITH. When you say the names of the people involved——

Senator BAUCUS. The names of the experts or the consultants or the investigators.

Mr. SMITH. No, sir.

Mr. MATHIS. Senator, we have in our, as a standard part of our solicitation request for proposal, disclosures entitled "Conflict of Interest." One of those disclosing whether or not the contractor has in his employee any former EPA employee. And it would be through that mechanism if there were anyone to perform on this contract who was in the employ of EPA, it would be disclosed. At that time we would make the decision as to whether or not we should proceed with procurement.

Senator BAUCUS. The trouble is, though, some of these people are not EPA employees but they are consultants.

Mr. MATHIS. Appointed consultants take the oath of office and is considered a special employee of the Government.

Senator BAUCUS. For the purposes of this regulation consultants and experts are considered employees?

Mr. MATHIS. Special employees.

Senator BAUCUS. And this has been a regulation or a practice for, how long?

Mr. MATHIS. This particular certification I speak to was put into operation, I believe, in April of 1978.

Senator BAUCUS. April of 1978?

Mr. MATHIS. Yes, sir.

Senator BAUCUS. Are you familiar with Cal Tech's contract to improve measurement of radon?

Mr. MATHIS. I became quite familiar with it yesterday.

Senator, that contract has not been awarded. As a result of the newspaper article in the Star yesterday, my staff is checking out the accuracy of that report, that report being that the principal investigator from Cal Tech is alleged to have testified that he knew of three other capable sources to perform that contract.

If that testimony proves to be accurate, we will not award that contract.

Senator BAUCUS. It is my understanding, too, that one of the persons involved claims he was personally contacted by Dr. Rosenbaum.

Is it improper for Dr. Rosenbaum to discuss a potential contract before a request for a proposal was issued?

Mr. MATHIS. There is no prohibition during the preproposal state. As a matter of fact, we encourage our program people to be in contact with industry before the work statements are prepared because our program people must be aware of the state-of-the-art and the capabilities that reside in industry and the only way they can do that is through contact with the industry.

But once the request for proposal hits the street, then only the contracting officer is authorized to have communication with industry.

Senator BAUCUS. That is with respect to competitive bids, isn't it?

Mr. MATHIS. That is correct.

Senator BAUCUS. Not with respect to sole source contracts.

Mr. MATHIS. Then we are not compromising any sources.

Senator BAUCUS. Are you familiar with the $55,000 contract with the University of Wisconsin to design a measurement program of radon levels of about 1,000 homes in Butte, Mont.?

Mr. MATHIS. I am not, but my staff would be.

Mr. SMITH. Yes, sir; we are.

Senator BAUCUS. How was this contract formulated?

Mr. SMITH. It was formulated based on a submission of a procurement request from the program and on the basis of a sole source justification.

Senator BAUCUS. Are you familiar with that sole source justification?

Mr. SMITH. Not exactly, sir. I am familiar with the submission of it, but the exact wordage, no, sir.

Senator BAUCUS. In your judgment, how much time would the competitive process have added to the granting of this contract had it not been sole source?

Mr. SMITH. You are concerned about the amount of time between sole source and the competitive process?

Senator BAUCUS. That is right.

Mr. SMITH. Approximately 3½ months difference.

Senator BAUCUS. Do you know why time was so critical in this case that this contract couldn't have been followed through a normal competitive procedure?

Mr. SMITH. To the best of my knowledge, sir, I believe that particular justification was based on the unique capability versus that of time. To the best of my knowledge.

Senator BAUCUS. So you are not in a position to know whether a better contract could have been signed under the competitive process.

Let me read to you just to establish the justification on record here. The justification, which was signed by Dr. Rosenbaum, states: "Based upon the above and the urgency * * * it is hereby recommended that the University of Wisconsin be awarded the contract on a noncompetitive basis."

Mr. SMITH. I agree with you, sir, that is how it is stated there. However, there is another sentence which says, "The competitive process would result in additional time delay that cannot be afforded because of the high risk of radon exposure."

Senator BAUCUS. Do you know how long after the procurement the contract was granted?

Mr. SMITH. That is from the initiation of the request, the time that it was awarded?

Senator BAUCUS. Yes.

Mr. SMITH. No, sir; not specifically. It would appear here that the requirement was submitted the latter part of April and the award was made August 26.

Senator BAUCUS. So that is roughly 4 months?

Mr. SMITH. Approximately.

Senator BAUCUS. About the same amount of time that the competitive process would have added on?

Mr. SMITH. Somewhat shorter, yes, sir.

Senator BAUCUS. Do you know how Dr. Rosenbaum determined that other potential contractors would be unavailable for bidding, as he claimed in the justification?

Mr. SMITH. No, sir; other than what is contained in the justification.

Senator BAUCUS. Did you receive this justification or did Miss Galatis?

Mr. SMITH. It was submitted to Miss Galatis for which I did review.

Senator BAUCUS. Let me ask the same question I previously asked Mr. Mathis. How much time do you spend perusing these justifications to determine if the statements in them are accurate as a matter of course? I am curious as to what the effort is.

Mr. SMITH. There is no standard of time that it takes. The normal practice is once we receive a justification we determine whether it is a valid justification. If in fact it does not appear as though the programs have sufficient justified sole source, we then have face-to-face discussions with that individual responsible for the requirement and if he is able to further support it by providing information that was not currently provided, and the information, in my opinion as contracting officer, stands the test that this is the only source that can provide us with this service within a given period of time, then it is normally approved and submitted on to the next level for review and approval.

Senator BAUCUS. When you read this one on the face of it, did it seem OK?

Mr. SMITH. No, sir; I do believe this is one for which discussions were held and additional information was provided.

Senator BAUCUS. You discussed the contract with Dr. Rosenbaum; is that correct?

Mr. SMITH. In this particular instance I am not sure whether this was Dr. Rosenbaum or Carl Spector.

Senator BAUCUS. That was in his office?

Mr. SMITH. Yes, sir.

Senator BAUCUS. What were the problems?

Mr. SMITH. Explaining to yourself that there are tremendous number of requirements that I am responsible for, one within the Office of Radiation and second for the Office of Noise Abatement and Control, and it is very difficult to remember the exact concept of each JNCP so it is an answer I can't really give you at this time.

Senator BAUCUS. Are you aware that the researchers Dr. Rosenbaum described as key persons are only going to extend about 28 percent and 8 percent of their time on this year-long contract?

Mr. SMITH. No, sir.

Senator BAUCUS. Would that make a difference to you if you knew at the time you saw this justification?

Mr. SMITH. It would be very hard to say as to whether or not 28 percent was critical to the program. That would be a decision the program would have to make.

Senator BAUCUS. If the time was so urgent as the justification states but the person was going to spend 28 percent of his time on a year-long contract, that seems to be somewhat inconsistent.

Mr. SMITH. I have no response.

Senator BAUCUS. On the face of it, it raises the question.

Mr. SMITH. I would say it would, sir.

Senator BAUCUS. Do you think that Dr. Rosenbaum has violated any procurement procedures?

Mr. SMITH. Not to my knowledge, sir.

You said procurement procedures?

Senator BAUCUS. Yes.

Mr. SMITH. Yes, sir, he has.

Senator BAUCUS. Which ones?

Mr. SMITH. That of taking the initiative of going out requesting proposals and having contact for the purpose of possible award of a contract without first making contract with the Contracts Management Division.

Senator BAUCUS. Which contracts would these be?

Mr. SMITH. I cannot give you specific contracts, but I would estimate that they were approximately 8, maybe 10 requirements for which proposals were submitted without CMD going out initially requesting proposal.

Senator BAUCUS. Over what period of time?

Mr. SMITH. I would have to say during fiscal year 1980. I cannot specifically say during what period of time.

Senator BAUCUS. Do you have anything to add?

Miss GALATIS. Senator, I think Mr. Smith has been very artful in stating our position.

Senator BAUCUS. OK. Thank you very much. I want to thank all three of you for your time this afternoon.

Let's recess again for 15 minutes and resume the hearing in 15-minutes time.

[Whereupon, a short recess was taken.]

Senator BAUCUS. The hearing will come to order.

Our next witness will be Mr. Raymond Brandwein, Director of the Office of Radiation programs.

STATEMENT OF RAYMOND BRANDWEIN, DIRECTOR, OFFICE OF RADIATION PROGRAMS, ENVIRONMENTAL PROTECTION AGENCY

Mr. BRANDWEIN. Mr. Chairman, I want to introduce Mary Doyle from the Office of the General Counsel, and Mr. Ed Hanley the Deputy Assistant Administrator for the Office of Management and Agency Services.

Senator BAUCUS. Mr. Brandwein, would you please describe your position at ORP?

Mr. BRANDWEIN. Yes, sir, I will. Actually my title is the Director, of the Program Management Office at the ORP and in that capacity I am responsible for the budgetary activities of the program developing the budgeting. My other principal responsibilities are serving as the principal liaison between our office and the Personnel Procurement Offices in the OPA.

Senator BAUCUS. Are you the executive officer?

Mr. BRANDWEIN. You might call it that. Some places call it program management officer.

Senator BAUCUS. How long have you been at ORP?

Mr. BRANDWEIN. I have been there 7 years.

Senator BAUCUS. How many consultants are listed for ORP?

Mr. BRANDWEIN. Right now 49 listed.

Senator BAUCUS. Forty-nine?

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS And these consultants perform work in roughly GS–13 to GS–15 range?

Mr. BRANDWEIN. That is the requirement, that they be performing work in the ranges of grades 13 to 15.

Senator BAUCUS. How many full time employees do you have at ORP?

Mr. BRANDWEIN. There are right now 143 permanent full time employees. Approximately 78 of those are in the same grade range as the consultants, that is, grades 13 through 15 and equivalent.

Senator BAUCUS. Could you, for the record, break out the number of employees you have at each of the GS ranges?

Mr. BRANDWEIN. Yes, sir. If I may point out for the record, we also make use of Public Health Service commissioned officers. This is Uniformed Service of the United States. The grades and the pay are equivalent to that of the military services and at this time we have 33 Public Health Service commissioned officers in grades 04 through 06 which are roughly equivalent to GS rates 13 through 15.

Senator BAUCUS. How many ORP employees are there present in the GS–13 to GS–15 range?

Mr. BRANDWEIN. There are 40.

Senator BAUCUS. I thought you said 78.

Mr. BRANDWEIN. There are 78 who are in the GS–13 to 15 range or equivalent. They are commissioned officers who are also permanent full time ORP employees are rated differently. They are not under the general scheduled. Their responsibilities are equivalent to GS–13 to 15.

Senator BAUCUS. Are they under the EPA budget?

Mr. BRANDWEIN. They are under the EPA budget. For all intents and purposes, they are the same as any of the other general services employees. The basic difference is the way which they are employed, the terms of employment are different. They have different requirements for performance, for leave. Their pay rates are different. But they are equivalent to general service.

Senator BAUCUS. They are paid by the ORP budget?

Mr. BRANDWEIN. Yes, sir, they are.

Senator BAUCUS. Are you familiar with Dr. Webber?

Mr. BRANDWEIN. I am.

Senator BAUCUS. What are his responsibilities at ORP?

Mr. BRANDWEIN. Mr. Webber is the expert who is assigned to work in the ocean disposal programs. His principal responsibility right now is coordinating some of the work that is being done inside with some of the contracts that are being performed at the request of ORP.

Senator BAUCUS. Did Dr. Rosenbaum know Mr. Webber through a working relationship at GAO?

Mr. BRANDWEIN. I am not sure. I do not know.

Senator BAUCUS. Do you know the capacity Dr. Rosenbaum knew Mr. Webber prior to working for EPA?

Mr. BRANDWEIN. No, sir, I do not know.

Senator BAUCUS. Was Mr. Webber originally hired as a consultant?

Mr. BRANDWEIN. Yes, sir, he was.

Senator BAUCUS. It is my understanding he was converted to expert status about 20 days later after he was hired as a consultant; is that correct?

Mr. BRANDWEIN. That is correct.

Senator BAUCUS. Who made that decision?

Mr. BRANDWEIN. Dr. Rosenbaum felt that we needed to have Mr. Webber taking a more active role in the oceans program at that time. Dr. Rosenbaum's concern was that the oceans program had a lot of work that seemed to be going in different directions. We needed someone to bring a lot of things together that seemed to be trailing off in different directions. As a consultant, Mr. Webber was limited in the types of things that he could perform. He could provide advice. So we converted Mr. Webber to an expert which would allow him, on a limited basis, to perform more direct operation for the program.

Senator BAUCUS. Why was he hired as a consultant in the first place?

Mr. BRANDWEIN. I don't know that, sir.

Senator BAUCUS. Did you interview him or have anything to do with hiring him?

Mr. BRANDWEIN. Dr. Rosenbaum requested he be hired as a consultant.

Senator BAUCUS. He just told you——

Mr. BRANDWEIN. He would produce the necessary documents.

Senator BAUCUS. He just said, "Ray, hire him"?

Mr. BRANDWEIN. Yes, that is basically it.

Senator BAUCUS. That is basically it?

Mr. BRANDWEIN. Basically it, sir, "Hire him as a consultant. I want the man hired as a consultant."

Senator BAUCUS. You heard earlier testimony today that there is a difference between an expert and a consultant. Do you generally agree with the characterization of the difference you heard this morning?

Mr. BRANDWEIN. That is the first time I have heard the characterization referred to that way, but it sounds reasonable, yes, sir.

Senator BAUCUS. If it sounded reasonable, I take it to mean it is somewhat accurate.

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS. Is it true consultants must be hired for a specific purpose?

Mr. BRANDWEIN. I believe that is so, yes, sir.

Senator BAUCUS. Excuse me?

Mr. BRANDWEIN. I believe that is so.

Senator BAUCUS. Is a Dr. Daniel Kleitman listed as a consultant at ORP?

Mr. BRANDEIN. He is listed as a consultant or expert.

Senator BAUCUS. You don't know which?

Mr. BRANDWEIN. He is listed as an expert.

Senator BAUCUS. He is listed as an expert?

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS. Is that a switch?

Mr. BRANDWEIN. I am not sure. It is possible that is a switch. If it is, I don't think it is a recent switch.

Senator BAUCUS. But he could possibly have been originally hired as a consultant, but at some time converted to an expert?

Mr. BRANDWEIN. He may have.

Senator BAUCUS. Do you know whether he has ever been a consultant?

Mr. BRANDWEIN. Not offhand I don't know, sir. I can provide that answer for the record if you like.

Senator BAUCUS. Whether he is an expert or consultant—and we are assuming he is an expert right now—did Dr. Kleitman, either as an expert or consultant, give Dr. Rosenbaum a request for a grant to MIT to work on radon studies?

Mr. BRANDWEIN. There was a grant request that came in from MIT that had Dr. Kleitman's name on it, yes, sir.

Senator BAUCUS. Was that grant turned into a contract?

Mr. BRANDWEIN. Excuse me?

Senator BAUCUS. Was that grant turned into a contract?

Mr. BRANDWEIN. Yes, sir, it was. It was turned into a contract request.

Senator BAUCUS. Are you familiar with the contract to Mitre Corp. to perform work in the ocean disposal area?

Mr. BRANDWEIN. Yes, sir; I am.

Senator BAUCUS. Did Dr. Rosenbaum tell you to find a way to sole source the contract to Mitre?

Mr. BRANDWEIN. I don't know whether I would characterize the instruction that way.

Senator BAUCUS. How would you characterize the instruction?

Mr. BRANDWEIN. Mitre Corp. is such that I don't think they can bid on contracts.

Senator BAUCUS. Excuse me, I missed the first part.

Mr. BRANDWEIN. The nature of Mitre Corp.'s charter is such I don't think they can bid on contracts; consequently, the only way we could acquire their services is through a sole source.

Senator BAUCUS. So, in effect, is it fair to say that he warted Mitre to do work with the EPA?

Mr. BRANDWEIN. Yes.

Senator BAUCUS. And, as I understand you, Mitre's charter or articles of incorporation preclude Mitre from responding to bids.

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS. So in order to allow Mitre to do the work, some kind of sole source arrangement was thought up to enable Mitre to do some work for EPA. Is that a fair characterization?

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS. Why did Dr. Rosenbaum want to work with Mitre? It seems to me he would want certain work performed regardless of what company it is so long as the right company could do the best work for the least cost to the Government. Why did he so specifically want to do work with Mitre?

Mr. BRANDWEIN. My understanding is that Dr. Rosenbaum wanted Gordon MacDonald to work with us on the oceans program.

Senator BAUCUS. Why would he want Gordon MacDonald?

Mr. BRANDWEIN. Gordon MacDonald is, I gather, a well-known scientist, environmentalist, one of the original members of the Council of Environmental Quality. He has been involved in developing other regulations, I believe, for the oceans. He has a very impressive dossier.

Senator BAUCUS. Are there others that have equally impressive dossiers?

Mr. BRANDWEIN. Not that I know of.

Senator BAUCUS. Have you looked?

Mr. BRANDWEIN. No, sir.

Senator BAUCUS. Has anyone looked?

Mr. BRANDWEIN. I don't know. Dr. Rosenbaum may know.

Senator BAUCUS. Might?

Mr. BRANDWEIN. Yes.

Senator BAUCUS. Have you discussed the possibility there might be others who are equally well qualified?

Mr. BRANDWEIN. No, sir.

Senator BAUCUS. Did you discuss the possibility with him?

Mr. BRANDWEIN. No, sir.

Senator BAUCUS. Did Dr. Rosenbaum ask you to prepare two purchase orders under $10,000 so Mitre could begin work immediately on the oceans disposal program?

Mr. BRANDWEIN. Yes, sir, he did.

Senator BAUCUS. Why did he do that?

Mr. BRANDWEIN. We had a decision that we wanted Mitre Corp. to assist us in preparing for some meetings that we were to attend—that EPA staff members were to attend, international meetings, and also we wanted Mitre Corp. to help us in developing—at least providing some longer term planning document to help us in mapping our activities for the ocean area. The statement of the readings, I believe, were scheduled for October, November of 1979, and there was just no way that we would have been able to negotiate the contract with Mitre Corp. in time to have preformed this work. What we did was to extract the task, the first task, sequentially in the contract and arrange for Mitre Corp. to provide us the task. It turned out it was under $10,000.

Senator BAUCUS. Why were two separate purchase orders, both under $10,000 utilized? Why not one with a total of over $10,000?

Mr. BRANDWEIN. Again, it had to do with the time, the delay in getting the contract negotiated. The first purchase order was written to acquire Mitre's services very quickly. It was apparent we weren't going to have the contract negotiated in time. When the contract still was not negotiated at the expiration of the first purchase order, we wrote a second purchase order, again as a holding for the second set of meetings.

Senator BAUCUS. Why work up purchase orders in advance of the negotiation?

Mr. BRANDWEIN. I am not sure, sir. We had a——

Senator BAUCUS. I mean there is no contract agreed to, yet you are giving purchase orders.

Mr. BRANDWEIN. No, sir, the contract was not agreed to. It was going through EPA's procurement process; at that point it was still in the negotiation stage.

Senator BAUCUS. Is there a $10,000 demarcation or limit by which the process can be expedited?

Mr. BRANDWEIN. I think it is. I am not sure what the exact requirements are, but yes, sir, I believe it is.

Senator BAUCUS. Did Mitre spend any contract money before the purchase orders or subsequent contract was approved?

Mr. BRANDWEIN. Mitre didn't spend any money for the purchase orders, to my knowledge, sir.

Senator BAUCUS. Did they spend any money between the two purchase orders?

Mr. BRANDWEIN. In our behalf?

Senator BAUCUS. Well, in pursuit of this endeavor, this undertaking.

Mr. BRANDWEIN. I believe that they did, yes, sir.

Senator BAUCUS. Did Dr. Rosenbaum authorize those expenditures?

Mr. BRANDWEIN. He didn't authorize them; he indicated he felt that they were incurred in good faith and probably should be honored.

Senator BAUCUS. Before the contract was approved?

Mr. BRANDWEIN. Well, I don't think before the contract was approved. By that time it may well have been we already had a contract. I am not sure of the exact date of our becoming aware that Mitre had incurred some expenses between the expirations of the purchase orders and onset of the contract.

Senator BAUCUS. Is that a proper procedure?

Mr. BRANDWEIN. I suppose it is legal.

Senator BAUCUS. Is it proper?

Mr. BRANDWEIN. I am not sure. All Dr. Rosenbaum did was—I note here that the request was January 14, 1980, which was after the time that Mitre Corp. had received a letter from EPA announcing that they could go ahead and proceed to work on the contract.

Senator BAUCUS. Was that before the money was approved for it, though?

Mr. BRANDWEIN. Before which money was approved for it, sir?

Senator BAUCUS. Well, any money was approved.

Mr. BRANDWEIN. Well, sequentially we had a purchase order of $9,900 in, I believe, September, the second purchase order of $9,200, I believe in October. Those two expired some time in November. The contract itself was awarded or at least a letter was awarded to Mitre telling them they were going to get the contract in late December. The time in question that the payment was requested for work performed that may not have been under contract was for the period of probably some time in late November to December approximately 21st, I believe.

Senator BAUCUS. As you have said earlier, Dr. Rosenbaum told you that the contract should go to Mitre because Gordon MacDonald worked there; is that correct?

Mr. BRANDWEIN. Essentially that is it, yes, sir.

Senator BAUCUS. Are you familiar with the contract to Cal Tech to study radon?

Mr. BRANDWEIN. Somewhat, yes.

Senator BAUCUS. Did Dr. Rosenbaum instruct you to sole source this contract to Cal Tech?

Mr. BRANDWEIN. He did.

Senator BAUCUS. He did?

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS. I am sorry.

Mr. BRANDWEIN. Yes, sir, he did.

Senator BAUCUS. Is it true that the original Cal Tech contract and justification for sole source contract were inadequate and had to be reworked?

Mr. BRANDWEIN. Yes, sir, that is true.

Senator BAUCUS. Has Dr. Rosenbaum initiated sole source contracts?

Mr. BRANDWEIN. Initiated? I am not sure initiated. I have—one of my functions is to receive contracts from staff members in ORP and deliver them to the contracts office, make sure ORP is provided the proper documentation. On some occasions Dr. Rosenbaum has been the person in ORP who has given me those contracts. Whether he has initiated them or not I don't know. But my only contact with ORP staff has been with Dr. Rosenbaum on these contracts.

Senator BAUCUS. So it is possible he has; you just don't know.

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS. If he has, how often has he done it?

Mr. BRANDWEIN. I would say something on the order of——

Senator BAUCUS. Let me ask the question differently. How often has Dr. Rosenbaum given you sole source contracts?

Mr. BRANDWEIN. I believe there are about 8 or 10.

Senator BAUCUS. Over what period?

Mr. BRANDWEIN. Over a year.

Senator BAUCUS. In the case of the contracts to Mitre and Scientists Institute for Public Information, do you feel that in any way you were, to use the word, "pressured" to grant those contracts sole source, or did somebody kind of lean on you a little?

Mr. BRANDWEIN. Well, I don't award the contracts, sir. All I do is make the contracts management division aware that these are requirements.

Senator BAUCUS. Did you tell the Inspector General investigator that you felt pressured as to these contracts?

Mr. BRANDWEIN. On a couple of the contracts, I perhaps indicated to Dr. Rosenbaum I wasn't sure we had a good sole source, and he felt that sole source was good enough to go.

Senator BAUCUS. So the answer to the question is yes?

Mr. BRANDWEIN. Yes, sir.

Senator BAUCUS. To your knowledge, have contract officers warned Dr. Rosenbaum that this is an improper practice?

Mr. BRANDWEIN. Are you talking about contacting the——

Senator BAUCUS. Yes.

Mr. BRANDWEIN. Yes, sir, I think I was present in a meeting in May in which the project officers delivered the message to Dr. Rosenbaum.

Senator BAUCUS. What was his reaction?

Mr. BRANDWEIN. He said he wouldn't do it again.

Senator BAUCUS. When were those meetings?

Mr. BRANDWEIN. It was some time in May. It is still my belief that there is no real requirement that prevents us from asking a contractor to provide—to deliver a proposal to us.

Senator BAUCUS. Why? Is that EPA policy?

Mr. BRANDWEIN. I don't know, sir.

Senator BAUCUS. No idea?

Mr. BRANDWEIN. No, sir.

Senator BAUCUS. Do you know whether Dr. Rosenbaum stopped personally contacting contractors after he was warned the first time?

Mr. BRANDWEIN. I believe he did.

Senator BAUCUS. He stopped after he was warned the first time?

Mr. BRANDWEIN. If the first time was in May. That is the first time I am aware of.

Senator BAUCUS. Was he warned more than one time?

Mr. BRANDWEIN. I don't remember more than one warning. I was not present for more than one.

Senator BAUCUS. You heard earlier testimony he was warned three times.

Mr. BRANDWEIN. Yes, I have heard other testimony earlier that I don't particularly agree with.

Senator BAUCUS. Do you disagree with the IG? Contracting personnel said that they warned him three times collectively.

Mr. BRANDWEIN. No, sir, all I am saying with respect to that is I don't know of other warnings except that one.

Senator BAUCUS. But you don't have any basis to disagree with that statement?

Mr. BRANDWEIN. No, sir.

Senator BAUCUS. So it is possible he was warned three times.

Mr. BRANDWEIN. It is possible.

Senator BAUCUS. Are project officers supposed to prepare the original work on contracts?

Mr. BRANDWEIN. Yes, sir, they are.

Senator BAUCUS. Have there been instances where the project officer has not done the original work?

Mr. BRANDWEIN. If you mean preparing the work scope, yes, sir, there have been times when, after a work scope has been prepared, we have made a decision to assign that project officer to monitor the contract.

Senator BAUCUS. I am sorry.

Mr. BRANDWEIN. After the work scope has been prepared and a request for proposal developed, we might after that time assign the project officer to work on the contract, to monitor the contract.

Senator BAUCUS. Has Dr. Rosenbaum ever listed a project officer without the project officer's knowledge and after the procurement work had begun?

Mr. BRANDWEIN. Yes, sir, he has.

Senator BAUCUS. When has he done that?

Mr. BRANDWEIN. I can think of two instances. The first instance is a case where we required some work—where we were seeking some work, I should say—incidentally, the contract was never let—but we were seeking some work to examine the economics of our studies on uranium mill tailings, and we put the project leader for uranium mill tailings on the contract without his knowledge.

The second case occurred perhaps 2 months after that when the State of Colorado requested us to find a study or continuation of a

study that had been originally funded by the Department of Energy, and at that time we assigned a project officer to monitor the contract.

Senator BAUCUS. Is there anything wrong with that practice?

Mr. BRANDWEIN. I don't think there is anything wrong with it, no, sir.

Senator BAUCUS. Do you think it can create any problems? I am just curious.

Mr. BRANDWEIN. Some project officers might want to be involved in the early stage of the work scope.

Senator BAUCUS. Have, to your knowledge, any project officers complained of this practice?

Mr. BRANDWEIN. Yes, sir, they have. One has complained to me.

Senator BAUCUS. What was the basis of his complaint? Why did he complain? Why did it bother him?

Mr. BRANDWEIN. He felt he knew nothing about the contract, did not want to work himself or was not willing to work himself, and didn't feel it was appropriate he should be listed as project officer.

Senator BAUCUS. That seems reasonable to me; does it to you?

Mr. BRANDWEIN. Yes, sir, it does, but there are occasions when a program director may make a decision that I want to assign this work to a project officer.

Senator BAUCUS. To your knowledge, has ORP violated any Federal or EPA procurement and consultant regulations?

Mr. BRANDWEIN. No, sir, not to my knowledge.

Senator BAUCUS. You have never indicated to either the IG staff or my staff that you felt that ORP has violated Federal or EPA procurement regulations?

Mr. BRANDWEIN. I have indicated that we have a large number of sole source contracts.

Senator BAUCUS. Is that a euphemistic way of stating——

Mr. BRANDWEIN. I am not sure that is a violation, sir. Any one of these sole source contracts, I believe, is probably justified. It is a matter of how many sole source contracts——

Senator BAUCUS. How do you know these sole source contracts are all justified?

Mr. BRANDWEIN. How do I know they are?

Senator BAUCUS. Yes.

Mr. BRANDWEIN. I don't know that they are.

Senator BAUCUS. Do you see any problems, any irregularities at all in the operation or in the area that we are talking about now?

Mr. BRANDWEIN. Yes, sir. I think what we have is a difference in style. I mean Dr. Rosenbaum's style may be different than mine, but I don't think there is any difference—I don't think that there is anything illegal.

Senator BAUCUS. How would you characterize his style compared with yours?

Mr. BRANDWEIN. I think that he probably feels a greater sense of urgency in finding solutions to some of the problems than I might.

Senator BAUCUS. You are either a masochist or not responsive. I would think you would have a sense of urgency in solving problems, too.

Mr. BRANDWEIN. Yes, I do, but mine is, I guess, tempered more by concern that, for instance, in the procurement processes that we take full advantage of the competition when we can.

Senator BAUCUS. So you would be more inclined to utilize competitive bidding procedures and the competitive process rather than sole sourcing?

Mr. BRANDWEIN. If I were writing some of these contracts, yes, sir, I would.

Senator BAUCUS. Why would you want to be more competitive in your bidding?

Mr. BRANDWEIN. I believe that is one of the principles of Federal procurement practices, that, to the maximum extent possible, we use competitive requirements, and one of the purposes, I assume, would be to try to get a useful product at the best possible price.

Senator BAUCUS. And it is your opinion that probably EPA would do better, get a better product at a better price with more competition?

Mr. BRANDWEIN. I don't know about a better product, sir.

Senator BAUCUS. We will get the same product for a better price?

Mr. BRANDWEIN. That I can't even comment on. There may be some trade-off of quality for price. Another of the departures in style between Dr. Rosenbaum and I is that is he is very committed to having the best of work for ORP. That doesn't mean that I am uncommitted to having good work.

Senator BAUCUS. You anticipated my next question.

Mr. BRANDWEIN. But there can be some trade-off. There can be a trade-off of some measure of quality for some measure of price, and sometimes by not competing requirements we don't have the opportunity to see whether we would have a good tradeoff.

Senator BAUCUS. I have no further questions. Thank you very much, Mr. Brandwein.

Our next witnesses will be Byron Bunger, Robert Dyer, Dan Hendricks, Abraham Goldin, Raymond Johnson, and George Niewiadomski. Would you please come to the witness table.

Gentlemen, will you please all stand and do you swear to tell the whole truth and nothing but the truth.

PANEL OF EPA AND DOI OFFICIALS:

STATEMENTS OF BYRON BUNGER, STAFF ECONOMIST; WILLIAM MILLS, RADIATION EXPERT; ROBERT DYER, DAN HENDRICKS, AND ABRAHAM GOLDIN, ENVIRONMENTAL SCIENTISTS, AND RAYMOND JOHNSON, CHIEF, IONIZING RADIATION SURVEILLANCE BRANCH, EPA; WITH GEORGE NIEWIADOMSKI, MANAGER, RADIATION HAZARDS, BUREAU OF MINES, DEPARTMENT OF THE INTERIOR

Senator BAUCUS. We will now hear testimony from a panel of environmental scientists familiar with the contracting and consulting practices of the Office of Radiation Programs. They are: Byron Bunger, staff economist; William Mills, radiation expert; Robert Dyer,

environmental scientist; Dan Hendricks, environmental scientist; Abraham Goldin, environmental scientist; Raymond Johnson, chief, Ionizing Radiation Surveillance Branch, EPA; and George Niewiadomski, manager, Radiation Hazards, Bureau of Mines, Department of the Interior.

Gentlemen, I want to thank you for coming today. I understand that some of you are concerned about testifying. I want to tell you that you were invited because of your expertise. I know none of you volunteered information to this subcommittee, rather we have asked questions of you. I want to assure you that certainly no action as far as I am concerned will be taken against you. If in some improper way somebody does, I will take note of it.

Mr. Hendricks, I understand you handled the contract of the public hearings into the uranium mill tailings program that eventually went to the Scientists Institute for Public Information; is that correct?

Mr. HENDRICKS. Yes, sir, that is right.

Senator BAUCUS. When you first began work on the project, how did you go about it?

Mr. HENDRICKS. The total project was a detail, a 120-day detail.

Senator BAUCUS. Pull the microphone closer to you.

Mr. HENDRICKS. I first started the project as a detail. I was detailed to the project to assist in preparation for an environmental impact statement in support of those standards. Along toward the end of that detail, I was asked to prepare a statement of work and procurement request for public hearings for that project.

Senator BAUCUS. Did you list several contractors who could perform the contract?

Mr. HENDRICKS. I listed maybe three or four.

Senator BAUCUS. Three or four. And to whom did you submit your analysis?

Mr. HENDRICKS. I submitted the package, the procurement request and the statement of work, to Dr. Rosenbaum's office.

Senator BAUCUS. What was the response to this submission?

Mr. HENDRICKS. It was unacceptable.

Senator BAUCUS. What were you instructed to do after it was not accepted?

Mr. HENDRICKS. I was instructed to go back and copy an earlier sole source justification for using SIPI.

Senator BAUCUS. Why were you requested to do that?

Mr. HENDRICKS. I don't know.

Senator BAUCUS. And did you follow those instructions?

Mr. HENDRICKS. I followed those instructions, copied verbatim the earlier statement of work, and returned that package to contracts.

Senator BAUCUS. Was the contract sole sourced to SIPI after that?

Mr. HENDRICKS. That was pretty much the end of my detail, and I think it was.

Senator BAUCUS. In your judgment, could other contractors have performed this work just as well?

Mr. HENDRICKS. In my judgment, they could have, yes, sir.

Senator BAUCUS. In your judgment, do you consider this—this eventual outcome, that is, the sole sourcing—improper? Does it raise any questions in your mind?

Mr. HENDRICKS. It raised quite a few questions. I wanted to get rid of that contract in a hurry.

Senator BAUCUS. What questions did it raise?

Mr. HENDRICKS. Well, it raised the timing question. There appeared to be time for competitive——

Senator BAUCUS. I am sorry, could you speak a little louder. Again, pull the microphone a little closer.

Mr. HENDRICKS. It raises a question of timing. I had asked the contracts people how long will this take, and they told me about 4 months, four or five months. Having worked on the project, it appeared to me that we were probably 6 months away from hearings.

Senator BAUCUS. Do you think it was proper to submit the contract this way, that is, to copy a prior justification and submit it? Does it raise questions of propriety to you at all?

Mr. HENDRICKS. I had questions about that, yes.

Senator BAUCUS. Now, Dr. Johnson, I have a justification for a sole source contract to MIT for the study of health effects of radon in water. In paragraph 2, the justification states, "The competitive process would produce time delays that cannot be afforded because of the high risk of radon exposure." Do you agree with that statement?

Mr. JOHNSON. No, I do not agree with that statement.

Senator BAUCUS. And why not?

Mr. JOHNSON. Because radon exposures in homes have been naturally occurring for many years, and there is very limited information about the extent of such exposures. And I would believe there is a need for evaluating the extent of those exposures in terms of measurements on concentrations before attempting to evaluate health risk.

Senator BAUCUS. The justification also states that, "Mathematics, statistics, physics, chemistry, and medical experts are needed for the project." I am wondering, in your view, if the real need is for health physicists, radiation biologists and epidemiologists. Is it your view that the latter class of specialists is more needed than the former or does that make any difference to you?

Mr. JOHNSON. Yes, I believe those disciplines would be needed in such a study.

Senator BAUCUS. As much or less needed than statisticians or chemistry and medical experts?

Mr. JOHNSON. As I indicated earlier, I believe what is needed has to do more with measurements and evaluation of measurements data. By measurements I am talking about measuring radioactive concentrations in homes as a result of various radon sources that could include radon from water. These measurements normally would be carried out by people with training in health physics or radiation measurements, and the evaluation of such data in terms of health effects would also be done by healthy physicists or in a broader scale by epidemiologists.

Senator BAUCUS. Do you agree that not only was there not a need for urgency when this justification was written, but there is no need today as well?

Mr. JOHNSON. OK, I would say there is a need for the study. I am not clear that the additional time savings of possibly 2 or 3 months by sole source would be justified on addressing this problem.

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Senator BAUCUS. In your view, could other contractors have performed this contract just as well?

Mr. JOHNSON. I would say to start with that I am not clear how a group of mathematical experts would represent the best people in the United States for doing this kind of work, that there are other laboratories or universities with people skilled in radiation measurements and interpretation of radiation data who could have easily done this work as well.

Senator BAUCUS. Are there others who could have done a better job?

Mr. JOHNSON. Yes, I believe that would be the case.

Senator BAUCUS. So, in your view, these were not the only contractors who could have performed this job.

Mr. JOHNSON. Yes.

Senator BAUCUS. And also it is your view that 2 or 3 months' urgency is not required here?

Mr. JOHNSON. That is accurate.

Senator BAUCUS. Isn't it true that this contract was also unnecessary because EPA does not yet know how much radon exists in water?

Mr. JOHNSON. That is true. Our official concern for radon in water was to be evaluated by a nationwide program for measuring levels of concentration of radon in water. That program was initiated approximately a year ago and is presently underway. The outcome of that would let us know something about the national magnitude or the scope of a potential problem for radon in water. And that epidemiology study, in my judgment, would be premature.

Senator BAUCUS. Dr. Goldin, I am looking at a contract here on the impact of pollution to the Wharton School of Business, University of Pennsylvania. The first paragraph states, "EPA must promulgate a standard for the disposal of high-level waste within the next 12 months." Isn't it true that high-level waste will not be disposed of until 1995?

Mr. GOLDIN. It is true that under President Carter's plans actual disposal of high-level waste would not take place until the middle nineties. The statement in the justification that it is important that EPA promulgate its standards within the next 12 months is true, because that is the requirement for the development of the disposal program by other agencies.

Senator BAUCUS. But is that EPA requirement reasonable do you think?

Mr. GOLDIN. The requirement that we do it within the next 12 months?

Senator BAUCUS. Yes.

Mr. GOLDIN. I would say so.

Senator BAUCUS. Reasonable?

Mr. GOLDIN. Reasonable.

Senator BAUCUS. I understand the present high-level waste disposal program is not to be in effect until 1990. How do those two statements square?

Mr. GOLDIN. Well, the EPA standards form a framework for further requirements by the Nuclear Regulatory Commission and for actions by the Department of Energy, and there is, as has been stated

in this paragraph, a long leadtime between the development of the regulations and actual establishment of the disposal program.

Senator BAUCUS. Are statisticians at a business school best suited to do this type of work, in your judgment?

Mr. GOLDIN. I have some problems with this document that I have just received today. In that the statement of work is rather vague. The statement of work appears to be a mathematical analysis of of radionuclide monitoring data, and that is about it—a very small statement of work. It is not entirely clear to me how that connects to the qualifications of the statistics people. There is a point that has been made in here in the fourth paragraph, the background of procurement request rationale is a discussion of outliers. And, in general, when considering outliers and in considering the analysis of the data is a requirement that the people involved be familiar with the quality that you are likely to get out of environmental data. I don't know of any expertise at the Wharton school in this area.

Senator BAUCUS. Would epidemiologists be better suited to perform this contract?

Mr. GOLDIN. On this one, I would say not; this is not an epidemiology problem.

Senator BAUCUS. Has the EPA already done work in this area? I was wondering.

Mr. GOLDIN. EPA has done a fair amount of work in the quality of environmental monitoring techniques, which is talked about in the second paragraph of the justification. We have a quality assurance program that is operated out of our laboratory in Las Vegas, and the agency has recently established as a policy that all work done by the agency or contractors, including environmental pollution measurements, including radioactivity, shall have adequate quality assurance procedures.

Senator BAUCUS. In your judgment, does EPA have capability to perform the contract in-house?

Mr. GOLDIN. Limited to the scope of work only. The analysis of the data and the determination of how they fit into apparent models—although that is not clear—I am not certain that we have that capability in-house. I am not an expert in the field of statistics.

Senator BAUCUS. Is it possible that you just don't have sufficient information?

Mr. GOLDIN. I don't know what is available to us in the agency.

Senator BAUCUS. Are there other sources who could perform this contract as well or better than the Wharton School of Business?

Mr. GOLDIN. My guess is, without specific knowledge in the area, that departments of statistics in most places would be competent to perform this sort of work.

Senator BAUCUS. Did Batelle Northwest Laboratory do a Department of Energy project in this area, do you know?

Mr. GOLDIN. Batelle Northwest—let me answer a question which you didn't exactly ask.

Senator BAUCUS. All right.

Mr. GOLDIN. I am aware of the work that has been done at Batelle Northwest on the development of sampling and monitoring schemes

in such terms of where samples are drawn and how often they are drawn, which appear to be complete.

Senator BAUCUS. Mr. Dyer, could you describe your duties at ORP?

Mr. DYER. My current duties or over the past few years?

Senator BAUCUS. Well, let's start with what you are doing now and see how relevant it is.

Mr. DYER. Primarily I work on completion of contracts and project reports.

Senator BAUCUS. Completion, what does that mean?

Mr. DYER. Well, we have done a series of surveys over the last 4 years which required initiating many separate contractual efforts, and, through various reasons, many of these contracts have taken a considerable amount of time to complete. I think a case in point was one involving a geochemical study where the principal investigator died during the contract performance period. But suffice it to say my principal duties over the last year have been to complete contract requirements, review the reports and see what was necessary to get those reports out.

Senator BAUCUS. Have you been involved in any way with the ocean disposal program for radioactive waste.

Mr. DYER. Yes, that is exactly what I was referring to, closing out reports and contracts in that specific area, sea disposal of nuclear waste.

Senator BAUCUS. Could you describe the Mitre Corp's role in the ocean disposal program?

Mr. DYER. That would be very difficult for me. I have had no direct contact with the Mitre Corp. either in their contractural efforts or in the purchase orders that have been referred to earlier. I can only judge their role based on two reports that have been provided to us in the normal circulation of information.

Senator BAUCUS. Who is playing the key role then?

Mr. DYER. My understanding is that it is Mr. Wendel Webber.

Senator BAUCUS. Is he running it?

Mr. DYER. I don't know who the project officer is for the Mitre Corp. contracts at this time, but he seems to be the direct contact with Mitre.

Senator BAUCUS. He is pretty high up, then, in the organizational scale of running it; is that correct?

Mr. DYER. Well, he was brought on a year ago as a consultant.

Senator BAUCUS. I know it, but as a consultant, now expert—I think we have established 20 days later he was made an expert—is he in a supervisory role of any kind?

Mr. DYER. Yes, he exercises a supervisory role. I think it was brought out earlier today that he has technical program management over the staff. There are three staff—myself and two others.

Senator BAUCUS. Is Mitre Corp. performing a key role in the U.S. ocean disposal policy?

Mr. DYER. To be quite honest with you, I haven't been involved over the last year at all in international activities. I have not been consulted or advised directly on these sorts of activities, so I really am not in the best position to answer that question.

Senator BAUCUS. Do you know whether Mitre has in any way changed the course of EPA ocean disposal policy?

Mr. DYER. I don't have any direct knowledge of whether that course has been changed.

Senator BAUCUS. How about indirect knowledge?

Mr. DYER. Well, I have been handed a review by the Department of State of a Mitre contract report on international issues—I don't have the title in front of me—which seems to raise a number of substantive questions about the direction of U.S. policy. Whether EPA policy is changed or not I can't answer that.

Senator BAUCUS. That report is pretty critical of Mitre's handling of ocean waste disposal?

Mr. DYER. Well, I read it at my lunch hour, and it appears to be quite critical, yes.

Senator BAUCUS. What is the controversy between the State Department's view and the Mitre handling? You said you read it over your lunch hour. What struck you when you read that as to major differences?

Mr. DYER. The one thing that seems to come to mind here is their concern that we are not drawing upon both the international information base and policy progress made to date, and it appears that we are forging new policies not built upon earlier development. That would be a very brief summation.

Senator BAUCUS. Are the new policies that Mitre seems to be pursuing considered by the State Department to be more environmentally dangerous or hazardous, less sensitive to the environment?

Mr. DYER. Again, I am at a bit of a loss; it was a very quick review. But it would seem that their concern is that Mitre is not as sensitive to EPA's environmental concerns as previously evinced by the agency.

Senator BAUCUS. I am going to include a copy of that memorandum in the record at this point.

[The memorandum referred to above appears in the appendix.]

Senator BAUCUS. Is Mitre the only company, in your judgment, that could have performed this contract?

Mr. DYER. I have to stress again that I haven't seen the contract.

Senator BAUCUS. Based upon your experience and based upon your familiarity?

Mr. DYER. I would like to be able to answer that.

Senator BAUCUS. You can qualify, I understand, but based upon your present knowledge and information, could anyone else have performed this contract?

Mr. DYER. Without having seen the sole source requirements or the contract requirements themselves, it would be vary hard for me to answer that.

Senator BAUCUS. Are there any other sources that could perform ocean disposal work ?

Mr. DYER. Oh, certainly there are, ocean disposal work in general; if we are talking about technical programs, yes.

Senator BAUCUS. What would some of those be?

Mr. DYER. Well, could I ask you to qualify what areas of ocean disposal?

Senator BAUCUS. The same work that Mitre is undertaking.

Mr. DYER. I would have to ask you to tell me what work Mitre has undertaken. Are we talking about policy development or technical programs?

Senator BAUCUS. Policy development.

Mr. DYER. In ocean policy development, there is a considerable number of institutional experts, such as oceanographic institutions, or the University of Rhode Island or the Ocean Law Group at the University of Virginia, to name a few. In fact, even in California there are many of what we would call think-tanks on ocean policy who could do work in this area.

Senator BAUCUS. What about Cal Tech?

Mr. DYER. Again, we would be looking most to those oceanographic institutions with proven research capabilities.

Senator BAUCUS. Are there others?

Mr. DYER. Than Mitre?

Senator BAUCUS. Yes.

Mr. DYER. Oh, yes; there would be many others.

Senator BAUCUS. Mr. Niewiadomski, I have a letter written by you discussing many contracts of EPA. Could you explain how this letter came about?

Mr. NIEWIADOMSKI. Yes, Mr. Chairman. The letter in question was written in response to a request from EPA to review a number of EPA projects.

Senator BAUCUS. Could you just very roughly summarize the contents of the letter?

Mr. NIEWIADOMSKI. Like with any review, the intent is to provide some constructive comments and identify any areas where there may be some duplication or there might be some weaknesses in the proposal. We are not trying to be critical of all EPA's contracts, because we are not involved in it.

Senator BAUCUS. How did you develop this information contained in the letter?

Mr. NIEWIADOMSKI. I was one of the reviewers, and I also solicited reviews from other researchers in the Bureau of Mines and outside the Bureau.

Senator BAUCUS. Did your superiors agree with the content of your letter?

Mr. NIEWIADOMSKI. Yes, they did.

Senator BAUCUS. Your letter discusses phase I of a contract to Harvard University on the study of the effects of indoor circulations systems on radon decay product concentration. You stated this contract is like putting the cart before the horse. Why?

Mr. NIEWIADOMSKI. Well, phase I, in my professional opinion, should describe the problem to be addressed rather than trying to find out what the problems are. In view of the fact that this effort was a sole source contract, the proposer should know exactly what the problems are and propose technologies or ways of trying to solve the problem.

Senator BAUCUS. You also noted that phase II of this contract appears duplicative of Bureau of Mines work in this area.

Mr. NIEWIADOMSKI. Based on the information which we had available to us—that is, the documents which we had provided to us—some of the work on air cleaning as well as attachment appeared to be duplicating some of the work which the Bureau has been doing in-house as well as on contract. Moreover, some of this work has been done by DOE.

Senator BAUCUS. Is there some way for EPA to utilize that information?

Mr. NIEWIADOMSKI. One of my conclusions is we need to find some sort of way to coordinate some of these activities. Even though we are not directly involved in what EPA is doing, our primary objective is to protect the health and safety of miners. Some of the things we have done in the past, some of the technology we have developed can be transferred.

Senator BAUCUS. So this might be a case of the right hand not knowing what the left hand is doing. Would EPA in the ordinary course be aware of your work?

Mr. NIEWIADOMSKI. Well, let me just say one thing. There is an interagency agreement with EPA. It primarily deals with the area of mining, and we have been cooperating with EPA. We have had informal meetings not only with EPA, but with DOE, with NRC, with NIOSH, discussing what work they were doing in the area of mining. We could do the same in the environmental monitoring area.

Senator BAUCUS. Did EPA know before this contract was entered into about this interagency agreement?

Mr. NIEWIADOMSKI. I am not really sure. I don't know.

Senator BAUCUS. With respect to the contract to Cal Tech for the study of field monitoring techniques for radon, does Cal Tech have expertise to perform this work?

Mr. NIEWIADOMSKI. Well, the principal investigator appears to be a competent scientist in some areas of physics which are not related to development of monitoring techniques for radon and radon data isotopes in dwellings. Again, that is based on the information we had available to review, and the bibliography which they provided.

Senator BAUCUS. Do you think Cal Tech could be the only source to perform this contract?

Mr. NIEWIADOMSKI. No, they are not. There are other sources.

Senator BAUCUS. That is pretty clear in your mind?

Mr. NIEWIADOMSKI. Yes, sir.

Senator BAUCUS. I have a couple other questions, but the bells are ringing again. I will recess the hearing for another 15 minutes, and that will conclude this panel because there are just two or three other questions, frankly, and I will submit those to the appropriate people and you can answer in writing for the record so you don't have to wait around for the next 15 minutes.

The hearing is therefore recessed 15 or 20 minutes.

[Brief recess.]

Senator BAUCUS. The hearing will come to order.

The next witness will be Dr. Rosenbaum, who is the Deputy Assistant Administrator for the Office of Radiation Programs.

Dr. Rosenbaum, do you swear to tell the truth, the whole truth and nothing but the truth?

Dr. ROSENBAUM. I do.

PANEL OF EPA OFFICIALS:

STATEMENTS OF DAVID ROSENBAUM, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF RADIATION PROGRAMS, ACCOMPANIED BY MARY DOYLE, OFFICE OF GENERAL COUNSEL, AND EDWARD HANLEY, DEPUTY ASSISTANT ADMINISTRATOR, OFFICE OF MANAGEMENT AND AGENCY SERVICE

Senator BAUCUS. Dr. Rosenbaum, we are going to have to proceed at this point in only about 15 or 20 minutes' time. There is a major vote coming up at that time, followed by another vote, and who knows how many after that. So if we can just keep it very brief, immediately to the point, avoid extended answers, I think we can get through, but in the event I get the feeling we can't cover this material in 20 minutes, we are going to have to have another hearing.

Dr. ROSENBAUM. May I just say one thing first?

Senator BAUCUS. Sure.

Dr. ROSENBAUM. I am really delighted to have this opportunity. No one has ever talked to me; no member of your staff ever interviewed me; and the Inspector General, they have never talked to me yet; and I, at no time, have ever had a chance to say anything about these matters. So I am really glad to be here, and I was hoping to have more of an opportunity to explain things.

Senator BAUCUS. OK, before we dispose of those preliminaries, you will have an opportunity to do so. That is the whole point of this, to give you an opportunity to say what you want.

Just briefly, when did you take charge of ORP?

Dr. ROSENBAUM. It was in June 1979, Senator. I think that is right.

Senator BAUCUS. Were there any staffing problems when you arrived, that is, inadequate number or caliber of people?

Dr. ROSENBAUM. There were a great many problems in both resources and in caliber of people.

Senator BAUCUS. How did you plan to deal with those problems?

Dr. ROSENBAUM. Well, I was a little overwhelmed in the beginning. It was not only I who perceived problems, it was my superiors who perceived problems, and that is why I was aked to come on board. The immediate problem I was asked to deal with was we had a number of regulations and standards which were very, very far behind schedule. These were standards either imposed by law—by Congress—or were imposed by the President. And if I may give you an example—and I don't mean to put this too much on the staff because they had too much to do on it—but an example is the Uranium Mill Tailings and Radiation Control Act, and some of that activity has come up here, called for us to promulgate final standards for inactive mills on November 8, 1980—no, 1979, I am sorry, and to promulgate final standards for active mills on May 8, 1980. As of now, we have not finished proposing even in the Federal Register the standards for inactive sites, and we will certainly not be able to promulgate them probably for another year. Even though we have done everything to expedite, we are only just beginning work, major work, on the standards that we were supposed to have promulgated last May. To cut my answer short, there are lots of other examples of this, and I would be pleased to go through them.

Senator BAUCUS. Sure. You also brought on a lot of consultants, true?

Dr. ROSENBAUM. Yes; I brought—I gave free rein—let me just say the number of consultants are part of a group allocation called "other than permanent full-time equivalent"—experts, consultants, all those people. The number of such man-hours, the number of such people I can bring in is allocated to me by the process, as in the number of permanent full-time equivalents, and the number of contract dollars is all that is given to me as a manager.

Senator BAUCUS. Did you request more personnel?

Dr. ROSENBAUM. I have not requested—the way the budgetary process works in EPA, I have not had a chance to request more personnel until recently, and I don't think we have very much chance actually——

Senator BAUCUS. When did you make that request?

Dr. ROSENBAUM. Well, you don't actually request personnel in the ZBB, what you do is request projects for priority which are of personnel and dollars.

Senator BAUCUS. When did you make that request?

Dr. ROSENBAUM. It is only in the last budget cycle, which was only a couple of months ago, because I came——

Senator BAUCUS. I am sorry, when did you come in?

Dr. ROSENBAUM. I came in June 1979, and the budget cycle for 1981 was essentially complete at the level of ORP then, and the budget cycle for 1980, which we are in now, the end of fiscal 1980, had long since been done. I had no control over that. It is only with the budget cycle for fiscal 1982 I have been able to play an active role.

Senator BAUCUS. Isn't there some emergency procedure where you can go to your superiors at OMB and get a hearing reprieve.

Dr. ROSENBAUM. Well, I have tried to work through the process of agencies, Senator. Everybody has urgent needs.

Senator BAUCUS. I know, but it sounds as if you have a greater proportionate number of consultants and experts than some other departments or sections. Your needs might be more urgent.

Dr. ROSENBAUM. Let me say something about that if I may. I think it will make it clearer.

Senator BAUCUS. Sure.

Dr. ROSENBAUM. I have a list, which I will be happy to provide for the committee, and about half of the 49 consultants and experts—let me call them, for simplicity, consultants at the moment—that we have, have charged no time in the last fiscal year. This only goes up to September 17. They have charged zero hours to the Government. Most of the rest of them have charged very few hours. So that the number—now, you might ask why do we have all these consultants if they are not charging hours? The reason is because these people are very great experts in particular areas—technical areas—and it takes quite a while to process somebody as a consultant; therefore, if we need somebody who is an expert in pathology, like Dr. Benjamin Castleman who is listed—now recently I think he is going to charge 3 hours for review——

Senator BAUCUS. Is it true you must have a specific purpose in mind when you hire consultants?

Dr. ROSENBAUM. Yes, as far as I know. I am not an expert in procurement regulations.

Senator BAUCUS. But you are responsible for hiring, aren't you?

Dr. ROSENBAUM. I don't do the hiring, I recommend to the personnel people who make the decision as to whether they are qualified as consultants.

Senator BAUCUS. When you make recommendations to hire someone, does the personnel office ever turn you down?

Dr. ROSENBAUM. Yes, they have.

Senator BAUCUS. How often?

Dr. ROSENBAUM. I don't have a good answer. I never thought to keep a percentage.

Senator BAUCUS. Five percent? 100 percent?

Dr. ROSENBAUM. Certainly not 100 percent. A reasonable number of times they have turned me down.

Senator BAUCUS. Reasonable means different things to different people.

Dr. ROSENBAUM. I don't mean to mislead. I am afraid I am under oath and I don't want to say a number I am not sure of. I don't have any such statistics in front of me, and I never kept a list of how many times I have been turned down, but certainly there have been instances.

Senator BAUCUS. Why did you bring these consultants on board with you?

Dr. ROSENBAUM. Well, I hired them over a period of time, each one for a specific reason. And I would be glad to either give you some examples or if you would like you could ask about any one.

Senator BAUCUS. If you hired them for a specific reason, why are so many doing so little work?

Dr. ROSENBAUM. May I give you an example?

Senator BAUCUS. Sure.

Dr. ROSENBAUM. I just happened to mention this one before. Dr. Benjamin Castleman is professor emeritus of pathology at Harvard Medical School, was at one time director of Massachusetts General Hospital; he was editor of the New England Journal of Medicine, which is probably the most distinguished medical journal in the country; and he has agreed to be on call for us to do things when we need a pathologist as an expert, and we do sometimes, and we just have needed one in the last week. His specific task is to review——

Senator BAUCUS. My understanding, though, is that the consultants are hired not for a specific purpose, but more for a specific project, rather than the purpose of just being available. One could say that is the purpose—it is a pretty broad purpose. My understanding is it has to be more specific than that; it has to be a specific project. Is that right or am I incorrect?

Dr. ROSENBAUM. Would it be all right if Mr. Hanley answers that? I can't tell you the rule.

Senator BAUCUS. Mr. Hanley—let's swear you in. Do you promise to tell the truth?

Mr. HANLEY. I do.

Senator BAUCUS. Good. Go ahead.

Mr. HANLEY. My understanding of the regulation is that if a program were to specify that they needed a particular expert to perform

a task such as Dr. Rosenbaum described, to review from time to time the following kinds of materials as a part of a process, and made it understood that this would not be a continuing task and it didn't have a start and finish of, say, 6 months of continuous work, but rather that these things were coming up, it was known they were coming up, they might require a day's work, 3 days' work, and that is the task definition that is an acceptable task definition for appointment of a consultant.

Senator BAUCUS. Dr. Rosenbaum. Did you feel you needed these consultants because you didn't have enough staff personnel?

Dr. ROSENBAUM. It isn't so much enough, Senator. It is not possible, in general, at least at the level we are able to hire people, to hire people of the eminence of, say, Dr. Castleman. There is no way Dr. Castleman is going to take a job in the Government, or anyone of his level, and, frankly, most of these people are not all that eager to be Government consultants at all, and I have had many experts simply refuse to do so, some of whom we greatly need their help.

My intent, Senator, was to get the very best minds working on the problems that we had.

Senator BAUCUS. Are you aware that hiring consultants to circumvent personnel ceilings violates EPA regulations and the President's directive?

Dr. ROSENBAUM. Yes. I didn't mean to hire to circumvent.

Senator BAUCUS. Turning to Mitre Corp., did you, personally, recommend that a sole source contract be given to Mitre Corp. for the ocean disposal program?

Dr. ROSENBAUM. Yes. Can I just explain a little bit?

Senator BAUCUS. Sure.

Dr. ROSENBAUM. EPA has more than a million dollars a year of contracts with Mitre, has had for some years—I don't know the exact number. So this is a small part of EPA's contracting with Mitre. Mitre does, I believe, about $130 million a year with the Government. All of it is sole source because, as far as I know, their master contract with the Air Force doesn't allow them to bid on contracts. Mitre is a federally funded research and development center. It was created by the Government; it is chartered by the Government, and they are not allowed to bid on contracts. So all the 100—I am just quessing at $130 million, but that's not very far off—all of that is sole source, as is all of the EPA work, and because it is a federally funded research and development center, there is an extra review at EPA that ordinary contracts don't go through which this contract did.

Senator BAUCUS. Could you please for the record submit the document that requires all Mitre contracts to be sole source?

Dr. ROSENBAUM. I will try to get it for you.

Senator BAUCUS. I would appreciate seeing that.

Did you work for Mitre prior to coming to EPA?

Dr. ROSENBAUM. Yes, sir. Not directly prior, but I did work for Mitre.

Senator BAUCUS. Could you explain in what capacity?

Dr. ROSENBAUM. Well, I have actually worked—to make it even worse than it sounds, I have worked for Mitre three times, I will volunteer. I worked for Mitre when I was a graduate student part time. I

am just giving these dates approximately; if you want the exact ones, I could supply it for the record. I worked for Mitre from I believe 1974 to 1976.

Senator BAUCUS. Did you discuss this contract with Dr. MacDonald at Mitre prior to contacting your own staff at ORP procurement?

Dr. ROSENBAUM. Prior to the procurement offer, I believe I did. But I did not originally discuss—maybe I should explain. When I came into the office, one of the big problems there that was perceived by me and my superiors was the oceans program problems. We had, for example, some 50 outstanding contracts, none of which had ever been finished, some of which had been running for many years, and some of which—many of which involved things like the Farallon Islands which is such an important issue now on the West Coast. That was an example of the kind of management problems we had on the ocean. We also had somewhat a—Dr. MacDonald when I first talked to him was not at Mitre; he was a professor of environmental science at Dartmouth.

Senator BAUCUS. Did you, personally, recommend a sole source contract to Scientists Institute for Public Information before hearings on uranium mill tailings?

Dr. ROSENBAUM. Yes. Originally, I believe—Senator, I think they have two—again to make it sound worse—they have two sole source contracts. One is for occupational guidance hearings—these are support hearings, support contract—and one is for the uranium mill tailings hearings. Yes, I did recommend that—I don't know, I am sure I recommended it. I don't recall telling anybody myself to copy the statement of—I don't think I did that, but I did recommend that they do that, yes, sir.

Senator BAUCUS. Are you aware that the original work prepared for this project by your own staff recommended competitive bidding?

Dr. ROSENBAUM. No, that is not true, Senator. The original work—the original time we put them on—can I explain the situation, please?

Senator BAUCUS. Sure. Well, you heard the testimony of Mr. Hendricks, didn't you?

Dr. ROSENBAUM. Yes, that was the uranium mill tailings thing. I don't know that I ever saw that list of his myself. I don't recall having seen it, though he said it came up to mysef, and it was a long time ago and I don't remember. But I would be perfectly willing to explain why I recommended SIPI.

Senator BAUCUS. All right.

Dr. ROSENBAUM. It is very difficult to know—we had hearings on the occupational guidance schedule jointly with NRC. We had come to an interagency agreement—and OSHA—for some time. They were way behind schedule and NRC was so upset about it they were ready to have hearings on their own without us even though under the way the system works any regulations they make are supposed to be made within the purview of guidance we send to the President, if he signs it.

The two chairman of the Nuclear Regulatory Commission, because there were two chairmen in that period, both spoke to me personally about hurrying up. At the time we gave SIPI the contract originally, it seemed like we were going to have the hearings in June. I put a very great stress in involving the public in a substantive way. We planned to have hearings not only around the country, but on evenings

and weekends when ordinary people can come. The lobbyists and people who represent organizations have no problem coming to see us in Washington and make their views know, and because of that we needed someone to go about selecting proper sites and setting them up immediately. As it turned out, those occupational things in the process above me at EPA were held up, which I had no way to know. I had to go on the basis things weren't going to be held up.

Senator BAUCUS. Are you familiar with the contract to Cal Tech to study indoor radon?

Dr. ROSENBAUM. Yes.

Senator BAUCUS. Did you, personally, contact Dr. Thomas Tombrello of Cal Tech before you began the contract process?

Dr. ROSENBAUM. I contacted Dr. Tombrello to ask if he would be a consultant because of his expertise in radon measurement. After he apparently has been—I am not sure of the date, but I think before he was actually certified as a consultant—I am pretty sure it was before—I had some technical discussions with him about the measurement of radon, which is a very serious problem because of the enormous health effects. I guess I would have to say as part of our discussions I found out that he had been doing—at least he told me he had been doing work for the Geological Survey in measuring very small changes in partial pressure of radon in wells before earthquakes. And I already had his qualifications, of course, because he had submitted his papers to be a consultant, and I did speak to him about—I had a long discussion with him about the problems we had with understanding what your instruments are reading.

For example, we are going to monitor probably—I am guessing, but probably there haven't been more than 15 homes in the United States which have been monitored for a full year for radon decay product concentration and what the health effect is. I would like to mention the estimate of my bio-effects branch, which has been confirmed by the carcinogen assessment branch, which doesn't work for me, is that 10,000 to 20,000 deaths a year are caused by indoor radon.

Senator BAUCUS. Excuse me, what is that figure again?

Dr. ROSENBAUM. 10,000 to 20,000 deaths a year.

Senator BAUCUS. Caused by indoor radon?

Dr. ROSENBAUM. Yes, sir.

Senator BAUCUS. Whose study is that?

Dr. ROSENBAUM. That is a determination that was made by our bio-effects branch, and it was independently made by the carcinogen assessment group, and the Department of Energy laboratories that have studied this have said they don't have any substantial disagreement with that.

Senator BAUCUS. Would you provide a copy of that for the record?

[The document referred to above appears in the appendix.]

Dr. ROSENBAUM. Yes, I would be glad to.

Senator BAUCUS. Why, then, do you disagree with the scientist who testified earlier that, in his judgment, there is no urgency, at least in the realm of 3 or 4 months, with respect to indoor radon?

Dr. ROSENBAUM. I would be glad to say why. Mr. Johnson works for me, and he is free—we have different technical judgments. This isn't really a technical judgment, it is a human judgment.

Senator BAUCUS. It is a what judgment?

Dr. ROSENBAUM. It is a human judgment. If there are 10–20,000 deaths a year now, and if sealing up the houses the way the Government is urging will cause 10,000——

Senator BAUCUS. I am astounded you say there are 10–20,000 deaths a year caused by indoor radon.

Dr. ROSENBAUM. Every year, and it is particularly acute in Montana, Senator. [Laughter.]

Senator BAUCUS. I am not aware of anyone in Montana dying because of indoor radon.

Dr. ROSENBAUM. Well, the cause of death is lung cancer.

Senator BAUCUS. Well, now what kind of lung cancer? There are all kinds of lung cancer.

Dr. ROSENBAUM. I am not a pathologist and I can't say what kind of lung cancer.

Senator BAUCUS. Smoking, that's one.

Dr. ROSENBAUM. No, that is the cause. I don't know what kind of lung cancer it is.

Senator BAUCUS. Well, how many of those indoor radon deaths are smokers?

Dr. ROSENBAUM. I don't know. All that was factored. I didn't make the technical judgment, Senator.

Senator BAUCUS. Do you stand by it though, that 20,000 deaths a year are due to radon?

Dr. ROSENBAUM. Yes, 10–20,000 deaths are caused, and EPA stands by it, and we have communicated to the Department——

Senator BAUCUS. Is that an EPA official policy?

Dr. ROSENBAUM. It is EPA's official technical judgment. I don't know if it is policy.

Senator BAUCUS. Will EPA make a press release tomorrow that says 20,000 deaths are caused by indoor radon every year?

Dr. ROSENBAUM. We have made—the bad thing is it may double.

Senator BAUCUS. Excuse me?

Dr. ROSENBAUM. The really serious thing is it may double with the sealing up of houses, and that was part of my concern.

Senator BAUCUS. A very high official at EPA told me 3 or 4 days ago it has nothing to do with indoor radon—that is the problem we have been discussing in the last several months with respect to indoor radon—rather, it is radon and water. It is nothing to do with building materials. This is a very, very top official at EPA that mentioned this to me within the week. So you have got a problem. Someone at EPA is saying one thing and you are saying something else.

Dr. ROSENBAUM. Senator, what I am saying is the judgment of the two independent and biological assessments that were done in EPA—I didn't make either one of them——

Senator BAUCUS. But you stand by it.

Dr. ROSENBAUM. Yes, sir, and Mr. Hawkins, my superior, has written to the Department of Energy and said this in two letters that I am aware of. So it is not only——

Senator BAUCUS. Let me restate. This person said that radon problems are not due to building materials or construction materials at all. According to EPA's analysis, the problem is due to radon in water. It has nothing to do with building materials.

Dr. ROSENBAUM. Well, the radon in people's homes can come from many different things.

Senator BAUCUS. From water.

Dr. ROSENBAUM. It can come from water, but that is a minor part of it. The radon—I was going to say something about the Cal Tech contract—but the radon problem in Montana is a very, very great concern to the State Health Department, and we have five contracts going now, two of them going or in the process of being put together, two of them with the State Health Department in Montana, and for quite large amounts——

Senator BAUCUS. Are you looking at water?

Dr. ROSENBAUM. No; the water is not the problem there, Senator.

Senator BAUCUS. I am told, just for your information so you are aware of this, that it is water due to the underground mine in Butte, Mont. It has nothing to do with building materials.

Dr. ROSENBAUM. I didn't say it was due to building material.

Senator BAUCUS. You said it is indoor.

Dr. ROSENBAUM. Indoor, but I didn't say the cause is building material.

Senator BAUCUS. Well, outdoors in Butte, Mont.——

Dr. ROSENBAUM. Well, radon is gas. It comes naturally from the decay of radium, which is an element. The reasons it is much more intense inside than outside is because it is trapped in the buildings; it is gas. In the outside it disperses to very high levels. In Butte, because of the inversions they get in winter, it can be very critical.

Senator BAUCUS. Did you order your staff to sole source the contract to Cal Tech?

Dr. ROSENBAUM. First of all, I don't sole source things; we only submit them to the contract people.

Senator BAUCUS. You asked somebody to do it?

Dr. ROSENBAUM. I certainly asked, because of the time, I certainly asked that we give—that was one part of the whole radon plan, which I would be glad to discuss, and a vital one. You asked me about Mr. Johnson, and let me get to that particular point. Say it is 3 to 4 months, though my experience is more like 6 months—let's say 3 months—3 months, Senator, is roughly 2,500 to 5,000 extra people who will die in the country. So that 3 months, when you are talking about 10,000 to 20,000 people—or that is the low, if we close up the houses, 20,000 to 40,000 people a year—3 months is a lot of dead people. Yes, I was concerned about the time. And I think the problem has been known by scientists for a long time; it has not been acted on by policymakers for a long time, and I would be glad to go into why.

Senator BAUCUS. It is your personal judgment that 20,000 people in America have died in the last year due to indoor radon radiation?

Dr. ROSENBAUM. I could double in the future if they seal up houses.

Senator BAUCUS. Your personal judgment is 10,000 to 20,000 people?

Dr. ROSENBAUM. Yes.

Senator BAUCUS. Radon is the primary cause of those 10,000 to 20,000 deaths.

Dr. ROSENBAUM. Yes. And that is not only my judgment, but is the judgment of the two groups at EPA who independently made such assessment, and the same way we make them they are made in other countries around the world.

Senator BAUCUS. Do a significant number of scientists disagree with that assessment?

Dr. ROSENBAUM. I don't have any count. I would say——

Senator BAUCUS. Do they?

Dr. ROSENBAUM. Oh, certainly. I would say—I am sure there are.

Senator BAUCUS. We heard one today who disagrees.

Dr. ROSENBAUM. No, I don't think Mr. Johnson said he disagreed.

Senator BAUCUS. He said it wasn't urgent. If he felt there were several thousand that die each year, he would——

Dr. ROSENBAUM. He is probably still in the room, you could ask him.

Senator BAUCUS. Is he?

Dr. Johnson, would you mind coming back up here and let's find out, if we can, about this. This is obviously relevant. If 10,000 to 20,000 people are dying a year due to indoor radon radiation, I would think that would be urgent. In your professional judgment, do you think 10,00 to 20,000 people are dying a year?

Mr. JOHNSON. I cannot vouch for that number. I would accept it as reasonable. I would also like it be known this is natural radiation.

Senator BAUCUS. What is natural?

Rr. ROSENBAUM. They are still dying.

Senator BAUCUS. What is natural radiation?

Mr. JOHNSON. It is a natural part of our environment that we have always been subjected to. What I would like to add for the record, in light of the significance of this problem, that you should inquire how much overall emphasis our office has placed upon this problem.

Senator BAUCUS. How much?

Dr. ROSENBAUM. Would you like me to answer?

Senator BAUCUS. In about 1 minute.

Dr. ROSENBAUM. I reprogramed out of our contract budget $2 million this year because no one in the Government at the time I had to make the decision that I knew of was concentrating on this problem in a major way, and I would be glad to go into the details of that.

Senator BAUCUS. How much attention has been given, in your judgment, Mr. Johnson?

Mr. JOHNSON. I would look at the number of staff people assigned to this area and, in my awareness, we have one, possibly two and part of a third person's time devoted to this problem out of the overall staff of ORP. I believe it should be much greater than that.

Dr. ROSENBAUM. So do I, Senator, believe it should be. We simply didn't have the wherewithal to take standards people. We are 30 people understaffed right now from our own budget allocation. If I were given some of those 30, I would certainly put them on that problem.

Senator BAUCUS. I heard there are 78 people.

Dr. ROSENBAUM. He was talking about people at a certain bracket. We have 173 full-time permanent equivalents this year, and we have 29 other than permanent full-time equivalents, of which, in spite of all the talk, we have used only half.

Senator BAUCUS. What was the point of this Cal Tech radon study if radon is a natural phenomenon? Was it the potential to look at sources of radon. How was it pinpointed?

Dr. ROSENBAUM. I drew up a whole program to attack the problem. It is true that radon is a natural product. It is also true people are

dying and something can be done to stop it. If someone is dying from lung cancer, it really doesn't matter whether they are dying from natural radon.

Senator BAUCUS. We have about 30 seconds.

Dr. ROSENBAUM. In terms of the measurement programs, such as what we are going to do in Butte, Mont., in a massive way, we ordinarily—the question is how do you know what your instruments are reading. Ordinarily through a series of steps they are related back to absolute standards developed by the National Bureau of Standards and you see if you get the same result as the National Bureau of Standards. In this case, the National Bureau of Standards has never developed the standards for radon radiation decay.

Senator BAUCUS. Dr. Tombrello told members of this subcommittee there were other sources who could perform the contract. Why were you so sure Cal Tech was the only one that could perform the contract?

Dr. ROSENBAUM. I wasn't so sure they were the only contractor that could do the work. I did think we had an enormous batch of health——

Senator BAUCUS. Could other contractors have performed just as quickly?

Dr. ROSENBAUM. I didn't think other contractors would perform as well.

Senator BAUCUS. Or as quickly?

Dr. ROSENBAUM. Or as quickly.

Senator BAUCUS. Despite what Dr. Tombrello said that others could?

Dr. ROSENBAUM. I think others could, but not as well. I think it is trying to be honest and saying other people could do it.

Senator BAUCUS. I have several other questions, and I apologize for not being able to have you answer more fully due to time constraints. Either we come back——

Dr. ROSENBAUM. I have had an awful lot of allegations made about this program. I would welcome a chance to explain. No one has ever asked me and I have never had a chance to answer these allegations. I would welcome for the record, under oath, a chance to answer any questions you would care to give me.

Senator BAUCUS. Let's do that. I will recess the hearing now and resume the hearing next Thursday, how would that be?

Dr. ROSENBAUM. Fine. What time?

Senator BAUCUS. We will set the time and let you know.

[Whereupon, at 4:12 p.m., the subcommittee recessed, to reconvene subject to call of the Chair.]

73-462 O - 81 - 7

FEDERAL USE OF CONTRACTORS AND CONSULTANTS

TUESDAY, OCTOBER 7, 1980

U.S. SENATE,
SUBCOMMITTEE ON LIMITATIONS OF
CONTRACTED AND DELEGATED AUTHORITY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met pursuant to notice, at 9:30 a.m., in room 2228 Dirksen Senate Office Building, Senator Max Baucus (chairman of the subcommittee) presiding.

Senator BAUCUS. This morning we will resume the portion of the hearing on the Environmental Protection Agency and continue questioning Dr. Rosenbaum. Following questions on the EPA, we will then turn to questions regarding the Federal Communications Commission, particularly the contract with SCS the FCC is entering into, looking forward to office space in Arlington, across the river, and, second, a sole-source contract, which is designed for FCC office space in Arlington and third, we will turn to Mr. O'Malley, who is editor of the Commerce Business Daily to look into some of the practices that agencies enter into listing or not listing various contracts with that periodical.

We will begin first with Dr. Rosenbaum.

Will you please stand?

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

Mr. ROSENBAUM. I do.

STATEMENT OF DAVID ROSENBAUM, DEPUTY ASSISTANT ADMINISTRATOR FOR RADIATION PROGRAMS, EPA, ACCOMPANIED BY MARY DOYLE, ASSOCIATE GENERAL COUNSEL, AND EDWARD HANLEY, DEPUTY ASSISTANT ADMINISTRATOR FOR MANAGEMENT SERVICES

Senator BAUCUS. Would you please identify the other two witnesses?

Ms. DOYLE. Mr. Chairman, I am Mary Doyle, Associate General Counsel of the EPA.

Mr. HANLEY. I am Edward Hanley, the Deputy Assistant Administrator for Management Services.

Senator BAUCUS. Are either of you going to testify for this portion of the hearing?

Mr. ROSENBAUM. They are here because they might be better able than I to answer questions about legal and administrative matters.

Senator BAUCUS. For the record, our first witness is Dr. David Rosenbaum, Deputy Assistant Administrator for Radiation Programs at the Environmental Protection Agency.

On September 25, this subcommittee heard testimony from the EPA Inspector General, and contracting officials and scientific experts. The Inspector General testified that her still incomplete investigation has uncovered troublesome contracting and consultant practices at ORP.

She testified that apparent conflicts of interest occurred involving several contracts. Contract officials testified that Dr. Rosenbaum circumvented EPA and Federal procurement procedures.

The panel of environmental scientists testified that many sole-source contracts were not justifiable, were duplicative and had already been performed. So today Dr. Rosenbaum will address several subcommittee concerns, including proliferation of sole-source contracts, violation of EPA procurement regulations, possible conflicts of interest involving contractors and any other matter that Dr. Rosenbaum might want to address.

Dr. Rosenbaum, the Federal policy regarding procurement is that we have competitive contracts wherever possible. Do you agree with that policy?

Mr. ROSENBAUM. Yes, sir. I am not a procurement officer, but I think that that is not exactly the wording of the Federal policies.

Senator BAUCUS. That is the tone and thrust of it? That is the general intent?

Mr. ROSENBAUM. That is right. I think "whenever practicable" is the actual wording in the Federal policy.

Senator BAUCUS. But the policy is to, whenever practical, to compete, advertise first, and where you cannot. for various reasons, then sole-source?

Mr. ROSENBAUM. I am very sympathetic to the idea of competing as much as possible. I have been on the other side of the issue in my life. I have run my own business and I understand the reasons for that policy. There are problems with any procedure, but I can't think of a better overall structure.

Senator BAUCUS. Why do you think competing as a general rule is good policy?

Mr. ROSENBAUM. I think it is good policy because it gives many firms a chance at business that they might not otherwise know about or have entrance to, though I think that the appearance of the chance is often more than the reality of the chance. I mean that the actual procedure is often set up in such a way that, even when rigorously followed, the competition is not as equal as it might seem.

Senator BAUCUS. Mr. Mathis, head of EPA's Contract Division, testified that about 79 percent of all EPA procurements for fiscal 1979 were competitive. Do you agree that figure appears to be generally in line with the policy to first try to compete and advertise rather than sole-source?

Mr. ROSENBAUM. I don't think that that number is a policy. Each contract has to be judged on its own merit. I am perfectly willing to accept the figure.

May I explain why our program has a higher percentage of noncompetitive contracts than the EPA average?

Senator BAUCUS. Why your program what?

Mr. ROSENBAUM. Why we have larger percentage?

Senator BAUCUS. OK, very briefly. We will get into that a little later.

Mr. ROSENBAUM. Then I will wait. That is fine.

Senator BAUCUS. Mr. Smith, the contracting officer for ORP, testified that total procurement at ORP at this time was only 49 percent, that is, roughly 50 percent competitive. I am wondering whether ORP's procurements in your judgment are in line with the Federal policy that the contracts be competitive?

Mr. ROSENBAUM. I think the figure given last week was that 49 percent of ORP contracts were noncompetitive. I think the actual percentage is 47.

Senator BAUCUS. What about the question?

Mr. ROSENBAUM. I am sorry.

Senator BAUCUS. The question is, are ORP's procurements in line with Federal policy to compete whenever possible?

Mr. ROSENBAUM. I think they are in line with policy to compete. Numbers are not the same as EPA policy.

Senator BAUCUS. Excuse me.

Mr. ROSENBAUM. I think ORP's procurements are definitely in line with the policy.

Senator BAUCUS. Overall EPA is 80 percent competitive.

Mr. ROSENBAUM. Yes.

Senator BAUCUS. ORP is less, about 50 percent competitive.

Mr. ROSENBAUM. Yes, that is right.

Senator BAUCUS. Only half of ORP's contracts are competitive. That doesn't seem to be in line with 80 percent for overall EPA procurements.

Mr. ROSENBAUM. The number is quite different, but the number is not a policy.

Senator BAUCUS. What is the policy at ORP?

Mr. ROSENBAUM. The policy is to go competitive unless there seems to be only one possible place to go, or unless the additional time would not be reasonable to take. That is the policy.

Senator BAUCUS. The EPA Inspector General testified on September 25 that her investigators received information that you personally initiated most of the sole-source contracts proposed by ORP. The subcommittee staff, has received the same information. Much of this testimony came from Ray Brandwein of your office.

Is this testimony accurate?

Mr. ROSENBAUM. I have initiated a considerable number of sole-source contracts. I do not think I initiated most of our sole-source contracts. I must point out that the Inspector General emphasized that she had not spoken to me and that her investigation is tentative. She hasn't in any way——

Senator BAUCUS. That is right.

She says he hasn't completed it. That is based upon information to date.

Mr. ROSENBAUM. Yes.

Senator BAUCUS. Do you disagree with Mr. Brandwein's assertion that you personally initiated——

Mr. ROSENBAUM. I don't remember him saying I initiated most of them. We could go through contracts individually and talk about each

one, if you want. I don't have the list of contracts in front of me to know which ones I initiated. It is my impression that I probably didn't personally initiate most of the sole-source contracts.

Senator BAUCUS. But a good number?

Mr. ROSENBAUM. I certainly initiated a good number. Yes.

Senator BAUCUS. She also testified that she has received testimony that you discussed contracts with contractors in advance of the procurement process.

In addition, the persons received proposals for many of these contracts before the contracting office did. Is this accurate?

Mr. ROSENBAUM. There were some instances with universities and perhaps one or two other nonprofit concerns. I did discuss the work. May I say something about that?

Senator BAUCUS. Sure.

Mr. ROSENBAUM. In the first place I have been advised by the General Counsel's office that none of these things break any laws or regulations. I have a memo on this to submit for the record.

Last spring—in May, I think—I was advised three times within a very short timespan that this was contrary to an EPA policy, which is what is at issue here. The result was, as far as I can best remember, and I don't keep a log of everything I do, that I haven't done it since.

I wasn't aware of the policy. Once it was explained to me, I stopped doing it.

Senator BAUCUS. So you are stating that, yes, your actions were in violation of EPA procedures, even though you were not aware of the procedures at the time?

Mr. ROSENBAUM. They were against what EPA policy was, yes. That is right.

Senator BAUCUS. May I ask why you were not aware of EPA procedures?

Mr. ROSENBAUM. I am not a contracting officer. These things, as I understand it, are explained in the Procurement Office's Manual.

Senator BAUCUS. But you are the program Director?

Mr. ROSENBAUM. Yes, sir.

I should have been aware of it and I wasn't. I assure you it was done with the very best motives, Senator. In fact, we are encouraged by the EPA policy to go out and discuss with people our problems and to see what kind of capacity they have to help us. It is almost inevitable that, if you go out and discuss with the people your problems, they may get the idea to submit a proposal. But I haven't done any of that since the first warning.

There is a very fine line dividing what may and may not be discussed. It is somewhat different, I think, for universities or other places that simply don't, for whatever reason, bid on contracts. In that case, if you put out a competitive RFP, you just will never hear from those people.

You asked me, Senator, by the way, to get you a copy of the part of the Mitre contract which prohibits them from competing for contracts. I have that for the record.

Senator BAUCUS. You say it is EPA policy to encourage EPA personnel to discuss various subjects with contractors. Is it also EPA's policy to encourage solicitations?

Mr. ROSENBAUM. It is against EPA policy for a program official to specifically ask someone to submit a proposal.

Since that has been explained to me, I haven't done it.

Senator BAUCUS. So you agree with the prior testimony that you were warned at least twice that discussing contracts with contractors in advance of the procurement process violates Federal procurement regulations as well as EPA?

Mr. ROSENBAUM. It is not a regulation. It is an EPA policy.

Senator BAUCUS. It is not a Federal regulation?

Mr. ROSENBAUM. That is what I have been advised. You could ask Ms. Doyle.

Senator BAUCUS. Since those warnings you have discontinued that practice; is that correct?

Mr. ROSENBAUM. To the best of my recollection, Senator, I haven't done it since then.

Senator BAUCUS. Also according to previous testimony, you were warned by contract officers in late May and after that date. Do you recall discussing a grant proposal with Dr. Kleitman at MIT?

Mr. ROSENBAUM. I don't remember the exact dates.

Senator BAUCUS. Did you talk to Kleitman after the warnings? That is the question.

Mr. ROSENBAUM. Kleitman is a consultant and does a good deal of work for us.

Senator BAUCUS. Did you discuss the grant proposal with him?

Mr. ROSENBAUM. I honestly don't remember.

It is my impression that I haven't talked to people about the contracts since then.

Senator BAUCUS. According to Executive Order 11222, consultants, advisers, or other special employees must refrain from any use of his public office which is motivated by or gives the appearance of being motivated by the desire of private gain for himself or other persons, including—particularly those including his family—business and financial ties.

William Mathis, the top EPA contracting official testified on September 25 that EPA procedures require contractors to disclose if anyone performing a particular contract is an employee of EPA.

Mr. Mathis further testified that for the purpose of these procedures, consultants and experts are considered EPA employees. Do you know of any contractors who are using EPA employees to perform contracts with ORP?

Mr. ROSENBAUM. I have a memo from the General Counsel's Office. It is very short. There is no such instance in ORP——

Senator BAUCUS. There is no what instance?

Mr. ROSENBAUM. There are universities with whom there are consultants, who also have contracts. That is in no way a conflict of interest under any Federal regulation. Those consultants have not in any way participated in EPA's decisions to award the contracts, and there is no double billing involved at all. This is completely in accord with Federal law, regulations, and policy, as far as I know.

Senator BAUCUS. Mathis testified that EPA procedures require the contractors to disclose if any contract is being performed by employees of EPA.

Mr. ROSENBAUM. Yes.

Senator BAUCUS. Was that done in this case?

Mr. ROSENBAUM. The list of consultants is known, is a public list. I don't understand the import of the question. I really don't understand this line of questioning.

Are you asking whether some regulation was violated?

Senator BAUCUS. The question is whether the contractor disclosed the information that there are EPA employees working on these same contracts. That is the question.

Was that disclosed?

Mr. ROSENBAUM. I don't have the contract material in front of me. The list of consultants is a public list. I would be happy to submit a memo for the record which has been given to me by General Counsel's Office explaining the conflict of interest procedures. They haven't been violated in any of these cases at all.

Senator BAUCUS. The problem is, though, that in previous testimony the contracting officials testified that had they known of this duality, they would not have approved the contracts.

Mr. ROSENBAUM. Sir, I don't remember such testimony, but I don't believe that is true.

There is no conflict of interest in any situation. There is no double billing. I think what they have said is they would have sought review by the General Counsel's Office. I believe that is what they said.

Senator BAUCUS. Excuse me.

Mr. ROSENBAUM. I believe what they said is they would have sought review by the General Counsel's Office.

In general they did know in fact and in fact we have such a review by the General Counsel's Office. We would be more than happy to submit it for the record.

The import of that review is that no laws, regulations, or policies were violated.

Senator BAUCUS. Have you ever advised the Contracts Office of any possible conflicts regarding experts and consultants paid by EPA?

Mr. ROSENBAUM. Let me say two things: One, I don't think there were any possible conflicts; two, I have been completely open with the Contracts Office at all times, which is how in fact they knew that I was talking to various people and how the original conversation came up about that. I have told the contracting officers everything all the time. I am sure they would be happy to testify to that.

Senator BAUCUS. Mr. Mathis' testimony is a little unclear, frankly, on this point. He did say that he was for proceeding and wanted to know more information. That is certainly at the very least an apparent conflict of interest?

My question is: Why wasn't this information disclosed to the contracting officers?

Mr. ROSENBAUM. In general it was disclosed to the contracting office. Mr. Mathis is the head of the whole chain. I have always been completely open, and as far as I know everybody has been completely open with the contracting officers. We are lucky enough to have them housed with us. So they have a great deal of intimate knowledge of the program. Would it be all right for Mr. Hanley to explain?

Senator BAUCUS. Let me say this. Ms. Galatis and Mr. Smith testified that in their role as ORP contracting officers, they were unaware of this information at the time they were reviewing contracts. Those were ORP contracting officers who said to my staff that they were unaware at the time.

Mr. ROSENBAUM. But as far as I know, we have been completely open at all times. I will be very sure to inform them in the future. I don't think there was any conflict of interest, apparent or otherwise.

I would be happy to discuss any specific case you would like to name, Senator.

Senator BAUCUS. Did you personally recommend that a sole-source contract be given to Scientist's Institute for public information to prepare public hearings on the uranium mill tailings?

Mr. ROSENBAUM. Yes, sir, I did.

Senator BAUCUS. Dan Hendricks of ORP testified that he prepared the scope of work for this contract that included a list of several contractors. He also stated that he forwarded his work to your office; but it was rejected. Further, he testified that he was told to copy verbatim a previously sole-source contract at the instruction of your office.

Is that an accurate statement of what transpired between Mr. Hendricks and yourself?

Mr. ROSENBAUM. No. It is not at all.

Senator BAUCUS. Why is that inaccurate?

Mr. ROSENBAUM. I don't think he testified it was under the direction of my office. I never told him to copy anything.

That might have been a reasonable procedure for the reason that the first contract and the second were very similar. I never told him anything of the kind. I didn't have a conversation with him. Somebody might have, but I didn't. I wasn't aware of it.

Senator BAUCUS. You didn't tell him to copy the sole-source contract?

Mr. ROSENBAUM. Absolutely not.

Senator BAUCUS. Did you tell him to sole-source it, period?

Mr. ROSENBAUM. I didn't even know Mr. Hendricks was working as the project officer until just before the hearings last week.

I did not assign him to be the project officer. I did not remove him as the project officer. I did instigate the idea of giving SIPI the contract, but I did not have any dealings with Mr. Hendricks. I didn't even know he was the project officer.

Senator BAUCUS. Somebody is either not telling the truth or is living in a different world.

Mr. ROSENBAUM. No. I don't think that is the case. I think Mr. Hendricks was probably assigned by his branch chief, who works for his division chief, who works for me. In general, I do not have day-to-day control over each one of the contracts and each one of the procedures.

Senator BAUCUS. Let's take what he said step by step. Did he prepare a scope of work to this contract?

Mr. ROSENBAUM. I don't know, Senator. I wasn't aware.

Senator BAUCUS. It included several contracts. You don't know whether that is accurate or not?

Mr. ROSENBAUM. I believe his branch chief is in the room. You might want to ask him.

Senator BAUCUS. I am asking you what your knowledge is.

Mr. ROSENBAUM. I don't know.

Senator BAUCUS. He stated that he forwarded his work to your office; it was rejected. Do you know anything about that?

Mr. ROSENBAUM. When he said he forwarded it, it would have to go through a long chain. I don't know what he meant by "rejected."

Senator BAUCUS. Did it come to your office?

Mr. ROSENBAUM. Not to my knowledge, Senator. But I get probably 350 papers a day. As I say, I was not aware Mr. Hendricks was the project officer.

Senator BAUCUS. Actually he testified it went directly to your office. You don't remember ever receiving his recommendation?

Mr. ROSENBAUM. To go to my office is to go to an organization and not to go to me personally. Many things come to my immediate office which I never see.

Senator BAUCUS. Regardless of all this, did you tell him to sole-source?

Mr. ROSENBAUM. I did instigate giving SIPI a contract. I would be more than happy to explain why.

Senator BAUCUS. Are there other contractors that could have that contract, that can perform that same work?

Mr. ROSENBAUM. There probably are other contractors which could perform that work.

Senator BAUCUS. Contractors who could perform the same work?

Mr. ROSENBAUM. Yes; I would be happy to say why I suggested it to SIPI.

Senator BAUCUS. Since you are so eager to explain it, please do.

Mr. ROSENBAUM. The EPA policy is, in general, as I understand it, that when a proposed regulation is put in the Federal Register, about 60 days are allowed for comment.

During those 60 days, EPA likes to have hearings as part of the public comment. I put a very great stress on allowing the general public to have an input into the process. That means much more elaborate planning than we would otherwise do.

For example, instead of just having hearings in Washington, which would be convenient for us, and telling everybody to show up at a hearing room at a certain hour to testify, we have made an effort to plan our hearings so that they would be held around the country, particularly in the areas that are most concerned, as well as in Washington, and to be held at hours in which people who are not paid to come to the hearings can come, namely, weekends and on nights, as well as during the work day.

Because of that, one has to plan to have the backup work for such hearings done in time for when the Federal Register gets through the EPA system. Sometimes it takes a long time. In the case of the uranium mill tailings we will be having—shall I go on?

Senator BAUCUS. Go ahead. I am listening.

Mr. ROSENBAUM. In the case of the uranium mill tailings, we expected to have hearings starting in September. Had we not had a contractor on board immediately, then we could not have been prepared

to have hearings in the West, where the uranium mill tailings are and when people could come, on nights and weekends, and have the whole thing work smoothly. Because SIPI had no conflict of interest, they were——

Senator BAUCUS. I am sorry. I hear the words, but it doesn't make much sense to me. Why, still, didn't you compete it? Why? I don't understand.

Mr. ROSENBAUM. If we competed it, we would not have the contract let and we would not be able to have the hearings.

Senator BAUCUS. Why?

Mr. ROSENBAUM. The procedure takes, in my experience, and we would be glad to provide for the record the actual numbers——

Senator BAUCUS. Sixty days, I am told, 2 months.

Mr. ROSENBAUM. It takes approximately 9 to 12 months to let a competitive contract.

Senator BAUCUS. Nine months?

Mr. ROSENBAUM. I would be happy to supply the records as to when we put contracts in and when they are actually let.

Senator BAUCUS. The information I have generally is about 150 days at the most.

Mr. ROSENBAUM. Senator, I would be happy to supply for the record the actual record of that.

Senator BAUCUS. I see your colleagues nodding in agreement with my statement that it is less than half a year on the average.

Mr. ROSENBAUM. Senator, the facts are demonstrable. We have dates as to when we put things into the competitive process. We have dates when the contracts are let. One can just see how long it takes as a matter of practice. It may be true that people aim in some theoretical—

Senator BAUCUS. How long after you gave the SIPI contract did you have these hearings?

Mr. ROSENBAUM. We haven't had the hearings yet. We will have the hearings probably in November.

Senator BAUCUS. When was the SIPI contract let?

Mr. ROSENBAUM. I don't know when it was actually let.

Senator BAUCUS. Two months ago, 3 months ago, a year ago, 10 years ago? How long?

Mr. ROSENBAUM. I think it was let a couple of months ago.

Senator BAUCUS. You think, you don't know when it was let?

Mr. ROSENBAUM. I don't know exactly. It was let as fast as we could go do it.

Senator BAUCUS. You don't know whether it was 2 or 3 months ago?

Mr. ROSENBAUM. I don't have the date in front of me. You have all the records.

Senator BAUCUS. The hearings are not until November?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. What date in November?

Mr. ROSENBAUM. I think the contract was let within the last month.

The hearings are going to be next month, Senator, and we have very little time to prepare. In fact, it will be a very arduous and difficult task to prepare by November the kind of hearings where the public, in the region concerned, can have real input, even letting the

contract noncompetitively. It would have been impossible had we not.

Senator BAUCUS. Last month? That was August—September, October, November—that is 3 months.

Mr. ROSENBAUM. It gives us 3 months to prepare for the hearing.

Senator BAUCUS. I am told most competitive procedures take about 3 months.

Mr. ROSENBAUM. Senator, we will supply for the record if you wish the actual numbers, but in fact, the competitive procedures take 9 to 12 months.

Senator BAUCUS. My understanding is that the contract of SIPI was requested in April. The hearings will be in November?

Mr. ROSENBAUM. That is right. Even with this procedure, we did not get the contract until last month. We would not have had the contract competitively let by November in my opinion and I think the record will demonstrate that. We would not have let it by November, never mind by last month.

Senator BAUCUS. The request was in April. You have a hearing in November. That is quite a few months. It seems to me that if you had gone through the competitive process, it wouldn't have taken any longer; second, why does 1 month make that much difference?

Mr. ROSENBAUM. I don't think the American taxpayers would have gotten any "break." I do think it is better to have competition, if you can do it. In fact, we had given an 8–A firm, for example, a noncompetitive contract for similar things under the 8–A procedures. It takes a great deal of time to prepare for these hearings. As it is, we will only have about 2 months to prepare for them. In a competitive procedure, we would not have had any. The contract can't be let the day of the hearings. It takes months to get these things prepared in order that such hearings can be held.

Senator BAUCUS. Mr. Hanley, what is your experience concerning the average time it takes to sole source a contract?

Mr. HANLEY. For a sole-source contract?

Senator BAUCUS. Yes.

Mr. HANLEY. I don't know that figure offhand. I would guess the sole-source contract typically takes from 2 to 3 months to award.

Senator BAUCUS. Two to three months?

Mr. HANLEY. Yes.

Senator BAUCUS. What is your experience with competitive contracts?

Mr. HANLEY. I believe the average for the agency would be between 5 and 6 months.

Senator BAUCUS. Between 5 and 6 months?

Mr. HANLEY. Six months is probably closer. The figure that I think we have for fiscal 1979, the last year we have complete figures for, is 150-some days on average. It is important to understand those, of course, represent the average for some 3,000 awards.

Senator BAUCUS. Some are longer and some are shorter?

Mr. HANLEY. Certainly. A contract of considerable size or complexity could take substantially longer. Obviously there are some that take less.

Senator BAUCUS. Is the SIPI contract one of considerable size and complexity?

Mr. HANLEY. I am not familiar enough with the substance to know how to answer that. I don't believe the size is that great. But quite often it is not the mere dollar amount that is involved that determines the time.

Senaotr BAUCUS. Dr. Rosenbaum, is the SIPI contract one of such size and complexity that it would take much longer than the average 150 days to complete?

Mr. ROSENBAUM. I don't believe, Senator, that we have ever let a competitive contract in 150 days.

Senator BAUCUS. You have never let one, have you?

Mr. ROSENBAUM. Yes. We have let lots of them. None of them take 150 days. We have many that have taken more than a year. If, in fact, it had taken 150 days to competitively let a contract for the mill tailings, we would not have been able to use it for the hearings; 150 days would have meant that the contractor came on in such a time that they would not have been useful to perform the function.

Senator BAUCUS. Stanley Lichtman of ORP is listed as the project officer on this contract. Did you select him?

Mr. ROSENBAUM. Let me explain how that procedure——

Senator BAUCUS. First of all, did you select him?

Mr. ROSENBAUM. I don't know. I will explain to you how it came about.

Senator BAUCUS. Did you personally select him or did somebody else?

Mr. ROSENBAUM. It was sort of a consensus I think. That is what I am trying to say.

Senator BAUCUS. Who did select him?

Mr. ROSENBAUM. I was involved in selecting him.

Senator BAUCUS. Explain what happened; that is, how he was selected and who selected him?

Mr. ROSENBAUM. I don't know the answer, but I can easily imagine what happened.

Senator BAUCUS. So you don't know what happened?

Mr. ROSENBAUM. I think if you let me explain it will be clear.

Senator BAUCUS. All right.

Mr. ROSENBAUM. Because I came in right at the beginning of the fiscal year, I had to concentrate first of all on improving the quality of the standards and the guides that we were putting out. I could not immediately review the contracting proposals for the year.

Senator BAUCUS. Excuse me, Dr. Rosenbaum. We have a lot of questions here. If you could keep your answers much shorter and more to the point, more responsive, we will both get along a lot better. So the question is: Who selected Stanley Lichtman?

Mr. ROSENBAUM. I don't know, Senator. I could explain. I sat down with each division director and then one branch chief at a time. We went for as many hours as necessary over the contracts proposed by that branch. Out of that we dropped about $2 million out of the proposed contracts because I though that they were not justified, or they were not important enough. That money went into radon. Some of that money was assigned at that time to other proposals. In the discussions with the division head and the branch chief we sometimes nominally

assigned someone in that branch chief's branch to be the project officer, even though that person wasn't in the room.

Mr. Lichtman was undoubtedly so assigned. The reason he was undoubtedly so assigned was that he was in charge of writing the Uranium Mill Tailings Control Act standards and therefore he seemed like a logical person.

Senator BAUCUS. Did you personally have anything to do with the selection of Stanley——

Mr. ROSENBAUM. I may very well have.

Senator BAUCUS. You did?

Mr. ROSENBAUM. I don't remember. I probably did.

Senator BAUCUS. Probably did. That is all you know. Did Mr. Lichtman write a memorandum insisting that his name be removed as project officer because it was done without his knowledge?

Mr. ROSENBAUM. He didn't write a memorandum to me. He wrote a memorandum to Mr. Brandwein, which I was not even aware of.

Senator BAUCUS. He did write a memorandum to Brandwein asking that his name be removed?

Mr. ROSENBAUM. Yes. I think Mr. Brandwein talked to me about that before the last hearing. I recalled the conversation in which I said I would be the project officer for the moment. In fact, it was just a holding procedure. Mr. Lichtman should have been informed by his branch chief or his division head. It was just a slipup that he wasn't, but since he was in charge of all the uranium mill tailings work——

Senator BAUCUS. Project officers are supposed to prepare work on the contract from the outset. Isn't that the job of the project officers?

Mr. ROSENBAUM. Yes. There wasn't any work to be prepared.

Senator BAUCUS. Do you think it is improper for Mr. Litchman to be named project officer, that is the person responsible for the project without first consulting him, asking his permission, approval?

Mr. ROSENBAUM. No. I don't think people are ordinarily asked for their permission to be project officer. They are assigned to be the project officer.

Senator BAUCUS. It is assigned without prior consultation?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. Is that the general practice?

Mr. ROSENBAUM. Well, I don't know.

Senator BAUCUS. Is it standard practice for somebody to be assigned as project officer without consulting with him? Is that standard procedure?

Mr. ROSENBAUM. I don't know. I don't usually assign project officers. I have had very little to do with assigning project officers.

Senator BAUCUS. Could you answer the question? You don't know whether that is standard procedure?

Mr. ROSENBAUM. No. I imagine that, because people will work together, they are generally told they have been so assigned. It isn't an option of someone. They are assigned.

Senator BAUCUS. Yes or no. Is it standard procedure to assign the person as project officer without asking him or talking in advance about it?

Mr. ROSENBAUM. I don't know. I don't think there is a standard procedure.

Senator BAUCUS. Sometimes somebody is assigned, sometimes somebody is not assigned?

Mr. ROSENBAUM. I think that is right.

Senator BAUCUS. Is that a good way to run a railroad?

Mr. ROSENBAUM. We have had actually very little trouble with this sort of thing.

Senator BAUCUS. I don't know. Lichtman had some trouble with it.

Mr. ROSENBAUM. I think if you ask Mr. Lichtman in detail you will find he didn't have trouble. His concerns were satisfied about it.

Senator BAUCUS. Yes, he did get his name off.

Mr. ROSENBAUM. What should have happened is that we should have explained to him what it was about. He probably would have been glad to be the contract officer, since he is in charge of writing the uranium mill tailings standards.

Senator BAUCUS. Did your office list Dave Bernhardt of the Las Vegas office as the project officer on the proposal contract for Cal Tech?

Mr. ROSENBAUM. Probably, for the same reason. The Las Vegas laboratory is the closest ORP office to Cal Tech. In order to save Government traveltime we assigned someone from there as project officer.

Senator BAUCUS. Do you intend to continue this practice?

Mr. ROSENBAUM. I don't know what practice you mean.

Senator BAUCUS. Listing names of people as project officers again without prior consultation.

Mr. ROSENBAUM. I would imagine.

Senator BAUCUS. You don't see anything wrong with that?

Mr. ROSENBAUM. I would imagine in the normal course of things that I will never be in the situation where I will ever assign a project officer again. That wouldn't be an ordinary part of my duties. It was because of the extraordinary situation that I was in that I did it.

Senator BAUCUS. Did you personally call Dr. Tombrello of Cal Tech before calling the Procurement Office?

Mr. ROSENBAUM. In fact, I did. In fact, I told the contracting officer about it.

Senator BAUCUS. Did you ask Mr. Brandwein of your office to sole source the contract to Cal Tech?

Mr. ROSENBAUM. I don't know who I asked.

Senator BAUCUS. Did you direct him to?

Mr. ROSENBAUM. I certainly thought the contract should be sole source to Cal Tech.

Senator BAUCUS. So the answer is "Yes," you did ask Mr. Brandwein to sole source?

Mr. ROSENBAUM. Mr. Brandwein doesn't sole source things. That is why I was hesitating. Mr. Brandwein processes papers. If the intent of the question is to ask whether I was trying to get the contract given to Cal Tech, the answer is "Yes."

Senator BAUCUS. Dr. Tombrello told the subcommittee staff that other sources could have performed the contract. In addition, the Bureau of Mines expert testified there are other more experienced sources. You stated previously that no one could do the job better and faster than Cal Tech. How does your statement square with the statements of others, who stated that other contractors could do a better job than Cal Tech?

Mr. ROSENBAUM. In the first place, I rather think that that is not an accurate representation of Dr. Tombrello's opinion. The contracts people have since talked to him. But you could ask Dr. Tombrello yourself. I think the import of it is that there are other places that have some radon experience, who could, given enough time and money, eventually get up to speed.

But I think it is true that Cal Tech's qualifications are unique. Right now the contracting office is, because of these hearings, investigating that question in great detail. I rather think that is the conclusion they will come to.

Senator BAUCUS. The conclusion again is?

Mr. ROSENBAUM. Is that no one could have performed at that level at that time what we needed done other than those people.

Senator BAUCUS. I have here staff notes. There is no legal value because it is not a transcript? But my staff talked to Dr. Tombrello. This is a memo to the file dated September 4. Tombrello said other sources could perform the contract. They are GE Research Laboratories and the University of California at Berkeley Radiation Laboratory.

Mr. ROSENBAUM. I am familiar with each of those places. And I think what I said still stands. GE has an obvious conflict of interest because some of the devices that are called for to be tested under the contract were in fact developed by GE.

Senator BAUCUS. But the Bureau of Mines testimony at the earlier hearing is very clear. In their view, other sources could perform the same work, and in fact do a better job.

Mr. ROSENBAUM. He is entitled to his opinion.

Senator BAUCUS. The question here is the degree to which you try to find other contractors, other sources that can perform the work that is being sole sourced. Do you make any effort, do you try to find out whether others can do the job?

In the case of Cal Tech, what effort did you undertake? What different sources did you contact? Can you name them, can you give us an indication?

What is the procedure in your office for seeking sources in order to reach a legitimate determination of whether or not to sole source?

Mr. ROSENBAUM. I would be happy to explain what I did in this instance. It partly is colored by what was brought out before about the urgency of the radon problem and the number of lives at risk. The measurement of radon is a very specialized art.

Senator BAUCUS. Before we get into urgency, let's discuss how many other sources can perform the job. Aren't there other——

Mr. ROSENBAUM. My belief, Senator——

Senator BAUCUS. Contractors?

Mr. ROSENBAUM [continuing]. Is that no one could perform the job at the level of Cal Tech at that time.

Senator BAUCUS. How many different sources did you consult in order to determine whether or not they too could perform the job?

Mr. ROSENBAUM. There were very few people in this field.

Senator BAUCUS. How many? Can you name them right now. Name other sources that you did sit down and talk with and also indicate the length and depth of the discussion you had with each of those

sources? I am giving you your opportunity. How many others? Did you talk to one person, one other source?

Mr. ROSENBAUM. I talked to people in the field. I was very familiar with GE's work. They had an apparent conflict of interest. I had visited Lawrence Berkeley Laboratory and sat in on the Department of Energy review of their work.

Senator BAUCUS. Did you make a legitimate, good-faith effort with either GE, or Berkeley, to see whether or not they had the wherewithal to perform this work?

Mr. ROSENBAUM. Yes. I said GE already had a conflict of interest which made them out of the question.

Senator BAUCUS. Did you discuss this——

Mr. ROSENBAUM. I didn't discuss it with either one of them.

Senator BAUCUS. You didn't discuss it with anybody?

Mr. ROSENBAUM. I discussed it with people who were knowledgeable in the field. I don't remember in detail who, but the field is very small. It is possible as you mentioned three places, I was already aware——

Senator BAUCUS. The radon field is not that small. It has been around for years and years.

Mr. ROSENBAUM. The question has been around for years and years. The level of expertise required to measure radon at the level that is needed to essentially perform the work that the National Bureau of Standards Laboratory would perform if they had a radon standard is not common, it is very rare. I believe, as I said, that the process which the procurement people are going into now, which is a very exhaustive process, will come to exactly the same conclusion.

Senator BAUCUS. The point is you didn't talk to anybody else?

Mr. ROSENBAUM. I already knew the capabilities of these places. I knew the conflicts of interest.

Senator BAUCUS. Do you agree with the prior testimony that the capabilities of these other places is just as good if not better?

Mr. ROSENBAUM. No; I don't agree.

Senator BAUCUS. You disagree with that?

Mr. ROSENBAUM. Yes; I certainly do.

Senator BAUCUS. With Dr. Tombrello's statement?

Mr. ROSENBAUM. That was not Tombrello's statement.

Senator BAUCUS. Shall I read it again?

Mr. ROSENBAUM. What you are reading is the note your staff made.

Senator BAUCUS. Let's take the testimony of Mr. Niewiadomski of the Bureau of Mines.

Mr. ROSENBAUM. I don't have it in front of me.

Senator BAUCUS. The point is he did so testify. Is Dr. Tombrello listed as an expert at ORP?

Mr. ROSENBAUM. He is listed as an expert. He has never drawn a penny of salary.

Senator BAUCUS. What are his responsibilities?

Mr. ROSENBAUM. His original responsibilities were to consult on radon problems. The possibility of a contract came up while he was being processed as an expert. He has never worked as an expert and never will.

Senator BAUCUS. He is listed as one that will perform work as an expert but he never has. Why is he listed?

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Mr. ROSENBAUM. Originally I contacted Dr. Tombrello to see if he would be willing to be a consultant because of his eminence. After he was in process as a consultant, I was speaking to him about some of the radon work and found out the laboratory's capabilities to fill a very important hole in our radon program.

His papers were then in process. If the Cal Tech contract goes through, which I certainly hope it will, then he won't be used as a consultant. The reason is not a conflict of interest. The reason he won't be a consultant is I would hope he would spend any time he could spend on Government business working on the contract.

Senator BAUCUS. Is Dr. Tombrello also listed as a principal investigator?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. On a $285,000 contract to Cal Tech, for the study of field monitoring techniques for radon; is that right?

Mr. ROSENBAUM. The contract is to make an absolute evaluation of what the radon devices actually measure.

Senator BAUCUS. It is my understanding that two of the three senior researchers on this contract were to be paid roughly $6,000, but Dr. Tombrello is not to receive any pay. Why is that? Do you know?

Mr. ROSENBAUM. I don't know why. Very often we have people listed on contracts who would lose, most—let me put it this way. Most of the people we sign on as experts can earn several times the maximum Government consulting salary, virtually all of them.

Senator BAUCUS. My understanding is he will be paid as an expert in EPA.

Mr. ROSENBAUM. He will not be paid as an expert—that is not true. But if in fact the contract does not go through, we may very well use him as an expert.

Senator BAUCUS. Had EPA intended to pay Dr. Tombrello as an expert any time prior to your statement today that he will not be paid anything?

Mr. ROSENBAUM. When we initiated his paperwork before the contract issue came up, we certainly intended to use him as an expert; yes.

Senator BAUCUS. You are saying now he will not be paid?

Mr. ROSENBAUM. He will not be paid if the contract goes through. If there is a contract with Cal Tech, he will not be paid.

Senator BAUCUS. Again, why not?

Mr. ROSENBAUM. Because I would hope he would spend all the free time he has on the contract. He doesn't have that much free time. It is very difficult to get people like Dr. Tombrello to work on your staff at all.

I believe that Cal Tech, as I recall my original conversations with Dr. Tombrello, has a very large contract with the Geological Survey for $3 million that also involves the radon measuring problem. I don't think he has much time available, with his teaching duties, other duties, and other consulting.

Senator BAUCUS. Did he ever tell you he would prefer to be paid as an expert rather than as a contract investigator?

Mr. ROSENBAUM. No; one is instead of the other. As I said, if the contract does not go through we would certainly hope to use Dr. Tombrello as an expert in the future.

Senator BAUCUS. The request for sole-source procurement to Cal Tech was submitted on April 30, 1980. Do you know when Dr. Tombrello was hired as an expert?

Mr. ROSENBAUM. I don't have the number.

Senator BAUCUS. I understand the date is May 18.

Mr. ROSENBAUM. It may very well be; it is easy enough to check.

Senator BAUCUS. Half a month later, which seems to indicate that you hired Dr. Tombrello as an expert knowing full well that he was an investigator on a contract with Cal Tech.

Mr. ROSENBAUM. That is not the case at all. The conversations I had with Dr. Tombrello about making him an expert took place before there was any discussion of any contract. The initial contact I made with Dr. Tombrello was to see if he would be willing to work for us as an expert.

Senator BAUCUS. I am sorry, I missed that, would you restate that?

Mr. ROSENBAUM. The initial conversations I had with Dr. Tombrello, in which I asked him if he would be willing to be an expert, took place before there was any discussion of any contract with Cal Tech. He then submitted papers. It takes a long time for these papers to be processed. It was during the time that the papers were being processed that I talked to him again. I don't remember the reason, but I suppose it was to talk to him about what he might do when the papers were processed, what kind of things he could help us with, what kind of needs he had. At that time I found out more about what he was doing with Geological Survey, what capabilities the laboratory had.

It was at that time that I realized the hole we had, which I hadn't seen any feasible way to fill in a short time, could be filled if he would be willing to do the work. His initial response to me was that he had a very large contract with the Geological Survey and he wasn't sure he could take on anything more—he wasn't that eager.

Senator BAUCUS. So you hired him first as an expert?

Mr. ROSENBAUM. We initiated paperwork first as an expert.

Senator BAUCUS. Then you sole sourced?

Mr. ROSENBAUM. Then we submitted papers for sole source.

Senator BAUCUS. A request for sole-source procurement to Cal Tech?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. Then you hired Tombrello as an expert?

Mr. ROSENBAUM. Then the paperwork went through and he became hired. The personnel people hired him. Once I send the paperwork over to make someone an expert or something, I don't see it again until such time as it reemerges from the process.

Senator BAUCUS. My understanding though is that this contract has been halted as of this date, partly due to the apparent conflict of Dr. Tombrello listed as an expert in EPA and working on radon problems, at the same time as he is the principal researcher on the Cal Tech contract.

Mr. HANLEY. May I answer that, Senator?

Senator BAUCUS. Yes, please. Go ahead.

Mr. HANLEY. The contract staff is now reviewing both the sole source justification and the apparent conflict of interest. If there is any appearance of a conflict of interest it would be referred to the Office of General Counsel for review of that issue of procedure required. When-

ever there is an apparent conflict of interest known to either the program officer, contracting official, it will be referred to the Office of General Counsel for a ruling.

But the principal focus of the contract staff review is the question of the sole-sources justification, whether anyone else can do the work in the time required.

Senator BAUCUS. My understanding still is this contract was halted as a result of this subcommittee's previous hearing. However, if it had gone through as you planned, the following situation would have existed: Dr. Tombrello would have been a highly paid expert at the EPA working on radon problems. At the same time he also would have been a principal researcher on the Cal Tech contract for the study of problems associated with radon. Also the same time, Dr. Tombrello would have been a full-time employee of Cal Tech.

The problem is that it sounds like the fox guarding the chicken coop.

Mr. ROSENBAUM. I don't think there is any conflict of interest apparent or otherwise. I don't believe the contract has been halted. I think that is incorrect. The contract is under review.

Senator BAUCUS. It is suspended.

Mr. ROSENBAUM. It is not being suspended. They are actively looking into this issue.

Senator BAUCUS. That is right, looking at these isssues.

Mr. ROSENBAUM. Yes, Dr. Tombrello has not drawn a penny as an expert, there was no issue whatsoever of Dr. Tombrello doublecharging, if that is your implication and in fact even if we had used Dr. Tombrello, which we had no intention——

Senator BAUCUS. Frankly, it sounds like Tombrello is not getting paid because of these hearings. We discovered the problem here and now you are trying to back off, prevent it from going through?

Mr. ROSENBAUM. It is not the case at all. You can only draw one salary for 1 day. There are a number of other consultants who simply won't take any money from the Federal Government, because they are earning more where they are working than with the Federal Government. They would have to get more pay to work with the Federal Government.

Senator BAUCUS. Let's turn to Dr. MacDonald. Did you discuss the proposed ocean disposal contract with him prior to the procurement process?

Mr. ROSENBAUM. I originally talked to Dr. MacDonald when he was a professor at Dartmouth. I called him because——

Senator BAUCUS. I don't care. Frankly, I am not too concerned with where he originated it. These questions by and large yield a yes or no answer. Did you discuss the proposed ocean disposal contract with Dr. MacDonald of Mitre prior to the normal procurement process. Yes or no?

Mr. ROSENBAUM. I don't remember. But I probably did.

Senator BAUCUS. Did you personally receive a copy of Mitre's proposal before the contracts office saw it?

Mr. ROSENBAUM. I might have. I don't remember.

Senator BAUCUS. Robert Dyer, acknowledged ocean disposal expert at EPA, testified previously that there were many other contractors

who could have performed this contract. Did you think of looking for other contractors before proposing the contract for Mitre?

Mr. ROSENBAUM. You are asking me if I stopped beating my wife.

Senator BAUCUS. Did you think of it? Yes or no.

Mr. ROSENBAUM. Yes. Of course I thought of it.

Senator BAUCUS. Did you do it?

Mr. ROSENBAUM. No. I didn't.

Senator BAUCUS. Why not?

Mr. ROSENBAUM. The reason was that there were some contracts on oceans which had been let, but none of which had been completed. It is Mr. Dyer who is the project officer for all of those. The result of that is that my superior, David Hawkins, is testifying right now in front of a House committee about the Farallon Islands situation, what EPA found, and why we didn't release it. The reason we didn't release it was that nobody knew the results of those contracts. Things were in chaos; most of the contracts had not been finished. They were sort of suspended, and we didn't receive the material from the contractors.

Senator BAUCUS. Why didn't you?

Mr. ROSENBAUM. We needed MacDonald's specific help, because he was the most knowledgeable person in the United States for what we needed, help to fulfill our responsibilities under the London Dumping Act.

Senator BAUCUS. How do you know he is the most knowledgeable person in the United States?

Mr. ROSENBAUM. Dr. MacDonald, in the first place, has an exemplary scientific background. He is a member of National Academy of Sciences and has concentrated in this area for many years. He is an expert in the area. There are no other experts who have Dr. MacDonald's qualifications. He was one of the original three members of the Council on Environmental Quality and, as a member, he was one of the principal American negotiators in drawing up the London Dumping Convention. This is the treaty we are acting under. He knew all of the implications of the treaty.

He knew the international scene, he knew all the policy issues, and he also had the scientific background. His qualifications were indeed unique.

Senator BAUCUS. Is Gordon MacDonald an expert at ORP?

Mr. ROSENBAUM. Gordon MacDonald is an unpaid expert. He gets no money. In fact, he draws no money from the Mitre contract either. He draws no money from the Federal Government. The Federal Government gets Dr. MacDonald's services entirely free.

Senator BAUCUS. Is this standard practice; experts are not to be paid?

Mr. ROSENBAUM. As I explained, Senator, many of our experts get so much higher pay than the Government can offer them as consultants, that, since they can't double-bill, they would prefer to continue to draw from where they are drawing ordinarily and to donate their time to the Federal Government. We have several such consultants who donate their time to the Federal Government because it would cost them money to take Government pay.

In the case of Dr. MacDonald, he is the chief scientist at Mitre and is not allowed to draw any money. It is donated to the Federal Government.

Senator BAUCUS. Did you know Dr. MacDonald prior to recommending he be hired as an expert?

Mr. ROSENBAUM. I knew him but not socially.

Senator BAUCUS. How did you know him?

Mr. ROSENBAUM. He has been a very prominent figure in the scientific scene for years. I have seen him in many meetings.

Senator BAUCUS. What are his duties at ORP?

Mr. ROSENBAUM. There are no duties at ORP now. His only duty is he is working on the contract.

Senator BAUCUS. He is an expert?

Mr. ROSENBAUM. Yes. The only reason we made him an expert is that an expert can represent the United States at international meetings. We wanted to leave that option open.

Senator BAUCUS. Does he have supervisory authority?

Mr. ROSENBAUM. He has no supervisory authority. He is an expert under other terms of expertise; he is the leading authority in the field.

Senator BAUCUS. So what does he do? If he doesn't supervise and doesn't draw——

Mr. ROSENBAUM. What he does as an expert is nothing. We keep him in that status so that he could represent the United States at meetings.

Senator BAUCUS. Has he advised you, has he helped you?

Mr. ROSENBAUM. He has not worked as an expert at all.

Senator BAUCUS. But he has helped?

Mr. ROSENBAUM. He has helped by working on the Mitre contract free.

Senator BAUCUS. What does he do?

Mr. ROSENBAUM. I am not monitoring the contract day to day. The project officer of the contract is in the room if you want to get more detail.

Senator BAUCUS. You seem to be pretty firm in your mind that he is by far the best person in the field for the job. If that is the case, it seems to me you must have some idea of what he is doing.

Mr. ROSENBAUM. He is very instrumental in drawing up Mitre's work for these meetings, among other things. His knowledge is in such depth and in such breadth that he is able to give a direction to the contract we could not otherwise have.

Senator BAUCUS. Did you tell your program manager Ray Brandwein that you needed to give Mitre sole-source contract because of Dr. MacDonald?

Mr. ROSENBAUM. Yes, sir.

Senator BAUCUS. Are you familiar with the contracts to analyze radon experiments and techniques for the Universities of Texas and Wisconsin?

Mr. ROSENBAUM. Are you talking about contracts now and not consultants? Are you talking about the contracts with the University of Texas and Wisconsin?

Senator BAUCUS. Yes.

Mr. ROSENBAUM. Yes.

Senator BAUCUS. You are familiar with them?

Mr. ROSENBAUM. Yes. They have to plan the Butte, Mont., radon survey, Senator. That is what they are for.

Senator BAUCUS. Mr. Niewiadomski of the Bureau of Mines testified that the justifications for sole-source procurements for both contracts are purely identical. Why do we have two projects for the similar work?

Mr. ROSENBAUM. I will explain that. Of the areas of the country that we know about, Montana is the most affected by radon, Butte in particular, both economically and in terms of health.

Senator BAUCUS. If you could, again, Dr. Rosenbaum, keep your answers brief.

Mr. ROSENBAUM. Yes. I will try to.

Senator BAUCUS. Why are the projects similar? Very briefly, we have a lot of questions here.

Mr. ROSENBAUM. I can't answer in a vacuum. The magnitude of the——

Senator BAUCUS. I am beginning to realize now why it takes so long for ORP to sole-source.

Mr. ROSENBAUM. Mr. Costle received a letter from Governor Judge in Montana asking for our urgent help. HUD had cut off mortgage loans for buildings in Butte and Anaconda. The Federal Housing Administration, Veterans' Administration, Commerce Lending and Mortgage Institution——

Senator BAUCUS. I am sorry. Could you just answer more briefly? Just in a nutshell, bottom line.

Mr. ROSENBAUM. It was because of the urgency of the Butte situation that we have made what amounts to $750,000 commitment.

Senator BAUCUS. You have two similar projects because of urgency?

Mr. ROSENBAUM. No. They are doing different things. One is measuring——

Senator BAUCUS. So, they are not the same. They are not identical. So, you disagree with Mr. Niewiadomski?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. That's all I'm trying to find out. You disagree?

Mr. ROSENBAUM. Yes. I would be happy to tell you they are different.

Senator BAUCUS. If you could in two sentences.

Mr. ROSENBAUM. We are planning to monitor a thousand homes in Butte.

Senator BAUCUS. That is one.

What is the other one?

Mr. ROSENBAUM. One contractor is looking at the spatial distribution of the 15 devices we are putting in each home. We also need to look at time series distribution, the time when different ones are taken out, other ones are put in, and when different devices are moved from one place to another. The contractor will later be involved in evaluating the date. Because of the urgency of the problem, we did these tasks in parallel. We can't start work in Montana until we get the design done.

Senator BAUCUS. Why couldn't one contractor perform both?

Mr. ROSENBAUM. We didn't believe that either one of them had the capability to do both. Because the Governor of Montana——

Senator BAUCUS. Did you look for one?

Mr. ROSENBAUM. Excuse me?

Senator BAUCUS. To do Butte?

Mr. ROSENBAUM. We were told of the urgent health and economic necessity——

Senator BAUCUS. My question is whether you looked?

Mr. ROSENBAUM. I don't do the looking. I imagine that people thought a good deal as to who would be available to do it and who could do these particular things.

Senator BAUCUS. Are you familiar with the $164,000 contract for the American Statistical Association to establish a program of visiting fellows at ORP?

Mr. ROSENBAUM. That was one part of the contract.

Senator BAUCUS. In your justification for sole-source procurement you noted ASA is the only organization capable of performing this work. Did you ask any other organizations to determine if any other sources could perform that contract?

Mr. ROSENBAUM. There are no other organizations comparable to ASA. That is the professional body——

Senator BAUCUS. Did you ask any other organizations to determine——

Mr. ROSENBAUM. It wasn't necessary to ask any other. There are no comparable organizations in the country.

Senator BAUCUS. The answer is "No?"

Mr. ROSENBAUM. The answer is "No."

Senator BAUCUS. That is all I wanted to know. The purpose of this contract is to establish conferences of statistics, epidemiology, radiation. Do you know how many radiation experts and epidemiologists belong to ASA?

Mr. ROSENBAUM. I wouldn't imagine very many.

That wasn't the point of the contract.

Senator BAUCUS. Why is it so stated in the justification?

Mr. ROSENBAUM. Why does what so state?

Senator BAUCUS. That you need epidemiologists and radiation experts?

Mr. ROSENBAUM. I would be happy to explain.

Senator BAUCUS. All right.

Mr. ROSENBAUM. There is a great lack of statistical expertise in the Government, particularly in regulatory agencies. I might add, parenthetically, that in the OMB budget hearings last week, which were held on the day that your staff finally wanted to meet with me, ORP was held up as an example to EPA for having tried to make much greater use of the good statisticians.

Senator BAUCUS. The justification states this procurement request has two objectives: One, to establish a program of visiting fellows as statisticians at ORP; the other to hold a series of conferences on statistics, epidemiology, radiation.

You have just stated that no purpose of this contract is to look at the epidemiology and radiation. The justification states——

Mr. ROSENBAUM. No. Let me explain to you the purpose of the conference.

Senator BAUCUS. On epidemiology and radiation?

Mr. ROSENBAUM. Yes. The point is that epidemiologists and statisticians, at least in the field of radiation, don't have sufficient contact

with one another. The epidemiologists are not sufficiently strong on statistics and the statisticians don't know enough about the details of the epidemiological situation and of the variables that are involved. Therefore it is necessary for us to get them together.

What we had in mind were conferences similar to the Gordon Conferences or the conferences run by the Engineering Research Foundation for the National Academy of Engineers in which we would get these people working together. That is vital for our program.

Senator BAUCUS. Let me ask a question. Do you know how many epidemiologists and radiation experts belong to ASA?

Mr. ROSENBAUM. Probably none. That is irrelevant to the contract.

Senator BAUCUS. I thought you were trying to put groups together?

Mr. ROSENBAUM. We have the radiation experts, Senator. We don't need to contract out for radiation experts who know about health effects.

Senator BAUCUS. Why does the justification state one of the purposes of this procurement is to hold a series of conferences on statistics, epidemiology and radiation?

Mr. ROSENBAUM. Ordinarily if you just hold a conference, the best people in the field won't come. They have thousands of invitations for conferences and thousands of offers for consultancy. It is only with the prestige of the American Statistical Association behind us that we could hope to get the very best statisticians involved.

The epidemiologists would be somewhat easier to get involved, I think, so rather than going to the equivalent professional association of epidemiology, I thought it would be better to use the statistical professional association. There is no other such body; there is no one to compete with. There is only one American Statistical Association.

Senator BAUCUS. I have a letter from Fred Leone, ASA executive director, to you, and the letter states that Donald Rubin is the senior editor at ASA and wrote the proposal for the contract.

Does Donald Rubin have any association with ORP?

Mr. ROSENBAUM. Donald Rubin is an expert at ORP; yes.

Senator BAUCUS. Is he a paid expert or is he not paid?

Mr. ROSENBAUM. He is paid.

Senator BAUCUS. Do you think it is proper for an expert paid at ASA who is also editor at ASA to write the proposal for the contract?

Mr. ROSENBAUM. I am not aware that he wrote any such proposal. We did receive a contract from ASA. Dr. Rubin is the editor of the journal at ASA. He was not involved in any way in choosing ASA to get the contract.

Senator BAUCUS. Do you think it is proper for the editor of the journal at ASA to write the proposal for the contract at the same time he is an expert being paid by EPA?

Mr. ROSENBAUM. It would be perfectly proper under the procedures, laws, and regulations of the U.S. Government.

You could ask the attorney or Mr. Hanley, if you like.

Senator BAUCUS. Do you know whether he is paid by ASA?

Mr. ROSENBAUM. He is not paid by ASA. He doesn't get paid at all.

Senator BAUCUS. As editor of ASA—he performs those services gratis. Is that right?

Mr. ROSENBAUM. In general, an editor is an honorary, though very hard working, position; yes.

Senator BAUCUS. Even so, isn't there an appearance problem here? Isn't there an appearance of conflict?

Mr. ROSENBAUM. I don't think there is an appearance of impropriety. It would be only something wrong if he was getting paid by ORP at the time he was writing that proposal. I don't believe that is the case.

Senator BAUCUS. First of all, we don't know whether he is paid by ASA. Let's assume he is not. Even if he is not, isn't there appearance of impropriety; that is, the editor of the journal of the contractor writes the proposal at the same time that he is paid as an expert for EPA?

Mr. ROSENBAUM. ASA is a professional association in which almost every statistician belongs. I don't see that there is any conflict of interest at all. He was not involved in the decision to give the contract. I am the one who thought of the idea of using the ASA, using the professional body of statisticians. It was my idea, not his.

Senator BAUCUS. Are you familiar with the $250,000 contract ORP proposed for the purpose of lending assistance during the investigation of risk assessments of radioactive waste standards?

Mr. ROSENBAUM. I am not familiar with the details. I know there was such a proposal.

Senator BAUCUS. My understanding is the firm rejected the contract offer. Do you know why?

Mr. ROSENBAUM. No. I don't.

Senator BAUCUS. My understanding is the firm lacked manpower to do the work.

Mr. ROSENBAUM. While I have limited the ideas of doing certain contracts, in general, I have nothing to do with the procedure after that. I am not involved in the negotiations. I am not involved in setting the price. I am not involved in any way in that. In general, I don't even know about it. I don't know——

Senator BAUCUS. But you initiated it?

Mr. ROSENBAUM. We desperately needed economic help. We have been criticized for our economic work, and I have tried unsuccessfully to obtain help. The best economic consulting firms simply won't bid on Government work; they usually won't take Government contracts at all. I have tried unsuccessfully to get such help. I have been turned down by the administrative people in the efforts I have made and I have, frankly, given up.

Senator BAUCUS. You were turned down in your efforts to do what?

Mr. ROSENBAUM. I was unable to get some of these economic firms involved, because the Contracts Office didn't think there was a sufficient sole-source justification. So, I stopped. As I pointed out last time, not all sole-source requests are approved.

Senator BAUCUS. In the justification for this proposed sole-source contract EPA stated delays in standard setting could result in a lawsuit against EPA. After the firm rejected the contract, did you try to give this contract to another contractor?

Mr. ROSENBAUM. No, sir. I didn't know any of those details. I didn't write the sole-source justification. In fact, I don't think I have written any of them. And I don't recall, though perhaps I did—even reading it. I am afraid I can't tell you great many of the details about that.

Senator BAUCUS. You personally don't write sole-source justifications. Is that correct?

Mr. ROSENBAUM. I don't believe I have ever actually written one; no. Everything in the office is my responsibility.

Senator BAUCUS. But you personally have never written one?

Mr. ROSENBAUM. I might have edited one or two once, but that is the most.

Senator BAUCUS. I am sure nobody can remember everything.

Here is a procurement request where you personally at least signed the justification.

Mr. ROSENBAUM. I signed many of them. That doesn't mean I write them.

Senator BAUCUS. But you read them before you sign them?

Mr. ROSENBAUM. I read them; yes, but perhaps not always as carefully as I should.

Senator BAUCUS. I know in my office we are given lots of material to sign and sometimes you don't get much opportunity to read them as you would like to.

Mr. ROSENBAUM. What I have mostly done is to initiate the idea for some of these contracts and to suggest that they be sole sourced to certain places. I have not done in general the detailed work. I haven't written sole-source justifications though I signed probably almost all of them and I haven't been involved in the price negotiations at all in any way whatsoever. I, in general, wouldn't know if the people had turned them down or why. I was probably told at some point that they turned them down, but I don't remember.

Senator BAUCUS. I understand you are listed as a project officer on a proposed contract for the National Economic Research Association to study economic aspects.

Mr. ROSENBAUM. That was the other economic contract I requested. As far as I know, that firm, which I considered to be the best such firm in the country, has never bid on a Government contract. They were not the slightest bit interested in doing any Government business. I practically had to beg them to see if I could get one of their best people involved.

Senator BAUCUS. You are listed?

Mr. ROSENBAUM. I was listed. I probably was project officer.

Senator BAUCUS. The contract was canceled. Do you know why?

Mr. ROSENBAUM. The sole-source justification wasn't approved; that is why.

Senator BAUCUS. The sole-source justification what?

Mr. ROSENBAUM. Was not approved.

Senator BAUCUS. Not approved.

Mr. ROSENBAUM. I only propose things.

Senator BAUCUS. If this was such an important contract it had to be let sole source, why did you not try to advertise later?

Mr. ROSENBAUM. I didn't try to advertise because I didn't think the quality of firms that we could get in that particular field would be sufficient for our needs. There are lots and lots of such firms, probably hundreds that would try to do such a thing. In fact, I have stopped trying to sole-source it at all. I haven't done it.

Senator BAUCUS. How many consultants and experts are listed for the Washington area offices for ORP?

Mr. ROSENBAUM. I don't have them separate for the Washington area, but there are 49 consultants.

I might point out that our budget for other-than-permanent, full-time equivalents from OMB, which covers consultants and experts, we have used only about half of our allowance. We have only used half of the resources for consultants and experts that have, in fact, been given to us. Most of the consultants, about half of the consultants, haven't charged a penny.

Senator BAUCUS. How many permanent employees are there in the Washington area office doing the same type work as consultants, roughly?

Mr. ROSENBAUM. I don't know.

Senator BAUCUS. Thirty-two sounds about right?

Mr. ROSENBAUM. There are 175 full-time positions in ORP, plus 29 other than permanent, full-time equivalents. There is an artificial distinction to pick out the Washington office from the other offices of ORP.

Senator BAUCUS. I understand it is about 32.

Mr. ROSENBAUM. I don't know. I don't know why you would want to pick out the Washington office. It is 70, I am told, 70 people in ORP at equivalent positions.

Senator BAUCUS. How many permanent employees are listed in the Washington area offices of ORP, doing the same level of work as consultants; that is, environmental science and engineering, in GS–13 to 15 range?

Mr. ROSENBAUM. I don't know. We can get it for the record.

Senator BAUCUS. All right. Good.

You earlier testified, and you stated the consultants and experts are needed because you had problems with resources in ORP staff. Hiring consultants to buttress understaffed offices violates a Presidential directive that consultants cannot be used to circumvent personnel ceilings.

Are you aware of that directive?

Mr. ROSENBAUM. I am aware of the directive. We have not violated it.

Senator BAUCUS. You previously testified you claim ORP staff are not of high caliber.

Mr. ROSENBAUM. I did not say anything of the kind.

Senator BAUCUS. What did you say?

Mr. ROSENBAUM. I said the consultants and experts provide a level of expertise that was not otherwise available to the Government. I never said ORP employees weren't of high caliber. I am sure I didn't use such words.

Senator BAUCUS. I asked you about any staffing problems and inadequate number of high caliber people. Your answer was, on page 192 of the transcript last hearing, "There are a great many problems in both resources and in caliber of people."

Mr. ROSENBAUM. That is true. But I didn't say——

Senator BAUCUS. Excuse me.

Mr. ROSENBAUM. Yes. I did say that. There are a great many problems. Consultants and experts provide an expertise we cannot get on the staff and don't have.

Senator BAUCUS. All I am trying to understand is, do you think there is a problem of the caliber of the people working for you? I am not talking about consultants or experts.

Mr. ROSENBAUM. We have a great many very good people working for us.

In general, some of the kinds of expertise we need are simply not hirable in ORP, probably not in the Federal Government at any level. Many of the best people simply aren't going to work in the Federal Government.

Senator BAUCUS. All I am asking is you be honest with me. Do you think there is a problem with the caliber of people in ORP? Is there a problem? You said the last time you testified there is a problem. I am asking is it accurate, and if it is we will deal with that, assuming it is accurate.

Mr. ROSENBAUM. I don't know how to take that, Senator. We have very many——

Senator BAUCUS. I am asking your personal opinion.

Mr. ROSENBAUM. We have some areas in which we don't have as much expertise as would be in the public interest to use. Therefore we use consultants and experts, sparingly, I might add, as they are supposed to be used to fill those functions.

Senator BAUCUS. You testified earlier that you had so many consultants on a standby basis because it takes quite a while to process somebody as a consultant.

Mr. ROSENBAUM. Yes.

Senator BAUCUS. Our staff has examined the processing time of a representative sampling of consultants. Daniel Kleitman was processed in 9 working days; Herman Chernoff, 18; Benjamin Castleman, 5; Donald Rubin was processed in 14; Gary Lorden, 2; Charles Mays, 17. I am wondering, does this constitute quite a while?

Mr. ROSENBAUM. In the first place, I don't think those figures are accurate. I don't know where they are taken from. For example, Gary Lorden, from the time I contacted him——

Senator BAUCUS. These are EPA's figures.

Mr. ROSENBAUM. It takes, depending on how much pressure we put on the system, on the average about 9 weeks to process the expert.

Senator BAUCUS. EPA tells us it takes a number of days.

Mr. ROSENBAUM. You put down specific examples. I don't have the figures in front of me.

Senator BAUCUS. These are representative.

Mr. ROSENBAUM. I don't think those figures are representative. I would be happy to provide the average for ORP. I can't provide it for EPA.

Senator BAUCUS. Is Dr. Herman Chernoff an expert at ORP?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. What are his duties?

Mr. ROSENBAUM. I don't have his forms in front of me, but Herman Chernoff is one of the leading statisticians in the United States. He was chairman of the Department of Statistics at Stanford University. He heads the statistics group at MIT and he has one of the profession's highest awards.

Senator BAUCUS. Do you know whether Drs. Chernoff and Kleitman are listed as principal investigators on the contract at MIT to study health effects of radon on water?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. What are the rates paid for Drs. Chernoff and Kleitman?

Mr. ROSENBAUM. Kleitman draws no money on the contract. I would imagine they both get the maximum rate.

Senator BAUCUS. Their per diem is $192?

Mr. ROSENBAUM. That is maximum; right.

Senator BAUCUS. Are they also employed by MIT?

Mr. ROSENBAUM. Yes. They are professors.

Senator BAUCUS. Does this seem to appear as a conflict?

Mr. ROSENBAUM. No. It is not a conflict.

Senator BAUCUS. Why not?

Mr. ROSENBAUM. No reason why it should be a conflict.

Senator BAUCUS. The same persons are drawing pay from two sources.

Mr. ROSENBAUM. They are not drawing pay for the same thing. Dr. Kleitman draws no money from the contract. That is the first thing.

Senator BAUCUS. He gets paid by MIT?

Mr. ROSENBAUM. Yes. All professors get paid and they are also allowed to consult outside a certain amount of time.

I believe the MIT rule is 1 day a week as maximum for professor.

Senator BAUCUS. Is Wendell Webber an expert at ORP?

Mr. ROSENBAUM. Yes, sir.

Senator BAUCUS. What are his responsibilities?

Mr. ROSENBAUM. I don't actually have his form here. You do, Senator.

Senator BAUCUS. I understand he does supervisory work in radioactive waste and ocean disposal?

Mr. ROSENBAUM. He did supervisory work for 4 months. At that time he had three staff members assigned to him as an expert.

After those 4 months, he has not had anyone assigned to him, if that is what you mean by supervisory work.

Senator BAUCUS. He was originally hired as consultant?

Mr. ROSENBAUM. He was switched to an expert specifically so he could help us in straightening out the program.

Senator BAUCUS. Can he supervise?

Mr. ROSENBAUM. Yes.

Senator BAUCUS. If Mr. Webber has the qualifications to be an expert, why wasn't he hired as an expert in the first place?

Mr. ROSENBAUM. Because when we originally hired him, it didn't occur to me that he would be used in a role that would be necessary to make him an expert. Unless you are going to use somebody in a supervisory role, it is really an option to make someone an expert. He certainly had the qualifications.

Senator BAUCUS. I have some more questions to ask you, but I must say I am struck with several observations.

No. 1, your operation seems to be a bit loose; that is, we are not sure what the standard operating procedure is at certain times. For example, we don't know whether or not. project officers should or should not be listed prior to consultation. That is just a representative example. Second, you say you were unaware of certain regulations at EPA and ORP.

Now that you are aware of them, you have ceased engaging in certain contracting procedures. It is curious to me that you were unaware of these procedures in the first place. Hearings of this kind are by definition always somewhat inconclusive. It is difficult to know exactly where the truth lies. But my own personal judgment, without being critical, is that the truth lies somewhere in the area of an operation that is not terribly efficient, does not really look at every penny, to make sure that there is absolutely no waste.

The real problem in Government, I think, is that too many people in Government simply draw their paychecks and put in 8 hours a day. When it comes to entering into contracts with contractors there is a tendency to just sign the check because it is not the individual Government employee's own money. It is Uncle Sam's, it is the taxpayers' money. So there is a tendency to be not quite as diligent in making sure that the budget balances as there is to make sure there is enough grocery money, enough money to pay the mortgage on the home, or on the car. There is a tendency for people to forget why they are here in Washington. There is a tendency to forget whom we are really serving. My only suggestion is that you, going back to your office, pay extra attention, walk that extra mile to make sure that we as taxpayers, are getting our money's worth.

You know, I think one of the reasons there is so much dissatisfaction with the Government today, and why there is some concern that many people won't vote in this next general election is basically because people are just fed up. With inflation facing them, it is harder to make ends meet. When they pay taxes, they have a sense that a lot of the money is just being wasted.

The only way that I think the American public is going to change that attitude as if they know for sure it is not being wasted. There is only one way that I know for them to have that impression and that is for everybody in Government—that includes the executive branch, as well as the legislative branch, to make every effort possible to make sure that we are not wasting money at all.

And that is why I have been spending so much time in dwelling upon sole-source contracting versus competitive contracting. It is my firm belief that we are going to get a better product for the money when we compete contracts.

The converse is true, too. The more an agency sole sources, doesn't try to find competition, the more likely money is going to be wasted, particularly when some of the same personnel are on both sides of the fence. Whether or not they are getting paid is probably irrelevant; that is, if a person is working for EPA on a contract at the same time he is working with the contractor or associated with the contractor in all likelihood some money is going to be wasted. That is, the person is caught in the middle. If he is not caught in the middle he probably helps the person who butters his bread more and the person who butters his bread more is going to be the contractor.

So I again suggest all of us, particularly ORP, exercise a little more diligence to get the job done; otherwise we are going to have a lot more hearings like this, otherwise there is going to be a lot more trauma in trying to cope with these problems.

Mr. ROSENBAUM. I had prepared an opening statement. May I submit it for the record?

Senator BAUCUS. Yes.

Mr. ROSENBAUM. I would like to say that a great deal of money is wasted in Government contracting. I have been around on all sides for a long time and I have seen it.

I don't work a 9 to 5 day. I work a great deal longer than that. Most of my colleagues also do. I have been zealous in trying to get the most for the Federal dollar, as I am sure any of the staff people who testified will tell you.

Senator BAUCUS. Thank you.

I might say, too, we will be back to look at ORP and EPA in 1 or 2 years, too.

Thank you very much.

Our next witness will be Richard D. Lichtwardt, Executive Director, FCC; Tom Campbell, Associate Executive Director; Kenneth A. Gordon, Chief, Procurement Branch of the FCC.

Gentlemen, we would appreciate it if you would come up and sit at the witness table.

Mr. Gordon, would you please stand?

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

Mr. LICHTWARDT. I do.

Mr. CAMPBELL. I do.

STATEMENT OF RICHARD D. LICHTWARDT, EXECUTIVE DIRECTOR, FCC, ACCOMPANIED BY THOMAS P. CAMPBELL, ASSOCIATE EXECUTIVE DIRECTOR OF OPERATIONS

Senator BAUCUS. Mr. Lichtwardt, thank you for coming.

Would you please briefly describe your responsibilities at the FCC?

Mr. LICHTWARDT. Yes.

I am Executive Director of the FCC. I have been employed by the Commission for some 8 years, and some 6 years in the position as Executive Director. The Executive Director is essentially the administrator-coordinator of the agency operating under authority delegated by the Commission through the Chairman. My purview involves areas such as procurement and personnel.

Senator BAUCUS. How many contracts over $10,000 has the FCC let annually? Do you have a rough idea?

Mr. LICHTWARDT. Something in the neighborhood of 24 to 30, I would think.

Senator BAUCUS. The figures I have for 1977, 26; fiscal 1978, 30; fiscal 1979, 49; and fiscal 1980, 35. Does that sound right?

Mr. LICHTWARDT. That is probably correct.

Senator BAUCUS. What is the total dollar figure for those contracts? I have information here. Let me read it. See if you agree with it. Fiscal 1977, $1.5 million, roughly; fiscal 1978, $800,000; fiscal 1979, $2.8 million; and for fiscal 1980, about $2.2 million.

Mr. LICHTWARDT. It sounds correct, yes.

Senator BAUCUS. Can you tell me how many consultants the FCC hires annually?

Mr. LICHTWARDT. How many consultants?

Senator BAUCUS. Consultants, that is right.

Mr. LICHTWARDT. Less than half a dozen I should imagine.

Senator BAUCUS. The figures I have for 1978, 26; for 1979, 55; and for 1980, 38.

Mr. LICHTWARDT. Consultants, Mr. Chairman?

Senator BAUCUS. That is correct.

Mr. LICHTWARDT. Are you including consultants who may be hired through the personnel system, as opposed to the contractual system?

Senator BAUCUS. That is right. Personnel systems would be included as well as contractual.

Mr. LICHTWARDT. I can't dispute the figure, Senator.

Senator BAUCUS. The information I have, too, is that the FCC spends on outside consultants annually about $349,000 in 1978, fiscal 1978; $787,000 in 1979; and about $872,000 in fiscal 1980.

Does that sound accurate?

Mr. LICHTWARDT. That may be correct.

Senator BAUCUS. What is the salary range for your outside consultants?

Mr. LICHTWARDT. The salary of an outside consultant in the personnel system is limited by law to the grade 15, step 10.

Senator BAUCUS. Those not in the personnel system?

Mr. LICHTWARDT. I think the maximum is 680–some dollars a day.

Senator BAUCUS. My information is between $200 and $680 a day, plus expenses; is that correct?

Mr. LICHTWARDT. That is correct.

Senator BAUCUS. How much does the average consultant make in the FCC per year? Do you have a rough idea?

Mr. LICHTWARDT. We don't have that data. We will have to provide that for the record.

The average consultant's earnings per year in the FCC: We will provide that.

Senator BAUCUS. I would appreciate it, but my understanding is it is about $10,000.

Mr. LICHTWARDT. That seems to be in the ball park.

Senator BAUCUS. My understanding is the average length, man-days, average length a consultant takes amounts to about two a month. Is that right?

Mr. LICHTWARDT. Two months per year?

Senator BAUCUS. Yes.

Mr. LICHTWARDT. Again, it should be within the ball park. But I will provide that for the record.

Senator BAUCUS. Do you know how much you pay your top communications consultants, how much the FCC pays its top communications consultant?

Mr. LICHTWARDT. Top communications consultant? I think we have that, Senator, if you would just give us a moment.

Mr. CAMPBELL. I belive it is in the range of $400 a day.

Senator BAUCUS. The information I have is one at $400 a day, one at $371 a day.

Are you familiar with part 1–1.301–1, title 481 of the Code of Federal Regulations which states, "All purchases and contracts, whether

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by formal advertising or by negotiation shall be made on a competitive basis to the maximum practicable extent"?

Mr. CAMPBELL. Yes, sir, we are.

Senator BAUCUS. Do you agree with that policy?

Mr. CAMPBELL. Yes, sir.

Senator BAUCUS. Is it the policy of the FCC to let all contracts on a competitive basis to the maximum practicable extent?

Mr. CAMPBELL. We believe that is the policy of the FCC. Yes.

Senator BAUCUS. I have a chart of information supplied to the subcommittee by the FCC. I wonder if staff could give you a copy of that.

Let me ask whether you agree that figures in the chart appear accurate?

If you look at the chart, you will note that the percentage of contracts let each year by competition has decreased steadily from 69 percent in 1977 to 26 percent in 1980. I am wondering if that reflects a change in the FCC mission during the last 4 years that accounts for such a dramatic drop?

Mr. LICHTWARDT. I don't think it represents a change in the FCC mission, but it represents a change in the FCC regulatory philosophy and a change in the type of things for which we needed to contract.

I think as your staff analyzes the procurements in the earlier fiscal years of 1977 and 1978, they will note that a great deal of the contractual effort at that time was for buildings and maintenance of ground and acquisition of computer capability for which we went competitively and continue to go competitively. With the passage of time and the introduction of a new chairman in the FCC, Chairman Ferris in 1977, a change in regulatory philosophy began to appear and at that time also research budget virtually doubled in fiscal year 1979. We were tasked by Congress and the Commission to take some very far-reaching policy steps.

The Congress tasked us to come up with a UHF comparability study to determine why the UHF television band cannot be comparable to the VHF; the Congress tasked us to make a study of the COMSAT Corp.; and to make a network inquiry to determine the extent of the influence of the networks over their owned and operated or affiliated stations.

We individually started a program to see how the networks were complying with the Commission policy statement on children's television. What I am saying is that a shift has occurred over that period of time from the types of acquisition of goods and services, to the acquisition of ideas and expertise in very selected and very unique fields. Some of the results of that shift you have correctly characterized in a reduction of competitive procurements and a relative increase in noncompetitive procurements.

Senator BAUCUS. Which contracts, though, that you have already generally outlined a number of them, I wonder if you could again categorize, which ones, the kinds of contracts, the kind of work you are doing this year and last year, but particularly I guess this year, in 1980, but you were not undertaking in 1977 and 1978. I assume a lot of the work is the same.

Mr. LICHTWARDT. Yes; as I say, there is still the acquisition of things.

Senator BAUCUS. UHF study and the other?

Mr. LICHTWARDT. The Comsat study. There was a great deal of preparation in late 1978 and early 1979 for the World Administrative Radio Conference in Geneva. We had to acquire noncompetitively Hewlitt Packard equipment so we would be compatible with the State Department and Geneva.

Senator BAUCUS. You have named several, four or five. Why does that account for such a percentage drop in the number of contracts again from, roughly, 70 percent competitive?

Mr. LICHTWARDT. You recognize we are dealing with small numbers. We do not do a great deal. I have analyzed the same statistics that your staff has here. I have broken those contracts into three separate categories, our whole contractual effort, competitive and noncompetitive. Those that deal with research studies, consultants and expert testimony is one category.

Senator BAUCUS. Excuse me?

Mr. LICHTWARDT. Those that deal with research studies, consultants and expert testimony, are in one category. Those that deal with facilities, equipment, support services and operations are another category. Then I have a miscellaneous category.

I can go from year to year. For instance, in fiscal year 1977, in the research area, we had three competitive contracts and six noncompetitive. Of those six, three were for testimony in rate-of-return cases in the common carrier area, two were proprietary information available only from one single source.

In fiscal year 1978, we have five competitive procurements, none of which were time sensitive. We had nine noncompetitive procurements, five of which were for individual expertise, two dealing with the network inquiry.

In 1979, we had five competitive, none of which were time sensitive. In the noncompetitive area we had 14, 2 of them resulted from unsolicited proposals to us. One was a proprietary matter dealing with Arbitron. Three of them were time sensitive because of the necessity of getting technical work done for the World Administrative Radio Conference.

Four of them were simply for the individual expertise of people.

In the miscellaneous area for fiscal year 1980, one is the Kurzweil reader for the blind. Kurzweil has been working for 50 years and is the only organization that has a reading machine for the blind. In each of the cases, for each year, we have two subscription services. Pike & Fisher Radio Reports and the Television Fact Book that are virtually bibles that our people work with. We must deal noncompetitively. We must subscribe with those people.

In each year, 1979 and 1980, we have made a contribution of $15,000 to an annual Telecommunication Conference hosted by the Department of Commerce and other agencies. This shows up in our statistics as a noncompetitive contract.

Senator BAUCUS. It would be helpful if you could, for the record, list the contracts for 1980 that were noncompetitive, I mean very explicitly describe why.

Mr. LICHTWARDT. Why they were not competing?

Senator BAUCUS. If you are saying they are time-sensitive, I want much more than just two words.

Mr. LICHTWARDT. Yes, the reason for the time-sensitivity.

Senator BAUCUS. Very explicitly as to the reasons why they are time sensitive. The more the justifications appear adequate, the less likely we will come back and revisit. I must tell you that the ones that don't appear adequate, the greater the likelihood to come back and look at it.

Mr. LICHTWARDT. I understand.

Senator BAUCUS. What are the most common reasons cited by FCC for the sole source of contracts?

What is the usual reason?

Mr. LICHTWARDT. I would say it is probably between time-sensitivity and the individual expertise of the person to be contracted with.

Senator BAUCUS. How many days does it take to advertise, complete a contract?

Mr. LICHTWARDT. How many days?

Senator BAUCUS. On the average?

Mr. LICHTWARDT. It would depend on the nature of the contract. We would tend to say 60 to 90 days for any competitive procurement.

Senator BAUCUS. The average at FCC is, you think, about 60 to 90 days?

Mr. LICHTWARDT. I would think so. Yes.

Senator BAUCUS. How many days does it take to sole-source a contract?

Mr. LICHTWARDT. I don't know.

Ken?

Mr. GORDON. It depends on how it is presented.

If it is on a simple work statement, there are ample sources in the area, probably 2 weeks; 4 weeks, if it is done on the standard form 18. If you flip-flop over into a complex work statement, task-oriented work statement, you are talking 75 to 90 days for the RFP.

Senator BAUCUS. Two weeks to ninety days.

Mr. LICHTWARDT. For sole-source.

Mr. GORDON. If you want to take that range, for sole-source; yes.

Senator BAUCUS. So again, so we are clear, between 2 weeks and 90 days for sole-source?

That is the range. The average would be in the middle or would the average be closer to one end or the other?

Mr. GORDON. The average would be quite low on the sole-source.

Senator BAUCUS. Would it be 2, 3 weeks, 4 weeks?

Mr. GORDON. Probably. Often when the work statement and the purchase request come down to the office, it has been negotiated by the program manager before I ever get it. So it is a simple matter of performing——

Senator BAUCUS. The point is by sole-sourcing, maybe a month and a half; roughly?

Mr. LICHTWARDT. Conceivably 2 months; yes.

Senator BAUCUS. Sixty to ninety days?

Mr. LICHTWARDT. Yes.

Senator BAUCUS. For my information, is there much difference in the time, here; that is, could we improve the time for either sole-source

or competitive routes in any significant degree, with any changes in personnel or regulations within reason? Are those time periods pretty well set in concrete? Are they pretty well fixed, the two alternate routes?

Mr. LICHTWARDT. Mr. Gordon can correct me, but I rather doubt you could make a great deal of improvement on it. I think in an advertised situation, competitive situation, you need to have 30 days for people to respond. You are going to need roughly another 15 to 30 days to analyze that response, to engage in whatever preawared conferences may be needed, this type of thing. I would doubt that there is room for significant improvement.

Senator BAUCUS. You don't think better planning for the FCC contracts would help improve the percentage of competitively let contracts?

Mr. LICHTWARDT. I would certainly say that perhaps better planning would help reduce that.

Senator BAUCUS. Are you familiar with the September 30, 1980, report entitled "Management Control of Agency Contracting Activities, Examination of Consulting Services, Contracts Awarded During Fiscal Year 1980 By the FCC"?

Mr. LICHTWARDT. Yes, sir. I am.

Senator BAUCUS. I understand it was prepared by Fred Goldsmith, Chief, Internal Review Division, Edward Schafer, Office of Attorney General Counsel?

Mr. LICHTWARDT. Yes.

Senator BAUCUS. I understand Mr. Goldsmith was appointed by Chairman Ferris to oversee FCC's efforts to eliminate waste, fraud and error; is that correct?

Mr. LICHTWARDT. Yes.

Mr. Goldsmith occupies a function similar to the Inspector General's function in a major department.

Senator BAUCUS. Could you briefly explain the genesis of this report?

Mr. LICHTWARDT. Yes. The genesis of that report came—I am trying to think back, in May or June, when there was in the local press a great deal of attention paid to Government contracting policies and particularly the use of consultants.

The Office of Management and Budget called and asked whether we had made an analysis of our consulting contracts. We had not. We initiated one at that time. At that time it was June or July.

Mr. Goldsmith and Mr. Schafer went into the procurement files, the contract files, and examined every consultant contract that we had.

Senator BAUCUS. What areas did this report cover?

Mr. LICHTWARDT. Only consultants, only consultant contracts over $10,000, I believe, for fiscal year 1980.

Senator BAUCUS. The report states on page 4:

> The absence of any competitively awarded contracts points to the absence of effective management controls. It appears that in several of the contract situations examined, the pressures of time and requirement to go sole-source arose because the need for consulting services was not recognized early enough in a given project and because insufficient inquiry was made to locate persons called for under some of those contracts that were admittedly rare skills and ability to address the topics without any institutional bias.

In other words, this report states that inadequate management planning is one reason for so many sole-source contracts. Is this one of the reasons why there has been such a dramatic drop in competitively awarded contracts?

Mr. LICHTWARDT. I don't know that has been one of the reasons why there was such a drop in competitive contracts. But as I said earlier, I think we have great room for improvement in the planning and management of the whole contractual effort.

Senator BAUCUS. That means you would be able to advertise more contracts, probably?

Mr. LICHTWARDT. If we had better planning; yes.

Senator BAUCUS. With better planning, you could probably advertise more contracts?

Mr. LICHTWARDT. Yes.

Senator BAUCUS. I would like to ask a few questions about two contracts, also examined by FCC Internal Review Division. First, Studley contracts. Would you please describe the work done by Julien J. Studley?

Mr. LICHTWARDT. Mr. Chairman, if I may, I would like to ask Mr. Campbell to respond to this.

Mr. CAMPBELL. The Julien J. Studley Corp. is under contract with the FCC to locate real estate as required by the FCC for additional office space. That has been its primary function. In addition to that, they have assisted us in the preparation of competitive leasing proposals—we have made one of those working with Studley—as well as looking at preparation of leases for noncompetitive leasing proposals.

Senator BAUCUS. How much money has been allocated for Studley's services to date?

Mr. CAMPBELL. To date, in fiscal 1980—I believe to date, including a small amount in fiscal 1979, the total is $86,000.

Senator BAUCUS. The figure I had was $133,000.

Mr. CAMPBELL. In 1980, originally in fiscal 1980 we had increased the amount obligated to Studley by $30,000. We have since deobligated that amount as it rose over a confusion as to what sorts of projects we were being billed for by Studley.

Senator BAUCUS. I'm sorry. Once more, please?

Mr. CAMPBELL. Originally we obligated an amount, I believe in the $120,000 range. I don't recall a total of 133, but I do recall a total of $120,000 range. We deobligated $30,000 in fiscal 1980. The deobligation resulted from our discussions with the Studley Corp. over what services they had performed on our behalf.

Senator BAUCUS. Does your total include a request for fiscal 1981?

Mr. CAMPBELL. No.

Senator BAUCUS. What would the request for fiscal 1981 be?

Mr. CAMPBELL. We are in the process of determining that at this point in time. We believe it would be $5,000 to $10,000. But we have not resolved that at this point. We originally placed a request in the procurement office for $20,000, but we have since withdrawn that. Again, we are in the process of redetermining our requirements.

Senator BAUCUS. Are you familiar with the sole-source justification in the original purchase order with Studley?

Mr. CAMPBELL. Yes.

Senator BAUCUS. You signed that justification?

Mr. CAMPBELL. I believe so.

Senator BAUCUS. I have a copy of that justification here.

Let me read part of it. It states.

There is in reference to our purchase request to contract with Julien J. Studley, Inc., for assistance in preparing our upcoming office space solicitation. As you know, the Congress has included a provision in our fiscal year 1980 Appropriation Act to allow us to directly lease office space in the downtown Washington area. We have been seeking office space since January 1978. Therefore, it is essential we move as quickly as possible to acquire the space as soon after October 1979 as possible. To do this, we need immediate support in this new complex program.

Therefore, due to these time constraints we believe it is appropriate to obtain the services of a sole-source justification.

This document states that you sole-sourced a contract to Studley because you needed to acquire new space quickly; is that correct?

Mr. CAMPBELL. Yes, sir.

Senator BAUCUS. Are you familiar with part 1–5.202 of title 41 of the Code of Federal Regulations?

Mr. CAMPBELL. If that is the section that deals with the negotiated procurements, I have reviewed it.

Senator BAUCUS. It states:

In order for this authority to be used—

That is sole-source authority—

the need must be compelling and unusual urgency as when the Government would be seriously injured financially or otherwise, the property and services to be purchased or contracted for were not furnished by a certain time and when they could not be procured by that time by means of formal advertising.

Do you believe the Government would have been seriously injured had you waited the extra 1½ to 2 months required to advertise the contract?

Mr. CAMPBELL. Yes, sir, I am not entirely sure of the definition of "seriously injured," from the FCC's perspective and the Chairman of the FCC, who gave Mr. Lichtwardt and myself a direct charge in this matter. We have been waiting since January 1978 to acquire badly needed office space for our staff in Washington, as well as office space necessary to consolidate licensing facility in Gettysburg, Pa.

It took several months, obviously, to complete the space procurements in both of those areas. Obtaining office space in Washington, a town where the office space is not that available; is difficult. It is a very heavily leased town. As for Gettysburg, Pa., the initial indications from GSA were that office space was not available there either.

These requirements had been pending for quite some time. Therefore, the Congress gave us this authority to lease our own space.

We felt we could not wait and go through a further competitive cycle to obtain the initial expertise we needed in this area.

Senator BAUCUS. I understand FCC wanted additional office space; that is not unusual. But I don't see a 1½-month delay or 2-month delay, 6-month delay is going to result in compelling unusual urgency, when

the Government would be seriously injured financially or otherwise. I don't understand why a several-month delay in getting office space is so compelling.

Mr. CAMPBELL. I think the original, the sole-source agreement with Studley was prepared in a relatively short period of time, a few days.

Senator BAUCUS. That doesn't answer the question.

Mr. CAMPBELL. I understand. I was building to that answer, if I could. We felt at that time that the negotiated cycle, excuse me, competitive cycle would take 75 to 90 days, but in any case, 2 to 3 months. In addition, a several month period of time is necessary to first locate space, complete a lease, redesign office space, get the staff in there, and actually begin to resolve the overcrowding problems. The chairman made it clear to us that we should move as rapidly as possible.

Senator BAUCUS. With all due respect, that is not much of an answer. Whether it's sole-source, competitive, the office is still going to have to move—that is irrelevant.

The question is why several months' delay, such an urgent compelling need for the Federal Government to require a 2- or 3-month——

Mr. CAMPBELL. We realized the staff would have to move, but the question of getting the office space for them to move was the matter we were trying to resolve most rapidly. It was not a question they were going to move at some point in time, but getting that movement under way as quickly as possible.

Senator BAUCUS. What is the damage to Uncle Sam if you move 2 months later?

Mr. CAMPBELL. I think the dollar damage would be very difficult to calculate.

Senator BAUCUS. What would it be?

Mr. CAMPBELL. I couldn't tell you.

Senator BAUCUS. $1?

Mr. CAMPBELL. I am unable to tell you what the damage is to the FCC or to the Federal Government or the taxpayers of saving FCC staff members from working in overcrowded conditions.

Senator BAUCUS. What is the probable advantage of offering a contract on a competitive basis so that Uncle Sam is paying less for the same job?

Mr. CAMPBELL. Presumably if we had gone out on a competitive basis, using the economic forces in the marketplace, we may have gotten a contract at a lesser rate.

Senator BAUCUS. In all probability?

Mr. CAMPBELL. In all probability, fine. However, the other side of it, the equation is much more tangible. It is one, however, that the top management of the agency felt strongly about. It was necessary to get the FCC staff into adequate, at least minimally adequate, quarters. I realize there are not dollars on both sides of the equation, but these are, however, important considerations.

Senator BAUCUS. Frankly, it seems to me, and the agency wants to move more quickly, 2 to 3 months more quickly.

Frankly, I think there are other reasons why this is sole-sourced. We will get into that later in the questions.

The point I am getting at is, I don't see what the damage to the Government is—FCC moves to a new office space 2 months later, as a practical matter.

How much time has been required for request for quotation to do the work Studley is doing?

Mr. CAMPBELL. My understanding is our process would take anywhere from 2 to 6 weeks.

Senator BAUCUS. Mr. Gordon said on the average 14 days to several months.

Mr. GORDON. Again, depending on the statement of work.

Senator BAUCUS. How long did it take to process the original purchase order for Studley?

Mr. CAMPBELL. I cannot tell you how many days. I know it was very few. I can supply that for the record.

Senator BAUCUS. I understand it took 2 weeks. So we would only have lost 2 weeks, if you had limited competition.

Mr. LICHTWARDT. I don't know that that follows. What we are saying is, we could process the request for proposals in 2 to 3 weeks, but we have the matter of getting the response.

Senator BAUCUS. Can you explain what the request for quotation is?

Mr. CAMPBELL. I think Mr. Gordon can give you the best technical explanation of it.

Mr. GORDON. It is a standard form prescribed by the Federal Procurement Regulations. The greatest application is in the small transactions, but you can use it in larger transactions, too. Its greatest application, other than in the small purchase area, would be simplicity in solicitation.

Senator BAUCUS. Is it competitive?

Mr. GORDON. Yes; you can get competition through it.

Senator BAUCUS. It is another form of competition?

Mr. GORDON. You may get competition, too.

Senator BAUCUS. It is a limited form of competition; instead of advertising for a contract, you simply send out a required work statement to three or four real estate firms in this instance and ask them to bid on it. Is that the general——

Mr. GORDON. Yes, essentially. Mechanically, if I were going to follow through on going out and trying to find somebody in the local area, I would prepare some telephone calls, solicit over telephone, back it up with the standard form 18 and ask them to accomplish in writing on that form what we have discussed on the phone.

Senator BAUCUS. So you could, the FCC could have participated in the request for quotation and within 3 or 4 weeks, 3 or 4 different firms would have responded with their bids and their specifications for the work. It that correct?

Mr. GORDON. Given the availability of sources and the statement of work, yes.

Senator BAUCUS. My question, then, is, what is the compelling and usual urgency behind the FCC's need for space, not allowing the FCC to wait a few weeks? If you can competitively bid it in 4 weeks, why couldn't you wait 4 weeks?

Mr. LICHTWARDT. Mr. Chairman, your side of the bench and our side of this table look at that compelling need differently. Of course, it is

understandable. The Federal Communications Commission has been chronically overcrowded for years. We moved into the 1919 M Street building, I think, in 1967. It was too small for us when we moved into it. We began at that time to look for satellite locations nearby. But for many, many years, we have been chronically overcrowded. We have tried to deal with the General Services Administration to locate us space within our area.

With the passage of this time, the increasing frustration translated into a compelling need type situation. There is no question but what there are other ways of getting the Julien Studley expertise, and there are other ways of doing it. We were advised that the Julien Studley Corp. was an internationally-known firm of high reputability.

Senator BAUCUS. Internationally? Are you moving to Geneva?

Mr. LICHTWARDT. No; it is an organization that is of international scope. We chose to go the sole-source route. I will certainly agree with you that there were other routes available to us.

Senator BAUCUS. I don't mean to beat a dead horse, but if there was a chronic space problem at FCC, even if there happens to be one—I am not sure that is the case compared to other agencies in town—what difference does several weeks at the most, 2 months, make in getting new office space when Uncle Sam, sole-source basis, spends a very high rate of money to affirm; on the other hand, in all probability they could have saved a lot of money if you had some kind of competitive process.

That is the basic policy, it seems to me.

Mr. LICHTWARDT. Yes.

Senator BAUCUS. Is it possible you could have contracted with another real estate agency equal in ability to Studley, which could have charged less?

Mr. LICHTWARDT. I am sure that is within the realm of possibility.

Senator BAUCUS. You are paying Studley $680 per day. Is that right?

Mr. LICHTWARDT. That is what it works out to, a daily rate. We are paying Studley $85 an hour.

Senator BAUCUS. Excuse me?

Mr. LICHTWARDT. We are paying Studley $85 an hour.

Senator BAUCUS. How many real estate agencies earn $680 a day, apart from the commission?

Mr. LICHTWARDT. In a consulting type capacity?

Senator BAUCUS. Yes.

Mr. LICHTWARDT. I am not sure. I am told the Studley rate is very competitive for that industry.

Senator BAUCUS. Do you know of any other quotes from any other real estate?

Mr. LICHTWARDT. We have not, sir; no.

Senator BAUCUS. How much do you say you pay your top communications consultant?

Mr. LICHTWARDT. We established $400 a day.

Senator BAUCUS. The Federal Communications Commission charged with the communications policy pays its top communications consultant $400 a day, yet it pays the real estate agent close to $700 a day plus expenses. Is there an anomaly there?

Mr. LICHTWARDT. I am not sure, sir, that I can address that comparison. It is the cost of professional services in the different areas. We speak of the $680 a day——

Senator BAUCUS. Is the FCC in the real estate business, or in the communications business?

Mr. LICHTWARDT. No, sir. We are in the communications business.

Senator BAUCUS. The Internal Review Division report refers to the Studley contract on page 7 that states, "Prices of services offered appears to have been accepted without any attempt to bargain."

Why didn't you attempt to negotiate the price of the contract?

Mr. LICHTWARDT. Again I have to turn to Mr. Campbell.

Mr. CAMPBELL. When we discussed it with the Studley Corp., we were told that was the rate they charged other Government agencies that they worked for, and that the rate they charged their private sector clients for consulting services was considerably more.

Senator BAUCUS. Did you check that out?

Mr. CAMPBELL. I talked to the other Government agencies and they said they had used Studley services. Both the Executive Office of the President and Federal Mediation Service indicated they were very satisfied with the service and they paid similar rates.

Senator BAUCUS. By "similar," $680 a day?

Mr. CAMPBELL. I believe both of those were a couple of years prior and my recollection is, although I am not absolutely certain about this, that FMC paid an inflation-adjusted rate, because the work had been done in 1975 or 1976.

Senator BAUCUS. What were those per diems?

Mr. CAMPBELL. I don't recall off hand. I think it is in the $50 or $60 range. I am not certain.

Senator BAUCUS. As I understand it, you first contracted with Studley for 10 days, then an additional 13 through the use of purchase orders; is that correct?

Mr. CAMPBELL. Yes.

Senator BAUCUS. At what point did you decide to issue an actual contract to Studley?

Mr. CAMPBELL. Once we determined we were going to require more extensive services to obtain both the large office space we needed in Washington to relieve our overcrowding, as well as to complete the solicitation for the competitive space procurement in Gettysburg.

Senator BAUCUS. How much has been spent on the Studley contract to date?

Mr. CAMPBELL. I believe we have obligated $83,000 through the end of fiscal 1980.

Senator BAUCUS. Why did you decide to sole source this contract? Why didn't you advertise it?

Mr. CAMPBELL. Again, at the outset, it had to do—you are speaking now of the contract versus the purchase orders?

Senator BAUCUS. Yes.

Mr. CAMPBELL. I think at that point in time it was the expertise Studley, Inc. developed when working for us, the experience they had with respect to the FCC's requirements, as well as the marketplace in terms of where possible locations existed that would meet the FCC's needs.

Senator BAUCUS. Did you personally write this justification, this sole source contract?

Mr. CAMPBELL. I believe I did. Yes.

Senator BAUCUS. As you know, it states in part services nonpersonal for following tasks: One, based on the FCC space requirements which will be provided, assess the office space availability in Washington, D.C., in Gettysburg, Pa., areas, two, provide assistance as required during the preparation of the solicitation for space for both the Washington, D.C., and Gettysburg offices, and three, Mrs. Pryor's work on 256–9 qualifies her as sole source for this new requirement.

Why had her work on 256–9 qualified her for the sole source contract?

Mr. CAMPBELL. I believe the number you referred to was the earlier purchase order. Again as I stated during that period of time she became very knowledgeable about the FCC's requirements and rather than, again, go through a competitive cycle, we decided that it made the most sense——

Senator BAUCUS. Could others have learned her special knowledge quickly and easily?

Mr. CAMPBELL. I think it would have taken a roughly comparable period of time for someone else to learn what she knew about the FCC. But it is certainly not unique. Somebody else obviously could learn.

Senator BAUCUS. Would you please explain to me what is so unique? Here we have an agency, FCC, looking for office space, Washington, D.C. area. What is so unique that some other real estate firm couldn't provide the same work; that is, a real estate firm in the Washington area which is in the business of real estate in Washington, D.C., that is their job, that is their business, what is so unique about the FCC looking for office space that some other real estate agent in the business of real estate in Washington, D.C., couldn't learn fairly quickly.

Mr. CAMPBELL. There are two sides of that question. One is the office space market in Washington, D.C., which presumably any corporation would come into the contract with that information. The other side is the FCC's requirements which we had begun discussing obviously in some detail over this period of time with Studley Corp.

Senator BAUCUS. What is so unique and special about FCC's requirements?

Mr. CAMPBELL. I don't think the FCC's requirements are particularly unique at this point in time. They are simply requirements of one agency. But rather it would have been a delay, again a 60- to 90-day delay.

Senator BAUCUS. Again, I am sorry, what is so unique about the FCC's requirements that required, that would make it unpracticable for some other real estate firm to do the work or to make it unpracticable to compete with, to advertise the work and put it up on a competitive basis?

Mr. CAMPBELL. As for the question of practicability, other corporations could obviously have done the work. The question was time, not the fact that Studley had unique information.

Senator BAUCUS. It is not unique qualities of FCC?

Mr. CAMPBELL. No; it was not the unique qualities of the FCC.

Senator BAUCUS. It is only FCC wanted office space pronto?

Mr. CAMPBELL. Yes, sir. We described that situation.

Senator BAUCUS. So we are clear now, the point is Mrs. Pryor did not have any special knowledge that required her to sole-source contract?

Mr. CAMPBELL. Mrs. Pryor at that point in time had obviously accumlated knowledge about the FCC. Other people over a similar period of time presumably could have accumulated that knowledge. But at that time she had accumulated the knowledge, and as part of our concern of expedition in this area we felt the continued sole source work with Studley was appropriate.

Senator BAUCUS. Let's go back again. What is knowledge that is so special that some other real estate firm in the business of real estate could not have learned in a very short period of time, that is, within 5 minutes, 15 minutes, et cetera?

Mr. CAMPBELL. I think the only knowledge that I could describe in this area would have to do with knowing the FCC's requirements, the individual bureaus and offices, where the overcrowding occurred and the kinds of individuals we are proposing to relocate. I am not claiming, I don't believe anyone would, that this is somehow unique information that somebody else could not obtain.

Rather, it is information that Mrs. Pryor did accumulate over that period of time and did reduce the startup time with any number——

Senator BAUCUS. I am sorry. I have to be more specific. What specific knowledge did Mr. Pryor have that would take a significant period of time for some other real estate agent to learn in order to help the FCC find office space?

Mr. CAMPBELL. I don't believe that Mrs. Pryor had any knowledge at that point in time that would require any substantial period of for anyone else to learn.

Senator BAUCUS. Therefore, she had no special prior knowledge to necessitate a sole source contract?

Mr. CAMPBELL. She had some knowledge of the FCC. It was neither special nor unique. Anyone else in a similar period of time could have obtained it. The concern was expeditious timing; our urgent need for office space, rather than the unique qualifications, qualifications that nobody else could present to the FCC. There was however, obviously time invested on our part in bringing Mrs. Pryor up to speed on our requirements. We could have done it with somebody else.

Senator BAUCUS. What would have happened if you waited an extra 75 days for the additional space as a practical matter?

Mr. CAMPBELL. As I mentioned earlier the concern was to eliminate the overcrowding among our staff as quickly as possible. I believe that as a practical matter, there is not a tangible answer. We have been working in overcrowded conditions for a period of time. The Chairman of the Commission and top management of the agency, I felt that this was no longer appropriate for the Commission. We then sought our own authority for office space leasing from the GSA, excuse me, from Congress.

Senator BAUCUS. Do you know why your office space is more crowded than any other agency in Washington?

Mr. CAMPBELL. My guess is are more crowded than some and, from my experience, less crowded than others.

Senator BAUCUS. There are agencies that have office space more crowded than yours?

Mr. CAMPBELL. I think that is probably true.

Senator BAUCUS. You are about average?

Mr. CAMPBELL. I can't say we are average. I suspect there are people more overcrowded than we are.

Senator BAUCUS. If that is the case, I take it from your answer, if more than one other agency, 2, 3, or 4, maybe 10 or 50, are more crowded than you why is time of such essence for the FCC to delay its move in 2 months?

Mr. CAMPBELL. The timing is of the essence to the Commission, to the Chairman of the Commission.

Senator BAUCUS. I am asking you for the facts. Maybe the Chairman's personal view. I am asking you as a practical matter why is time of the essence in your personal opinion? I will ask Chairman Ferris that question some other time. I am asking you right now on your personal opinion what is the practical matter that necessitates this urgent 2-month——

Mr. CAMPBELL. Because of the impact of overcrowding on the FCC's being able to complete its mission. The overcrowding in other agencies presumably has a detrimental effect on those agencies in meeting their missions.

Our concern was the overcrowding impact on the FCC mission and we attempted to relieve that as quickly as possible.

Senator BAUCUS. Contract for Computer Science Corp., would you briefly describe that contract?

Mr. CAMPBELL. We initially contracted with the Computer Sciences Corp. for technical services; to give us assistance in preparing the necessary plans, and so forth, specifications for leases, as well as to look at specialized areas such as office landscaping.

Senator BAUCUS. How much has the Commission spent on services to date?

Mr. CAMPBELL. I believe we have obligated $123,000.

Senator BAUCUS. I have about $196,000. It is somewhere in the middle? That includes fiscal year 1981?

Mr. CAMPBELL. Exactly. If you include fiscal year 1981, I believe the 196 would be accurate.

Senator BAUCUS. You wrote the sole source justification. Is that correct, for this contract?

Mr. CAMPBELL. I believe so. Yes.

Senator BAUCUS. In the justification you list two reasons for not competing. The first is the requirement of time sensitive and it requires expedited action to meet urgent expansion of requirements imposed by Congress. When did you first decide that you needed the services of CSC?

Mr. CAMPBELL. I believe in late September, early October of 1979.

Senator BAUCUS. I understand there was a purchase order October 11, 1979.

Mr. CAMPBELL. Yes.

Senator BAUCUS. There is a second purchase order requested when?

Mr. CAMPBELL. I believe it is in January of 1980.

Senator BAUCUS. That is my information, indicates as well. When was the contract for CSC signed?

Mr. CAMPBELL. The first contract was signed with them on March 5, 1980.

Senator BAUCUS. Wouldn't there have been ample time between October and March to advertise this contract?

Mr. CAMPBELL. Absolutely.

Senator BAUCUS. Why wasn't it?

Mr. CAMPBELL. Because we did nothing at that point in time. We were dealing with CSC as we did with Studley on a purchase order basis. Originally we went out to obtain technical services to support our office space leasing requirements and to look at the issue of office landscaping as a way of reducing our costs. What happened was not a question of waiting from October to March to first go out and deal with CSC, but rather it was a matter of beginning work with them in October and continuing work with them throughout this period of time.

It was in March that we decided we had substantial requirements with respect to telecommunications for a consolidated space for the FCC—what is now the Roslyn project.

Senator BAUCUS. What unique and peculiar characteristics does CSC have in your view that would require this?

Mr. CAMPBELL. At that time we felt they had substantial expertise in two or three areas that the FCC needed support in, one, in computer location, second, in telecommunications requirements. Leaving aside the telephone systems, the FCC has three other communications systems. We were very interested in expanding those when we consolidate.

Senator BAUCUS. Are there any other firms in the area that can perform the similar work, have the same peculiar need qualifications?

Mr. CAMPBELL. I suspect there are. I believe in retrospect that the peculiar and unique side of CSC is a less compelling reason for sole-sourcing and that the timing aspect was much more compelling.

Senator BAUCUS. The Internal Review Division states the Architectural Engineering Service is necessary and complementary to the solutions of the Commission's space problems were negotiated for by the same staff official responsible for obtaining the services of Studley. As in the case of Studley ngeotiations, no consideration is given to other organizations or firms providing similar or identical services. In a like manner CSC quotations appear to have been accepted without question or attempt at bargaining. The Commission's contracting officer was not privy to or involved in any of these negotiations.

The first question I have is why didn't you at least consider other firms that could have provided similar services?

Mr. CAMPBELL. I think at the time we started to deal with CSC, which was in October 1979, we needed, on a reasonably urgent basis, technical support to prepare the documentation for our Gettysburg solicitation, a competitive solicitation for office space, as well as the solicitations for space and leases for space in Washington. So it was a question of time sensitivity, again in the October 1979 time frame.

Senator BAUCUS. But time in the same sense, for the same reasons that you employed Studley to try to find office space. That is the problem?

Mr. CAMPBELL. That same sense of urgency. Yes.

Senator BAUCUS. At least in your view?

Mr. CAMPBELL. Yes, sir. In my view.

Senator BAUCUS. Why didn't you attempt to negotiate the price? Bargain?

Mr. CAMPBELL. When we got the price lists from CSC, they had already been reviewed and approved by the Defense DCAA audit staff. I am not sure what the C stands for, Defense Contract Audit Agency. They had approved those, as well as the overhead rates for CSC. CSC gave us a document to that effect. So we felt those rates were comparable in the industry at that point, as well as ones that the Defense Department had apparently accepted.

Senator BAUCUS. Did you check to see whether they are comparable?

Mr. CAMPBELL. We did not call other companies at that point. We had rates that were approved by an agency that had extensive capability.

Senator BAUCUS. Is there any reason why you didn't invlove the contracting officer in these negotiations?

Mr. CAMPBELL. I can't reconstruct entirely our relationship with CSC versus the contracting officer. I suspect it went pretty much as it did with Studley. We had an initial discussion, then we began discussing it with the contracting officer in order to obtain the services through the contracting system.

Senator BAUCUS. How did you happen to select Julien Studley to do the computer science in the first place?

Mr. CAMPBELL. The initial contact, was by a member of my subordinate staff who had worked with both companies previously when he was in the private sector. He was aware of Studley, talked with them. This apparently caused Studley to, in turn, talk with me. I received a proposal from them.

Senator BAUCUS. The Internal Review Division states the Studley representative with whom negotiations were conducted is the person who in fact performed for Studley on the contract. This person is Barbara Pryor, wife of David Pryor, who at the time A. & E. services were determined to be required was an employee of CSC. Initial reference or suggestion of the services that the Studley firm be considered was made by the Commission employee who is personally acquainted with both Mr. and Mrs. Pryor; two, formerly employed by CSC where Mr. Pryor was his supervisor; and three, is a former tenant or lessee of a personal residence owned by the Pryors.

These relationships are mentioned not as an indication that any improper action on the part of the Commission employee who parenthetically considers both Pryors to be outstanding in their respective fields but to demonstrate the need for independent inquiry on the part of negotiating officials and for the invlovement of a contracting officer in the process on order to arrive at independent judgment of an officer's qualifications. Do you agree with that statement?

Mr. CAMPBELL. I think the factual portions of the statement are correct. I did not have all of that information at the time I was dealing with these two contracts. I think that the contracting officer should be involved in all contracts at the earliest stage practicable and I believe

as Mr. Lichtwardt stated earlier, that all of the contracts practicable should be competed.

Senator BAUCUS. Any independent judgment has changed the manner in which you chose firms?

Mr. CAMPBELL. I don't believe independent judgment would have changed it. I think competition may have changed it. I believe my judgment was substantially correct. We have reviewed both of these contracts carefully. We have in fact, in the case of CSC, paid them very little money this year because we have not been satisfied with their billings. I think you will find that a careful review of our contract management and monitoring will show independence of judgment on my part. I would further add that the individual who recommended the first company to us, Studley Corp., has had no role in determining the scope, the amount of money to be paid to Studley, or the kinds of tasks they are to perform. He is a valuable employee, but he is at a subordinate level.

Senator BAUCUS. Still he did make the suggestion?

Mr. CAMPBELL. He made the suggestion to Studley, yes. They contacted us. Studley in turn recommended CSC to do the sort of technical work that we needed done. I did not know that David Pryor worked there at the time, but his role is not related to the systems division that has been doing work for the FCC. When he was working there he was their Internal Director of Administration. He did, at one time, when the two individuals working on our contract, one an architect who had left the CSC and the second gentleman who came down with hepatitis and was inactive, do some work for us.

David Pryor was asked to fill in on the meetings on our Gettysburg project. Beyond that he has had no relationship with this. I have met the gentleman once. Beyond that, we have had no discussions, no contact.

Senator BAUCUS. There appears to be a conflict in the Internal Review Division report. Page 8 states the services of Studley are, according to the Commission staff officially responsible for procuring Studley services, combined with space acquisitions in the immediate geographical center of the Commission's office at 1919 M Street, NW., Washington. The ongoing acquisition of space in southwest Pennsylvania, in Gettysburg, the scope of Studley services is to exclude remuneration consultation advice with respect to the acquisition of office space currently under active consideration in Rosslyn, Va. The relationship, the precise nature of which has not been determined, exists between Studley and the owners or lessors of the space at Rosslyn that the Commission is considering for leasing efforts aimed at consolidation of staff offices.

It is presumed Studley is acting as a broker and/or leasing agent with respect to the Rosslyn space.

Further on the report, it states reference to invoices submitted by Studley indicates that certain services and advice have been provided with respect to the acquisition of space in Rosslyn. These invoices have been honored and payment has been made.

Who is the Commission staff official referred to here? Do you know?

Mr. CAMPBELL. I believe so, yes.

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Senator BAUCUS. Excuse me?

Mr. CAMPBELL. I believe I am.

Senator BAUCUS. Do you know whether Studley has been paid for work done on the FCC's planned consolidation move to Rosslyn?

Mr. CAMPBELL. As far as I know, we have not been billed nor have they been paid for the move to Rosslyn. What I believe the report refers to, I spoke to the authors directly about this, is invoices for work done on the question of consolidation prior to our making any kind of decision that we wanted to continue leasing or, excuse me, to begin to obtain a lease at the Rosslyn location. So there was some work done in December and January when the FCC realized that the consolidation of the Commission, which is relatively long-term goal, made sense. We received some billings for this work.

However, to avoid any sort of problem of double-billing in this matter, we are going back and reviewing and reauditing all of those bills.

Senator BAUCUS. Did you tell the author of this report that Studley Services did not violate anything with respect to the acquisition of space in Rosslyn?

Mr. CAMPBELL. We are not paying Studley a consulting fee with respect to acquisition of space in Rosslyn. They are working on a commission in that particular matter.

Senator BAUCUS. Is the planned move to Rosslyn called Exodus?

Mr. CAMPBELL. Yes, sir.

Senator BAUCUS. Why Exodus?

Mr. CAMPBELL. We sat around the table one day; someone had the bright idea of Exodus. It seemed like a good idea at the time.

There is nothing particularly esoteric about it.

Senator BAUCUS. I have a purchase request here dated September 29, 1980, ordered by you and signed by someone for Mr. Lichtwardt. I wonder if someone from my office could give you a copy.

Under the description remarks, it states modification of FCC contract; 3332, Judien J. Studley, Inc., increased $30,000 work for the Exodus project. Did you order this purchase request?

Mr. CAMPBELL. Yes, sir.

Senator BAUCUS. Mr. Lichtwardt, did you know someone signed this purchase request for you?

Mr LICHTWARDT. No. I signed the purchase request myself. This purchase request has been withdrawn, by the way. It is no longer active.

Senator BAUCUS. Why was it withdrawn?

Mr. CAMPBELL. I discussed the question of Barbara Pryor's billings to the FCC in late September with her and she told me she had $30,000 worth of billings for Exodus. I assumed at that time. I just needed a few sections to lead up to this, that we would be billed for those. In fact, I misunderstood. We are not being billed for that. So this purchase request for fiscal year 1981 services was predicted on the assumption that she would bill us for Rosslyn, which was a misunderstanding on my part. This is the one we are withdrawing and reissuing to take into account only additional work she did on the Gettysburg effort.

Senator BAUCUS. When was it withdrawn?

Mr. CABPBELL. It was withdrawn yesterday, I think.

Senator BAUCUS. Yesterday?

Mr. CAMPBELL. Yes, sir. We have only had——

Senator BAUCUS. Why yesterday?

Mr. CAMPBELL. We have had the report for a couple of days. I sorted out the other issue, the question of the $30,000, I believe on Thursday or Friday of last week. It was simply a question of getting to it administratively.

Senator BAUCUS. Studley is doing work still on the Exodus project?

Mr. CAMPBELL. Yes. They will be doing work on the Exodus project, but only on a commission basis.

Senator BAUCUS. I have a memo here signed by you, Mr. Campbell, dated September 29, states,

> As you know, we have two important space projects underway, Gettysburg Consolidation and Exodus. The Studley Co., Computer Science Corp., have been deeply involved with both projects. We are now within a few weeks of completing the lease in Gettysburg and Exodus project is still continuing. Given the detailed knowledge both contractors have of these two projects. I believe it would be substantially disadvantageous for the Government to go through the competitive process and necessary delays on both space projects. Therefore, I am requesting sole source contracts for both companies initiated for fiscal 1981 and attach the appropriate A–78's.

Is this also an indication that Studley continues to be involved in the move to Rosslyn?

Mr. CAMPBELL. Yes, sir.

Studley will again be working on the move to Rosslyn. So will CSC at this point in time. CSC is being paid directly by us for their services. Studley is not.

Senator BAUCUS. Are you seriously considering any other space in Rosslyn besides the two towers?

Mr. CAMPBELL. No, sir. We are not at this point.

Senator BAUCUS. I have another memorandum prepared at a meeting on June 19, 1980, entitled "FCC Project Exodus." I would like to provide you with a copy right now. It appears from this memo that you are seriously considering moving into Two Towers because you have had someone plan which floors will be occupied by which bureaus. Is that correct?

Mr. CAMPBELL. Our planning for Twin Towers began substantially earlier. I believe this memo is cut off on one side, but it is dated June.

Senator BAUCUS. Yes.

Mr. CAMPBELL. We began planning on this much earlier than that. I think in the time period we have here, we had begun to determine conceptually which bureaus and offices would be located in which portions of the Twin Towers. In order for us to negotiate a lease we have to understand the amount of space involved in that lease.

Senator BAUCUS. Which floors will be occupied with the new move by the commissioners?

Mr. CAMPBELL. In our current plan, which we have not discussed with them, they would be in the second tower, the uppermost floors of the first rise, which I believe are floors 22 out of 31. I am doing that off the top of my head. I am reasonably sure about that.

Senator BAUCUS. 22d floor?

Mr. CAMPBELL. 22d floor of the 31 floors in the second tower.

Senator BAUCUS. Is it safe to assume Studley is being paid by the Commission to find space in the building for which Studley is either the broker and/or leasing agent?

Mr. CAMPBELL. The FCC is not paying Studley to find space in the Rosslyn building. They are working on a commission at this point. They have an agreement as a tenant broker with the corporation, Westfield Realty, that owns the Twin Towers, to be paid a commission if, in fact, the FCC locates in those towers.

This is a normal practice of the tenant brokers in Washington.

Senator BAUCUS. What am I missing here?

You are saying Studley is being paid and will be paid if this contract is agreed to and the move actually takes place. Studley is employed as an agent by the firm which owns the Twin Towers.

Mr. CAMPBELL. No, they are not. They are not an agent of the firm that owns the Twin Towers. They are not the exclusive leasing agent for the corporation that owns them, Westfield Realty. Julien J. Studley is a tenant broker representing the FCC's interest before Westfield Realty.

Senator BAUCUS. What is the relationship between Studley and Twin Towers again?

Mr. CAMPBELL. They are a tenant broker and they have a brokerage agreement, as I understand it, which states that if the FCC relocates to the Twin Towers, they are paid a commission.

Senator BAUCUS. By whom?

Mr. CAMPBELL. By the Twin Towers.

Senator BAUCUS. That is the problem here, it seems to me.

If Studley is being paid by Twin Towers to locate in Twin Towers, Studley at the same time is being paid by the FCC to find office space for the FCC. That to me is a conflict of interest.

Mr. CAMPBELL. The FCC is paying Studley only a consulting fee, only when we are working on a specific project such as 2000 L, which is space we relocated in, such as the Gettysburg relocation which has been a substantial part of the Studley payments. We are not paying them to lease the Twin Towers for us.

Senator BAUCUS. You are paying them to find office space?

Mr. CAMPBELL. That is correct.

Senator BAUCUS. Who found Twin Towers for you?

Mr. CAMPBELL. Studley Corp.

Senator BAUCUS. Who does Studley also—who will also pay Studley in the event that this move takes place?

Mr. CAMPBELL. The Twin Towers.

Senator BAUCUS. Isn't that a conflict of interest?

Mr. CAMPBELL. No; I don't believe so.

Senator BAUCUS. Why isn't it?

Mr. CAMPBELL. As a tenant broker, they reviewed all the office space available in Washington that would meet our needs. I believe any of those buildings in the normal customary business practice would have paid the broker that presented the FCC to that building a commission. In this case, it is normal practice of the marketplace. They would do this——

Senator BAUCUS. It would be a bigger problem here than meets the eye.

Mr. CAMPBELL. It is a normal practice in the commercial marketplace. The FCC is relatively rare among Federal agencies that use outside assistance to seek office space. Most of them, as you are obviously aware, go through GSA. It is a common practice in the private sector. It is relatively rare in the Government sector. It has, however, I know, been used in the Executive Office of the President, when finding space for the Presidential reorganization program.

Senator BAUCUS. Isn't it to Studley's advantage to locate the FCC in the Twin Towers?

Would they earn greater remuneration if they locate in the Twin Towers, the FCC; wouldn't Studley earn more if the FCC locates in the Twin Towers compared with what Studley would earn if the FCC locates someplace up in northwest Washington and has no tie whatsoever with Studley?

Mr. CAMPBELL. No. I don't believe that would make any difference.

Senator BAUCUS. How much commission would Studley get if FCC locates in some place where Studley has no connection whatsoever, other than Studley's connection with the FCC?

Mr. CAMPBELL. They would have, I believe, a similar commission. The commission would be dependent upon the price, the cost of the building. Again, with any building we move to, if we move to building X, right in northwest Washington, the building has a certain, typically—I can't guarantee this—but typically the building will have a commission built into the arrangement, to the financial arrangements for that building, and Studley will be entitled to a portion of that, again typically now, for representing the FCC, another company, or the building developer. Again, it depends on the particular arrangements as for as who receives the other half, the second half of that commission as the exclusive agents for the building.

So, it would not be particularly in Studley's interest to go in one building versus another. They would presumably—my understanding is—the common practice would be they would receive the commission, regardless of the building, particularly for a deal this size.

Senator BAUCUS. You are saying Studley would receive the same total dollar remuneration, assuming FCC moves into some office space, regardless of where the office space is, whether it is Twin Towers, whether it is any place else is irrelevant? Studley gets the same fee, the same total fee. Is that correct?

Mr. CAMPBELL. I believe the only variability in the total fee would be dependent upon the cost of the building, if you will, the amount of money involved, the dollar per square foot rates. Those are variables which affect the leasing arrangement. It is a negotiated commission; it is not a flat—if I were selling my house, there would be an automatic 6- or 7-percent commission there.

These are negotiated commissions but essentially what you say is correct.

Senator BAUCUS. In your view the Studley has no connection with Twin Towers in any way which would result in greater remuneration to Studley than Studley—than any connection Studley might have with any other office space in Washington?

Mr. CAMPBELL. Assuming they were representing the FCC, yes. Again leaving aside the economic barriers.

Senator BAUCUS. The Internal Review Division also makes the following recommendations: determine the status of the task presently assigned Studley and CSC with respect to specified sites or buildings and permit no add-ons for further purchase orders for their services beyond tasks already in progress. Further services of this type should be obtained competitively.

Will further services of this type be obtained competitively?

Mr. CAMPBELL. I believe at this point in time that the only contractural agreement we propose to undertake or enter into with Studley will be for their work on the existing projects. I think the one great unknown has to do with whether or not we complete our Rosslyn project. If that does not go, is not approved by the Congress and we do not go through on it, then we will still have a serious problem with respect to leases we are losing. I think we would have to evaluate whether or not we could go competitive on this at that time.

Senator BAUCUS. Let me ask you another question about a meeting which you had with Mr. Perez, LeMasters, and Mrs. Pryor. My understanding is that at this lunch Mrs. Pryor billed the Commission $1,000 to have lunch with her. Is that correct?

Mr. CAMPBELL. No, sir. It is not.

Senator BAUCUS. Would you explain that?

Mr. CAMPBELL. Yes. This was at a time when I was within a couple of days leaving for vacation in Europe. This was not a lunch, it was a breakfast. Our offices are relatively close to each other and Barbara Pryor, Tom LeMasters, and I decided beforehand that on that day that they would come in an hour early for us to catch up on the various events and arrangements. I get in my office about 7; they get in at 9:30. We decided to meet over a cup of coffee and discuss the status of these things. I did not have time in my schedule between this point in time and my departure for Europe to discuss with them, in detail, our projects. The long meeting with Perez and LeMasters represents the bulk of this billing.

That was a detailed discussion, as I recall, of our Gettysburg solicitation, the status of that solicitation, and whether or not we were going to be able to continue that as a competitive solicitation. So it is not——

Senator BAUCUS. She billed $85 an hour. Is that correct?

Mr. CAMPBELL. She does bill at $85 an hour. That is our agreed-upon price. There were 12 hours. That was an extensive discussion that day, but 1 hour or less of that in fact had to do with my meeting with her at breakfast, really at my convenience in order to deal with her and Tom LeMasters prior to their normal business hours before I left the country.

Senator BAUCUS. It is my understanding that GSA has full-time civil servants that are paid exactly the jobs for which you are planning to spend nearly a quarter of a million dollars. I understand you're dissatisfied with GSA. What problems do you run into with GSA that require this change?

Mr. CAMPBELL. We have had extensive discussions with GSA about our requirements both before and after obtaining our separate leasing authority.

For example, in the area of office space design and layout GSA has five employees in the National Capital region that do this work. The typical job they do, the largest one is 50,000 square feet.

They have told us they have gone up as high as 150,000 square feet for space studies and space layouts. Our job is in the neighborhood of 450,000 square feet. They contract these jobs out. We have copies of the contracts or solicitations they have undertaken. In doing that work they would not do it for us, if you will, at minimum price or at no cost to the FCC. Leaving aside the GSA costs, jobs of our size they contract out and it takes somewhere between, as they have told us, 3 and 6 months to get a contract out, as well as 80 to 140 days, which is the performance time on the examples they have given us, to actually do a space study.

We did a space study on our own in 2 months. I am speaking now, if you will, of the Rosslyn project, where we have a certain time frame we are trying to meet, if in fact the project goes through. If we could not wait several months to get a competitive contract through GSA as well as the 140 days just to do a space study, we would have also paid the full price to the contract. They pass that on in total to the agency, as well as overhead they are charging.

So, it was not a question, we believe, based on our discussions which were in the March–April time frame with GSA, of the FCC going out and contracting for these services versus GSA sitting there with that excess capacity, if you will, able to do our work for us. They do not have the capability of this size. They admitted that to us. They said when they have jobs of this nature, they go out and do it on a contract as well.

Senator BAUCUS. Let's change the gears here a little bit. You have thought over this Studley, this other contract for some time. It has been in the press for a few weeks. You have been working with FCC for some period of time. What recommendations can you give us as to help batten down the hatches here a little bit, tighten up the ship a little bit so that we are wasting fewer dollars? You must admit, I think you would anyway, that on the surface regardless of the facts, the facts may or may not agree with the service, appearance, but on the surface the arrangement with Mrs. Pryor, and Studley is certainly suspect. Partly because of the way the contract was put together in the first place; that is, the employee at FCC who is a tenant of Mrs. Pryor and who worked for her husband at CSC Co. and also because FCC is wanting to move maybe 1 month, 2 months earlier, sole source compared with competitive. On the face of it, it looks like there is a cozy, sweet arrangement, sweet deal here, particularly when she is billing $85 an hour, particularly when she is getting paid a fee that is almost twice the top fee that you pay your communications consultants.

Don't you think there is at least appearance of problem here, at the very least?

Mr. CAMPBELL. I believe the way you have described it or the way it has been described to the press, if I were a taxpayer sitting out in Prince William County, I would——

Senator BAUCUS. That is how it looks.

Mr. CAMPBELL. That is right. If you read the headlines, that is certainly the impression you are going to get. I think——

Senator BAUCUS. Not the headlines. If you look at the facts that went on. That is the original, the first impression that people have. It may be the valid impression. I am not yet getting to the point where it is valid or not. I am just talking about the first impression.

Mr. CAMPBELL. From my impression, it is not a valid impression.

Senator BAUCUS. At least the first impression.

Mr. CAMPBELL. There is no question that on first impressions someone would look at that who is totally from the outside, say that is obviously another typical Government contract that has gone awry. In fact I believe we can justify our actions, I think we have attempted to do this this morning. I do not believe that our documentation, that our reasoning has been 100 percent as adequate as it could have been. In retrospect as I have gone back through the contract files, I believe I could really have done a better job writing sole-source justifications; I really could have presented the rationale much more clearly. We could have given, for example, some more consideration to such processes as RFQ's. However, I think that what we did was proper within the context in which we were operating. There is no question, it seems to me in hindsight, that it could have been improved.

Senator BAUCUS. I must say too, I am quite convinced that you had to make the move 2 months earlier. I just don't see it. That is why I tend to think that this could have been let on a competitive basis.

Mr. CAMPBELL. I think that is a matter of judgment.

Senator BAUCUS. Several times you tried to explain why, the urgency, the complelling need, and the reasons why Uncle Sam would have lost dollars had it not been sole source. But I haven't heard the reasons yet. I heard all the words. I don't hear the compelling view that indicates that, by gosh, it is absolutely crucial that we move at that pace. That is, the building inspector coming in to say the building is going to collapse or a fire or desk out in the street, you know, rained on, snowed on. I just don't hear this compelling need. All I hear is the FCC would kind of like to move a little earlier, nice, cozy 22d floor over in the Twin Towers in Rosslyn. That is what I hear.

Mr. CAMPBELL. The circumstances are not as compelling as they could be.

Senator BAUCUS. To say the least, that is an understatement.

Mr. CAMPBELL. We have only had one building currently in the process of being condemned and demolished but the rest of them are going to be there awhile. The problem is overcrowding. As I mentioned earlier, it is an intangible. I think if I were on your side looking at this I would not see dollar-tangible requirements. I don't believe they can be presented. I think it is a matter of judgment. It was our judgment.

Senator BAUCUS. This is a bit novel, but as soon as we conclude this hearing I would like to invite you down to my office. I want to take you through, I have three rooms and I want you to see how crowded my office is. I want you to tell me in all candor, who has the greater compelling need to get better accommodations, better space.

Mr. CAMPBELL. I am familiar with the space on Capitol Hill. I am constantly amazed at how crowded and overcrowded it is. But I think from our perspective——

Senator BAUCUS. I want you to visually see my office.

Mr. CAMPBELL. I would be glad to, sir.

Senator BAUCUS. I invite you to come down with me, take you to three of my rooms.

Mr. CAMPBELL. I would be glad to. I would be glad to show you some of our office space as well.

Senator BAUCUS. I asked my office several times to go over to the FCC. They say they have. They have gone through your building. I personally have not done so. I would like to do so. But it is their candid assessment that our office space is much more compelling. I don't want to say much worse than you, but that is just there, I would like you to personally get a sense of the feel.

Mr. CAMPBELL. Certainly.

Senator BAUCUS. It is 12:30 right now. I don't mean to impose upon you at all. Could you possibly wait about 30 minutes so I can take you down to my office as soon as we conclude this hearing——

Mr. LICHTWARDT. We would be glad to.

Senator BAUCUS. That concludes this portion of the hearing. I want to thank you all for coming. I will quickly get through the next part and we will take a little tour downstairs.

Senator BAUCUS. Our next witness is Mr. O'Malley, editor of the Commerce Business Daily.

Mr. O'Malley?

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

Mr. O'MALLEY. I do.

STATEMENT OF JOHN O'MALLEY, EDITOR, COMMERCE BUSINESS DAILY, DEPARTMENT OF COMMERCE

Senator BAUCUS. Thank you for coming.

How long have you been editor of the Commerce Business Daily?

Mr. O'MALLEY. About 11 years.

Senator BAUCUS. Would you please describe the function of the CBD, your function and what you do?

Mr. O'MALLEY. Briefly, I function as the editor of the paper. The paper itself is used to advertise all the proposed amendments emanating——

Senator BAUCUS. Would you please pull the microphone a little closer?

Mr. O'MALLEY [continuing]. Emanating from Government agencies.

Senator BAUCUS. I'm sorry?

Mr. O'MALLEY. It is meant to advertise all proposed procurements that emanate from all Government agencies.

Senator BAUCUS. Could you pull the microphone still a little bit closer?

Mr. O'MALLEY. It is used to publicize all the proposed procurements that emanate from all Federal agencies.

Senator BAUCUS. What was the origin of the Commerce Business Daily?

Mr. O'MALLEY. Actually, it goes back to the Truman administration, when there were some 5 percent scandals, and it was decided then, in 1950, to publicize in the widest fashion possible all procure-

ments of the Federal Government so that would be proper competition.

Senator BAUCUS. Was it a newsletter first attributed to the Department of Commerce?

Mr. O'MALLEY. Yes. Basically it was, it was a one-sheeter and has since evolved into one that will go as high as 32 pages a day.

Senator BAUCUS. How many subscribers are there now?

Mr. O'MALLEY. Paid subscribers, there are approximately 34,000.

Senator BAUCUS. How much does the subscriber pay?

Mr. O'MALLEY. There are two prices. It sounds odd, but there is an $80 subscription, that would be second-class delivery and the first-class delivery is $105. That would travel by air.

Senator BAUCUS. What type of information are agencies required to submit to the Commerce Business Daily?

Mr. O'MALLEY. The agencies are supposed to synopsize their proposed procurements in the briefest form and send them to us.

Senator BAUCUS. Do you have any enforcement or investigative authority to insure that the information the agencies submit to you is actual or proper?

Mr. O'MALLEY. No. We don't.

Senator BAUCUS. You just get what comes in the mail?

Mr. O'MALLEY. That is right. We do a little bit of investigating on our own, in a very, very minor way. But no, we don't have any authority to enforce.

Senator BAUCUS. You cannot guarantee the acuracy of the information that you put out?

Mr. O'MALLEY. No, sir. I cannot.

Senator BAUCUS. As I understand it, one of the purposes of the Commerce Business Daily is to help small businessmen, especially those outside of Washington, to compete for Federal contracts; is that correct?

Mr. O'MALLEY. That is true.

Senator BAUCUS. That is, people in Washington tend to have a slight advantage because they are in Washington, and one of the purposes of the Daily is to let contractors outside of Washington to better know what is available and what to compete on.

Mr. O'MALLEY. Exactly.

The smaller businessman cannot afford to have a representative here to look out after his interests.

Senator BAUCUS. I take it that the information, if it is helpful to a small businessman, has to be timely, too. He has to get the information as quickly as possible so he has an opportunity to effectively bid on any contract.

Mr. O'MALLEY. That is correct, to price out his bid.

Senator BAUCUS. Do you also receive the information from agencies in sufficient time to advertise?

Mr. O'MALLEY. No, sir; we certainly don't.

Senator BAUCUS. Would you amplify on that a little bit, give me a little better feeling of the flavor as to the incidence that that happens, the number of times, and so forth?

Mr. O'MALLEY. The way the regulations are written, they state that the agencies are supposed to start their synopsis to us 10 days before

it is issued. If this is not possible, it is supposed to be published no later than the date of issuance, and this is not done.

Senator BAUCUS. Any rough estimate as to the number of times it is not done, the percentage of items listed where that does not occur, or that the subject or industry category where it is more prevalent?

Mr. O'MALLEY. It is more prevalent, of course, toward the end of the year when people and agencies are rushing to spend their funds. So far as the frequency is concerned, it occurs more, I would say, on repair and improvement projects to real property than it does in any other area.

Senator BAUCUS. Are there any certain agencies that tend to provide information slower and later than others?

Mr. O'MALLEY. During this period, there are. Normally, agencies with far-flung operations such as the Forest Service and the VA for example. There are ones where the activity has to notify Washington that they have a project and then they have to wait until the funds are allocated for that project. Of course, sometimes this takes longer than it should.

Senator BAUCUS. So it is the agencies that have extensive field operations?

Mr. O'MALLEY. This is the usual thing; yes.

Senator BAUCUS. What is the result of having information come to your publication late?

What is the practical effect on subscribers?

Mr. O'MALLEY. Looking at it from the broadest point of view, the practical effect is that the Government couldn't get the most for its money. These bids are hurriedly made and of course anybody making a bid in a hurry is going to give himself every advantage.

Senator BAUCUS. Is it possible that some agencies send you contract information late specifically to avoid competing?

Mr. O'MALLEY. I think so.

Senator BAUCUS. Do you think it is probable that that might occur in any significant number of times?

Mr. O'MALLEY. Yes; I suppose so.

Senator BAUCUS. You are saying in all probability a significant number of agencies and/or, or an agency, a significant number of times, sends information to you late specifically to avoid competition?

Mr. O'MALLEY. It is done.

I don't know whether an agency would do it repeatedly or not. But I feel that it is done.

Senator BAUCUS. Is there any way we avoid that?

First, to back up, can you again categorize the areas of businesses or the agencies, the subjects where this tends to be more of a problem in your judgment than others?

Mr. O'MALLEY. I cannot really put my finger on it. There are incidents that stand out in your mind and what not, but to say that this agency does it all the time, or some other agency, I don't feel that I can say that because I may be putting them in the wrong light. Maybe they didn't do it for that reason.

Senator BAUCUS. What makes you believe or feel that this is a significant problem?

Mr. O'MALLEY. I have talked with the people and asked them why they couldn't send in their synopsis sooner than they did, and in practically every instance the reason given was that, "We asked our central office to allocate funds for this project some months ago, but we only just recently received the authorization to do so." And so, in effect, they are blaming their central office for not acting expeditiously on their request.

Senator BAUCUS. Would you please describe the coding system used in the Commerce Business Daily?

Mr. O'MALLEY. Yes; 96 codes are used—they are general codes. Services are the letter codes, the number codes are used for supply items. Every synopsis that we receive is published under certain codes so that people can read the paper.

Senator BAUCUS. Do you have a problem with the coding system at all? Is there any miscoding?

Mr. O'MALLEY. There is miscoding, yes; definitely.

Senator BAUCUS. Would you explain that? What do you mean?

Mr. O'MALLEY. If an item were published with the wrong code on it, it is possible that a reader would not be able to find the project that he was interested in bidding on. In other words, it wouldn't occur in the paper where he suspected that it would. So he might miss it altogether.

Senator BAUCUS. Do you believe there is any intentional miscoding?

Mr. O'MALLEY. I think there must be; yes.

Senator BAUCUS. You think some agencies intentionally—why would they do that? Why would an agency intentionally miscode?

Mr. O'MALLEY. The one thing that they would succeed in doing, of course, is limiting competition. In other words, you were talking about the agencies or the firms that have offices in Washington—they would probably hear about it. But maybe a firm located in Dubuque, Iowa, wouldn't.

Senator BAUCUS. Do you sometimes catch miscoding?

Mr. O'MALLEY. Yes.

Senator BAUCUS. What do you do when you catch it?

Mr. O'MALLEY. We change the code.

Senator BAUCUS. If you were provided the contract information earlier, would you be able to catch more miscodings?

Mr. O'MALLEY. Yes.

Senator BAUCUS. What happens when you find a contract that is miscoded? Do you call up and ask them what is going on here, or do you change it on your own?

Mr. O'MALLEY. No, sir. We change it on our own, but we attempt to check with agencies when time permits.

Senator BAUCUS. Because you don't have the time to follow up?

Mr. O'MALLEY. That is part of the problem. The other is, we don't want to start arguing the case on the phone.

Senator BAUCUS. Which agencies seem to miscode more than others, whether intentional or otherwise, just the fact there is more miscoding? When agencies tend to miscode?

Mr. O'MALLEY. Here again, as I said, there are things that stick out in my mind. But really I would have to categorize somebody as deliberately miscoding all the time or at least frequently.

Senator BAUCUS. Apart from whether or not it is intentional, may or may not be intentional, are there other agencies that seem to have a greater incidence of miscoding compared to others, without attributing any culpability or blame? I am just curious if there are some.

Mr. O'MALLEY. There are very unusual things that stick out in your mind—the Navy in Mechanicsburg.

Senator BAUCUS. Excuse me?

Mr. O'MALLEY. The Navy procurement operation at Mechanicsburg, Pa., has sent in some items coded under farming equipment. Whether this is intentional or not, I don't know. I haven't seen it occur lately. But as I said, this is one of the things that sticks out in your mind.

Senator BAUCUS. Have you seen any indications of contractors that are tipped off in advance before the contract is advertised?

Mr. O'MALLEY. We frequently get calls from people asking if a certain item had been published in the paper. Even though we make a search, we don't find it, but maybe a day or two later, it will come in; that is, the synopsis will be delivered to us.

Senator BAUCUS. I assume the contractor who is tipped to the contract in advance, has the advantage over the contractor who first reads about the contract in the paper?

Mr. O'MALLEY. He certainly does.

Senator BAUCUS. How often do you receive phone calls like this?

Mr. O'MALLEY. Probably as frequently as once a week.

Senator BAUCUS. Would you please explain what the Federal Procurement Data System is?

Mr. O'MALLEY. The Federal Procurement Data System is relatively new. What it does in essence is every contract in the Federal Government of $10,000 or more is supposed to be made known to this data center. They in turn can compile the statistics and other information.

Senator BAUCUS. So if I understand correctly, this system should be a mirror of the contracts you advertised except for minor deviations in contracts not awarded, is that correct?

Mr. O'MALLEY. The other exception would be multiple awards where a single item is advertised in the Commerce Business Daily and maybe there are a number, 5, or 10 or even 50 awards made as a result of that single advertising.

Senator BAUCUS. I understand that you compared the contracts advertised in your paper for 1979 and the Federal Procurement Data System Report for 1979. Could you explain what the result of that comparison was?

Mr. O'MALLEY. It is rather noteworthy. We advertised approximately 169,000—164,226 items in the Commerce Business Daily and the Federal Procurement Data System shows contracts awards of 389,266.

Senator BAUCUS. Why that discrepancy?

Mr. O'MALLEY. Part of it, of course, would be the exceptions to the statute, itself. There are 10 exceptions for not advertising in the Commerce Business Daily, the multiple awards that I have already mentioned to you and another possibility would be this failure to advertise in the Commerce Business Daily.

Senator BAUCUS. Those 10 exceptions and multiple awards account for the reasons in your judgment for the discrepancy alone, or are there other reasons?

Mr. O'MALLEY. The deficit is over 200,000, 225,000, and I find that a little hard to believe, that all of these are brought about just by those few exceptions.

Senator BAUCUS. Therefore, you think there are many contracts just not advertised?

Mr. O'MALLEY. That is correct.

Senator BAUCUS. That should be advertised?

Mr. O'MALLEY. That is right.

Senator BAUCUS. That obviously hurt businessmen outside of the Washington area who are just unaware of these contracts?

Mr.O'MALLEY. It certainly does.

Senator BAUCUS. Are agencies required to advertise their contracts?

Mr. O'MALLEY. Yes, sir, by statute, Public Law 87–305.

Senator BAUCUS. It requires them to advertise contracts in the Commerce Business Daily?

Mr. O'MALLEY. That is correct.

Senator BAUCUS. Even if they are sole-source?

Mr. O'MALLEY. That is right.

Senator BAUCUS. They have to be advertised or listed so that you can publish them?

Mr. O'MALLEY. Yes.

Senator BAUCUS. What happens if they don't? Are there any remedial measures or provisions, actions that can be taken against agencies that don't advertise as they are required by law?

Mr. O'MALLEY. The only action that could be taken, of course, would be as a result of a GAO audit or something of that nature or notifying the Congressman and having him look into the matter. But no, there are no provisions for this.

Senator BAUCUS. Do you have any suggestions?

Assuming that there are many contracts that are not advertised and by definition should be advertised, do you have any recommendations of what we, Congress, can do to help remedy that problem? Does it take criminal statutes or investigative resources on the part of your office? How do we go about making sure that contracts are included in the Daily again assuming that there are a large number that are not?

Mr. O'MALLEY. I think there should be some sort of an audit made. I doubt that it should be done by the Department of Commerce. I think a dininterested party should be used to make the audit. But certainly a sampling of all agency contracts could be taken sometime during the course of the year, and audit made of the CBD to make sure that they are advertised.

Senator BAUCUS. Are they particular categories of contracts that more often than not are sole-sourced or not open to competition?

Mr. O'MALLEY. There certainly are. The research and development type contract is.

Senator BAUCUS. Which are research and development types?

Mr. O'MALLEY. I don't have the reason for it, but we are talking of those that we advertise in terms of from 70 to 75 percent that are sole-source.

Senator BAUCUS. 70 to 75 percent of the research and development?

Mr. O'MALLEY. That we advertise.

Senator BAUCUS. That you advertise?

Mr. O'MALLEY. Yes.

Senator BAUCUS. Are sole source. Do these categories lend themselves to sole sourcing rather than to competition?

Mr. O'MALLEY. They are more likely to occur in expert and consultant type and research and development than most other categories.

Senator BAUCUS. Why should they more likely occur?

Mr. O'MALLEY. I am speaking from my point of view. The incidence is higher in these two categories than it seems to be anyplace else. As for the reason, I really don't know.

Senator BAUCUS. So you are not in a position to pass judgment at least in your view, or to give an opinion whether more of these contracts should be competitive, rather than sole source?

Mr. O'MALLEY. I really don't have an opinion on that.

Senator BAUCUS. You mentioned earlier that there seems to be a greater incidence of failure to advertise at the end of the fiscal year, agencies trying to speed up their spending process. Can you tell us why agencies, again, which categories, seem to account for the greatest number of offenses here, the greatest incidence of failure to advertise? Is there a certain agency or are there some agencies that tend to fall in this category more than others?

Mr. O'MALLEY. So far as failure to advertise is concerned, that I can't comment on. I don't know enough about it. I am not privy to it. But, as was mentioned before, repairs and improvements to real property, these are the ones that arrive late. These are really the cause of an awful lot of criticism by subscribers to the Commerce Business Daily; a lot of criticism of the Commerce Business Daily by subscribers. Each year at this time, we receive phone calls castigating us or letters doing the same thing when it is not really our fault.

Senator BAUCUS. What is the current Federal policy with respect to grants being advertised by the Commerce Business Daily?

Mr. O'MALLEY. The law says all proposed procurements are to be advertised in the Commerce Business Daily. It doesn't differentiate as to whether the end result will be a grant or a contract. However, the decision was made years ago not to require that grants be advertised in the Commerce Business Daily. Grants are supposed to be advertised in the Federal Register, though.

Senator BAUCUS. Do you believe the grants should be advertised in the Daily?

Mr. O'MALLEY. Yes, sir.

Senator BAUCUS. Why is that?

Mr. O'MALLEY. The situation with grants, I think, has changed a lot over the years. A lot of agencies went into such things as competitive grants for example. And, the Federal Government is involved in so many grants to States and whatnot. The State's procurement policies do not necessarily parallel the Federal Government's. In other words, they may be more lax than the Federal Government.

So this has raised a spectre really of the Federal Government being involved in sleazy contracting when actually they are not.

Senator BAUCUS. I still don't understand.

Mr. O'MALLEY. The Federal Government makes a grant, let's say, to a State agency to build a road. The State agency follows its own con-

tracting provisions and regulations and awards a contract on the basis of these. These regulations within this one State may be very lax. In other words, the contract may not be awarded as competitively as it could have been.

Senator BAUCUS. But again, why does that indicate to you that grants should be advertised? Just to encourage contractors in other States or greater geographic area to compete? Is that the reason?

Mr. O'MALLEY. The competitive contracts should be in the paper. What we are talking about here are the grants that are made to the States and once the grant is made, the State isn't going to perform the service. They are going to go out and they are going to contract for it with some firm. I think the subcontracts, if you will, or these contracts stemming from this grant, should be advertised in the Commerce Business Daily.

Senator BAUCUS. I understand that you received from the Department of Transportation, you received a call from the Department of Transportation an attorney who wanted to advertise State road constructions. Is that right, grants, construction grants?

Mr. O'MALLEY. That is right.

Senator BAUCUS. What happened in that case?

Mr. O'MALLEY. It was a young attorney and he mentioned this very matter to me on the phone. He asked me first, would I advertise these contracts stemming from the Department of Transportation grants.

Senator BAUCUS. Grants to State agencies?

Mr. O'MALLEY. That is right, and the contracts that would be let by the State agency, would be advertised in the Commerce Business Daily. I said, "Yes, we would." He in turn said,

> That he was going to try to get a provision in the regulations to the effect that whenever these grants were made to State agencies that they would have to advertise the contract stemming from the grants in the Commerce Business Daily.

That was the last I heard of it. Apparently, he wasn't successful.

Senator BAUCUS. You feel if more grants were advertised in the Commerce Business Daily that would minimize a lot of loose contracting procedures that you think presently exist?

Mr. O'MALLEY. That is right. We have had several scandals in the Chicago area regarding the award of contracts of this nature. I think if they were advertised it would be the best for all concerned.

Senator BAUCUS. So just to sum up here, what you are saying is in your experience as editor of the Commerce Business Daily, for a significant number of years that many agencies don't advertise, that many miscode, that the failure of agencies to advertise contracts in the Commerce Business Daily at the very least prevents firms outside of the Washington area or even in the Washington area from learning of the contracts that they might bid on and at worst may indicate that some agencies are intentionally avoiding advertising in order to sole source or in order to prevent certain people from becoming aware of, and therefore competing with the other firms in trying to secure a contract.

Mr. O'MALLEY. Yes.

Senator BAUCUS. That is basically what you are saying based upon your experience as editor of the Commerce Business Daily?

Mr. O'MALLEY. Yes, sir.

Senator BAUCUS. You are also suggesting that this is such a problem that there should be some remedy, some way to cure it; that is, some way to force agencies to comply with the law; that is, to advertise contracts in the Commerce Business Daily as they are supposed to, in a fair way and in a way that businessmen around the country can learn of these contracts?

Mr. O'MALLEY. Yes, sir.

Senator BAUCUS. You are not in the position to tell us how we are going to enforce the compliance. That is not your business, but you do feel, based upon your experience, that this is such a significant problem that we have to find some remedy because a large number of the contracts are being wasted?

Mr. O'MALLEY. Yes.

Senator BAUCUS. Mr. O'Malley, I want to thank you very much for your testimony. At some future date we will try to find a way to solve some of this, but you have at least opened the door to the problem. Now it is up to us to try to find a way to solve the problem.

Mr. O'MALLEY. Good luck to you, Senator.

[The prepared statement of Mr. O'Malley follows:]

PREPARED STATEMENT OF JOHN O'MALLEY

My name is John O'Malley and I am Editor of the Commerce Business Daily, a publication of the Department of Commerce printed in Chicago. The Commerce Business Daily originated in the Department of Commerce as a mimeographed news letter distributed to business-people through the Department's field offices.

It has now some 32,000 paid subscriptions, is published every business day, averages 28 pages and in fiscal year 1979 published 165,000 procurement synopses. If I may I would like to give the committee a copy of the 1979 Annual report of the Commerce Business Daily for possible inclusion in the record because it recapitulates recent accomplishments.

It would seem in order at this juncture to also point out every issue of the CBD carries a statement of editorial responsibility which is to the effect that the U.S. Department of Commerce is responsible for compilation and editing only. All substantive information relative to procurement whether printed in the CBD or not submited for printing is a responsibility of the agency concerned. Also, it may be noted, Public Law 87–305, the Congress' mandate to the Secretary of Commerce that he obtain and publish procurement information provides no enforcement or investigative authority to insure completeness, propriety or timeliness. Specific directives to agencies not in Public Law 87–305 are currently contained in the Defense Acquisition Regulations of the Department of Defense and the Federal Procurement Regulations of General Services Administration for the civilian agencies.

In conclusion it seems appropriate to state that policy direction to me comes from the Department of Commerce in Washington, U.S. Commercial Services, International Trade Administration, and that with that office, I have made numerous suggestions for improvement of the current regulations for inclusion in the to be published Federal Acquisitions Regulations of the Office of Federal Procurement Policy, Office of Management and Budget.

Attachment: CBO Annual Report for 1979.

73-462 O - 81 - 11

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

February 14, 1980

ANNUAL REPORT

COMMERCE BUSINESS DAILY

FISCAL YEAR 1979

The Secretary of Commerce is mandated in P.L. 87-305 to publish on a daily basis through the International Trade Administration's U. S. Commercial Services, (formerly Industry and Trade Administration's Bureau of Field Operations), Federal procurement synopses. These synopses are published in These synopses are published in the Commerce Business Daily (CBD) which also includes awards valued at $10,000 or above for military, and $ 5,000 or above for civilian agencies. The purpose of the CBD is to benefit U. S. business in general, and small business in particular by publicizing opportunities for selling to the Government. The following is the Annual Report of the CBD activities for Fiscal Year 1979.

1979 was a record breaking year for CBD subscriptions. A two percent subscription increase was made bringing total subscriptions to nearly 33,000. This gain, in part, is attributed to promotional efforts in support of the CBD. These efforts included a six-month trial subscription campaign; the development of public service radio announcements that were distributed by the 43 ITA District Offices throughout the U. S.; as well as press releases, brochures, CBD sample copies, and order forms used by 140 District Office Trade Specialists in their day-to-day contact with American business. Moreover, to accommodate international businesspersons, overseas subscriptions were instituted with 167 subscriptions purchased the first year. This figure is expected to grow appreciably over the next several years due to the Multinational Trade Negotiations Agreement which will open foreign government procurement opportunities to American business.

Improvement gains were also made in the area of procurements published in the CBD. A 13 percent increase in procurements published which translates into 164,756 procurement synopses (68,16 services, 96,592 supplies) were published in FY 79. In addition, 63,589 procurement awards (30,370 services, 33,217 supplies) were printed in the CBD during 1979. A slight but highly desirable decrease occurred in the number of published procurement synopses that provided less than the required 20-day bid time in 1979 which was 6,344 compared to 6,864 in FY 78. Towards this end, CBD staff members contacted individual procurement offices 1,017 times during the year to encourage compliance with civilian and military procurement regulations.

Over the past year, strides have been made in the three-tier Commerce Business Daily Improvement Project. The objectives of this project are: 1) Data Transmission, 2) Data Retrieval, 3) Federal Acquisition Regulations (FAR) Project. These goals are intended to improve CBD services to U. S. business, particularly small business selling to the Government, by the timely publication of Federal procurement opportunities.

In addition to CBD input into the FAR Project, a data transmission test was conducted August 1, 1979 through October 1, 1979. During that time, twenty-four procurement agencies of the Departments of Energy, Defense and the General Services Administration transmitted procurement synopses and awards via GSA's Advanced Record System (ARS) and the Department of Defense's Autodin network to the CBD's editorial office in Chicago. Through these systems, messages can be received on a 24-hour basis with the average transmitting time approximately 1-1/2 minutes per message. This capacity to electronically transmit and receive procurement synopses and awards resulted in an average 5-7 days in additional lead time to readers of the CBD versus conventional mail systems. Over the test period, 1,036 synopses were received electronically which resulted in a cumulative total of 5,180 days saved by prospective bidders. (This total projects, on an annual basis, to a time-savings of over 31,000 days in lead time for prospective bidders.) We are currently in the process of contacting members of the Federal procurement community to advise them of the availability and advisability of relaying procurement information through these networks whenever possible. Thus far, first time procurement synopses have been received and published for procurement activities in such diverse locations as the Azores, the Canal Zone, and Hawaii.

The Commerce Business Daily is currently testing another innovative procedure for direct remote input from NASA to the CBD's computerized photocomposition facilities. NASA's procurement synopses are accessed directly to these storage banks resulting in almost immediate galley proofs ready for CBD editors. Direct input offers immense potential for time and cost savings to all in the Federal procurement community because only a single keyboard operation takes place, eliminating unnecessary and costly steps.

In addition, we have expedited emergency procurements by installing and announcing the availability of a 24-hour telecopier service in the CBD editorial office. Nearly 300 high priority notices have been transmitted each month since the announcement was made in May 1979.

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

October 7, 1980

SUGGESTED IMPROVEMENTS IN THE
COMMERCE BUSINESS DAILY

1. Advertise all proposed procurements of $10,000 or more from both civil and military agencies.

2. Require the advertising of all competitive grants and the advertising of all subcontracts of $10,000 or more emanating from Federal grants.

3. Require the advertising of all contract modifications that would increase the expenditures by $10,000 or more.

4. Require the advertising of all proposed procurements for personal or professional services.

5. Require the advertising of all proposed procurements which are for services from educational institutions.

6. Require that all synopses of proposed procurements must allow 30 days for response.

John J. O'Malley
Editor
Commerce Business Daily

Senator BAUCUS. Thank you. That concludes the hearing.

[Whereupon, at 1 p.m., the subcommittee adjourned to reconvene subject to call of the Chair.]

APPENDIX

Additional Submissions of Small Business Administration

REPORT OF AUDIT

ELIGIBILITY REVIEW OF 8(A) FIRMS

SMALL BUSINESS ADMINISTRATION 1953

Internal Audit
Office of Inspector General

SEPTEMBER 27, 1979

REPORT NO. 2-79

COPY NO. Original 32

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I. SUMMARY OF FINDINGS AND RECOMMENDATIONS

In a 16-month review by the Office of Inspector General of the 1505 firms in the Section 8(a) program portfolio as of April 30, 1978, a total of 526 Section 8(a) firms with deficiencies of varying degrees of significance were identified. The names of those firms were referred to the Associate Administrator for Minority Small Business and Capital Ownership Development for review and appropriate action. A total of 323 such firms, or 21% of the entire portfolio, was headed by disadvantaged individuals who did not appear to control or manage the day-to-day operations of their firms or whose status as socially or economically disadvantaged individuals was doubtful under prevailing eligibility standards. These standards were viewed as the most significant factors in assessing whether the manner in which the program was being administered was in furtherance of Congressional intent and expectations under the law. As a result of this review, the Inspector General has concluded that it is essential that guidelines for defining ownership and control as well as economic and social disadvantage be clarified and simplified if the program is to provide the maximum possible assistance to the greatest number of deserving minority businesspersons.

The Inspector General's review has also disclosed the need for more objective standards for determining when Section 8(a) firms should be graduated or terminated from the program, as well as the need for an effective system for the monitoring and oversight of individual 8(a) firm growth under business plan objectives established for the firm. The need for such improvements is clearly indicated by the fact that a number of firms were determined to have reached or exceeded objectives set forth in their business plans and yet were allowed to remain in the program. Additionally, effective controls and oversight would permit timely action, including, where necessary, termination of firms which fail to maintain their program eligibility status, fail to comply with 8(a) program and other SBA rules and regulations, fail to conduct their business in a prudent, responsible, ethical manner, or, for one reason or another, have no reasonable expectation of ever reaching their stated business plan goals.

Two conditions have led to the findings and recommendations contained in this report: vague and loosely defined procedures governing the administration of the program, and inadequate management oversight and direction at the Central Office and field levels. The Inspector General has met with the Associate Administrator for Minority Small Business and Capital Ownership Development to discuss the findings of the OIG's review and has received and noted his comments herein. It should be noted that significant progress appears to have been made by program officials during the pendency of the 8(a) review. A revised Standard Operating Procedure (SOP) has been drafted and will be issued shortly. It addresses many of the deficiencies noted by the Inspector General and could enhance considerably the quality of the management of the Section 8(a) program. Nevertheless, as important as the revised SOP may be, no meaningful program improvement will result without a management commitment to fully enforce adherence to the procedures by SBA program officials at all levels.

While efforts have been initiated to improve the administration of the 8(a) program, there is continuing disagreement between the Inspector General and the Associate Administrator for Minority Small Business and Capital Ownership Development on what the Inspector General views as important recommendations which will significantly minimize the vulnerability of the program to fraud and abuse. One such disagreement arises over the type of objective standards needed to determine program graduation. Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development believe that standards to measure 8(a) firm viability can be established as objective determinants for graduation. The Inspector General, on the other hand, is of the opinion that measuring viability of a business concern involves too many variables to be practical. Additionally, using viability as a standard for graduation might tend to encourage firms to perform below capacity in order to extend their tenure in the program and obtain maximum benefits. The Inspector General recommends the use of business plan objectives consisting of 8(a) sales projections as a means for identifying candidates for graduation.

Other areas of disagreement include: (i) permitting management agreements between 8(a) firms and nondisadvantaged individuals in the same or similar line of business, and (ii) allowing nondisadvantaged part owners to donate property, supplies and services and to furnish financial assistance to 8(a) firms. The Inspector General believes that the risks associated with allowing these practices far outweigh the possible program benefits and that their continuation would require an economically unjustifiable degree of surveillance and oversight to ensure against continuing abuses.

The Office of Inspector General will continue to work with program officials as they review the audit findings for the purpose of addressing and taking appropriate remedial action to correct deficiencies developed by this review.

Following is a summary of deficiencies disclosed during the review:

	No. of Firms	% of Total Firms Reviewed
Total Firms with Deficiencies	526	35%
Deficiencies Relating to Ownership/Control and/or Social/Economic Disadvantage	323	21%
Other Deficiencies	203	14%
Firms With No Deficiencies	979	65%
Total Firms Reviewed	1505	100%

A breakdown of deficiencies by regions is found in the Appendix to this report.

All firms with deficiencies were referred to the Associate Administrator for Minority Small Business and Capital Ownership Development for corrective action or other disposition. Also, the activities of 22 of the firms with deficiencies were referred to other audit and investigative offices in the Office of Inspector General and other Federal Agencies for further inquiries.

II. INTRODUCTION, BACKGROUND AND SCOPE OF REVIEW

1. Introduction

The Office of Internal Audit (OIA) of the Office of Inspector General (OIG) conducted a review of all firms enrolled in SBA's 8(a) program. The primary purpose of the review was to obtain pertinent information relating to (i) the socially and economically disadvantaged status of the 8(a) firm owners on whom eligibility was based and (ii) the degree of ownership and control over the 8(a) firms by their owners and the extent to which they were involved in day-to-day operations. Other important aspects of the 8(a) program such as size determination, business development, requirement support, contract negotiations, business development expense, advance payments and program completion and termination were not specifically covered by the review. Nevertheless, when potential problems in these areas were disclosed and developed during the course of the review, they were reported to appropriate Agency officials.

Concurrent with this review, the Office of Financial Investigations and Examinations of the Office of Inspector General conducted an audit of selected 8(a) firms that received advance payments and business development expense. The results of this audit were reported in April 1979.

2. Background

The legislative origin of the 8(a) program is found in Section 8(a) of the Small Business Act. That section empowered the Agency to enter into contracts with other U. S. Government departments to furnish equipment and supplies to the Government, and to subcontract the performance of the contracts to small business concerns or others. SBA, in Part 124.8-1(b) of its Rules and Regulations, established a policy of limiting its 8(a) authority to assist small businesses owned and controlled by socially or economically disadvantaged persons. The Rules and Regulations were revised following an amendment to the Small Business Act, Public Law 95-507 dated October 24, 1978. All firms included in this review were in the program before that date.

Prior to this review, several reviews related to 8(a) program eligibility were made by GAO and OIG. In 1974, GAO conducted a program audit that included a detailed review of 25 sponsored 8(a) firms. Its report concluded that all of the firms were controlled by their sponsors and that the sponsors had little or no incentive to develop the 8(a) firms into viable businesses.

In 1976, OIG performed an audit of 44 firms in Regions III and IV and found that 28 were likely controlled by nondisadvantaged individuals or firms.

Another 8(a) program review was performed by GAO in SBA's Region IX in 1978. This review evaluated how SBA applied eligibility criteria on social and economic disadvantage. GAO concluded that the criteria were vague, were inconsistently applied, and that eligibility determinations were inadequately documented.

Congressional hearings related to the management and administration of the 8(a) program held in 1977 and 1978 prompted SBA's Administrator to direct that OIG conduct a review of the entire 8(a) portfolio, the results of which are the subject of this report.

3. Scope of Review

The scope of the review consisted of individual examinations of all firms enrolled in the 8(a) portfolio as of April 30, 1978. One firm in the portfolio was not examined due to its involvement in a Department of Justice investigation. As a result, firms so enrolled and reviewed totalled 1486. The review of an additional 19 firms enrolled after April 30, 1978, but prior to enactment of Public Law 95-507, brought the total number of firms reviewed to 1505. Extensive review effort was not expended on those firms in the portfolio that had been graduated, terminated or withdrawn from the program by the time the individual reviews were to begin. In those instances, 99 in all, review was limited to obtaining supporting evidence for graduation, termination and withdrawal actions.

Individual reviews consisted of an examination of each 8(a) contractor's business plan file plus, where necessary, other SBA records including 8(a) contract files and loan case files. In addition, field visits to 8(a) firms were made in those cases where ownership and control problems were suspected or where sufficient information was not avaialble in SBA's records to complete the reviews. Field visits were made to all firms with 8(a) contracts totalling $5 million or more except for one firm whose owner refused an interview. In all, field visits were made to 487 8(a) firms or 32% of the firms reviewed. Additionally, 97 telephone interviews were held in those instances when field visits were considered unnecessary.

OIG was assisted in the review from March through July 1979 by approximately 90 auditors from Commerce, HUD, Transportation, and Treasury Departments and from Defense Contract Audit Agency and Defense Audit Service.

The findings and recommendations of this report were discussed with the Associate Administrator for Minority Small Business and Capital Ownership Development. His comments relative to the findings, including corrective action taken or intended, are stated after each finding. In addition, individual reports on those companies in which deficiencies were disclosed were referred to the Associate Administrator.

III. FINDINGS AND RECOMMENDATIONS

1. SBA Criteria Regarding Ownership and Control Are Inadequate

Inadequate Agency criteria for ownership and control have provided opportunities for nondisadvantaged businesspersons to control 8(a) firms and to obtain benefits intended for disadvantaged businesspersons. This appeared to be true in 234 cases or 16% of the 8(a) portfolio. Control was effected through part ownership and various types of management and other agreements. As a result, Agency resources may have been expended for individuals who were not intended by SBA Regulations to receive benefits from the 8(a) program and diverted from disadvantaged businesspersons whose development the program was designed to promote.

Except for character determinations, there were no eligibility standards for evaluating personal attributes of 8(a) applicants. That is, there were no basic standards set up to assure that applicants had at least the potential to become competitive businesspersons. Conceivably, therefore, an applicant might lack minimal levels of experience, education, or motivation and still be eligible for the program provided he or she was of good character and had a majority ownership in the firm. Without basic skills to run a business, 8(a) owners might be influenced by nondisadvantaged businesspersons whose experience, superior business knowledge, personal contacts, reputation and access to financial and other resources, could be used to control the 8(a) firms. This appeared to be the case in many instances. Control was effected through management, sponsorship, rental and other types of agreements, oral and written, and part ownership by nondisadvantaged individuals and companies in the 8(a) firms.

We believe the situations arose because the Agency's standards on 8(a) firm ownership and control were inadequate. Our search for more precise standards led us to Part 121 of SBA's Rules and Regulations pertaining to control through common management. Although these regulations were developed for use in determining size standards, they were also found to be appropriate for assessing the degree of control exercised by disadvantaged owners over their 8(a) firms. According to Part 121.3-2(a)(vi), a firm has the ability to control another firm through common management when one or more of the following relationships exist between the two firms: (i) interlocking management (ii) the use of common facilities (iii) excessive influence by an established firm in the formation of a new concern.

Using these standards as guidelines, we were able to identify certain characteristics of 234 firms that led us to believe they were controlled by nondisadvantaged individuals or firms, or where the potential for such control existed.

Characteristics of Control by Nondisadvantaged Individuals or Firms

	Description	No. of Firms Involved
1.	Disadvantaged owner owned less than 51% of the stock	51
2.	8(a) firm was involved with individuals who were in most instances owners, officers, or employees in other firms	54
3.	Management, joint ventures, subcontracting or lease agreements were entered into with nondisadvantaged firms whose line of work was identical or similar to 8(a) firm's	35
4.	8(a) owner worked for nondisadvantaged entity prior to heading 8(a) firm	16
5.	8(a) owner did not give appearance of actually managing the firm	39
6.	8(a) owner did not appear to have sufficient education and experience to operate a business	19
7.	8(a) owner did not pay for capital stock received	5
8.	8(a) owner could not present proof of stock ownership	44
9.	Firm reorganized/changed ownership without SBA approval	19
10.	8(a) firm shared same office space with the nondisadvantaged firm	15
11.	8(a) firm rented office space from the nondisadvantaged entity	17
12.	8(a) firm purchased/rented machinery and equipment, furniture and fixtures and supplies from the nondisadvantaged entity	12
13.	8(a) firm received financial, technical, and/or administrative services from the nondisadvantaged entity	29
14.	8(a) firm received working capital, bonding or other financial assistance from the nondisadvantaged entity	14
15.	8(a) firm was not separately listed in telephone directory	3
16.	Nondisadvantaged entities controlled firm through convertible debentures/stock/promissory note	9

Characteristics of Control by Nondisadvantaged Individuals or Firms (Cont'd)

	Description	No. of Firms Involved
17.	Partnership agreement/corporate by-laws gave nondisadvantaged owners power to control firm	27
18.	8(a) owner's salary was unreasonably low or equal to other officers' salaries	9
19.	8(a) owner did not devote full time to firm	23
20.	8(a) firm was formed in response to the 8(a) program	6
21.	8(a) firm was formed by or with assistance of nondisadvantaged entity	28
22.	Capital injection of 8(a) firm was minimal, $1,000 or less	9
23.	Ownership of 8(a) firm could not be verified	8
24.	Eligibility based on group rather than individual ownership	1
25.	Control of firms was in hands of estates/trustees (firm bankrupt)	2
26.	8(a) firm retained public accountant of nondisadvantaged entity	9

In our Report No. 10-77, dated September 9. 1977, captioned a Review of 8(a) Sponsorships, we reported similar ownership and control deficiencies in a sample of 8(a) firms reviewed in Regions III and IV. We concluded that SBA should eliminate the sponsorship concept from the 8(a) program, and develop stringent, specific criteria defining ownership and control by the disadvantaged owner. The results of this latest review led us to the same conclusion.

Recommendations

For the Associate Administrator for Minority Small Business and Capital Ownership Development:

a. Develop stringent criteria on ownership and control in order to assure that disadvantaged owners own, control and operate their 8(a) firms. These criteria should include the following:

(1) Prohibit ownership in 8(a) firms by nondisadvantaged firms in the same or similar line of business as the 8(a) firm.

(2) Prohibit sponsorship, management or rental agreements, oral or written, between 8(a) firms and nondisadvantaged firms and individuals in the same or similar line of business. The need of 8(a) firms for equipment, supplies, office space or for financial, legal, technical, administrative and management assistance should be supplied from commercial concerns whose regular function in business is to furnish these goods and services. SBA programs should be expected to assist 8(a) firms when commercial sources are not available.

(3) Permit minority ownership in 8(a) firms by nondisadvantaged individuals only if they are not former employers of the disadvantaged owner, are not affiliated with other firms in a similar line of business, and if their only contribution to the firm is equity capital. Nondisadvantaged owners should be allowed as officers, directors or employees of 8(a) firms only if their status is incontrovertibly subordinate to that of the disadvantaged owner.

(4) Prohibit nondisadvantaged part owners from selling, renting or giving real property, equipment, supplies, services, financial assistance or other resources other than their own personal services as employees or directors. Compensation for these services should be limited to reasonable wages, bonuses and director's fees.

(5) Require the disadvantaged owner to receive a compensation exceeding that of other firm employees. Any exceptions should be clearly justified and documented.

(6) Allow joint ventures between 8(a) and nondisadvantaged firms only if the 8(a) firm is to perform a reasonable portion of the total contract, the firm's responsibilities under the joint venture are conducive to the firm's growth, and the joint venture agreement is detailed with sufficient clarity to identify the scope and nature of the work to be performed by both parties. The size and nature of prior contracts completed by the 8(a) firm should be compared with the responsibilities of the 8(a) firm under the contemplated joint venture in order to determine whether it has the capability to perform. Serious disparities between past accomplishments and the scope of the work intended to be performed by the 8(a) firm under the joint venture should be evaluated and justified before approval. Management agreements purporting to be joint venture agreements should be prohibited.

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(7) Require that eligibility determinations of 8(a) applicants be more than judgments of character and disadvantaged status. Screening procedures should be established to determine whether applicants have sufficient education, skills, experience and motivation to become successful businesspersons. Attempts to justify an applicant's enrollment into the program by substituting technical and other skills of subordinates for the applicant's fundamental managerial and operational shortcomings should not be permitted. Any deficiencies in an applicant's management skills which cannot be remedied by SBA's management assistance programs prior to or concurrent with his enrollment in the 8(a) program should be cause for disqualification from the program.

(8) Strengthen controls over subcontracting so that nondisadvantaged firms cannot use this means to circumvent other restrictions designed to limit the program to disadvantaged firms.

(9) As is the case of SBA borrowers, require 8(a) contractors, as a condition of participation in the program, to permit SBA to examine the firms' books and records whenever necessary to affirm the independence and control of the firms by disadvantaged owners.

b. Identify firms currently enrolled in the program that do not meet revised criteria and require them to correct deficiencies relative to ownership and control, or remove them from the program.

Corrective Action to be Taken

Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development partially concurred with our recommendations and stated that SOP 80 05, soon to be issued, would have guidelines complying with our recommendations a(1), a(3), a(5), a(6), a(7), a(8) and a(9). They also stated that firms that do not meet ownership and control criteria revised as agreed upon would be identified and required to correct the deficiencies or be terminated from the program. All of the above actions are expected to be initiated or completed by October 31, 1979.

Officials agreed to establish prohibitions against sponsorship, management and rental agreements between 8(a) and nondisadvantaged firms in the same or similar line of business as we recommended in a(2), but did not agree to prohibit such agreements with nondisadvantaged individuals. They believed that agreements with individuals could prove beneficial to 8(a) firms without exposing them to undue influence by the nondisadvantaged individuals. Officials also agreed to prohibit nondisadvantaged part owners from selling or renting real property, equipment, supplies and services as we recommended in a(4), but did not agree to prohibit giving these items, nor did they agree to prohibit nondisadvantaged owners from providing financial assistance to 8(a) firms. They thought that many 8(a) firms need this type of help since they often cannot obtain bank financing.

OIG Comments

We agree with corrective actions planned for those recommendations concurred in by the Office of the Associate Administrator. We do not agree with the opinions expressed relating to our other recommendations. We believe that managment agreements with individuals should be prohibited as well as with firms in the same or similar line of business. Unless individuals are also prohibited, firms could circumvent this rule merely by appointing an agent-employee to execute the management agreement.

In regard to allowing nondisadvantaged part owners to give goods and services to 8(a) firms, we oppose the practice because the presence of donated goods or services to an 8(a) firm may imply an obligation to return the favor in a manner that would undermine the independence of the 8(a) firm.

We are also opposed to nondisadvantaged owners providing financial assistance to the 8(a) firm. This practice suggests a transaction that may not be at arms-length. Furthermore, it furnishes a means for a nondisadvantaged owner to take over control of an 8(a) firm. In a situation where an 8(a) owner or firm's financing needs cannot be obtained from a bank on its own credit or collateral, we suggest that the nondisadvantaged owner give his financial support by being a guarantor of the note.

2. Eligibility Criteria for Determining Social and Economic Disadvantage Status Are Inadequate

SBA's criteria for determining whether applicants for the 8(a) program are socially and economically disadvantaged are too subjective to permit uniform application or objective analysis and too impractical to verify. As a result, applicants who do not qualify as being socially and economically disadvantaged may be approved for the program while other applicants who have these qualifications may be rejected. Because of the vagueness of existing criteria, we found it difficult to evaluate whether 8(a) owners qualified as being socially or economically disadvantaged. However, we did find 119 8(a) owners or 8% of the total portfolio whose socially and economically disadvantaged status was, in our opinion, at least questionable.

Existing criteria in paragraphs 4a and 18 of SOP 60 41 identified a disadvantaged person for 8(a) program eligibility as one who is socially or economically disadvantaged. Neither of the two terms was defined. However, the SOP listed certain factors or situations that may have been present in an applicant's background that could qualify him or her as socially or economically disadvantaged. These included:

a. Inability to obtain business or technical assistance.

b. Difficulty in obtaining financing.

c. Ability to compete effectively for government contracts.

d. Long time residence in urban areas with high concentrations of unemployment or low income persons.

e. Marginal unemployment.

f. Low income status of the individual and applicant company.

g. Veteran status resulting from service in the Armed Forces.

The SOP prohibited qualifying an applicant based principally on race, creed or ethnic background.

The Agency revised its criteria on social and economic disadvantage with a change to its Rules and Regulations effective May 29, 1979. Section 124.1-1(c) states in part:

(3) Social Disadvantage.
(i) Socially disadvantaged individuals are (A) those individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identification as members of certain groups, without regard to their individual qualities; such groups including, but not limited to, Black Americans, Hispanic Americans, Native Americans, (including American Indians, Eskimos, Aleuts and Native Hawaiians) and other minorities, to be designated from time to time by SBA according to the procedures set forth at §124.1-1(3)(iii) below; and (B) those individuals who are able to demonstrate to SBA that they have individually been subjected to chronic racial or ethnic prejudice, or cultural bias.

(ii) The social disadvantage of individuals, including those within the above-named groups, shall be determined by SBA on a case-by-case basis. Membership alone in any group is not conclusive that an individual is socially disadvantaged.

(4) Economic Disadvantage.
(i) Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area who are not socially disadvantaged.

(ii) In determining the degree of diminished credit and capital opportunities of a socially disadvantaged individual, consideration shall be given:

(A) with respect to both the disadvantaged individual and the applicant concern with which he or she is affiliated, to the following factors, including but not limited to:

(1) Personal and business assets;

(2) Personal and business net worth; and

(3) Personal and business income and profits.

(B) with respect to the applicant concern, the following factors, including but not limited to:

(1) Availability of financing;

(2) Bonding capability;

(3) Availability of outside equity capital; and

(4) Available markets.

Our review disclosed 114 out of the 119 cases where, in our opinion, the 8(a) owners' eligibility was questionable because one or more factors in their backgrounds suggested that they were not economically disadvantaged or sufficient information was not available to make a determination:

Factors Questioned	No. of Disadvantaged Owners 1/
High personal and business gross assets	16
High personal and business net worths	45
High personal and business incomes (annual)	29
Financing available	9
Markets available	20
Bonding available	4
Sufficient background information not available	45

1/ Some owners were questioned on more than one factor.

The following tables show the range of personal gross assets, net worths and incomes where available, for individual disadvantaged owners pertaining to the above firms:

High Personal Gross Assets

Value of Assets	No. of Disadvantaged Owners
Under $100,000	3
$100,000 to $200,000	3
$200,000 to $300,000	7
$300,000 to $1,000,000	2
Over $1,000,000	1
	16 Individuals

High Personal Net Worth

Value of Net Worth	No. of Disadvantaged Owners
Under $100,000	1
$100,000 to $250,000	25
$250,000 to $500,000	14
$500,000 to $1,000,000	4
Over $1,000,000	1
	45 Individuals

High Personal Income (Annual)

Value of Incomes	No. of Disadvantaged Owners
Under $20,000	1
$20,000 to $50,000	19
$50,000 to $100,000	5
$100,000 to $150,000	3
Over $150,000	1
	29 Individuals

We also found 12 cases[1/] where there was a question concerning the owner's status as socially disadvantaged. In two instances, the indentity of the disadvantaged owners as members of a minority group was in doubt. In another case, the owner was approved only because he was handicapped. In nine cases, the status of the disadvantaged owners was questioned because they had held positions of influence and authority in government or private circles, suggesting that they had overcome any social disadvantage.

The revised criteria in the current Rules and Regulations are an improvement over the SOP guidelines in that they specifically define social and economic disadvantage. Nevertheless, both the old and new criteria suffer from the same weakness in that information supplied by the applicant to satisfy the criteria is difficult to evaluate objectively and in some cases is difficult to verify. For example, one business development specialist may consider an applicant's personal net worth of $100,000 to be a disqualifying factor whereas another specialist may arrive at a contrary opinion. Similarly, inconsistent decisions might result from a factor such as "availability of financing". How "unavailable" must financing be for it to be considered evidence of economic disadvantage? Obviously, criteria made up of factors as these make objective, fair and uniform evaluations nearly impossible.

Racial, ethnic and cultural prejudices flourish in many insidious and subtle ways and therefore are difficult to verify. Discrimination against members of certain groups in our society is generally agreed to be widespread but is not easy to prove in individual instances. Blatant admissions of racial or other prejudice against individuals are rare. Therefore, it is often difficult to tell whether discriminatory behavior toward an individual is due to group prejudice or individual qualities..

1/ Includes seven cases where economic disadvantage was also questioned.

We believe the dilemma existing in evaluating social and economic disadvantage could be lessened by further improving criteria to include more exacting definitions and guidelines. Social disadvantage eligibility could be satisfied by identifying specifically which groups are subjected to racial or other bias and then automatically assuming that all members of these groups are socially disadvantaged. Individuals outside of these groups would not be considered socially disadvantaged.

Economic disadvantage could be defined precisely by setting maximum allowable dollar limitations on an applicant's personal and business gross assets, net worth and income. If an individual's financial status placed him or her within these limits, it would automatically be assumed that his or her ability to compete has been impaired due to diminished capital and credit opportunities. It would also be assumed that other factors such as financing, bondability, equity capital and markets were not available to the extent required or were not relevant to the applicant's ability to compete in the free enterprise system. Applicants whose assets, net worths and incomes exceeded the guidelines would not be considered to be economically disadvantaged.

The requirement of Public Law 95-507 that eligibility determinations be made by one individual, the Associate Administrator for Minority Small Business and Capital Ownership Development, accentuates the need for standards under which he should be held accountable in order to minimize subjectivity in his decision making. Further, objective guidelines would provide a continuity in interpretation that would be binding upon succeeding Associate Administrators, whatever their social and ethnic backgrounds.

The adoption of guidelines as exacting as we recommend may meet with significant opposition from some quarters if the guidelines are confined to regulations or SOP's. If so, it may be necessary to request Congress to have the guidelines enacted into law.

By defining social and economic disadvantage in precise terms, operating personnel in the field will be able to evaluate applicants in a fair and uniform manner without the inconsistent results disclosed in our review.

Recommendation

For the Associate Administrator for Minority Small Business and Capital Ownership Development:

Develop criteria that will more precisely define social and economic disadvantage. Social disadvantage should be defined to include all members of specifically identified groups that have been subjected to

racial, ethnic or cultural bias in order to preclude the need to qualify applicants on an individual basis. Guidelines for economic disadvantage should establish maximum dollar limitations on personal and business assets, net worth, and income within which an applicant's financial status will have to fall in order for him or her to be considered eligible. Consideration should be given to establishing controls that would preclude qualification of an applicant whose economic eligibility was achieved by transfer to others of personal assets. Present law permitting, the applicant should also be required to submit tax returns for the purpose of corroborating income requirements.

Corrective Action to be Taken

The Office of the Associate Administrator for Minority Small Business and Capital Ownership Development concurred with our recommendation. Criteria for social disadvantage have already been developed in SOP 80 05. It lists groups, the members of which SBA considers to be socially disadvantaged. The criteria differ from that of our recommendation in that: (i) under the SOP, a claim of social disadvantage by a member of a group designated by SBA as socially disadvantaged can be refuted if there is substantial evidence that the individual has not experienced or has overcome prejudices identified with his group, and (ii) applicants who are not members of a designated group may still be approved as socially disadvantaged provided they can substantiate in detail their claim of chronic disadvantage. The SOP, however, is in conflict with SBA's Rules and Regulations Part 124.1-1(c)(3)(ii), dated May 29, 1979, which states that even individuals who are members of designated groups are to be determined on a case-by-case basis. It states, "Membership alone in any group is not conclusive that an individual is socially disadvantaged." Regarding guidelines for economic disadvantage, a contract will be awarded by September 30, 1979, to a contractor to develop guidelines for determining economic disadvantage.

OIG Comments

Corrective action to be taken for defining social disadvantage is basically in agreement with our recommendation. However, the conflict between the SOP and the Regulations should be resolved in favor of the criteria stated in the SOP, i.e., applicants who are members of designated groups should be determined to be eligible automatically, rather than on a case-by-case basis. At this time, we will withhold comments on corrective action planned for developing criteria for economic disadvantage, pending the completion of work under the aforementioned contract.

If criteria for economic disadvantage cannot be developed, we would recommend a change in Public Law 95-507 that would require applicants for the 8(a) program to be approved by an eligibility committee of three or more members, including the Associate Administrator for Minority Small Business and Capital Ownership Development. This change will not remove the element of subjectivity. However, such a procedure would provide a greater degree of credibility to the eligibility determination process.

3. More Objective Procedures for 8(a) Firm Graduation Should be Established

Agency criteria for 8(a) program graduation (completion) were not sufficiently objective to enable operating personnel to take definitive and timely action to graduate firms that achieved business plan goals. As a result, firms that should have been removed from the program were allowed to remain in the portfolio and continue taking advantage of the program. A limited review of 8(a) firms to evaluate viability was conducted. This resulted in the identification of 38 firms which had achieved established business plan goals or were otherwise considered viable and should have been graduated.

Par. 16a of SOP 60 41 states that "The objective of the 8(a) program is to assist eligible firms develop the capability to compete effectively in the nation's marketplace". The SOP does not define at what point an 8(a) firm will have developed the capability to compete or what measures can be used to gauge a firm's progress to the point where it can be stated categorically that the firm has reached viability.

The SOP does list some guidelines in par. 64a that are to be considered in evaluating the progress of the 8(a) firm. They consist of a number of factors that include the length of time the firm is in the 8(a) program, net profit and other financial indicators, quality of performance, credit ratings, ratio of competitive to 8(a) awards, bonding capabilities and several subjectively determined factors. These factors, however, are to be used as guides to assist in making a subjective determination that the firm is now viable and ready to be graduated from the 8(a) program.

The use of subjective graduation criteria, such as they are, is understandable. No definition of "viability" is specific enough to describe precisely what ingredients are necessary to make a firm competitive, nor sufficiently comprehensive to fit the situation of all firms in all industries under all market conditions. By making the criteria subjective and elusive, the problem of precisely defining "viability" is avoided, but the problem of evaluating a firm's status fairly and objectively remains. The Agency has evaded the issue by simply postponing a decision in the graduation of 8(a) firms. SBA consequently graduates few firms, thus diminishing the possibilities of new firms entering the program.

We believe the solution to the problem would be to abandon efforts to measure or identify "viability" since it is not practical to do so. Instead of trying to evaluate how well a firm is progressing, a concept obviously valid in principal, SBA should concentrate on measuring how much benefit the firm is to receive from the program. In fact, a yardstick for measuring benefits already exists. Par. 23 of SOP 60 41 describes the preparation of an applicant's business plan. Par. 23b(6)(e) requires the applicant to indicate the sales volume needed to permit "...profitable, competitive and independent operations." This sales volume, after evaluation and approval by SBA could be used as a specific goal for business plan accomplishment, after which no

additional support would be furnished by the 8(a) program to the firm. Sales volume could be expressed in dollars or units, and in 8(a) sales alone or total sales. Once the stipulated goal is reached, however, no additional support would be provided regardless of whether or not the firm has "attained viability".

A maximum, fixed time limit for program participation should be stipulated in order to provide a firm with reasonable time to attain its business plan goals. Once a firm has reached this time limit, it would be removed from the program, regardless of whether or not its business goals as expressed in sales volume have been attained.

During our review, we found 38 firms whose financial condition indicated they had developed the capability to operate independently of the 8(a) program. In 16 of the 38 cases, projected sales goals established in business plans had been exceeded significantly as follows:

Percent Actual Sales Exceeded Projections	No. of Firms
Under 10%	1
10 to 25%	3
25 to 50%	5
50 to 100%	3
100 to 250%	3
Over 250%	1
	16

We believe these firms should be strongly considered for graduation.

Using business plan sales projections as objective measures for 8(a) firm graudation would also solve the serious problem of analyzing why an 8(a) firm has performed so little non 8(a) work. One reason is that the firm has tried hard to obtain commercial and other non 8(a) work but has failed because it has not yet reached a competitive status. SBA's remedy in this case would be to furnish more 8(a) support. The other reason is that the 8(a) firm has made no attempt to invade the non 8(a) market and is content to remain dependent on the program. In this case, the solution would be the opposite: terminate the firm. Unfortunately, SBA seldom has the resources to tell the difference between the two situations. However, by stipulating a maximum amount of assistance that a firm can receive from the 8(a) program, the firm will know that its participation in the 8(a) program is truly only temporary and they will be more motivated to develop a non 8(a) market.

Our review revealed 55 firms that have relied solely or predominately on 8(a) contracts for support. We believe the Agency should set a limit to the amount of additional 8(a) support these firms are entitled to, after which time they should be graduated or terminated.

Recommendation

For the Associate Administrator for Minority Small Business and Capital Ownership Development:

Develop procedures for measuring the full extent of contract assistance a firm can expect from the 8(a) program in order to determine objectively when the firm is to be graduated from the program.

Corrective Action to be Taken

Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development did not concur with our recommendation. They agreed that objective graduation criteria are needed, but were opposed to establishing criteria that would drop a firm from the program after a given amount of assistance regardless of its ability to compete in the commercial world. They thought that Public Law 95-507 provided a mandate to develop viable firms and that a firm should not be dropped from the 8(a) program until it has attained viability or has proved beyond a reasonable doubt that it will never become competitive. Instead, they intend to develop quantitative standards to measure viability and to determine when a firm is a candidate for graduation. The standards will be based on the size and financial stability of nondisadvantaged firms in the same line of business and markets. A contract will be awarded to develop these standards.

OIG Comments

In our opinion, the action planned by the Office of the Associate Administrator will not correct the serious problem for which the program has been severely criticized--namely, the lack of program graduates. We hold this opinion for two reasons. In the first place, as mentioned in the body of this finding, we do not believe it is practical to develop objective criteria for defining viability because of the large number of variables to be considered, including numerous financial ratios and other measurements of financial position and performance, the variety of firms in the program and related markets, the difference in 8(a) firm size, and the fluctuations of markets and the economy in general. We think the result of such research will be another list of graduation "guidelines" similar to those that already exist in SOP 60 41. The list may be longer, more detailed and more impressive but it will still be used in the same fashion as current guidelines--to aid in making a subjective determination that will more likely result in a firm remaining in the 8(a) program rather than graduating.

Secondly, there is the problem of negative motivation prevalent in the program. Firms may tend to refrain from developing non-8(a) markets in order to obtain maximum program benefits. They may also remove assets from the firm for personal use or tamper with the firm's operations in ways that cover up a viable operation in order to postpone graduation. This type of behavior is inconsistent with the 8(a) program objectives. In theory, of course, SBA should monitor 8(a) firms for evidence of this type of behavior.

In practice, we do not believe the Agency has the resources to monitor firms to the required degree, nor do we see any prospects for developing this capability.

Further, we do not see any conflict between our recommendation and Public Law 95-507. The objective of the law is to help disadvantaged businesspersons become competitive in the market place. It does not state that this help must be unlimited. If it can be assumed that there are more eligibile businesses in the country who could benefit from the 8(a) program than the program can accommodate at any one time, it is only fair that the program benefits be distributed among as many eligible firms as can be effectively helped. We believe our proposal of limiting program participation of the firm to a stated amount of contract assistance will provide greater opportunities for other eligible participants to be assisted by the program.

4. Firms in Failing Financial Condition Should Be Terminated From 8(a) Program

The Agency allowed 8(a) firms to remain in the program even though they were in failing financial condition and could not achieve objectives set forth in business plans. As a result, 8(a) program resources were diverted away from other firms that showed more promise and were deserving of the program's benefits. Failure to meet business plan goals is a cause for termination from the program, according to Agency procedures. We found 47 firms that, in our opinion, should be considered for termination from the program for this reason.

According to par. 17 of SOP 60 41, SBA's "...business development function is to assist existing and newly organized or prospective eligible firms in applying resources and techniques designed to achieve self sustaining independence in the competitive economy". Obviously firms in the program whose financial conditions have deteriorated to the point where they have lost the potential to achieve competitive positions in the business world can no longer be helped by the program and should be removed. The criteria in SOP 60 41 for program termination provides this option. Par. 66a(10) states that "inabilities of the firm to make satisfactory progress in achieving its business development objectives" is a cause for termination.

Our audit disclosed 47 firms whose deteriorated financial conditions were, in our opinion, cause for seriously considering termination. Several financial indicators led us to this conclusion but in 16 cases serious deficit net worth of the firms was the most obvious reason:

Deficit Net Worth	No. of Firms
Under $25,000	4
$25,001 to $50,000	1
$50,001 to $100,000	2
$100,001 to $250,000	6
$250,001 to $1,000,000	2
Over $1,000,000	1
	16

We believe SBA should carefully review the financial conditions of these firms in order to identify the causes for their financial difficulty. Where the 8(a) program provides no realistic possibility for resolution of their problems, the firms should be terminated.

Recommendation

For the Associate Administrator for Minority Small Business and Capital Ownership Development:

Determine the causes for the serious financial plight of firms in the 8(a) portfolio, and terminate from the program those firms that can no longer realistically be expected to achieve their business development objectives.

Corrective Action to be Taken

Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development concurred with our recommendation and said that all firms with serious financial difficulties will be reviewed in order to determine the causes of the difficulties and to plot a course of remedial action. In those cases where there are no realistic solutions to the firms' financial problems, they will be terminated from the program. It is expected that the review will be completed and required actions initiated by October 31, 1979.

OIG Comments

The corrective action planned is in accord with our recommendation.

5. Need for Closer Monitoring of Eligibility Requirements

Because of inadequate eligibility determinations, SBA allowed applicants who did not meet all eligibility requirements, other than social and economic disadvantage and ownership and control, to enroll into the 8(a) program. As a result, applicants who did not qualify as 8(a) owners received program assistance. Our review revealed 167 instances involving 160 firms whose 8(a) owners did not meet all eligibility qualifications.

In order to qualify for the 8(a) program, an applicant must meet eligibility criteria stipulated in SOP 60 41. The most important of these relate to ownership and control and social and economic disadvantage. 8(a) owners who may not have met these two criteria are discussed in Findings Nos. 1 and 2 of this report. There are, however, other eligibility requirements that must be met. Our review identified 167 instances of 8(a) firm owners who were, in our opinion, deficient in fulfilling various eligibility requirements:

	Deficiency	No. of Instances	Eligibility Criteria SOP 60 41 Par.
a.	Disadvantaged owner devotes less than full-time with 8(a) firm	117	4c(1)
b.	Spouse of 8(a) firm owner, officer or director employed by Federal Government	23	4c(2)
c.	Minority stockholder employed by Federal Government	1	4c(2)
d.	Disadvantaged owner owned or formerly owned other 8(a) firm	16	4d
e.	Possible fraudulent data submitted with disadvantaged owner's application	6	23c
f.	Disadvantaged owner was member of SBA Regional Advisory Committee	1	4c(2)
g.	8(a) firm formed to protect assets of another firm	1	2f
h.	8(a) firm approved on a conditional basis	1	24a, b, c
i.	8(a) firm controlled by nonprofit firm	1	5a(8)
		167	

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In regard to the provision that the 8(a) owner must devote full-time to 8(a) firm operations, Par. 4c(1) states that this requirement affects only those firms entering the program on or after November 14, 1974. We believe SBA should consider requiring all 8(a) owners to operate their firms on a full-time basis, regardless of when they entered the program.

For all deficiencies noted above, 8(a) owners should be made to comply with the eligibility standards if possible. If the criteria cannot be met, or if the owners refuse to cooperate, the firms should be terminated from the program.

Recommendations

For the Associate Administrator for Minority Small Business and Capital Ownership Develoment:

a. Improve controls over the evaluation of business plan applications to insure that applicants for the 8(a) program meet all standards for eligibility.

b. Take corrective action on 8(a) owners currently in the program who do not meet all eligibility criteria. Those who cannot satisfy all eligibility requirements should be terminated from the 8(a) program.

c. Change Agency procedures to require all disadvantaged owners on whom the management responsibility of the 8(a) firm falls to devote full-time to 8(a) firm operations and management.

Corrective Action to be Taken

Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development stated that the following actions would be taken:

a. Evaluation of business plan applications will be improved through (i) the establishment of a Central Office eligibility committee that will review applications and make recommendations for approval to the Associate Administrator for his approval or declination, (ii) a revision to SOP 80 05 that describes the evaluation process in detail and the various responsibilities connected with the process, (iii) the preparation of new eligibility forms that ask clearly and concisely the questions needed to make eligibility determinations.

b. A review to evaluate firms with deficiencies related to eligibility has been initiated. Those that do not meet all eligibility criteria will be given a period of time to satisfy the criteria or be terminated from the program.

c. SOP 80 05 has been revised to require all disadvantaged owners responsible for managing the firms to devote full-time to 8(a) firm operations.

All of the above actions are expected to be initiated or completed by October 31, 1979.

OIG Comments

The corrective action planned is in accord with our recommendations.

6. Firms Out of Business or Recommended For Termination Should be Removed From the 8(a) Program

Final action against eleven (11) firms that were apparently out of business or were recommended for termination for various reasons had not been taken by the Agency. Further, we could find no reasons why this action was delayed except in two cases. As a result, the 8(a) portfolio contains firms that should no longer be in the program.

The criteria for 8(a) program termination are set forth in par. 66 of SOP 60 41 which cites various reasons for terminating an 8(a) firm.

Our review of these eleven firms disclosed the following:

1. Seven (7) firms were recommended for termination by Agency officials for one of the following reasons:

   a. Firm did not meet standards of contractor responsibility.

   b. Firm committed contract violation.

   c. Firm violated concession agreement.

   d. Firm failed to buy out NDVD owner as required by SBA.

   e. Firm failed to submit financial and other required data and failed to pursue non 8(a) work.

   f. Firm convicted of misapplication of Federal funds.

   In the case of the seventh firm, no reason was given.

2. Three firms were apparently out of business or abandoned.

3. One firm's owner himself recommended termination.

In nine of the eleven cases, Agency records did not reflect any justification for the failure to institute final termination actions. In one of the eleven cases, the delay was due to higher priority work. In the eleventh case, district officials were awaiting Regional Office approval to take final action.

Recommendation

For the Associate Administrator for Minority Small Business and Capital Ownership Development:

Insure that field offices take timely action to terminate 8(a) firms that are no longer in business and final action against those where termination has been recommended.

Corrective Action to be Taken

Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development stated that final termination actions will be taken against the above mentioned firms by October 31, 1979.

OIG Comments

The corrective action planned is in accord with our recommendations.

7. Termination Action May be Needed for 8(a) Firms Being Investigated for Possible Illegal or Improper Actions

SBA should closely monitor 8(a) firms being investigated for possible illegal or improper activities. Termination or other corrective action may be necessary now or at some future time, depending on the results of investigations that are still in process. Our review disclosed 18 firms suspected of illegal or improper activities which were under active investigation at the time of our review. These are in addition to the 22 firms mentioned in Part I of this report which have been referred for investigation as a result of this audit.

SOP 60 41 requires that 8(a) firm owners operate their businesses in an ethical and businesslike manner. Par. 4b requires an applicant to be of good character. Par. 2 requires Agency officials to report to Security and Investigation Division (now the Office of Security and Investigation, OIG) evidence of false representation and other irregularities involving 8(a) applicants or 8(a) firms. Par. 66a(55) establishes unethical business conduct as a criteria for terminating an 8(a) firm.

As of this report, 18 8(a) firms either have been or are presently under investigation by SBA-OIG, the U. S. Justice Department, other Federal agencies, and state and local agencies. In four cases, information on the nature of the allegations was not available. In the other 14 cases, the description of the allegations against the 8(a) firms follows:

		No. of Firms
a.	Involved in receiving or transporting stolen property.	2
b.	Improprieties involving former SBA officials.	4
c.	Miscellaneous allegations involving CETA and 8(a) contracts.	5
d.	Improper payment of wages.	1
e.	On debarred contractors list.	2
		14

In most of the instances noted, the charges are still in a state of investigation or litigation, or the status is uncertain. In at least one case, the 8(a) owner was reportedly convicted of a criminal offense.

SBA should monitor these firms carefully and, after investigations are completed, take appropriate action.

Recommendation

For the Associate Administrator for Minority Small Business and Capital Ownership Development:

Carefully monitor 8(a) firms being investigated for possible illegal or improper activities. When investigative and litigative actions are completed, take appropriate action against these firms.

Corrective Action to be Taken

Officials of the Office of Associate Administrator for Minority Small Business and Capital Ownership Development stated that field offices have already been notified by memo to initiate appropriate action against these firms consistent with the outcome of pending investigation and litigation.

OIG Comments

The corrective action planned is in accord with our recommendations.

8. Various 8(a) Firm Deficiencies Require Termination or Other Corrective Action

Various types of deficiencies involving 8(a) firms were disclosed during our review which require corrective action by SBA and may warrant termination of some 8(a) firms. A total of 114 instances involving 102 firms were disclosed relating to deficiencies that pertained in general to Agency procedures.

Many of the deficiencies found were violations of Agency guidelines which could require termination of 8(a) firms. These types of deficiencies are listed in the table below and represent 75 firms with 78 instances of deficiencies.

Deficiency	No. of Instances	SOP 60 41, Par. Basic Criteria	SOP 60 41, Par. Termination Clause
a. Timely financial statements not submitted	62	25a(1)	66a(8)
b. Wife succeeding disadvantaged owner not certified as new disadvantaged owner	2	5a(10)	66a(2)
c. Subcontract not approved by SBA	3	8b(3)	66a(12)
d. Nondisadvantaged owner convicted of bribery	1	2f	66a(5),(16)
e. Disadvantaged owner refused SBA management assistance	1	13a	66a(7)
f. Nondisadvantaged owner helped obtain 8(a) contracts for % of profits	1	12	66a(14)
g. Management agreement entered into without notifying SBA	1	5a(6)(a)	66a(13)
h. 8(a) firm misused or defaulted on SBA loan	2	None	66a(6)
i. Existence of 8(a) firm was questionable	4	None	66b
j. Disadvantaged owner convicted of tax evasion and bribery	1	None	66a(5)(6)(16)
	78		

We also found additional deficiencies where no specific termination criteria are related to these types of deficiencies. However, some of the problems involved raises questions about 8(a) owners' ethical conduct, which is one of the conditions for termination. We believe that where termination is not called for, other corrective action should be taken. The following table describes these types of deficiencies for 34 firms (seven of these firms are included among the 75 firms mentioned in previous table) and 36 instances of deficiencies.

	Deficiency	No. of Instances	SBA Criteria SOP 60 41 Par.
a.	BDE sued for questionable purposes	7	57b, c
b.	Failure to provide updated business plan file	1	63a
c.	Advance payments misused	3	54c, APP. 18
d.	Conflict of interest between 8(a) firm and other parties	3	2f
e.	Disadvantaged owner's salary questionable	1	None
f.	406 task order approved in unethical manner	1	None
g.	Participation in joint venture not adequately described	1	5a(7)
h.	8(a) firm suspended from Surety Bond Guarantee Program	1	None
i.	Disadvantaged owner involved in criminal action against nondisadvantaged owners	1	None
j.	Disadvantaged owner refused interview with auditors	2	None
k.	8(a) firm reinstated without explanation	2	67d
l.	8(a) firm exceeded size standards	2	20, 23b(1)
m.	8(a) owners withdrew funds from firm for personal reasons to possible detriment of 8(a) firm	9	None
n.	Disadvantaged owner refused 8(a) contract awards needed to become competitive	1	None
o.	Disadvantaged owner owned non 8(a) firm represented as 8(a) firm	1	None
		36	

Recommendations

For the Associate Administrator for Minority Small Business and Capital Ownership Development:

a. Establish tighter controls in order to identify and correct the types of deficiencies noted above including, in particular, the failure to obtain financial statements in a timely manner.

b. Take action to correct the specific deficiencies noted.

Corrective Action to be Taken

Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development said that tighter controls will be established to facilitate the identification and correction of deficiencies noted above. They consist of (i) SOP changes that will require periodic field visits to 8(a) firms for the purpose of reviewing firm structure and operations and (ii) an increase in the size of the surveillance team that will review operations of both SBA field offices and the 8(a) firms.

OIG Comments

The corrective action planned is in accord with our recommendations.

IV. GENERAL PROGRAM RECOMMENDATIONS

The following are general recommendations that were developed during the course of the review. Not all are directly applicable to findings reported in Part III of this report, but we believe their implementations would improve the efficiency and effectiveness of 8(a) program operations.

1. Assure that all business plan files of active 8(a) firms contain the appropriate SBA approval documentation including the rationale for approval, i.e., details on why and how DVD(s) are eligible for 8(a) program. This documentation would also include the initial application and subsequent field office annual reviews of 8(a) firms.

2. Require field office adherence to agency procedures for verifying monthly EDP listings of 8(a) "company", "requirements", and "contract" data. Timely verifications, as required by par. 71 of SOP 60 41 will insure that program records are accurate and current.

3. Controls should be established to insure receipt by field offices of required financial statements from 8(a) firms and that these financial statements are reviewed and utilized for the purposes intended.

4. Selected information pertaining to the owners, directors and officers of an 8(a) firm should be placed in the computer and be available to the field offices in order to assist them in detecting and/or precluding such things as interlocking management, ownership in more than one 8(a) firm and using 8(a) eligibility more than one time.

5. All information currently computerized regarding 8(a) firms should be processed in a more timely manner to include contracts, subsequent modifications, and new certifications of 8(a) firms. This will assure that SBA records would be updated to support program objectives.

6. Provide a system for comparing on a timely basis projected vs. actual 8(a) and non-8(a) sales to ascertain viability which could lead to graduation or termination.

7. The SBA Business Plan and Qualification Resume, SBA Form 1010, should contain a criminal penalty clause to motivate the applicant to provide complete and accurate information.

Corrective Action to be Taken

Officials of the Office of the Associate Administrator for Minority Small Business and Capital Ownership Development concurred with our general program recommendations. They stated that recommendations 4, 5 and 6 require the use of computer facilities and that corrective action cannot be taken on these recommendations until SBA's computer system has been improved. Regarding the other recommendations, officials said that revised SOP's, increased surveillance over field offices, and the centralizing of eligibility determinations should assure improved compliance with requirements to obtain approval documentation, verify monthly program data and obtain and analyze financial statements. They also stated that the Business Plan and Qualification Resume form would be revised to include a criminal penalty clause.

OIG Comments

The corrective action planned is, for the most part, in accord with our recommendations.

STATISTICAL SUMMARY BY REGION

	REGIONS										
	I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
FIRMS WITH DEFICIENCIES	18	51	174	29	42	50	19	24	93	26	526
FIRMS WITH NO DEFICIENCIES	50	84	176	82	143	146	43	62	123	70	979
TOTAL FIRMS REVIEWED	68	135	350	111	185	196	62	86	216	96	1,505
FIRMS WITH OWNERSHIP/CONTROL OR SOCIAL/ECONOMIC DISADVANTAGE DEFICIENCIES	9	37	98	24	29	32	9	15	52	18	323
FIRMS WITH OTHER TYPES OF DEFICIENCIES	9	14	76	5	13	18	10	9	41	8	203
TOTAL FIRMS	18	51	174	29	42	50	19	24	93	26	526

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OIA Control No. 390

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: BLK Group, Inc.
Washington, DC (Region III)

Category of Deficiency: Viability and Lack of Audited Financial Statements

MSB Comments:

DECISION:

This office agrees with the field's recommendation that this firm be retained in the program.

REASON:

The firm responded timely to the cure notice. It satisfactorily responded to the allegations raised. On the question of audited financial statements, the firm was not able to comply because of the untimely death of its accountant. On the question of non 8(a) marketing, the firm responded that they have pursued 8(a) business and were able to obtain eight non 8(a) contracts.

OIG COMMENTS:

Disagree with the action taken by MSB. Pertaining to the potential problem reported of financial statements, this item was satisfactorily responded to and considered resolved. However, with regard to the firm's viability, we disagree with MSB's decision to retain the firm. The firm has been in the 8(a) program in excess of nine (9) years and has a history of not obtaining commercial/competitive work.

It appears that MSB's initial decision in December 1979 recommended program termination because the firm has made no appreciable gain in the commercial area, is operating at a deficit net worth of $360,000 and the business plan for FY 80 and FY 81 calls for 8(a) marketing only and the firm states it will not pursue commercial sales during this same period. This recommendation was not followed through with by MSB and there was no indication of additional information being obtained subsequent to December 1979 that could have altered MSB's final decision.

OIA Control No. 32

OFFICE OF INSPECTOR GENERAL

EVALUATION OF MSB ACTION TAKEN ON INDIVIDUAL 8(a) FIRMS

Firm Name: Car-Ted Industries

Category of Deficiency: Ownership and Control

Action and Comments By MSB: Retain in program.

A cure letter was sent to Car-Ted on September 25, 1979. The response from Car-Ted was timely received. The allegations were adequately responded to by Mr. Turner. He reaffirmed the Region's findings that he is in day to day control of the firm.

OIG Comments:

Disagree with action taken by MSB. Recommend termination from program.

MSB comments consist of rhetorical remarks made from several sources and references to superficial changes made by the firm, apparently in an attempt to more closely align the firm's operations with the intent of SBA's criteria on ownership and control.

Quotations were furnished from the firm's management consultant attesting to the disadvantaged owner's understanding of the business and his competence to manage it. While the professional competence of the consultant is not questioned, there is doubt that he is in a position to provide an objective assessment of the owner's competence since his contract is paid through MSB by BDE funds. To illustrate, on 4/26/79, the consultant told OIG auditors that the disadvantaged owner was not presently able to run the 8(a) firm nor had he established any plan to obtain the needed technical competence. It is not likely that the owner could acquire this competence within a six-week period.

Actions taken by the 8(a) firm included:

1. A statement from the disadvantaged owner that he had now assumed day-to-day operations over the 8(a) firm.

2. A decision by the firm's Board of Directors that the General Manager is to report directly to the owner.

3. An increase in the owner's salary by $10,000 per annum.

We do not believe that the additional actions taken or information supplied by MSB either refutes or mitigates the substantial evidence disclosed by our

Car-Ted Industries (Cont'd)

report that the firm is not under the control of the disadvantaged owner or that his invitation to join the firm was for any purpose other than to qualify it for the 8(a) program. The Office of Financial Investigations and Examinations drew a similar conclusion in their report dated July 1979, following an examination of the firm.

OIA Control No. 665

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Chata Septic Tank Company
Philadelphia, Mississippi (Region IV)

Category of Deficiency: Economic/Social Disadvantage; Eligibility

MSB Comments:

Retain firm in 8(a) program.

SOP 80 05 does not address the Native American issue. The Central Office will be coming up with regulations concerning tribal ownership of 8(a) firms.

OIG COMMENTS:

Disagree with MSB's action on eligibility. A non-profit organization should not have control over an eligibile 8(a) firm. SOP 80 05, par. 11a says that a non-profit organization "...shall not own a controlling interest in, or exercise management control over an eligible 8(a) firm." This is the problem. The 8(a) firm must be owned, controlled and operated by persons determined to be socially and economically disadvantaged. The Chata Development Company, a non-profit corporation owns the Chata Septic Company. There is no specific, identifiable person or persons declared eligible for the 8(a) program.

Opinion is withheld on deficiencies related to economic and social disadvantage until MSB further evaluates the 8(a) firm on the basis of new criteria being established for economic disadvantage.

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OIA Control No. 274

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Chesapeake Enterprises, Inc. - Norfolk, Va. (Region III)

Category of Deficiency: Economic/Social Disadvantage
Other - Federal employment by a member of Board of Directors

MSB Comments:

"We do not consider any of the questions raised by the auditors to be in violation of our rules and regulations." "No corrective action deemed necessary. Concur with Field Office to retain this firm".

OIG Comments:

Disagree with action taken by MSB. OIG's opinion on questionable economic disadvantage of disadvantaged owner would have been withheld pending issue of new criteria by MSB. However, the additional deficiency mentioned was not addressed by MSB, namely the directorship in the firm of the owner's brother, who is employed by the U. S. Government. This relationship was prohibited by SOP 60 41 and is still prohibited by par. 7a(1) of SOP 80 05, which further states that ineligible applicants in this category are to be referred to the Standard of Conduct Committee for decision. MSB's action did not indicate that this referral was made.

OIA CONTROL No. 1200

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Del Green Associates (DGA)
Foster City, California (Region IX)

Category of Deficiency: Viability

MSB Comments:

DECISION:

No corrective action at this time.

REASONS:

When this company entered the program it was not necessary to establish both social and economic disadvantage status to become eligibile. Entry in the vast majority of cases was based upon the social disadvantages suffered by racial minorities.

All companies admitted to the program prior to the spring of Public Law 95.507 in October 1978 will be reviewed in the near future to determine present eligibility based upon the new criteria established by the Act.

We have asked the responsible field office to give priority to the review of this company and furnish us with a written report when their determination is made.

OIG COMMENTS:

Disagree with action taken by MSB. MSB reviewed this firm considering the initial potential problem sheet; however, a revised problem sheet was forwarded on March 26, 1979. The revised problem sheet cited the problem as viability instead of economic/social disadvantage. MSB has not addressed the facts presented as related to viability; namely, the firm's enrollment in the program for eight years, increase in 8(a) owner's net worth from $41,000 to $202,600, receipt of seven 8(a) contracts valued at $1,140,225 and over reliance on program as shown by 8(a) sales amounting to 82% of 1977 sales.

OIA Control No. 1378

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: F & M Janitorial Services
Miliani Town, Hawaii (Region IX)

Category of Deficiency: Viability

MSB Comments:

Retain firm in 8(a) program. The firm can achieve competitive status. It is to submit a revised business plan upon which to base a 7(j) task order, develop a marketing plan and achieve competitive status.

OIG COMMENTS:

Disagree with MSB's action. The 8(a) firm has been in the program since 1974, and to date is virtually dependent upon the program for economic survival. It has not improved its 8(a) dependency since 1976's 406 Task Order.

The 7(j) program is not a panacea to firms in managerial difficulties. This firm has had ample time to develop a competitive status and diminish its dependency on the 8(a) program.

OIA Control No. 25

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Grimes Oil Co.
Dorchester, Mass. (Region I)

Category of Deficiency: Viability

MSB Comments:

DECISION:

Support program completion for this company as soon as possible (i.e. by FY 1981) preceded by a scheduled decrease in 8(a) support.

REASON:

This company will be inhibited from developing non 8(a) sales if the large 8(a) support now being furnished is continued up to the completion date. (the completion date being end of FY 1981)

OIG COMMENTS:

Disagree with MSB action to retain the firm until FY 1981. As previously stated, this firm had non 8(a) sales of 52% for the period ended June 30, 1978 and non 8(a) sales had increased from $460,000 in 1971 to over $5.0 million in 1978. However, the central issue in this case remains, that is, the Grimes Oil Company was twice considered for program completion by the Boston Regional Office - but never graduated. No doubt, an extensive and complete analysis was performed by the regional office prior to notifying the firm of program completion. Now we learn that the primary reason for not graduating Grimes Oil was based on the firm's need for additional exposure to federal government 8(a) contracts and an opportunity to increase its profits and retained earnings. At present, it appears Grimes Oil has received approximately $34.0 million in 8(a) support. How much additional exposure is needed?

An October 15, 1979, memo from DAA/MSB to the Boston Regional Administrator requested a response "...indicating your actions or justification as to why program completion procedures have not been initiated...." In response, the region merely referred Mr. Luna to their original memo of May 22, 1979 with no additional comments or justifications. MSB & COD accepted this response and apparently agreed to program completion in FY 81. In a February 12, 1980 memo to the file, the

DAA/MSB stated that the firm "...is being over loaded with 8(a) work which will stifle non-8(a) work and inhibit viability".

The DAA/MSB comments and concerns were appropriate. Further, the response by the field office does not provide information of substance that would alter our initial conclusion or reasonably justify the retention of this firm.

OIA Control No. 1356

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Goshute Enterprises
Ibapah, Utah (Region VIII)

Category of Deficiency: Ownership and Control and Lack of Audited Financial Statements

MSB Comments:

DECISION

Continue in the 8(a) Program.

REASONS

The regional office has submitted a new management agreement to the AA/MSB-COD for approval. A cursory review of the new agreement indicates that it is satisfactory and eliminates the items previously deemed objectionable. In the matter of audited financial statements, the regional administrator has stated in writing that satisfactory unaudited statements have been furnished. Inasmuch as audited financial statements are not required by SOP 80 05, the issue is moot.

OIG COMMENTS

Disagree with action taken by MSB. Pertaining to the lack of audited financial statements, MSB has satisfactorily responded to our concerns. However, with regard to ownership and control, the new management agreement is unsatisfactory. Our position is based on the AA/MSB's response to the Administrator concerning the Eligibility Review of 8(a) firms. This response, in part, stated that management agreements between parties in the same or similar line of business would be prohibited. In this situation, the parties are in the same line of business and the decision to retain on that basis would be contradictory of MSB policy.

OIA Control No. 998

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Harris System Pest Control, dba Limpio Industries
San Antonio, Texas (Region VI)

Category of Deficiency: Other - Possible Misuse of Advance Payments and BDE Funds and Viability.

MSB Comments:

DECISION:

Retain the company subject to continuing extensive scrutiny.

REASONS:

1. Field office reports that notwithstanding prior problems with extensive use of consultants, there is no evidence to support that such consultants unduly influence the voting shares which are totally held by the eligible individual Vasquez brothers.

2. The auditor's questions about possible misappropriation of the BDE and Advance Payments were attributable to the assumption by the owners that the attempted spin-off of the San Antonio Limpio component would be approved. That is, the financial plans examined by the auditors assumed approval of the spin-off and consequently segregated those items allocable to the Limpio division from the aggregate financial statement of the rest of Harris Systems. Now that it has been disapproved, Bernardino Vasquez has been advised that the financial statements must be reconsolidated.

3&4. One of the results of the denial of the effort to spin-off the Limpio component of the Harris businesses was that Bernardino Vasquez has returned to the management of the consolidated entity and has shown an increased willingness to be responsible to SBA recommendations regarding the reduction of dependence on outside consultants. Further, the field office reports that "as a step to assure span of management control is not extended beyond demonstrated capability, next year's (now this year's) 8(a) contract(s) will be reduced by 50% of the current level." The BDS acknowledges that the company is still having problems, but notes that the immediate effort is to reduce excessive dependence on 8(a) contracts for profitable operations. Close and continuing scrutiny of this retention will clearly be required.

OIG COMMENTS:

Disagree with action taken by MSB. The ethical conduct of the disadvantaged owner is questionable because of his formation of another firm in an apparent attempt to evade size standards for SBA loans and to extend his stay in the 8(a) program. During the course of this activity he made an apparent false statement in a business plan application, transferred 8(a) firm equipment from the 8(a) firm to the non 8(a) firm, used 8(a) firm BDE and advance payments for the benefit of the non 8(a) firm, and used the non 8(a) firm to perform an 8(a) contract.

Perhaps of more importance is the lack of progress of the firm since entering the program on February 1, 1973 after receiving over $11 million in 8(a) contracts and the apparent ineptness of 8(a) management which, according to MSB, has ignored or circumvented SBA management and technical assistance and has given substantial loans and salaries to company officials regardless of the firm's weak financial condition.

The 8(a) owner's own salary has increased from $72,000 to $90,000 and now he wants an increase to $120,000. He does not appear to be interested in developing the 8(a) firm into a viable business.

OIG Control No. 1080

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Hogan Hauling, Inc.
Omaha, Nebraska (Region VII)

Category of Deficiency: Viability

MSB Comments:

DECISION:

We recommend that the firm be retained as recommended by the field offices for approximately two more years.

REASONS:

Workmen's Compensation Insurance

Program continuation of this firm for two additional years (1982), will allow the District Office sufficient time to adequately implement the solutions outlined in their response.

The two years should provide the principals of this firm time to acquire the type of equipment needed to perform non-8(a) jobs, to develop its commercial accounts, and to obtain the required bonding capacity.

OIG COMMENTS:

Disagree with action taken by MSB to retain this firm. The solution proposed by the Regional office contradicts their previous position of July 1978 when termination was proposed unless improvements in business development were reflected. The information contained in recent correspondence does not justify continuance in the 8(a) program.

On July 13, 1978, the 8(a) Regional Review and Evaluation Committee considered this firm a prime candidate for program termination since there was no indication of Hogan Hauling developing a commercial market. The District office had recommended program continuation for one year. The Regional office was inclined to agree but requested the District office to show cause as to why the firm should not be terminated.

The present circumstances do not reflect a situation much different from that considered by the review committee. In recommending retention, the District Director indicated they planned to solve the firm's financial and equipment problems by providing additional financing if needed, government surplus equipment, or business development expense funds. However, SBA has already purchased through BDE funds, equipment of $100,000. Now, the proposal is for two more years of support through 1982, more financing if needed, and more BDE even though the firm continues to show losses.

OIA Control No. 219

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Kem-Her Construction Co., Inc.
Philadelphia, PA (Region III)

Category of Deficiency: Viability

MSB Comments:

MSB agrees with field's recommendation to retain firm in the 8(a) program. It is bidding on commercial contracts but the bids are against high volume, low overhead companies. Commercial contracts require Bid Bonds as high as 20% of the bid; therefore, the firm has a limit on the number of jobs he can bid on at any given time. The indebtedness to SBA has been resolved.

OIG COMMENTS:

Disagree with MSB's action. After being in the 8(a) program since 1971, the firm has been unable to penetrate the non 8(a) market.

The BDS's letter of September 7, 1979 readily admits that this firm unsuccessfully bids on large commercial jobs and is not receiving commercial awards. It has also received above average 8(a) support through the years and has little to show as a result.

OIA Control No. 372

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: M.S.I. Services, Inc.
Washington, DC (Region III)

Category of Deficiency: Disadvantaged Owner not Devoting Full Time to 8(a) Firm

MSB Comments:

DECISION:

This office agrees with the field's decision to retain this company in the 8(a) program.

REASONS:

By letter dated 9/9/77, Mr. Childs certified to SBA that he had terminated his relationship with the law firm of Santarelli, Sandground, and Good.

OIG COMMENTS:

Disagree with action taken by MSB. Despite disadvantaged owner's letter to MSB on October 19, 1979 that he has withdrawn from the practice of law, it remains OIG's belief that he continues to have an active practice and therefore cannot be devoting full-time to the 8(a) firm. The problem sheet cited our reasons for this belief -- the disadvantaged owner's lack of experience relating to the 8(a) firm, separate listings on the office directory for both him and the 8(a) firm, and the confusing and contradictory evidence furnished by him regarding his salary with the 8(a) firm. Additional review performed by OIG in April 1980 indicated that, although the disadvantaged owner no longer is employed by the cited law firm, he still maintains his own law offices. He still has a telephone directory listing as "Winston Childs, Lawyer" which is a different number than the 8(a) firm. On calling this number, we were led to believe by Mr. Childs' secretary that he was still practicing law.

OIA Control No. 13-1

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Red Eagle Construction Co.
Fort Worth, Texas (Region VI)

Category of Deficiency: Ownership and Control

MSB Comments:

Region made a thorough investigation of the Red Eagle Construction Company and determined that there is no involvement with the Beckman Construction Company. Memo in file to this effect.

The Dallas District Office has made a thorough investigation of Red Eagle Construction Company and supplied the following findings through this office.

1. Red Eagle Construction Company has relocated their offices to a small town outside of Ft. Worth, Texas.

2. Mr. Richard Longoria has been removed as vice president of Red Eagle Construction Company and replaced by Mr. John D. Clement, Jr. (brother-in-law of president).

3. Mrs. Sandra Wilson (wife of president) is replacing Edith Monzuelo as the firm's bookkeeper. Mrs. Wilson was also appointed corporate secretary of Red Eagle Construction Company.

The Regional Office is satisfied that Red Eagle Construction Company is no longer involved with Beckman Construction Company and, therefore, we are lifting our suspension of this company.

OIG COMMENTS:

Disagree with MSB's action to retain this firm. The district office investigation was inconclusive since it did not address the use of leased equipment and manpower obtained from Beckman Construction Company. These two aspects are significant when considering the fact that most of the 8(a) firm's business has come from subcontracts provided by Beckman Construction Co.

OIA Control No. 1455

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Robert H. Johnson Construction Co., Inc.
Tacoma, Washington (Region X)

Category of Deficiency: Ownership and Control; Audited Financial Statements; Less than full time devoted to firm by disadvantaged.

MSB Comments:

Retain firm in 8(a) program. The Business Development Specialist feels that Mr. Johnson is engaged full time in the daily management and operation of his business concern. Mr. Johnson failed to provide SBA with the required audited financial statements and the business development file contained written requests for waivers of the audited financial statement requirement for the years 1976 and 1977.

OIG COMMENTS:

Disagree with MSB action. The firm's ownership is questionable. MSB has not provided evidence of stock certificates indicating Mr. Johnson as the owner. The firm also has been in the 8(a) program since 1971 and cannot provide financial statements due to the condition of the company. The firm has demonstrated inadequate management performance in that SBA was not provided the required financial statements.

OIA Control No. 65

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Shah Construction Company, Inc.
Wakefield, Massachusetts (Region I)

Category of Deficiency: Other - (Viability)

MSB Comments:

We agree with the field office position that it is premature to determine this company to be a viable competitor in the construction industry and no longer in need of 8(a) contract support.

The position of the I. G. that the development of Shah Construction Company, Inc. is sufficient to justify program completion is rejected. This Region currently is updating or revising the business plan of the firm. As a result, it is expected that 8(a) support will continue through at least FY 1982. At the conclusion of FY 1978, the net worth of the firm has not reached a level where it could sustain adverse effects for an erratic construction industry. At this time, the probability that the Shah Construction Company, Inc. will complete the 8(a) Program in the next few years is "very high" (at least 80% subjective probability.)

Therefore, the position of the I. G. relative to the graduation of Shah Construction Company, Inc. is rejected.

OIG COMMENTS:

Disagree with action taken by MSB. The 8(a) firm showed significant increases in sales, income, net worth and working capital ratio during a three-year period. Further, non 8(a) work increased dramatically from 11% to 54% from 1976 to 1978. These statistics reflect the operations of a firm that should now be capable of competing in the business world. We do not consider the two main arguments used by MSB to justify retaining the firm to be valid:

1. That a firm must necessarily be capable of surviving current existing economic problems as an erratic construction industry, excessive costs of money and inflation. -- Many national, reputable big businesses, not to speak of thousands of small

businesses, are having difficulties surviving current economic conditions. It is unrealistic and unfair to insulate otherwise viable 8(a) firms from market conditions merely because those conditions are not presently favorable.

2. That the maximum size standard in sales can be used as a target for which a firm can be retained in the program if the target has not been reached. -- Size standards were never intended for use in this manner. Obviously, the smaller the firms in question, the more unrealistic a business plan goal geared to a size standard would be.

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OIA Control No. 755

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: S. W. Williams Painting Contractors, Inc.
Detroit, Michigan (Region V)

Category of Deficiency: Ownership and Control

MSB Comments:

Retain firm in the 8(a) program. The field office will be advised to bring this firm into compliance with SOP 80 05. The nondisadvantaged owner holds 40% of the outstanding stock and participates in the business on a part-time basis in the areas of estimating and promotion.

OIG COMMENTS:

Disagree with MSB's action. The retention of the firm in the 8(a) program has not been justified by MSB. Its response admits to the problems addressed by OIG but no corrective action has been effected.

OIA Control No. 352

OFFICE OF INSPECTOR GENERAL

EVALUATION OF MSB ACTION TAKEN ON INDIVIDUAL 8(a) FIRMS

Firm Name: Systems and Applied Sciences, Riverdale, MD

Category of Deficiency: Viability

Action and Comments By MSB: Retain in program.

Although as of November 1977 the firms 8(a) sales were approximately 99% of total sales, total 8(a) sales were within 7% of projections and net worth of the firm had increased from $7,500 when the firm was admitted to the program to $183,014 at the end of FY 1977.

OIG Comments:

Disagree with action taken by MSB, Recommend termination from program.

MSB comments are not germane to the issue which is that the 8(a) firm, after five years in the 8(a) program as of 6/30/78, received non-8(a) contracts of only $18,233 compared to $6,221,201 in 8(a) sales. MSB provided no additional information since our report issuance to indicate that the 8(a) firm has obtained or even aggressively pursued non-8(a) work. It is to be noted that the initial field response to the deficiency was that the firm should be removed from the program due to its failure to seek non-8(a) work.

OIA Control No. 84

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Vanguard Oil and Storage Co., Inc.
New York, New York (Region II)

Category of Deficiency: Viability

MSB Comments:

DECISION:

Agree with R/O recommendation to retain firm in the 8(a) program.

REASON:

Field set certain conditions for this firm to continue in the 8(a) program.

(1) Update business plan projections.

(2) Assist in developing non 8(a) sales with emphasis on marketing.

(3) Submitting evidence to SBA on efforts to obtain commercial work.

The oil industry is in a peculiar position. Graduating this firm at this time would result in certain failure. A minority firm would not get any oil allocation or would get a substantial decrease in allocation of fuel oil if it was not for government contracts in hand. Field should keep close review of this firm.

OIG COMMENTS:

Disagree with action taken by MSB. The firm has been in the 8(a) program since 1972 and has received over $35 million in contracts since that time, certainly enough support to enable it to compete in the market if in fact it has the potential to compete there. Inference is made that this firm must compete against multinational oil companies and that, without 8(a) assistance, would be helpless. If this were true, it would imply a need for permanent 8(a) support, an objective not in accord with 8(a) objectives. 8(a) sales were 49% of total sales, indicating the firm's capacity to exist without 8(a) help.

OIA Control No. 1289

OFFICE OF INSPECTOR GENERAL

EVALUATION OF INDIVIDUAL ACTIONS TAKEN BY MSB TO RETAIN 8(a) FIRMS

Firm Name: Western Technical Associates
Los Angeles, California (Region IX)

Category of Deficiency: Ownership and Control

MSB Comments:

This office is not aware of any other information that would indicate that Mr. Redman is not in control of the firm's operations. On the contrary, Procurement Assistance Division personnel state that past contact with this firm indicates Mr. Redman is very active in the direction of the firm's management. Recent meetings with Mr. Redman and Mr. Niles and ARD/FI, ARD/PA and RC all conclusively demonstrate that Mr. Redman is thoroughly aware of and in control of the major issues facing Westech.

Thus based on the limited information available to our office at this time, it is determined that termination action is not appropriate.

OIG COMMENTS:

Disagree with MSB action to retain the firm. We reiterate the fact that during a six hour interview with Messrs. Niles and Redman, questions asked of Redman were referred to Niles for a response for approximately 90% of the questions asked. Mr. Niles conducted himself as the individual who really knew what was "going on" and who, no doubt, makes most of the real decisions in this company.

Niles' description of duties includes being responsible for financial planning, scheduling, budgeting, corporate administrative responsibilities including personnel, security and contract administration, preparation of pricing estimates, cost proposal justifications and contract negotiations. He originally founded the firm as a sole proprietorship.

The field response has not provided additional substance that would alter our original conclusion that Mr. Niles, the NDVD owner, is actually in control of this company.

Additional Submissions of Environmental Protection Agency

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 6 1980

1980 OCT -6 PM 4:06

Honorable Max Baucus
United States Senate
Washington, D.C. 20510

Dear Senator Baucus:

In a Memorandum to the Office of Radiation Programs' Staff, Mark Smolonsky, an investigator for your Subcommittee, asked a number of questions relating to EPA estimates of the lung cancer risks from radon exposures. Estimates of this risk for the total U.S. population are a function of the population's average lifetime exposure to radon in the home and work place and how much a given lifetime exposure increases the risk of lung cancer. Neither of these quantities are known with much accuracy, but information is accumulating which indicates the public risks from radon warrant serious attention.

A Radiation Policy Council (RPC) Task Force, which I chaired, recently examined the radon question and what the proper Federal role should be. Their report outlines what is known about how radon gets into the home environment, what average exposure levels might be, and the potential consequences. A copy of this interagency Task Force report is enclosed.

Radon exposures are usually expressed in terms of the concentration of short half-life radon daughter products, using a unit called the Working Level (WL). As outlined in the Task Force report, the amount of radon daughters in homes varies enormously depending on the ventilation, local geology and a number of other factors. Although average exposures are not well known, there is some concensus that the mean U.S. exposure is about 0.004 WL (Tables II-1 and III-1 in the RPC report). The actual amount of radon in homes could be more or less than this and one of the aims of the emerging Federal program is to get better data on national exposures.

As illustrated in Table II-2 of the RPC report, a wide range of risks have been estimated for radon exposures. These risk estimates vary by a factor of eight or more depending on the assumptions made in applying epidemiological data from occupational exposures (underground miners) to the general population. EPA has made a straightforward projection of the observed occupational risks to the general population. I must emphasize that we do not know if the general population would have a greater or smaller response than miners. This is a common feature of all radon risk estimates and is a major source of uncertainty.

Bearing this in mind, EPA has used three risk models to estimate the lung cancer risks from lifetime exposures. These estimates are documented in a 1979 EPA/ORP report "Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands." A copy is enclosed which outlines in some detail the various approaches we have used to estimate lifetime risks. If we assume children and adults have equal sensitivity, 0.004 WL yields a lifetime risk of about 4000 cases per million persons exposed for a lifetime, page 52 of the EPA report. (For the same population base, we would expect about 25,000 additional cases due to causes not associated with radon.) These estimates are for a stationary population having 1970 death rates with an average age at death from all causes of about 71 years, so that the average annual risk associated with radon is about 60 cases per year per million population. For a U.S. population of 240 million persons, this amounts to an estimated lung cancer death rate per year of about 14,000 cases. As pointed out in the 1979 EPA report, cited above, if exposures during childhood are 3 times more dangerous than adult exposures, the annual risk associated with radon would be increased to about 20,000 cases per year. On the otherhand, the less conservative risk model used in the 1979 report yields an average annual risk of about 7,000 cases per year in a population of 240 million.

We recognize that estimating the risks due to ionizing radiation is an uncertain business and that other investigators have made estimates of risks due to radon that are both larger and smaller than those made by EPA - Table II-2 in the RPC report illustrates this point. One of the most recent estimates is one made by the National Academy of Sciences' BEIR Committee in 1980. Although their methodology was quite different from that used by EPA, lifetime risk estimates using their model yields results that are almost identical to the EPA estimate of 14,000 cases per year given above, c.f., Table II-2 in the RPC report. Even so, we are not convinced that the risks from indoor radon are well understood. Projecting risks from occupational exposures to a general population may not be very accurate. However, in the absence of relevant data showing that risks to the general population are likely to be less, we believe current estimates of risk should be used.

The Radiation Policy Council has recently recommended that considerable Federal attention be directed at the radon problem and placed responsibility on EPA to provide leadership in a number of areas. Their September 25 decision paper concerning the indoor radon problem is enclosed. Expeditious action by EPA and other agencies is required by these RPC-approved recommendations.

I hope this letter and the enclosures provide sufficient information on how EPA risk estimates for radon were made. If you have questions, please contact me by phone at (703) 557-9380.

Sincerely yours,

W. Ellett

William H. Ellett, Ph.D.
Chief, Bioeffects Analysis Branch
Criteria & Standards Division (ANR-460)
Office of Radiation Programs

3 Enclosures

cc: w/o Enclosures
Mr. Mark Stevens, Office of Legislative Affairs, EPA
Mr. Mark Smolonsky
Dr. David Rosenbaum (ANR-458)

UNITED STATES GOVERNMENT

Memorandum

TO : OES/ENH - Don King

DATE: June 16, 1980

FROM : M/FSI/POL - Edward Mainland

SUBJECT:

ENH asked for my comments on "An Analysis of International Issues Associated with Ocean Disposal of Low-Level Radioactive Waste" (DRAFT), May 1980, by the Mitre Corporation.

Summary:

The paper omits key issues, treats others incompletely, and is not an example of the objective, technically rigorous analysis that the U.S. requires for future, environmentally sound ocean-disposal policy. I hope that the Department of State is able to influence EPA toward this professionally rigorous, scientific approach or at least provide appropriate input so that the Department's views at all stages are a matter of clear record. I'm sure you will act so that if and when the probable future confrontation occurs between EPA's and the public regarding EPA's handling of radioactive waste dumping regulations, criteria, guidelines, and the permit process, the Department will have done all it could to facilitate consensus along environmentally acceptable, openly arrived-at policy lines. END SUMMARY.

First, the paper inadequately characterizes U.S. positions and Parties' decisions at the consultative meetings of the London Dumping Convention. For example, it gives virtually no attention to specific U.S. suggestions for IAEA's work program and for improving the IAEA Definition and Recommendations (1979, 1979) while devoting several pages to the issue of whether NGO's views should be aired.

The paper could more forthrightly state that in IMCO, UNEP and other such foras the U.S. strongly favors attendance and an unmuzzled expression of views by environmental NGO's.

The paper advocates "rethinking" and "strengthening" the IAEA Definition and Recomentations "in light of the Convention's requirements" (p. 1-4). The paper fails to

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indicate in what specific respects the Definition falls short of the Convention's requirements. Is it too restrictive? Too permissive? What are the objectives of review or revision? Does the author imply a bias toward supplanting the Definitions with a looser, more permissive one for use "regionally" by NEA? What does the author think about the specific U.S. suggestions that were offered to improve the IAEA definition in 1978-9 and still on the table?

The paper's advocacy of "the development of mutually agreeable criteria and standards for the preparation of environmental assessments", apparently internationally (p. 1-4), puts emphasis on the term "mutually agreeable." There is a point in such negotiations where a least common denominator is less desirable than no agreement. Dilution of technical rigor merely to win short-term acceptance and favor is not always desirable.

For now the highest possible standards should be espoused by the U.S. in the forum most likely to adopt them. This forum is not NEA much less an ad-hoc grouping of actual and potential dumpers. IAEA and the London Convention, through established U.S. position-paper preparation and the Ocean Dumping Advisory Committee are more likely to realize U.S. standards. There must, of course, be more openness and, above all, wide peer review inside and outside government of the technical basis of U.S. positions.

The paper shows a tendency to portray the "administrative procedures" and "standards" areas as tabula rasa as if nothing much has been done. The evolution of the IAEA work program, the Jamaica meeting (Dec 1978), and OECD experts (July 1979) all achieved something, and the U.S. is not starting from scratch. The paper dismisses these efforts without really analyzing what they stood for, what progress was achieved, and how this evolution can be continued. The continuity, substance and success of U.S. efforts in 1974-79 are largely ignored. The paper should reflect the need for continued development. IAEA, NEA, and IMCO have been addressing the issues and the U.S. has been giving immediate attention to them. Is some new exercise, outside the Convention, envisaged? If so, why?

The paper selectively draws on the 1977 and 1978 IAEA oceanographic and radiological advisory groups as if they were ultimate writ. The groups were composed of mortal men who are no more authoritative than other mortals whom the paper discounts or ignores.

The paper furnishes little specific or useful guidance on what U.S. positions should be, and why, on many of

the issues discussed. Its recommendations need more elaboration to know what is meant and implied.

The paper's uncritical advocacy of U.S. participation in international monitoring activities overlooks some pitfalls. There is a danger, for example, that U.S. participation may lend U.S. legitimacy and support to bad science and expedient but unscientific conclusions and may imply acceptance of the concept of radioactive waste dumping at sea. This outcome would be environmentally unfortunate in the NEA context. The November 1979 NEA experts meeting was a harbinger of what to expect. It would be wiser to involve the U.S. actively in the international development of objectives and technical strategies of monitoring.

The paper advocates (p. 1-4) a "multi-agency coordinated effort" to effect its recommendations. Later in the paper the Department of State and the Nuclear Regulatory Commission are excluded from a list of agencies in this effort. Why? Is there a desire to sidestep established machinery, e.g., the Ocean Dump, Advisory Committee?

The paper alleges (p. 1-4) inconsistencies in U.S. positions at international meetings but does not document this assertion. In fact, the inconsistencies generally consisted of DOE officials, experts, and contractors at expert meetings taking a divergent, less environmentally oriented line than that established by EPA, State and others through regular policy channels. The intensified use by EPA/ORP of DOE contractors would appear to increase the likelihood of inconsistencies being resolved in favor of solutions expedient to the generators and custodians of radioactive wastes.

The paper's recommendation on wider distribution of environmental assessments would be better phrased as follows: "The U.S. should be encouraging the international community to structure ways of ensuring widespread distribution of EA's."

Some big issues are virtually ignored by the paper. For example, the extent of isolation and containment is still a major problem internationally. Domestically, it is a major imperative. Should or should not the U.S. maintain its position?

Another is dose to man. Do theoretical procedures and models for assessing the effect on man suffice? Or are actual measurements of dose to man also needed. It is argued that there is no way of measuring dose to man. If this is so, can we still say that the marine environment

is protected if man is protected? There is evidently no way yet of measuring the effect on the marine environment either.

Should collective population radiation dose be used? Isn't ICRP in whole or in part inapplicable to the problems of marine disposal? Can collective dose (accumulation of dosage to population from dumping over the lifetime of the emitter) by quantified? What effect do these issues have on marine disposal?

The paper seems to miss the point on the release rate issue. It concludes that release rate and dumping rate are and always will be anonymous. The U.K. has in fact so stated privately but has never been willing to put its views in writing. This latter reluctance has been the problem for the U.S. Once the point is settled officially and formally, a great deal of wheel-spinning will be put behind U.S. Doubts will be cleared up concerning alleged U.K. intentions to use "containment credits" to justify dumping more radioactivity than the Convention/Definition permits.

The paper also apparently misses the point behind the U.S. suggestion to incorporate IAEA Recommendation B.1.4 and B.1.5 in the London Convention's Interim Notification Procedures. The contractor's view is that such incorporation is redundant given the agreement of Parties to apply the Recommendations "to the best of their ability." The U.S. Delegation desired that this important element of the IAEA Recommendations by given added weight and authority precisely because of the equivocal nature of "ability." If there are particular national objections to this IAEA Recommendation regarding making environmental assessments available to IMCO, it would be instructive to air thoroughly what they are. The U.S., in general, should advocate a "sunshine law" in these matters whenever possible lest public opinion become even more cynical about radioactive waste disposal procedures than it now is.

Another neglected issue is de minimus. Why is the U.S. pushing for a definition? De minimus is not the equivalent of "trace amounts" of other annex substances and there is no ready precedent for inserting it in the Convention's work. What is the utility of the concept in terms of U.S. domestic regulations? Who are the advocates of the concept and what are their interests?

In sum, the "Analysis" makes vague "motherhood" recommendations which have been voiced before by others. It contains selective presentation with bias toward inexplicit

objectives, value judgements and undocumented ex-cathedra assertions. Its discussion does not objectively lay out pros and cons. It picks and chooses inconsistently in detailing history and issues. It rewrites and erases some of the past, giving little credit to international agencies for what they have accomplished, but does not demonstrate their work to be unsound. By inferring that little has been done, the paper risks disregarding the headway the U.S. has made (e.g., Definition, IAEA work program, Jamaica meeting, OECD experts group) and opens the door to possible regression away from scientific balance and environmental soundness. The Department may wish to offer to help the contractor correct these shortcomings for a final version.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 1, 1980

Mr. George E. Niewiadomski
Office of Minerals, Health and Safety
U.S. Bureau of Mines
2401 E. Street, N.W.
Washington, D.C. 20241

Dear Mr. Niewiadomski:

As stated in the current Interagency Agreement EPA-79-D-X0759 between the Office of Radiation Programs, EPA and the U.S. Bureau of Mines I am requesting BOM's assistance in reviewing the enclosed documents pertaining to EPA efforts involving the study and measurement of radon-222. As these efforts are of considerable importance to the presently defined mission of the Office of Radiation Programs I would appreciate BOM's most critical evaluation of all technical aspects of each of these efforts. For your convenience, I have also enclosed a copy of the original IAG between ORP and BOM and refer you to the second paragraph under Section III. Provisions.

On behalf of the Office of Radiation Programs I would Like to thank you for your kind attention to this matter and the many fine services BOM has rendered EPA during the course of our Interagency Agreement.

Sincerely yours,

Mark M. Gottlieb

Mark M. Gottlieb
Environmental Engineer (Radiation)
Control Engineering Analysis Branch (ANR-460)
Criteria and Standards Division
Office of Radiation Programs

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PLANNING AND MANAGEMENT

JUN 29 1979

Mr. Lindsay D. Norman, Acting Director
Bureau of Mines
2401 E Street, NW.
Washington, D.C. 20241

Please refer to EPA-79-D-X0739

Dear Mr. Norman:

Enclosed are two signed copies of Interagency Agreement EPA-79-D-X0739, to provide EPA with technical advice and assessments of uranium mining technology by the U.S. Bureau of Mines.

If this agreement is acceptable, please sign both copies and return one original signed copy to me at the following address:

Environmental Protection Agency
Procurement Section C
401 M Street, SW. (PM-214-M)
Washington, D.C. 20460

We appreciate the opportunity to work with you.

Sincerely yours,

Irene Galatis

Irene Galatis
Contract Specialist
Procurement Section C (PM-214-M)

Enclosures

OFFICE OF THE DIRECTOR

United States Department of the Interior

BUREAU OF MINES
2401 E STREET, NW.
WASHINGTON, D.C. 20241

In Reply Refer to:
EBM:MMRD:Min

August 9, 1979

Ms. Irene Galatis
Procurement Section C (PM-214-M)
Environmental Protection Agency
Washington, D.C. 20460

Dear Ms. Galatis:

Enclosed is one signed copy of the Interagency Agreement (EPA-79-D-X0739) concerning control of radon gas in uranium mines.

We are pleased to be working with EPA towards solving this significant problem.

Sincerely yours,

Lindsay D. Norman
Assistant Director

Enclosure

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

INTERAGENCY AGREEMENT
BETWEEN
U.S. ENVIRONMENTAL PROTECTION AGENCY
AND THE
U.S. BUREAU OF MINES

I. PURPOSE

The purpose of this Agreement is to provide the U.S. Environmental Protection Agency (EPA) with technical advice and assessments of uranium mining technology by the U.S. Bureau of Mines.

Among the responsibilities delegated to the EPA under the Clean Air Act, as amended in 1977, is the determination of hazardous radioactive material emissions and the development of standards for the release of such materials including airborne radionuclides to the environment from underground uranium mines.

In addition, under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), EPA is required to provide a report to Congress which identifies the location and potential health, safety, and environmental hazards of uranium mine waste together with recommendations, if any, for a program to eliminate these hazards.

The USBM has responsibilities to develop methodology to reduce radiation exposures to uranium miners. In performing its mission, the USBM has developed broad expertise in mining technology. This USBM expertise can be most helpful to EPA in EPA's development of standards and regulations under the above cited authorities and in EPA's preparation of studies as required by UMTRCA. The purpose of this agreement is to provide EPA with advice and technical assessments including recommendations by the USBM on the engineering feasibility of radon control technology for underground uranium mines.

II. SCOPE OF WORK

Of prime importance in performing determinations under the Clean Air Act is a knowledge of the engineering feasibility and cost effectiveness of available and near term control technology options. Such options include the use of mine wall sealants, the application of overpressurization of mine atmosphere, the filtration of radon with charcoal or chemical adsorbents, bulkheading worked out areas, and the application of negative pressure bulkheading strategies.

The USBM has been conducting extensive studies of these and other control technology options as part of its efforts to develop methods of controlling levels of radon and radon daughters in the atmosphere of underground uranium mines to insure compliance with current occupational radiation standards.

73-462 O - 81 - 16

The USBM shall make available to the EPA technical effectiveness assessments and cost reviews of potential control technology options for long-term applications in retarding the emission of radon into mine atmospheres and the environment. Recommendations on the engineering feasibility of control technology options shall be included in such assessments.

III. PROVISIONS

The USBM and the EPA will engage in a continuous exchange of technical information relevant to the development, assessment and application of control technology options to retard the emission of radon from underground uranium mines into the mine atmosphere and the environment.

The USBM will provide, on a time available basis not to exceed 0.05 man years of effort, technical advice and review of ongoing EPA contracts in the area of control technology options for retarding the emission of radon to the environment.

The USBM shall also review with the EPA, on a time available basis not to exceed 0.05 man years of effort, the underground and surface environmental impacts of those disposal options for uranium mine waste and mill tailings involving relocation to underground mines.

The USBM will provide technical advice and assessments, including recommendations, to the EPA as it exercises its standard setting and regulatory functions under the CAA as amended in 1977.

The scope of work will be subject to review for extension and modifications at the end of the FY 1979.

IV. DURATION

This IAG will be in effect from October 1, 1978 to October 1, 1979. Current planning calls for a continuation of this agreement for FY 1980.

V. REPORTING REQUIREMENTS

The USBM will provide progress reports on the scope of USBM's activities in radon control technology to the EPA on a basis consistent with their (USBM's) internal reporting requirements. The USBM shall provide all available information on the scope of USBM activities in radon control technology to EPA contractors for the preparation of a final report. A contractor draft final report suitable for publication shall be delivered to EPA and USBM within 60 days after the close of FY 1979. This contractor's report shall not be in lieu of, or preclude, the USBM publications of the results of the completed experiment or test in either the USBM Reports of Investigation Series or in the open literature. A final report shall be delivered to EPA and

USBM within 30 days following receipt by the contractor of EPA and USBM comments on the draft final report. The USBM comments on the draft final report shall be included in the final report at USBM's discretion.

Upon completion of work supported by EPA funds the USBM shall provide to EPA 20 copies of a final report. This report shall contain USBM evaluations concerning the engineering feasibility of investigated radon control technology options.

VI. PROJECT OFFICERS

U. S. Bureau of Mines	Environmental Protection Agency
Mr. George Niewiadomski Division of Mining Research, Health and Safety 2401 E. St., N. W. Washington, D.C. 20241 (202) 634-1247	Mark Gottlieb, Office of Radiation Programs 401 M Street, S.W. ANR-459, CM#2 Washington, D.C. 20460 (703) 557-7604

VII. FUNDS

No funds will be provided by the EPA to the USBM under this Agreement for FY 1979. The EPA will provide $100,000 to the USBM for use in meeting program goals at the beginning of the FY 1980 depending upon the availability of funds. These funds will be used in mutually agreed upon areas oriented toward radon control in the mine atmosphere and the environment and specific activities by the USBM will be described in amendments to this Agreement. Payment to the USBM will be made by submission of Standard Form 1081, Request for Payment, by the USBM to the EPA on a semi-annual basis. Should additional funding be required, it will be accomplished through amendment to this Agreement.

EPA accounting data will appear in subsequent amendments to this Agreement.

VIII. AUTHORITY

The basic authority for this agreement is the Economy Act of 1932 (31 U.S.C. 686) as amended. Specific authority is contained in the Clean Air Act as amended in 1977 and the Uranium Mill Tailings Radiation Control Act of 1978.

Environmental Protection Agency

for David G. Hawkins,
Assistant Administrator
for Air, Noise and
Radiation Programs (ANR-443)

May 16, 1979
(Date)

U. S. Bureau of Mines

Lindsay D. Norman,
~~Acting~~ Assistant Director
Bureau of Mines

AUG 20 1979
(Date)

United States Department of the Interior

BUREAU OF MINES
2401 E STREET, NW.
WASHINGTON, D.C. 20241

IN REPLY REFER TO:

September 12, 1980

Mr. Mark Gottlieb
Office of Radiation Programs
U.S. Environmental Protection Agency
ANR - 460
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Gottlieb:

As requested in your letter of August 1, 1980, the documents pertaining to EPA efforts involving the study and measurement of radon-222, which were provided to us under the Intergency Agreement EPA-79-D-X0759, have been thoroughly reviewed. Our general and specific comments follow:

A. Technical Proposals

1. Effect of Indoor Air Circulation Systems on Radon Decay Product Concentration Phase I

The effort described in Phase I is what one would normally think about doing before one would write a proposal. Our feeling is that the agency whose support one is requesting would expect the proposer to do his homework and not look for support to figure out what needs doing and how to go about it. If they had a clear idea of what they were after and how to go about it, that would be fine. To ask for financial support to learn where the problems are seems like putting the cart before the horse.

2. Radon Transport in Building Materials-NBS

The objectives of this project are quite reasonable. The lack of any real details make it difficult to evaluate. However, it is very likely that NBS would do a first-class job.

3. Radon Progeny Studies: Aerosol Physics Aspects and Despostion Rates and Mechanisms - NCAR

Dr. Martell maintains that there is no threshold for production of particles by radon decay. Others have indicated that there was such a threshold for the formation of condensation nuclei. There may be no real discrepancy depending on what one means

by a particle. The low levels of radiation may be forming agglomerations of molecules that are still too small to be observed as traditional condensation nuclei (0.01 um in diameter). However, this is an area that would be very useful for some additional careful study. In addition the further study of deposition on low level charged and neutral surfaces would be worthwhile. This proposal recongizes the work done in the area, identifies problem areas and plans ways to investigate them.

4. Methods for Control of Radon Decay Products Inside Buildings-Harvard

The work described in this proposal appears to be duplicative of various other efforts including BOM's Denver Research Center, DOE's Environmental Measurements Laboratory (EML) and a variety of EPA sponsored research in air cleaning methods. It would have been much more useful to focus on those areas where new knowledge and/or resolution of discrepancies could be a result of the study. They are proposing to look at a broad range of problems that have other active research underway. We do not know the current status of the EML experiments, but they were certainly looking at wall plateout and daughter deposition velocities under various flow conditions. The BOM's Denver Research Center is continuing an experiments and it's not at all clear that the approach, discussed in the proposal, to aerosol attachment or air-cleaning will tell us anything new.

Page 1, Introduction: There is no recognition of either BOM or DOE groups who have worked in this area.

Page 3, second paragraph: Based on BOM sponsored research at the University of Illinois, polydispersed aerosols will not help resolve the existing discrepancies in the attachment process.

Page 5, fifth paragraph: The BOM's Denver Research Center has been conducting experiments on fan plateout in their radon chamber. The proposed work appears to duplicate previous experiments unless the intent is to obtain first hand experience.

Page 9, fifth paragraph: There are problems with establishing real equilibrium. In light of this fact one needs to measure radon directly.

5. Study of Field Monitoring Techniques for Radon and Radon Daughter Isotopes-Cal. Tech.

The principal investigators appear to be competent scientists in some areas of physics which are not related to the development of monitoring techniques for radon and radon daughter isotopes in dwellings.

The content of the Cal. Tech. proposals reveals that the authors have no significant experience in this area of nuclear radiation research. There is no clear indication that they

are aware of what has been done; there is no literature review. They show no understanding of aerosol formation and dynamics, filtration, or radon and radon daughter studies. Based on the above, a sole source procurement is not justified because there are several organizations with greater competence in this area, such as, Aggonne National Laboratory, Battelle Northwest and Science Applications, Inc.

Page 1, second para.: Major source of radon is more likely the soil and rocks upon which the dwelling is constructed.

Page 2, second para.: This is not a significant problem at environmental levels of radon nor indeed is it a problem in uranium mines.

Page 2, second para., last sentence: Neither method is cost effective. It is best to prevent radon from entering the dwelling in the first place.

Page 3, first para., last sentence: This statement is obscure and pretentious.

Page 3, second para., second sentence: There is no indisputable proof in the literature that either one of these parameters plays a significant role in the emanation rate of radon.

Page 4, last para.: This method of measurement is of no significant value.

Page 5, third para., line nine: This technology is not applicable.

Page 6, second para., line 7: Prefilters for field instruments have been in use for years.

B. Proposed EPA Contracts

It is difficult to evaluate these on a technical basis since we do not have the technical proposal response.

1. Statistical Experimental Design and Analysis of Indoor Radiation Experiments- Univ. of Texas

   This project sounds like a virtual copy of "Design and Analysis of Indoor Radiation Equipment" which is proposed for the University of Wisconsin. Identical language has been used to justify the non-competitve procurement. It may be prudent to have more than one experimental design; however, it is not clear why one sampling plan wouldn't suffice for the 1000 home study in Butte, MT. It seems to us to be a serious flaw to have a design for sampling done by a group who may have substantial statistical expertise but little or no experience in sampling and analysis of airborne radioactivity. Much of the design of such a study must include what to measure: radon; total radon daughter; RaA, RaB and RaC separately; attached fraction; aerosol size distribution; other pollutants may be mutagen/carcinogens. There are going to be problems when the statistically-

based experimental group to execute. An interdisciplinary team including bio-statisticans, epidemiologists and airborne radioactivity and aerosol monitoring scientists should be collected to design and condust the study to insure that the best results are obtained. However, before such study is undertaken, one should come up with an accurate method of measuring radon at the levels likely to be encountered in these homes.

2. Determining the Indoor Radon Hazard Potential of Undeveloped Lands

This project is worthwhile if it does as indicated "provide the methodology and the techniques for evaluating the radon hazard for any construction area. It at least recongizes a few of the people in the field for competitive bidding. Much has been done on developing emanation models and it is possible for the results of such a project to provide useful planning data for site development questions regarding radon hazard.

3. Study of Health Effects of Radon in Water -MIT

This study which is oriented toward determining the feasibility of preforming an epidemiological study on the public health danger of radon in New England homes has to be questioned from several grounds. First, from our readings, we are not sure that a potential health hazard has been established. Second, why is EPA getting into epidemiological studies and not the health people who have considerable experience in epidemiological work? Third, it is very difficult to support a sole source procurement for this one because of its size and the lack of demonstrated immediacy for the contract. This proposed contract should go out for review to determine if such work is needed at this time. If needed, other organizations such as the Communicable Disease Center, which was suggested by an EPA reviewer, are better qualified to do epidemiology studies.

4. Design and Analysis of Indoor Radiation Equipment - Univ. of Wisconsin

See B-1 above.

5. Impact of Pollution Emitting Devices - Univ. of Penn.

We agree with the intent of this research; however, the sole source justification is not defendable. Since a number of institutions and research organizations are capable of doing this type of work, we cannot understand why proposals cannot be solicited from the various technically competent organizations.

6. Development of Monitoring Techniques for Radon and Radon Daughter Isotopes in Dwellings - Cal. Tech.

It is very difficult to accept the fact as stated in the sole source justification that Cal. Tech. has unique capabilities in radon and radon daughter monitoring. One gets the distinct impression that the writer of this document is clearly no in touch with the academic

or non-profit institutions who have been ocnducting radon research over a period of time. Many of the twelve items listed in their "wish list" have been sutdied by BuMines, DOE (AEC, ERDA), etc., and information on many has been published. For example, efficiency of filters has been studied by many and reported in Health Physics, etc.

We agree with the EPA reviewer that greater emphasis should be placed on developing a program for evaluating the overall efficiency and realiability of radon daughter measurements by TLD's (evaluate calibration techniques, reproducibility, accuracy, etc.) to determine how good are the measurements being currently made by EPA. There is no justification for keeping this project out of competitive procurement.

In summary, there is a real problem of coordination in the research efforts on radon. Several of the technical proposals are duplicative of ongoing efforts. Sponsoring agencies should make an effort to become aware of research efforts supported by other agencies such as BuMines and DOE who have been in the field for some time. It would appear that some kind of formal interagency coordination is essential if duplicative research programs are not to proliferate. With many important problems needing solutions, it is imperative that limited resources be spend wisely.

With regards to needless noncompetitive procurements that fail to recognize the number of groups with expertise in the field, this practice may result in both extra cost and lower quality of results. Unless greater urgency and more knowledge of the problem are shown, it would be more advantageous to pursue competitive procurements, as well as cooperative efforts with other Federal agencies under IAG's.

Thank you for the opportunity to evaluate some of EPA's efforts involving the study and measurement of radon and radon daughters. I hope our comments will be helpful to you.

Sincerely yours,

George E. Niewiadomski

George E. Niewiadomski
Manager for Radiation Hazards

PROCUREMENT REQUEST RATIONALE

1. Title of Project. Impact of Pollution Emitting Devices.

2. Estimated Period of Performance. September 1, 1980, to August 31, 1981.

3. Project Officer. Donald B. Rubin.

4. Background. ORP relies heavily on models of the movement of radionuclides through the environment to calculate radiation doses to people. However, the usual methodologies for examining actual pollution distribution ignore or eliminate outliers, which may be the most important pieces of data. ORP wishes to fund investigators to critically examine and analyze this part of the pollution monitoring problem.

5. Procurement Abstract. ORP relies heavily on models and actual measurements of the movement and distribution of radionuclides in the environment to calculate radiation doses to people. ORP requires a contractor to critically examine the usual methods of analyzing environmental pollution data, particularly data for radionuclides, and to develop new methods as appropriate. Contractors should have extensive training and practice in probability and statistics, and some experience with pollution problems.

6. Statement of Work. The general role of the contractor shall be to critically examine the usual methods of analyzing environmental pollution data, particularly data for radionuclides, and to develop new methods as appropriate.

A. The contractor shall examine some specific set of data on radionuclide pollution in the environment (to be agreed to with ORP) and show how traditional methods of analyzing these data are or are not adequate. If these methods are not adequate, the contractor shall develop better methods, apply them to this data, and show how they are better.

B. The contractor shall examine the applicability of these methods to the general problem of radionuclide pollution. The contractor shall also determine if these methods suggest better ways of monitoring the environment and collecting data.

7. Proposed Budget.

Statisticians	1 man-year	$36,000
Computer		$ 3,000
Travel		$ 2,000
Overhead		$27,000
		$68,000

8. Reports. At the end of the contract period, the contractor shall provide to ORP 10 copies of a report describing his work, including complete descriptions of the mathematical models investigated, analyses of experimental data tested, and conclusions and recommendations for experimental and analytical techniques of environmental pollution monitoring.

9. Recommended Sources. Abba M. Krieger and James Pickands III, Department of Statistics, Wharton School, University of Pennsylvania. Justification for Noncompetitive Procurement attached.

10. Evaluation Criteria. Not applicable.

11. Government-Furnished Property. Not applicable.

12. Unsolicited Proposal. This proposed procurement is based upon an unsolicited contract proposal.

This request does not commit the Government to pay any costs incurred in the submission of your proposal or in making necessary studies or designs for the preparation thereof. Nor does it commit the Government to procure or contract for said services or supplies. It is also brought to your attention that the Contracting Officer is the only individual who can legally commit the Government to the expenditure of public funds in connection with this proposed procurement.

Your proposal shall be signed by an official authorized to bind the offeror. Your proposal will be considered to be firm for a period of 90 days from the date of receipt thereof by the Government.

Your proposal shall contain a completed and signed copy of the enclosed Representations and Certifications" and a statement to the acceptability of the proposed contract schedule articles and the General Provisions.

Information will be disclosed to offerors in accordance with regulations applicable to negotiated procurements. Written notice will be given to unsuccessful offerors in accordance with Federal Procurement Regulations, Section 1-3.103(b).

The offeror submitting a proposal in response to this request may assert a business confidentiality claim covering part or all of the information in its proposal by placing on (or attaching to) the proposal a cover sheet, stamped or typed legend, or other suitable form of notice employing such language as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the offeror and may be submitted separately to facilitate identification and handling by the Government. If the offeror desires confidential treatment only until a certain date or until the occurence of a certain event, the notice should state this. A claim of business confidentiality will in no way prejudice the offeror's proposal with respect to the Government's evaluation. If the offeror fails to mark the proposal as specified above, the Government may, following award, make the information available to the public without further notice to the offeror. The Government assumes no liability for disclosure or use of unmarked data and may use or disclose the data for any purpose. If the proposal is marked as specified above, the Government will disclose the information only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B (41 Federal Register 36906-36918, September 1, 1976).

PREAWARD EQUAL OPPORTUNITY COMPLIANCE REVIEWS
(FPR Temporary Regulation 19, dated September 15, 1970)

Where the proposal of the apparent low responsible offeror is in the amount of $1 million or more, the offeror and his known first-tier subcontractors which will be awarded subcontracts of $1 million or more will be subject to full, preaward equal opportunity compliance reviews before the award of the contract for the purpose of determining whether the offeror and his subcontractors are able to comply with the provisions of the Equal Opportunity clause.

This RFP package consists of the following:

1. Cover Letter

2. General Financial and Organizational Information

3. General Instructions for the Preparation and Submission of Cost or Price Proposals

4. Instructions for the Preparation of Technical Proposals

5. Representations and Certifications

6. EPA Rules on Conflict of Interest

7. Proposed Contract and Statement of Work

All inquiries concerning this request should be referred to Irene Galatis, Contract Specialist, at the address given above for submission of proposals. The telephone number is number is Area Code (703) 557-0299.

Sincerely yours,

Irene Galatis
Contract Specialist
Procurement Section B (PM-214-M)

Enclosures

cc: Region III
(WA 80-B248)

Donald Rubin
Project Officer (ANR-458)

PM-214-C:IGalatis:sjs:rm1022A:CM#2:x70299:6/2/80

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: 24 JUN 1980

SUBJECT: Technical Evaluation of RFP No. WA 80B248
(Wharton School)

FROM: Carl Spector
Office of Radiation Programs (ANR-458)

TO: Irene Galatis
Procurement Section (PM-214)

Item 1. The proposal of the Wharton School indicates a thorough understanding of the task to be accomplished and the problems likely to be encountered. The proposal shows that the Wharton School has the capability to solve these problems.

Item 2. The Wharton School has already agreed to accept the statement of work in the procurement request rationale.

Item 3. The proposed level of effort and the proposed personnel are satisfactory.

Item 5. The amount of travel proposed is reasonable.

Item 9. The use of computers will be essential to accomplish this work. The amount proposed is adequate.

Item 10. The printing costs are reasonable.

Item 12. No comment.

Item 13. The techniques to be developed under this contract probably will not have immediate commercial applications.

SUBJECT: Request for Technical Evaluation of Request for Proposal (RFP) No. WA 80B 248, DATE: 5/30/80
Univ of Pa Wharton

FROM: Irene Halatis
Contract Specialist, Procurement Section B (PM-214-M)

TO: Dr. David Rosenbaum
Project Officer, ORP (ANR 458)

The attached proposal is forwarded for technical evaluation. The evaluation must consider the following applicable aspects of the proposal and your return comments must discuss and substantiate in detail your findings regarding each aspect.

	(A)	(N/A)	
1.	(✓)	( )	Elaborate upon the offeror's understanding of the project objectives and potential problems. Take into consideration the proposed method of accomplishing the project and the thoroughness, originality and projected thinking reflected in the proposal. Strong points and weak points should be emphasized.
2.	(✓)	( )	If there are desired statement-of-work changes and they are minimal in number, they should be specified in your technical evaluation. The contract will then be written for procurement in accordance with the offeror's proposal with specified exceptions, additions, and/or deletions. If the statement of work desired is substantially different from that proposed by the offeror, it should be rewritten, and three copies should be furnished to this office as attachments to your technica evaluation.

EPA Form 1320-6 (Rev. 6-72)

	(A)	(N/A)	
3.	(✓)	( )	Evaluate the level of effort estimates and the offeror's proposed labor mix as they are proposed. If the caliber of personnel proposed appropriate for the work involved? Comment on the number of hours proposed in each labor category and the make up of the overall labor spread, i.e., is there too much supervisory labor, will more engineering effort be necessary, etc? Indicate any adjustments deemed necessary to successfully accomplish the program requirements along with comments supporting your position. When the Project Officer's estimate for the work differs materially from that of the offeror, he should give some rationale in support of the estimate and not arbitrarily cut the estimate without sound basis. This procedure is essential for the development of a sound estimate to be incorporated into the Government's prenegotiation position.
4.	( )	(✓)	Evaluate the reasonableness of the types of material and equipment proposed. Please indicate the reasonableness of the prices proposed if such catalogue information is available.
5.	(✓)	( )	Evaluate the reasonableness of the travel proposed, i.e., the number of trips, the points of travel, the duration of trips, and the size of party.
6.	( )	(✓)	Discuss the possibility of using Government furnished property and the availability and date when shipment of furnished property may be expected.
7.	( )	(✓)	Evaluate the reasonableness of the consultant effort proposed. Will this effort be actual consultation or will there be actual hourly effort involved? Discuss the worth of the proposed consultant and comment whether or not other consultants may be considered.
8.	( )	(✓)	Evaluate the subcontracting effort proposed. Could the work be performed by the prime Contractor? Comment on the proposed effort, cost, and competitive possibilities.

Please evaluate the salary amount they are proposing. Are you happy with the personnel proposed?

	(A)	(N/A)	
9.	(✓)	( )	Evaluate the need for computer effort proposed. If, to your knowledge, computer time is available from Government sources, e.g., GSA, please advise.
10.	(✓)	( )	Comment on the proposed costs associated with preparation and printing of reports.
11.	( )	(✓)	Evaluate the reasonableness of the cost for site restoration.
12.	(✓)	( )	Comment on your general knowledge of the offeror in areas of personnel, facilities, etc., which may assist in successful negotiation of the contract. If applicable, comment upon the offeror's performance under a current or recent contract, including the quality of work and any delinquency in submission of reports or other deliverable items.
13.	(✓)	( )	Does the technique or process to be investigated have a good potential for commercial application by the prospective Contractor? If so, please discuss.

Please insure that all personnel which handle the proposal realize that the information contained therein is to be used only for evaluation purposes and that this information cannot be disclosed or duplicated in whole or in part for any other purpose without the written permission of the submitting party. Naturally, this stricture does not apply to the same or similar information which has been or could be obtained from other sources without restriction. Also, insure that all personnel who are involved with the evaluation are aware that no contact can be made by them with the offeror under consideration to discuss the subject RFP.

You may retain the attached copy of the offeror's proposal for your file. In order to insure a prompt processing of this action, the format provided by this memorandum should be rigorously followed. This office would appreciate receipt of the technical evaluation on or before 6/6/80.
If you anticipate delay beyond this date, please notify.
Irene Galatro. 70299
Enclosure(s)

cc: _____ (_____)

REQUEST FOR COST ANALY

TO:

U.S. Environmental Protection Agency
Contracts Management Division (PM 214)
Cost Review and Policy Branch
Washington, D.C. 20460

CONTRACTOR/GRANTEE: Univ. of Pa: Wharton
CONTRACT/REQ/GRANT NO.: WA80B248
SUBCONTRACTOR (Fill in if appropriate):
DATE OF PROPOSAL: 6/16/80
PROPOSED AMOUNT: $71,217
PROJECT TITLE: Impact of Pollution Emitting Devices
DESIRED DATE FOR COMPLETED COST REPORT: ASAP

It is desired that a cost analysis be made on the attached proposal.

INFORMATION REQUIRED TO BE SUBMITTED (Fill in the appropriate blocks)

CONTRACTS/RFPS	GRANTS
TYPE OF CONTRACT: C-R	PROJECT OFFICER'S NAME: DR. David Rosen Bauer
PERIOD OF PERFORMANCE: 12 months	PHONE: ORP
CHECK ONE: ☑ SOLICITED ☐ UNSOLICITED	LOCATION: 557-9710
CHECK ONE: ☑ SOLE SOURCE ☐ COMPETITIVE	HAS FUNDING PACKAGE BEEN RECEIVED? ☑ YES ☐ NO IF "YES" FOR HOW MUCH? AMOUNT: $68,000.

COMMENTS (Including specific areas of interest, if any.)

Pls perform cost analysis on proposed contract.

Thank you.

REQUESTOR: Irene Galatis
PHONE (Include ext): 557-0299
DATE: 6/23/80

THE DESIRED DATE FOR COMPLETED REPORT IS SATISFACTORY UNLESS EXPLAINED BELOW.

COST ANALYST:
DATE:

EPA Form 1900-7 (Rev. 11-75) PREVIOUS EDITION IS OBSOLETE

WA80B331

PROCUREMENT REQUEST RATIONALE

1. Title. Visiting Fellows in Statistics and Conferences on Epidemiology, Statistics, and Radiation.

2. Estimated Period of Performance. August 1, 1980, - July 31, 1982.

3. Project Officer. Carl Spector.

4. Background. The Office of Radiation Programs relies on the statistical analysis of environmental monitoring data and health survey data to determine the levels of radiation in the environment and the dangers of this radiation. For this reason, ORP has recently created a Statistics and Applied Mathematics Division. In order to broaden the capabilities of this division, ORP wishes to establish a program for visiting fellows in statistics and requires a contractor to assist in recruiting and evaluating applicants for these positions. Furthermore, ORP believes that, in light of the current problems in statistics and epidemiology and their controversial applications to radiation phenomena, it is necessary to arrange a series of conferences on these topics; a contractor is required to organize and support these conferences.

5. Procurement Abstract. The Office of Radiation Programs wishes to establish a program of visiting fellows in its new Statistics and Applied Mathematics Division. ORP seeks a contractor to recruit and evaluate qualified applicants for these positions. ORP also wishes to sponsor a series of annual conferences on epidemiology, statistics, and radiation and requires a contractor to organize these conferences.

6. Statement of Work.

A. The contractor shall recruit and evaluate applicants for the positions of visiting fellows in statistics at ORP. Recruitment shall be carried out through appropriate advertising, direct mailing, and personal contacts. Evaluation and recommendation of applicant shall be done by a panel whose members are chosen by the contractor and ORP. The fellows may visit at ORP for up to one year. Within six months of the start of the contract, the contractor will make his first recommendations. Although only highly qualified applicants will be accepted, ORP currently expects to fill two such positions; additional positions may be made available for periods of less than one year. The contractor will make a second set of recommendations within 18 months after the start of the contract. ORP will make all final decisions on hiring. Fellows will be paid directly by ORP.

B. The contractor shall organize two conferences on statistics, epidemiology, and radiation, one for each year of the contract, on dates to be chosen by mutual agreement of ORP and the contractor. The contractor shall seek and invite experts in these fields to present papers and participate in discussions. The conference shall not be open to the public. The contractor, with the consent of ORP, shall choose a director for each conference. ORP may elect to specify a co-chairman for the conference. The contractor shall provide all support services necessary for the conferences.

7. Proposed Budget.

A.	Professional and Clerical Staff	1,300 hours	$ 34,000
	Travel		$ 5,000
B.	Director/Staff	1.2 man-years	$ 32,000
	Supplies		$ 5,000
	Travel		$ 20,000
	Meeting Rooms/ accommodations		$ 18,000
Overhead			$ 50,000
			$164,000

8. Reports. No reports required.

9. Recommended Source. American Statistical Association. Justification for noncompetitive procurement attached.

10. Evaluation Criteria. Not applicable.

11. Government-Furnished Property. Not applicable.

12. Unsolicited Proposal. This proposed procurement is based upon an unsolicited contract proposal.

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT

This procurement request has two objectives: 1) to establish a program of visiting fellows in statistics at ORP, and 2) to hold a series of conferences on statistics, epidemiology, and radiation. Both of these tasks are necessary to allow ORP to fulfill its responsibilities in developing standards for high-level waste disposal and occupational radiation exposure and in determining the extent of exposure to indoor radon and its danger. The contract will assist ORP in the development of the rigorous statistical methods needed for these topics.

The primary requirements for a contractor for these tasks is a thorough familiarity with the capabilities and members of the American statistics community. This will enable the contractor to encourage the widest possible participation in these projects and to evaluate the ability of these people to contribute to the work of ORP.

The American Statistical Association is the only organization capable of performing this work. It is the largest and oldest professional association of statisticians in the United States. Its members include statisticians in academia and in industry, those studying theoretical and those studying practical problems in statistics. ASA has extensive formal and informal contracts with all segments of the statistics community. It has had experience organizing programs for visiting fellows (e.g., for the Census Bureau) and in running hundreds of conferences.

Therefore, I recommend that the American Statistical Association be issued a contract for the required effort on a noncompetitive basis.

David M. Rosenbaum
Deputy Assistant Administrator
for Radiation Programs (ANR-458)

AMERICAN STATISTICAL ASSOCIATION

FOUNDED 1839

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March 28, 1980

Mr. David M. Rosenbaum
Deputy Assistant Administrator
for Radiation Programs
U.S. Environmental Protection Agency
Washington, DC 20460

Dear David:

Enclosed* is the draft of the contract for two fellows and one conference per year for two years. Note that I have included one conference each year. Within the conference, I have included an item of $10,000 for travel. I have also included invited papers with an honorarium of $500 each. These could be considered as costs of necessary work including assistance to prepare talk and have finished copy available for dissemination prior to the Conference. Please let me know your reaction to the above and we can change this if necessary.

The script has been put together by Don Rubin with an assist and detailed finalization, format, etc. by me. If you do not see any changes necessary, we will go with this.

I have already canvassed the Executive Committee of ASA for a preliminary response. The initial impression is "Go." Now I am sending a copy of this and expect a final response by mid-week.

Again, please call me on any of the above.

Sincerely,

Fred

Fred C. Leone
Executive Director

Encl.

cc: Donald B. Rubin

P.S. Are Canadians and other non-U.S. citizens eligible for the fellowship program? This should be cleared up early.

P.P.S. The vitae are not included in this draft. We are still waiting for them.

*Also enclosed are copies of grant approval from NSF.

Sept. 3, 1980

memo: to file
Re: ORP investigation

I talked to Dr. Leone of the American Statistical Association today. He said David Rosenbaum contacted him directly to take a contract, sole source, on setting up statistical fellowships for ORP. Leone said ASA has program with Census to do similar work. He said he met with Rosenbaum and Don Rubin in ORP office, where Rosenbaum proposed contract. Leone said the Institute of Mathematical Statistics and the Eastern and Western Region of the Biometric Society could also perform contract work.

Additional Submission of Federal Communications Commission

MANAGEMENT CONTROL OF AGENCY CONTRACTING ACTIVITIES. AN EXAMINATION OF CONSULTING SERVICES CONTRACTS (OVER $10,000) AWARDED DURING FISCAL YEAR 1980 BY THE FEDERAL COMMUNICATIONS COMMISSION

BY: FRED J. GOLDSMITH, CHIEF,
INTERNAL REVIEW DIVISION

EDWIN J. SCHAFER, ATTORNEY-ADVISER,
OFFICE OF GENERAL COUNSEL.

SEPTEMBER 30, 1980

INTRODUCTION

By letter of February 8, 1979, to Mr. Wayne G. Granquist, Associate Director, Office of Management and Budget (OMB), FCC Chairman Charles D. Ferris designated Mr. Fred J. Goldsmith, Chief, Internal Review and Security Division as accountable directly to the Chairman to oversee the agency's efforts to eliminate waste, fraud, and error.

On July 3, 1980, Mr. Goldsmith was contacted by an assistant to Mr. Howard M. Messner, Assistant Director, OMB, who requested information as to the agency's actions or follow-up on recently published information concerning the FCC's use of consultants hired under sole-source contracts (The information was requested concurrently with the dispatch of a letter by the Director, OMB, James T. McIntyre, Jr. to the heads of Executive departments and agencies. The letter emphasizes the importance of effective management controls over procurement practices, and stresses that the policy, guidelines and standards of OMB Circular A-120 apply to all Executive departments and agencies. Appendix I).
In response, Mr. Messner was informed that the records maintained by the Commission's Procurement Branch appear to comply with existing legal provisions, and contain in each instance a determination by a senior official that sole source procurement of a consulting service was proper, but that in order to determine the efficacy of the FCC's management control system, an independent review was being initiated by Mr. Goldsmith and Mr. Edwin J. Schafer, Office of General Counsel.

The Commission's use of consultants was also referred to in a July 17, 1980 letter from Senator Barry Goldwater to the Chairman of the Senate Committee on Commerce, Science and Transportation, and the Chairman of the Subcommittee on Communications (Appendix II). In Chairman Ferris' letter of August 15, 1980, detailed replies are made to Senator Goldwater's questions concerning two consulting services contracts, both awarded on a non-competitive basis (Appendix III).

OMB Bulletin No. 78-11, was issued May 5, 1978 to implement an earlier Presidential memorandum that asked the heads of agencies to review consulting services arrangements to assure that they were both appropriate and necessary (Appendix IV). Basic policy and guidelines for the use of counsulting services were provided, as were the management controls to be observed. Basic policy was stated as follows:

a. Consulting services will not be used in performing work of a policy/decision-making or managerial nature which is the direct responsibilty of agency officials.

b. Consulting services will normally be obtained on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.

c. Consulting services will not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.

d. Former Government employees per se will not be given preference in consulting service arrangements.

e. Consulting services will not be used under any circumstances to specifically aid in influencing or enacting legislation.

f. Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.

Following were the guidelines for the use of consulting services:

a. To obtain specialized opinions or professional or technical advice which does not exist or is not available within the agency or another agency.

b. To obtain outside points of view to avoid too limited judgment on critical issues.

c. To obtain advice regarding development in industry, university, or foundation research.

d. To obtain the opinion of noted experts whose national or international prestige can contribute to the success of important projects. Management controls to be established for all consulting service arrangements were to assure that controls are competitively awarded to the maximum extent practicable to ensure that costs are reasonable. Further, that each agency will establish specific levels of delegation of authority to approve the need for the use of consulting services, with written approval of all such arrangements required at a level above the organization sponsoring the activity.

On April 14, 1980, OMB gave more permanent form to its Bulletin No. 78-11 by publishing it as Circular A-120, and adding the following:

a. The contracting officer is held respon-responsible for determining whether a requested solicitation or procurement action, regardless of dollar value, is for consulting services, with such determination being final.

b. The contracting officer will assure that all provisions of Circular A-120 are adhered to, and that certain recording action is taken on all awards of consulting services contracts over $10,000.

c. The level of delegation of authority to approve the need for the use of consulting services during the fourth fiscal quarter will be the second level above the organization sponsoring the activity rather than the first (Appendix V).

CONSULTING SERVICES CONTRACTS AT THE FCC

In fiscal year 1980, approximately $690,000.00 were awarded in consulting services contracts (over $10,000). All of these were awarded on a sole source basis. In terms of the agency's contract obligations for the year (again using contracts over $10,000 each) the above sum represents approximately 38% of funds obligated for all contracts.

The actions taken and procedures used in the award of non-competitive (sole source) consulting services contracts during Fiscal Year 1980 were subjected to examination during this inquiry in an effort to determine compliance with and adherence to existing regulations. A total of fifteen such contracts, all but one valued at $10,000 or more, were examined (one in the amount of $9,750 was included because the contractor was a former Commission employee). The examination included a review of records maintained by the Procurement Branch, Operations Support Division; the Finance Branch, Financial Management Division, both under the Office of the Associate Executive Director (Operations); records of operating officials; review of pertinent agency directives; and interviews with finance and contracting personnel and the officials responsible for initiating the procurement actions. No effort was directed to ascertainment of the validity of the need for the consulting services procured.

In interviews with Bureau and Office Officials responsible for obtaining desired consulting services it was found that acquisition of desired services on a sole source basis was 1) dictated by time constraints; 2) desired from a particular person or firm because of familiarity with work product; or 3) felt to be warranted because of the unsolicited nature of the proposal offered. In most cases, other prospective sources of the desired services were considered. They were dismissed usually, because of the unavailability of the person needed to perform the service. Insofar as price is concerned, Bureau and Office officials stated that price negotiations were not undertaken by them but were left to the Commission's procurement office. It would appear that in most cases, if an offeror's price was within the limit budgeted for the particular project, it was accepted without bargaining. In all cases, it was the view of the Bureau and Office Officials that the price paid was reasonable - relying upon personal knowledge or experience with existing market-place rates for similar types of work. In some cases, analogy to the 10th step of a grade GS-15 was cited, or the current $80 to $100 per hour fee charged by Washington lawyers was used as a benchmark. Bureau and Office Officals agreed that exceptional value was received in most cases; and that no unsatisfactory or unacceptable work was produced. The contract disputes clause has not been invoked with respect to any of the contracts reviewed.

A detailed review, containing the findings made with respect to the major topics of this inquiry, follows:

Implementation of OMB Directives

OMB Bulletin No. 78-11, of May 5, 1978 (Appendix IV) was not publicized within the agency, or issued in the form of Commission instructions. The Chief, Procurement Branch, when meeting with Bureau representatives engaged in arranging for consulting services, instructed such persons as to the basic policy and the guidelines of 78-11; however, the agency did not comply fully with the management controls prescribed by the OMB directive:

1. Individual justifications did not contain a certification that there was no unnecessary duplication of previously performed work or services (7a(1).

2. The absence of any competitively awarded contracts points to the absence of effective management controls (7a.(3). It appears that in several of the contract situations examined, the pressure of time and the requirement to go "sole source" arose because the need for consulting services was not recognized early enough within a given project, and because insufficient inquiry was made to locate

persons called for under some of those contracts or with the admittedly rare skills and the ability to address the topics without any institutional bias.

3. The agency did not establish specific levels of delegation of authority (at a level above the sponsoring activity) to approve the need for the use of consulting services (7b). In many instances, the requesting and the approving officials were one and the same.

Following the publication of OMB Circular A-120 in May 1980 (APPENDIX V), the Chief, Procurement Branch recommended in July 1980 the publication of an FCC directive, and submitted it, through his division chief, to the Associate Executive Director - (Operations). Although a meeting was held to discuss the matter, no agreement was reached as to the approving level for the consulting services arrangements, and publication of a directive is still pending.

Role of the Office of General Counsel

The role of the Office of General Counsel in the procurement cycle is at best ill-defined. Currently, pursuant to an understanding that dates to the early 1970's, the Office of General Counsel reviews for legal sufficiency all Requests for Proposals (RFP's) for "research projects" before publication and prior to final award to the successful offeror. There are no formal guidelines with respect to other procurement activities. Insofar as consulting contracts not clearly characterized as research are concerned, they are referred to the Office of General Counsel for review for legal sufficiency on an ad hoc basis at the discretion of the contracting officer. Of the consulting contracts reviewed in this inquiry, only five (out of a total of fifteen) were referred. The Office of General Counsel review has been confined essentially to determining whether the strictures of the Federal Procurement Regulations and the Federal Property and Administrative Services Act of 1949, as amended, have been adhered to. In other cases the opinion of the General Counsel's Office has been solicited with respect to ostensible or possible conflict of interest matters. The Office of General Counsel does not attempt to go behind the contract to determine, for example, whether the best prospective contractor has been chosen for award, or that the contract price quoted is reasonable.

Adherence to Legal Strictures Concerning Procurement

As has been noted elsewhere in this document, all FY 1980 consulting services contracts were awarded on a negotiated rather than formally advertised basis. Negotiated procurement is authorized pursuant to Section 302 of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 252), and the Federal Procurement Regulations (FPR) that implement that Act, see 41 CFR 1-3.200 et. seq.

Of the circumstances permitting negotiated procurement, exclusive reliance in FY 1980 was placed on Section 302(c) (10) of the above-referenced act and Section 1-3.210 (a) (13) of the FPR. These sections provide, in substance, that negotiated procurement may be pursued in those cases where it is impracticable to secure competition by formal advertising. Appropriate determinations and findings (D & F's) were prepared for each of the consulting contracts awarded; and where required, determinations of contractor responsibility are to be found in the contract files of the Procurement Office. Formal adherence to the Federal Property and Administrative Services Act and the Federal Procurement Regulations was noted in all cases.

Unsolicited Proposals

There appears to be considerable confusion surrounding the treatment afforded unsolicited proposals */ Upon receipt these proposals are treated as proprietary, whether so requested by the offeror or not. They are then referred to the appropriate Office or Bureau of the Commission for consideration. If the proposal appears meritorious, and it is found to be genuinely worthwhile, a search for funding is undertaken. Standard Federal (particularly DOD) practice dictates that negotiations may then be undertaken with the offeror without soliciting other sources even though these other sources may be fully and equally competent to perform the desired work. Any other practice might discourage people from submitting ideas that have substantial value to the government. Moreover, making a truly unique unsolicited proposal the basis for a competitive solicitation can raise both legal and ethical questions. The confusion with respect to unsolicited proposals centers about the failure to adequately consider the uniqueness of the proposal, and the failure to recognize that price may be negotiated. Thus, in order to warrant the extraordinary treatment reserved for unsolicited proposals, a determination must first be made that the ideas contained within the proposal are genuinely novel or unique. This does not appear to have been done or understood.

*/ The three unsolicited proposals reviewed in this inquiry all appear to have been genuinely unsolicited.

The Julien Studley/Computer Sciences Company (CSC) Contracts

The Contracting Officer's determinations and findings with respect to both of these negotiated sole source procurements are predicated on the impracticability of securing competition by formal advertising [41 U.S.C. 252 (c)(10); and 41 CFR 1-3.210(a)(13)].

Selection of the Studley firm to provide consulting services relative to the Commission's space acquisition problems was accomplished without reference to or consideration of other organizations or firms providing similar services. The price of the services offered appears to have been accepted without any attempt at bargaining. The price quoted was, in the view of the staff official responsible for the negotiations, reasonable and in accord with prices quoted for other professional services with which he professed to be familiar. The architectural-engineering services necessary and complementary to solutions of the Commission's space problems were negotiated for by the same Staff Official responsible for obtaining the services of Studley. As in the case of the Studley negotiations, no consideration was given to other organizations or firms providing similar or identical services. In like manner, price quotations appear to have been accepted without question or attempt at bargaining. The Commission's Contracting Officer was not privy to, or involved in, any of these negotiations.

The Studley representative with whom negotiations were conducted is the person who in fact has performed for Studley under the contract. This person, Mrs. Barbara Pryor, is the wife of David Pryor who, at the time that A-E services were determined to be required, was in the employ of CSC. The initial reference or suggestion that the Services of the Studley firm be considered, was made by a Commission employee who 1) is personally acquainted with both Mr. and Mrs. Pryor; 2) was formerly employed by CSC where Mr. Pryor was his supervisor; and 3) is a former tenant or lessee (1972/73) of a personal residence owned by the Pryors. These relationships are mentioned not as an indication of any improper action on the part of the Commission employee who, parenthetically, considers both Pryors to be outstanding in their respective fields, but to demonstrate the need for independent inquiry on the part of the negotiating official and for the involvement of the contracting officer in the process in order to arrive at an independent judgment of an offeror's qualifications. The method used to establish Studley's qualifications was to initiate a purchase request in a relatively small amount ($6800), and based on acceptable performance by Studley, there followed the award of a sole source contract for which the sum of $62,160.00 has been obligated, and $38,527.65 expended to date.

The services of the Studley firm are, according to the Commission staff official responsible for procuring Studley's services, confined to space acquisitions and related matters in the immediate geographical vicinity of the Commission's Offices at 1919 M St. N.W., Washington; and the ongoing acquisition of space in South-Central Pennsylvania, near Gettysburg. The scope of Studley's services, according to the same official, is to exclude remuneration for consultation or advice with respect to the acquisition of the office space currently under active consideration in Rosslyn, Virginia.

A relationship, the precise nature of which has not been determined, exists between Studley and the owners or lessors of the space in Rosslyn that the Commission is considering for lease in its efforts aimed at consolidation of staff offices. It is presumed that Studley is acting as a broker and/or leasing agent with respect to the Rosslyn space.

Reference to invoices submitted by Studley indicates that certain services and advice have been provided with respect to the acquisition of space in Rosslyn. These invoices have been honored, and payment has been made.

The Role of the Commission's Contracting Officer

The position and the responsibilities of the Contracting Officer within the procurement cycle are believed to be little understood by those staff officials responsible for obtaining desired consulting services. In most cases, the contracting officer was not informed or made aware of the true circumstances or background of the contract he was being asked to enter into on behalf of the Government. Again, in most cases, preliminary negotiations or searches for prospective contractors were undertaken before the contracting officer was even advised that a contract was being considered. The most glaring of the deficiencies noted in this area has been the total lack of inclusion of the contracting officer in the negotiation of price. It may be said that with respect to the truly critical aspects of negotiation of contracts for consulting services the contracting officer has been effectively by-passed. In most cases the contracting officer is presented with after-the-fact details and asked to draft the necessary procurement documents for award. The contracting officer's position or location in the organizational structure of the Commission is believed to be indicative of the general lack of emphasis or recognition of the importance of the procurement function. A current organization chart is appended hereto as Appendix VI.

STATE OF RECORDS FINANCE BRANCH

The records of Finance Branch consist of a file containing a copy of the contract or purchase orders and the record of each payment made, and a voucher file containing the bill, invoice, etc. submitted by the contractor, together with a certification by the COTR that the billing is proper and that payment may be made. (The COTR, normally an employee of the Bureau/Office that requested the service, is the person most familiar with the requirement and the product expected). It was found that there were no written instructions to guide Finance Branch processing personnel. It is the present practice, and has been for years, that a bill submitted by a contractor, and accompanied by the COTR's certification, will be processed and certified for payment by one of the four certifying officers of Finance Branch without efforts to verify the presence of any documentary support of the charges. For example, bills submitted by Julian J. Studley, Inc. contained total charges without any breakdown, and make reference to attached time sheets. These time sheets are not on file, and, according to the principal voucher examiner, she has not been instructed that documentation beyond the COTR's certificate is needed. However, in instances where it was obvious that the bill contained an error in totals shown, it would be sent to Procurement Branch for clarification.

In case of the Studley time sheets, it was found that they had been submitted to the official who requested the services and is the COTR. Certification was made by the COTR after review of the time sheets, but they were then separated and sent to administrative files, rather than Finance Branch. The employee having custody of the time sheets indicated no direct involvement with the particular contract, and assumed that, on completion, the records would be sent to Procurement Branch. The GAO Manual for Guidance of Federal Agencies calls for the segregation of duties and functions as among authorization, performance, keeping of records, custody of resources, and review, so as to provide proper internal checks on performance and to minimize opportunities for carrying out unauthorized, fraudulent, or otherwise irregular acts. Procedures are called for that provide adequate control over expenditures in order to provide assurance that services paid for are actually received and that prices are in accordance with the applicable contract. Absent the detailed record of how the expenditures were incurred, it appears that the current internal control procedures in this specific area are inadequate. According to the Chief, Finance Branch, this situation is due to the workload imposed on the office and limited personnel resources, the absence of any written policy or instructions, and the fact that the present procedure for payment of contractors' bills is one that has been in effect since 1972.

73-462 O - 81 - 18

RECOMMENDATIONS

1. Take priority action to issue an agency directive implementing OMB Circular A-120, to include the establishment of a panel, consisting of senior agency officials, with the delegated authority to approve the need for the use of consulting services by Bureaus and Offices. This would require delegation of authority by the Chairman.

2. Initiate comprehensive training and orientation programs, based on the Commission's written directive implementing A-120. It should combine the technical, legal, and ethical aspects that must be considered in each of the instances where consulting services are deemed necessary, and provide checklists, etc. for the use of COTR's and others. Procedures and instructions should be provided for the handling of unsolicited proposals.

3. Provide for written directives and instructions concerning the records required to be maintained by Finance Branch, and the extent of independent verification of charges to be performed by its personnel.

4. Require that all contractual arrangements for consulting services over $10,000 be given a review for legal sufficiency by the Office of General Counsel.

5. Consider strengthening the role, position, and visibility of the contracting officer by placing the function at an organizational level above that of the present branch. With a considerable amount of the day-to-day procurement actions being initiated through the division of which Procurement Branch is a part, or through the Office, Associate Executive Director (Operations), of which division is a part, the independence of the contracting function, through elevation within the organizational structure of the Office of Executive Director, appears to be desirable. This would also tend to strengthen the hand of the contracting officer in direct dealings with the heads of Bureaus and Offices on contractual matters.

6. Determine the status of the tasks presently assigned Studley and CSC with respect to specified sites or buildings, and permit no "add-ons" or further purchase orders for their services (assessing space availability and assisting in the preparation of solicitations for space in the case of Studley, architectural and engineering services in the case of CSC) beyond tasks already in progress. Further services of this type should be obtained competitively.

7. Establish the legal relationships between a.) Studley, b.) the lessors of the office space being negotiated for in Rosslyn, and c.) the Commission, to determine whether conflicts of interest may be present.

Contract with Network Management Associates, Inc.
Contract # FCC-0326

Description: To provide planning support to the ADP Steering Committee.

Justification: In August 1979, the Comptroller General of the United States published its Report B-145252 "Organizing The Federal Communications Commission for Greater Management and Regulatory Effectiveness". In chapter 9 of the Report "Automatic Data Processing Program Reflects FCC-Wide Management Weaknesses", GAO rendered several recommendations to the FCC Chairman, designed to improve the overall ADP posture in the agency. The GAO strongly recommended the restructuring of the (existing) ADP Steering Committee "under the direction of a person with sufficient authority to direct FCC-wide ADP activities". As a result, the ADP Steering Committee received its revised Charter from the Chairman on November 1, 1979. To be responsive to the GAO Report recommendations, the Steering Committee set out to immediately perform a zero-base review of all automated functions in the agency. In the resulting report to the Chairman on February 19, 1980, the ADP Steering Committee, among other things, recommended that there was an urgent need for an improved ADP planning process. The Committee then undertook to develop a "Blueprint for Electronic Information Processing at the FCC". From the outset it became clear that radical and fundamental changes in the application of the latest information management technologies would be needed to address and correct most of the deficiencies which existed in the ADP Program, as noted in the GAO Report.

Due to urgency of the situation and the gravity of the GAO Report, an unsolicited proposal from Network Management Associates, Inc. was evaluated by the technical staff and the Steering Committee. It was determined that the proposal contained unique and timely consulting services, unavailable in-house, which would assist the FCC in its attempts to shape the future of the agency's ADP program in such a manner as to be responsive to the GAO report's recommendations. The decision to proceed on a sole-source basis was based on the following considerations:

(1) The project could not be delayed. Any delay necessitated by the time consuming process of formulating, negotiating, and awarding a competitive contract was considered non-responsive to the GAO Report recommendations. It is our experience that such a procurement takes in excess of 120 days from time of inception to time of award.

(2) To conduct a competitive procurement of such a relatively small scope, in terms of dollar-value, was not considered cost/effective considering the projected in-house person hours required to conduct such a procurement.

JULIEN J. STUDLEY, INC.

FCC-0332

In our FY 1980 Appropriation Bill, the Congress provided the FCC the authority to lease office space. In attempting to utilize this authority to resolve what, in our judgment, was, and continues to be, a compelling and urgent need to acquire additional office space, it quickly became apparent that we had no internal expertise or sophistication in the process of real estate procurement. Thus, we believed it imperative at that point to solicit such expertise immediately from an external source and proceeded to write a purchase order with Julien J. Studley, Inc. for advice on, and assistance in the procurement of office space in both Washington, D.C. and Gettysburg, Pa.

Subsequently, satisfied with the quality of the services rendered by J.J. Studley, Inc., and in anticipation of several related upcoming space projects, we then negotiated a sole-source contract with Studley. Again, not only was Studley by this time intimately familiar with the FCC and its space requirements, but we were working under what we judged to be severe time constraints. The competitive bid cycle ranges anywhere from 75-90 days; in our judgment the conditions we were attempting to alleviate warranted more expeditious action. We believed that it was prudent to proceed with a sole-source contract.

COMPUTER SCIENCES CORPORATION

FCC-0337

The Computer Sciences Corporation began working with the FCC on a purchase order basis in October of 1979, providing us with technical or architectural/engineering services necessary to support our office space leasing efforts in both Washington, D.C. and Gettysburg, Pa. These services were required on an expedited basis as we were proceeding on time-sensitive leases in both Gettysburg, Pa., i.e. consolidation of our licensing facility, and downtown Washington, D.C., i.e. two leases to alleviate serious overcrowding in headquarters buildings. Due to the fact that prior to FY 1980 we had not had our own leasing authority, we had no one on our staff with the technical expertise required for these projects. CSC provided us technical support on the Gettysburg solicitation, i.e. preparation of the RFQ; space design, specialized drafting, architectural and construction services for facilities in Gettysburg, Washington, and a proposed consolidated facility in Rosslyn, Va; and architectural and engineering support in designing an appropriate integrated telecommunications-computer system for the proposed consolidated facility.

At the outset CSC, a corporation with known expertise in the services we required, was available immediately to provide us with said services, thus satisfying the exigencies of our requirements. Over a several month period we became aware that these space projects were much more involved than we had initially anticipated, particularly when we decided to pursue the consolidation of the Agency. Thus, there was a continuing requirement for

CSC's services. Given the fact that CSC had laid all of the technical groundwork on our leases, and were thus intimately familiar with the FCC and its unique requirements, we determined it to be in the government's best interests to continue on with CSC for these technical services. Therefore, once the initial purchase orders were exhausted, we then negotiated a sole-source contract with CSC to continue the work they had begun.

Contract No. 1202-0

Policy options in the international communications field.

Over the past year, the Bureau has undertaken an ambitious program to radically change its approach to the regulation of international common carriers. In essence the Bureau wanted to move deliberately in the direction of placing greater emphasis on the role of the market place in determining the price, quality and combination of services as well as the identity of suppliers. The Bureau recognized, however, that the character of the international market is a function of unique economic factors. Thus, before undertaking such major programs as Comsat restructuring, Authorized User, Resale, TAT-4, Gateway expansion for the IRCs and Interconnection; it was essential to have an assessment of the available policy options. Due to the nature of the work, it was felt that the individual undertaking the project should possess the following qualifications: (1) a thorough understanding of the issues, (2) an appreciation of the international telecommunications environment and (3) the economic framework necessary to evaluate the impact of various policy changes.

Dr. Larry Darby is uniquely qualified to undertake such a project. He is a trained economist and was formerly Chief of the Bureau's Economics Division. He was also Bureau Chief so he certainly possessed the specialized knowledge of these issues and the international environment.

Finally, the Bureau was under a short, statutorily imposed deadline on the Comsat study, one of the main elements of the program. Consequently, the work had to be undertaken expeditiously. Dr. Darby was available and, because he already possessed the knowledge necessary to undertake the project -- avoiding the need for original research, it was felt that he would be able to complete the work in the necessary timeframe.

Kurzweil Computer Products
FCC-0373

The Kurzweil Reading Machine (KRM) translates printed material into the aural medium, allowing visually handicapped persons to utilize printed matter without the aid of a human reader. This independence encourages initiative and increases efficiency on the job. It also solves the problem of locating capable human readers within a constricted hiring system.

In the Fall, 1980, a survey was conducted of the facilities provided by several Federal Agencies for their visually-handicapped employees. The Department of Justice, the Library of Congress, and the Office of Education were among those contacted and/or visited. Much of the various equipment available in this field was still developmental. The machines capable of translating printed material were of 2 major types:

1. a hand-held scanner, moved across the printed page by the "reader," scanning each line; and
2. a stationary screen, on which the book, etc. is placed and an internal scanner moves across the page.

Discussion and demonstration with some of the Commission's handicapped persons highlighted the difficulty for a blind person in moving a scanner straight across a line of print. Therefore, the alternative (the stationary screen type) was determined to be more convenient and more easily learned. The KRM was the only model of that type available commercially.

The KRM was developed by Raymond Kurzweil, a blind computer expert, in cooperation with the Bureau of Education for the Handicapped, the Veterans Administration, the Rehabilitation Services Administration, and other groups. In 1978, the price dropped from $50,000 to $19,400 due to technological advances in the field which permitted a redesign of the basic machine. In light of this cost reduction, as well as the factors cited earlier, the Kurzweil Computer Products organization was solicited for their equipment.

Since delivery, the KRM has been used by the several blind attorneys employed by the Commission. The equipment is available for all uses as required.

Contract with Terminals Unlimited, Inc.
Contract # FCC-0327

Description: To provide computer terminals and related equipment.

Justification: As a result of the publication of the Comptroller General's Report B-145252, "Organizing the Federal Communications Commission for Greater Management and Regulatory Effectiveness", a number of management actions were taken to immediately address some of the problem areas identified in the GAO Report. One of these actions involved the restructuring of the FCC's ADP Steering Committee. This Committee recommended the immediate procurement of light-weight terminal devices which would facilitate the work of its members by enabling them to communicate among themselves via electronic mail from their offices, their homes, or wherever their travels would take them in their performance of duties as Bureau/Office Chiefs. In addition, several terminal printing devices were needed to produce photo-ready copy in support of the Committee's work.

Terminals Unlimited was the only local vendor capable to provide the equipment and maintenance services for this project on short notice, i.e. days instead of months.

Contract with C.A.C.I. Inc.
Contract # FCC-0322

Description: Provide ADP programming support.

Justification: During the summer of 1979 a study was undertaken to determine how, through the application of automated data processing technology, the burden of the OMB imposed requirements for Zero-Based Budget submissions, could be alleviated.

The results of the study led to a management decision that the application of data base management system (DBMS) technology would be the most effective, the most flexible, and quickest way to implement an automated system in support of the budget process.

The FCC did not have data base management software operational on its in-house Honeywell computer. The agency had only one computer specialist on the rolls who had data base management experience. This individual was experienced in only one DBMS, marketed as "System 2000". This particular DBMS was not designed for Honeywell equipment.

In view of the urgency of the requirement, the FCC concluded an inter-agency agreement with DOD's Harry Diamond Laboratories for the shared use of their computer hardware on which the System 2000 data base management system was available. In addition, the sole source contract under discussion was concluded with C.A.C.I., a firm which specializes in supporting the specific System 2000 DBMS software. The decision for concluding a sole-source contract was based on the following considerations:

(1) The training of those in-house resources required (in addition to the one experienced computer specialist) to perform the necessary programming using the DBMS would have been too costly in view of the limited application of the software. It is estimated that such training would have required approximately $8,000 to $10,000 in training funds.

(2) The required training would have delayed the start of the project by at least 4-6 weeks.

(3) The in-house resources necessary to prepare and conduct a competitive procurement, along with the training funds mentioned above, would, in all likelihood, have exceeded the $20,000 expended under this contract. Such procurement also would have delayed the start of the project 90-120 days.

CONSULTING SERVICES FOR INVESTIGATION AND
EVALUATION OF COMMISSION'S DISCOVERY PROCEDURES;
FCC-0321

This contract involved an examination, analysis, and evaluation of the functioning of the Commission's discovery procedures since their adoption in 1968. The basic purpose of the study is to determine whether the discovery procedures have been accomplishing their originally intended objectives and to make such recommendations for revisions, reforms, and improvements as may be warranted to make the process more efficient and effective.

The Contract awarded to Mr. Paglin was not put out for competitive bidding because the contractor was uniquely qualified by background and experience to perform the studies and produce the Report required by the contract. There are only a handful of people in the country whose prior experience has given them the insight into the actual working of the administrative process that Mr. Paglin possesses. There is probably no one else in the country with more insight and knowledge concerning the various aspects of the FCC's adjudicative process, including the discovery phase.

Mr. Paglin is the only staff official in the history of the Commission to have held both the positions of General Counsel and Executive Director. In addition, he has served as a trial attorney, Legal Assistant to a Commissioner, Assistant General Counsel, and Senior Supervisory Attorney, Office of Opinions and Review at the Commission. Additionally, he has served as a permanent member of the Atomic Safety and Licensing Board Panel, and served as a consultant to the Administrative Conference of the United States. He has published many scholarly works in the field of administrative law and lectured extensively on the subject.

The background and experience detailed above provided him with an expertise in the area of administrative law in general and all phases of the adjudicatory process in particular, including discovery procedures, which made Mr. Paglin uniquely qualified to aid the Commission in evaluating the effectiveness of its adjudicatory procedures. No one else could possibly possess the combined legal and management perspective concerning the Commission's adjudicatory procedures that Mr. Paglin possess since no other person has ever served as General Counsel (1961-1964) and Executive Director (1966-1971) of the Commission, along with the other positions described above. Mr. Paglin's experience with all aspects of the adjudicatory process and the way that each phase (such as pre-hearing, fact-finding, etc.) interact made him uniquely qualified to evaluate the Commission's discovery procedures and make recommendations for change.

Lela Garlington
2671-0
ED-80-36-A

This is to justify the retention of Lela Garlington in July, 1980 at a cost of $200 as a consultant to the Press and News Media Division of the Office of Public Affairs in planning the preparation of the 1979 Annual Report of the Commission.

The Commission has charged the Office of Public Affairs with assembling, and writing or editing, the Annual Report and preparing it for publication. While the staff of the Press and News Media Division assigned to this project possesses the substantive knowledge of the Commission and its functions to assemble the Annual Report, the staff does not possess the design expertise necessary for this type of publication. Ms. Garlington had the design expertise in government and commercial publications needed to assist the staff in planning the preparation of the 1979 Annual Report. Ms. Garlington fulfilled her contractual obligations on August 8, 1980.

Dr. Mark Johnson
ED-80-8A
P.O. 0565-0

This is to justify the retention of Dr. Mark Johnson in November, 1979 at a cost of $625 as a consultant to the Minority Enterprise Division of the Office of Public Affairs to assist in updating and improving the Commission's Minority Buyers Listing.

The Minority Buyers Listing was established by the FCC in November, 1978 as a means of fostering minority ownership of broadcast properties. The list consists of minority persons who are interested in purchasing a broadcast facility and who wish to make their interests known to sellers, brokers and other persons who are looking for station buyers. The list is updated periodically.

Dr. Mark Johnson was retained to assist the Minority Enterprise Division in updating and improving the Minority Buyers Listing.

Dr. Johnson, Chairman of the Department of Communications at Mt. Vernon College, had extensive experience, both academic and professional, in the research skills needed to update the Buyers Listing. Dr. Johnson surveyed brokers involved with broadcast properties to determine the information they seek from potential buyers to assist the Minority Enterprise Division in making the Buyers Listing more efficient and effective for potential sellers and brokers by providing more precise information. He completed his contractual obligation in December, 1979.

River-at-Sunrise FCC-0324

Scott D. Bristol (New Matrix) FCC-0345

Beginning in late 1977 and during 1978, the Commission began to place greatly increased emphasis on marketplace competition as an alternative to traditional modes of regulation. Major new regulatory initiatives during this period, and the programatic changes which ensued directly impacted the Commission's staff. These new directions encompassed not only changes in institutional and personal regulatory philosophy but necessitated major changes in the agency's internal organizational structure and management processes.

In early 1979, it became evident to senior FCC officials that the human dimension of these changes required attention if the new policies and regulations being promulgated by the Commission were to be implemented in an effective and timely manner. As the Commission did not have the required expertise on its staff, it was decided that outside assistance would be needed to analyze the nature and dimension of the problem and to assist in developing strategies to promote acceptance and support for these dramatic changes in the agency's programs and administrative structures. Further, based on the evidence available at that time it was determined that this analysis should be given the highest priority. It was the staff's judgement that time was of the essence.

Consultations with the Federal Trade Commission revealed that they had recently implemented an internal organization development program to deal with similar concerns. After several unsuccessful efforts, they had contracted with the River-at-Sunrise Institute for Human and Organization Development -- a non-profit organization -- to assist them in this endeavor. Organization development (OD) utilizes a variety of techniques to change both institutional and personal values, attitudes and structures so an organization can better adjust to change.

An OD consultant serves as a change agent or facilitator. The consultant, by selective interventions, seeks to improve the communication, leadership, planning and decision-making skills of key personnel within the organization. The Trade Commission advised the FCC that the River-at-Sunrise Institute had been extremely effective in this regard and that their fees were comparable to or less than others providing similar services.

In view of the urgent need to take immediate steps to address the impact of programatic changes on the human resources of the agency, and with the knowledge of the Institute's highly successful work in another Federal agency with similar mission, organization structure and staffing pattern, the FCC decided to retain River-at-Sunrise Institute to conduct a brief diagnostic study. The Institute completed the diagnostic study in a very short time. Their findings and recommendations were perceptive and sound. Most significantly, the Institute's staff quickly earned the confidence and trust of key agency officials. It must be emphasized that, as OD is a highly personalized activity, these attributes are a most critical prerequisite to an effective and productive consultancy.

It was the Commission's judgement that the Institute's past record, demonstrated skills and effectiveness in the diagnostic study of the FCC, fee and availability, coupled with the urgent need to address the organizational issues identified and clarified during the diagnostic study, combined to fully warrant a sole source procurement for an initial three-month organizational development effort. Accordingly, three orders were placed with the Institute to conduct a bureau and office chiefs retreat, a management skills workshop, and to provide 14 days of on-site process consulting services.

The result of this initial three-month effort were carefully monitored. During this period, the Institute's staff clearly demonstrated both their technical competence and ability to relate effectively to FCC staff at all levels. It was the consensus of all agency personnel who participated in this program that the Institute's staff had significantly aided them in improving internal communications and group effectiveness and had also enhanced their ability to address a variety of complex and sensitive administrative issues.

While several of the organization and management issues identified during the diagnostic study were resolved during this period, other critical areas required additional effort and new interrelated issues had been identified. It was the agency's judgement that progress during the initial three-month period had to be continued without interruption. Accordingly, in view of the continuing urgent need for assistance and the demonstrated ability and effectiveness of the Institute, the Commission decided to continue to utilize their services during the remainder of FY 1980.

In May 1979 one consultant who had been working with the FCC left the River-at-Sunrise Institute to establish his own non-profit organizational development consultancy -- New Matrix. Since May, the Commission has used the services of both the Institute and New Matrix in order to take advantage of the specialized skills and expertise offered by each.

It should also be noted that one of the underlying objectives of the Commission's organizational development program from the beginning has been to develop and enhance the skills of the Commission's staff so they can deal effectively with management issues without outside assistance. Consequently, requirements for this type of contractual assistance will decline in the future. Funds tentatively allocated for OD consulting services have been reduced by one third in FY 1981 and further reductions are anticipated in FY 1982.

Mitre Corporation

FCC-0320

This contract was let in response to Mitre Corporation's unsolicited proposal to assess the potential of spectrum efficient wide band signaling (spread spectrum modulation) for radio services licensed by the FCC. Spread spectrum techniques have had considerable use in military communication, but there has been little analysis of this type of modulation for non-Government services. Mitre has done considerable work in spread spectrum for military use and had looked at some civilian applications before submitting their proposal. This study was necessary as a part of the FCC's continual search for new methods to make more efficient allocation and use of the spectrum.

Dr. Kenneth Gordon

3094-0

This contract was awarded to Dr. Kenneth Gordon to obtain his consulting services for the economic implications of various rulemaking proceedings before the Commission. He is a respected economist and has published numerous articles and has extensive professional experience in regulatory economics and the interaction of economics and Law. Dr. Gordon was selected as a sole source contractor due to his microeconomic and analytical skills. He was the only known individual that was deemed highly qualified to perform the needed tasks in the available time.

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Parry D. Teasdale

2233-0

Mr. Teasdale was selected as a sole source contractor for a variety of reasons. First, he is an independent television producer and has writing experience including a book, scripts for television programs and numerous articles for media-related publications. Second, he has proven expertise in low power television technology and recently completed a comprehensive report for the FCC's Low Power Television Inquiry Staff, on the past experience and present prospects for very low power television broadcasting in North America entitled "A Micro-TV Service in the United States."

Mr. Teasdale's prior experience and proven capabilities in low power television research qualified him as the most adroit person to perform this follow-on research in low power TV.

Mar-Tech Strategies

FCC-0334

The purpose of this contract was to provide research support in connection with the Commission's current study of the corporate structure and operating activities of the Communications Satellite Corporation (COMSAT). The study was required by Section 505 of the International Maritime Satellite Telecommunications Act. An outside contractor was needed to research COMSAT's present and future role in satellite technology development and the effect that role may have on the overall development of satellite technology. The purpose of the research was specifically to assist the FCC's Common Carrier Bureau to review COMSAT's plans for application of its corporate technology and expertise to business ventures outside of its special INTELSAT and INMARSAT functions.

A contract for the research described above was awarded to Mar-Tech Strategies on a sole source basis for two reasons. First, the required tasks called for a research entity specializing in trends and developments in communication's technology markets. Second, the limited time available for the conclusion of the study necessitated an expeditious contract award so that the research product would be useful in preparing a recommended final report for Commission consideration.

Mar-Tech Strategies, the principal of which is Mr. Ronald Eward, was selected due to Mr. Eward's expertise in communications technology markets and his ability to extract the implications of technology development to regulatory policy. He is the author of several major

research studies performed for OTP/NTIA, including:

- Telecommunications Policy Issues in Electronic Mail
- The Information Society in the Electronic Age
- The Needs and Dilemmas of U.S. International Policy

In view of all these factors, Mar-Tech Strategies was selected for the research task.

Brookings Institution

Dr. Robert Crandall

0697-0

This contract was cancelled because the anticipated circumstances did not arise to require his consultancy.

Decision Science Applications

FCC-0340

Recent international discussion of frequency allocation, together with rapid development of new telecommunication concepts, and increasing demand for new assignments within existing spectral allocations has placed increasing pressure on the Federal Communication Commission to reexamine existing frequency assignments and frequency assignment policy. There is growing pressure for the assignment of additional TV channels, but the potential for new assignments is severely limited by a complex set of interference constraints. Because There is a critical need for computerized assistance to facilitate more efficient assignments and to evaluate technological alternatives for providing more efficient use of the available spectrum, a sole source contract was awarded to Decision Service Application (DSA) based on an unsolicited proposal submitted to the Commission. DSA's practical and theoretical application experience in the formulation and calibration of value criteria together with the systematic and logical proposed approach to study the problem of optimal allocation of TV channels determined that the contract should go to DSA.

Dr. Myron Gordon-Emjay Associates

FCC-325

This contract was let to acquire expert assistance for the preparation of testimony as to the required rate of return for AT&T (CC-Docket 79-63).

The firm of Emjay Associates was selected for three major reasons. First, the docket for which the tasks were to be performed was designated by the Commission as an expedited proceeding. The normal time period required to solicit and evaluate bids on a competitive basis would probably have caused a delay in the projected schedule for hearings in this case, and thus frustrate the Commission's order that the matter be handled quickly.

Second, the primary task to be performed required the preparation of testimony as to the required rate of return for AT&T, and cross-examination theron. This required the Contractor to be very familiar with finance in general and required rate of return for a communications common carrier in particular. Moreover, the issues required that certain complex accounting matters be addressed to resolve what is the appropriate AT&T capital structure for rate making purposes. Thus, the issues encompassed substantially more than the traditional rate of return analysis of a common carrier whose capital structure is known. Dr. Gordon, an eminent economist has previously testified on AT&T's required interstate and foreign rate of return, and has kept aware of--and in fact has been involved in-continuing F.C.C. activity designed to measure AT&T's required interstate and foreign rate of return. He

also has published numerous articles and books dealing with accounting, and has been a prominent member of the American Accounting Association. He thus has the background and ability to develop the required economic and accounting testimony in the abbreviated time period available.

Finally, it was essential that the contractor not be connected with other parties that might enter an appearance in this or similar proceedings. Dr. Gordon had no such interests that would have precluded him from rendering a fair and impartial opinion on AT&T's rate of return.

Arbitron Company

FCC-0341

This was let as a sole source contract because that was the only way in which there was any chance of both meeting the contract specifications and meeting the budgetary and time constraints imposed on the UHF Comparability Task Force by Congress. The UHF Comparability Task Force was funded by Congress in October of 1978 and charged to deliver its final report by the end of the fiscal year, 1980. The need to coordinate this project with other projects of the Task Force, and the time necessary to complete a complicated research design meant that the Task Force was not able to fully specify this project until the end of calendar 1979. This research design required the use of a contractor who already had collected television viewing data from a broad, national sample using a widely accepted methodology. In this way the Task Force could avoid the prohibitive cost of collecting this viewing data, and also could use viewing data subject to general scrutiny and validated by wide use for other purposes. This requirement reduced to a very short list the number of possible contractors who could meet the research specifications. Arbitron was selected from this short list. Arbitron does collect widely-used viewing data from a national sample using an acceptable methodology. Arbitron also was able to make a proposal that met the time and budgetary constraints of the Task Force. Preliminary discussions held by the Task Force to determine that its research project specifications could be met had made it clear that Arbitron was the only potential contractor who could meet these limitations.

Parry D. Teasdale

0295-0

Parry Teasdale was selected for this initial contract for the FCC's Low Power Television Inquiry Staff due to his special expertise in the technology of low power television. During his career, Mr. Teasdale has been a writer and independent television producer; his work has appeared on broadcast, cable television and in museums, galleries and libraries in the U.S. and Europe. His other writing experience includes scripts for television programs and video tapes, as well as numerous articles for media-related publications. Mr. Teasdale's knowledge of and experience in the broadcast industry made him the logical choice to research and prepare a report on low power television broadcasting in North America.

Dr. Walter Bolter

FCC-0342

One of the most important tasks currently facing the FCC is to develop cost allocation and tariff mechanisms that will ensure that telephone companies are properly reimbursed for providing local exchange access for interexchange services. Several different mechanisms are in effect to serve the purpose of reimbursing local exchange companies for access services. This contrast was executed to explore the design of access charges, options to access cost allocation and identify deficiencies in data. Dr. Walter Bolter was selected to perform this contract due to his breadth and depth of knowledge in jurisdictional cost separations and the division of revenue and settlements. There are very few experts in this rather narrow, esoteric field. Dr. Bolter has a specialized knowledge in the subject matter; he has been deeply involved in proceedings before the Commission involving cost accounting (Uniforms System of Accounts) and cost allocation (Docket No. 18128) methodologies. In addition, Dr. Bolter initiated and directed a pilot project for the Commission in the analysis and prescription of access charges. He has an intimate familiarity with the historical and substantive aspects of policy development in this field, and his academic training in economics, engineering and accounting made him an appropriate choice for this work.

Dr. Carson E. Agnew

2190-0

Dr. Carson Agnew is a leading regulatory and microeconomic policy economist. He has published a number of articles and reports in the area of telecommunications regulatory economics and industry structure and performance including a Recent Report that has the most thorough discussion ever written on frequency spectrum deregulation alternatives and market mechanisms. He has had extensive professional experience in regulatory economics including teaching, writing and holding an Assistant Professorship at Stanford University. Dr. Agnew has a B.S. in aeronautics and astronautics from M.I.T., and an M.S. and Ph.D. in engineering-economic systems from Stanford. He has taught courses on telecommunications and public policy, and the economics of public policy. At the consulting firms of Mathematics, Inc. and Mathtech Inc., he managed studies on the impact of revising the 1934 Communications Act on industry research and development and productivity; cable television demand; and changes in the F.C.C. uniform system of accounts. Based on Dr. Agnew's extensive and specialized experience in economic techniques for spectrum management, a sole source contract was awarded to him.

William G. Mister

2798-0

The FCC chose Professor Mister as a consultant for his specialized knowledge in the AT&T rate of return proceeding. Professor Mister has worked closely on this matter and has devoted considerable research to the subject, including the development of a computer program. During the time he was associated with the Commission during 1979 and 1980, he developed an intimate understanding of the rate of return proceeding. The basic purpose of this contract was to assist the Trial Staff with cross -examination of AT&T's witnesses on the computation of the cost of debt capital. It was felt that Professor Mister would be most helpful to the F.C.C. in preparing for this proceeding.

MarTech
OPP-8D-19
FCC-0334

1. The Commission contracted with MarTech Strategies, Inc. to research the present and future role of the Communications Satellite Corporation (Comsat) in communication satellite technology development and application. The purpose of this research was to assist the Commission in reviewing Comsat's plans for application of the corporate technology and expertise that it developed from its monopoly participation in INTELSAT to competitive non-INTELSAT lines of business. The research was procured as part of the Commission's overall effort in conducting the Comsat Study. The Comsat Study was done pursuant to section 505 of the International Maritime Satellite Telecommunications Act, which required the Commission to conduct a study of the corporate structure and operating activities of Comsat to determine whether any changes are required to ensure that Comsat is able to fulfill effectively its obligations and carry out its functions under the Communications Satellite Act of 1962 and the Communications Act of 1934. Section 505 required a report to be submitted to Congress no later than May 1, 1980.

2. The Commission's Common Carrier Bureau initiated the Comsat Study in January 1979. The initial phase of the study included an initial survey audit of Comsat and its subsidiaries. The major thrust of the initial survey audit was an on-premises staff examination of Comsat's operations to provide initial information regarding Comsat's corporate structure, managerial organization, operating activities, and financial practices.[1/] The on-premises staff examination took place over approximately

1/ The on-premises examination included a review of (1) Comsat's accounting practices and cost accounting systems, (2) the corporation's financial obligations, agreements, contracts, and arrangements, (3) the corporate structure and decision-making process, and (4) the corporation's activities and any agreements or contracts relative to those activities.

a three-month period. The initial survey audit was completed and a staff report prepared by June 1979. The report identified and described Comsat's operations and organization and the interrelationships between corporate elements in carrying out their functions. The report was used by the staff as a working reference for conducting the remainder of the study.

3. The second phase of the study consisted of (1) review of the information obtained from the initial survey, (2) determination of the areas of emphasis for the remainder of the study, (3) preparation of the Interim Report and Notice of Inquiry, and (4) preparation and implementation of a program for further conduct of the study. The program for further conduct of the study included an analysis of Comsat's economic and financial performance and additional on-premises review of Comsat's operations. The analysis of Comsat's financial and economic performance provided a basis on which to assess Comsat's overall marketplace role and its participation in diversified activities involving a variety of markets. The additional on-premises review of Comsat's operations included an update of previously obtained information regarding Comsat's corporate structure and operating activities. However, emphasis was placed on examining certain non-INTELSAT lines of business to assess the extent to which these ventures may result in actual or potential cross-subsidization and conflict of interest problems with respect to Comsat's statutory responsibilities. As a preliminary step to examining these lines of business, an on-site review was conducted of the operations and activities at Comsat Labs. The on-site review of Comsat Labs was completed and a staff report prepared in August 1979.

4. From its initial survey audit and the on-site review of the Labs, the Commission's staff determined that Comsat's involvement in communications satellite technology development was a major factor in the Corporation's increasing involvement in non-INTELSAT lines of business. The staff became concerned (1) that Comsat's ratepayers for INTELSAT services not bear an unreasonable burden in supporting Comsat research and development efforts which provide a base for Comsat's involvement in non-INTELSAT lines of business, and (2) that Comsat not utilize its monopoly role as the U. S. representative in INTELSAT and INMARSAT to gain unfair advantages in competitive technology development markets. The concerns were reflected by the Commission in its Interim Report and Notice of Inquiry released on October 19, 1979, which requested public comment on a number of issues raised as a result of the staff's initial work in conducting the study.

5. The staff conducted additional on-premises review of Comsat's operations following Commission release of the Interim Report and Notice of Inquiry. This review involved matters related to a variety of issues raised by the Interim Report and Notice of Inquiry. However, the staff believed that neither this on-premises review nor the comments the Commission would receive from interested parties in response to the Interim Report and Notice of Inquiry would provide sufficient information to assess the overall industry implications of Comsat's efforts in satellite technology development and application. The staff viewed such an assessment as necessary in determining whether Comsat may enjoy competitive advantages in satellite

technology development markets as a result of its unique INTELSAT roles. The staff,therefore, decided to seek assistance from an outside source who is knowledgeable about satellite technology development and has a proven capability of extracting its implications in terms of regulatory policy. The staff obtained this outside assistance on a sole-source basis from MarTech Strategies, Inc.

6. In a memoramdum to the Commission's Procurement Office dated November 5, 1979, the staff advanced two reasons for the sole-source approach in procuring MarTech's services as opposed to competitive procurement: (1) the tasks contained in the Statement of Work required a person who specializes in trends and developments in communications technology markets; and (2) the limited time remaining for the conclusion of the study necessitated that a contract be awarded expeditiously so that the contractor's product would be useful in preparation of a recommended final report to be considered by the Commission in April 1980 prior to submission to Congress on May 1. The staff recited MarTech's recognized background and past work in communications technology development. It emphasized that MarTech's experience coupled with the limited time remaining to complete the Comsat Study were compelling reasons to award a contract in an expeditious manner.

7. The contract was awarded to MarTech on January 4, 1981 by the Commission's Procurement Office. Pursuant to the terms of the contract, MarTech provided a draft report to the Commission in March. The staff used MarTech's draft in preparation of certain portions of a comprehensive Final Report and Order in the Comsat Study which it submitted to the Commission for consideration. The Final Report and Order addressed a variety of issues concerning Comsat's

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corporate organization and operations. It contained a chapter entitled "Competitive Advantages Related to Comsat's INTELSAT/INMARSAT Roles" (paragraphs 213 through 260) which was heavily influenced by MarTech's draft. The Final Report and Order was adopted by the Commission on April 22 and transmitted to Congress on May 1, 1980. MarTech submitted a final draft to the Commission in July 1980.[2/] MarTech's final draft was placed in the Commission's Comsat Study docket file number 79-266 to accompany the Commission's Final Report and Order. It is therefore available for public inspection, and may be useful to interested parties who wish to file comments in the Commission's rulemaking proceeding (Docket No. 80-634) recently initiated to consider implementation of the recommendations made in the Comsat Study.

2/ Under the terms of the contract, MarTech was to submit its final draft 150 days after the contract award, however, a 30-day extension was granted by the Commission.

William K. Jones - P.O. 0246-0

Professor Jones of Columbia University Law School has been generally recognized for at least the past 12 years as the senior authority among law school professors on the topic of economic regulation of broadcasting. He is also a pre-eminent authority on FCC common carrier regulation. The purpose of this contract was to gain the advice of Professor Jones on the design of Network Inquiry research projects and his review of our initial drafts of key policy papers.

Roger Noll - P.O. 0346-0

Professor Noll of the California Institute of Technology has co-authored one of the two leading books on television economics and has written about almost every major FCC broadcasting proceeding in the past decade. It would have been almost unthinkable to conduct the Network Inquiry without consulting him. The purpose of this contract was to gain Professor Noll's advice on the design of our research projects and his review of our initial drafts of key policy papers.

Ronald Soligo - 0247-0

Professor Soligo, of Rice University, has co-authored leading papers on the economics of the network-affiliate and network-program supplier relationships. The Network Inquiry prepared extensive reports on each of these topics and this contract permitted Professor Soligo to participate directly with the staff in performing econometric calculations and drafting these reports.

Brookings Institution; Robert W. Crandall - 0250-0

Dr. Crandall, former economic analyst for FCC Commissioner Glen Robinson, has published leading articles on the economics of the television program supply industry. Our own work required us to re-study many of the issues addressed in Crandall's earlier writings and the purpose of this contract was to obtain his review of those portions of our papers.

Herbert Zeltner - FCC-0255-0

Mr. Zeltner had for many years been a leading executive in the advertising industry. He now serves as a consultant to several ad agencies and does substantial work for the dominant industry weekly publication, Advertising Age. He is particularly expert on the structure and organization of the advertising industry and the growing utilization by traditional ad agencies of new technologies, such as cable television. We prepared a major report on the television advertising market. The purpose of this contract was to gain independent, expert review of our report by a person well-versed in the industry's daily operations.

Sherwin Rosen- FCC-0256-0

Professor Rosen, of the University of Chicago, is the nation's foremost authority on the application of hedonic pricing models to economic behavior. In the course of our study of television advertising markets, it became apparent that use of a hedonic pricing model would substantially further our analysis. The purpose of this contract was to gain expert technical assistance on the research design for this study and review of its preliminary draft.

Professor Thomas Schuessler - FCC- 0286-0/0343

Professor Schuessler, of the University of Arizona Law School, has written the principal legal academic papers on the FCC's 1970 network rules. He is presently the recipient of a large foundation grant to write a treatise on the law of FCC network regulation, which will be the only book of its kind. Two FY 80 contracts were entered into with Professor Schuessler. The first permitted us to obtain an extensive legal analysis of one of the 1970 rules (the "financial interest rule") which was necessary to dispose of a major petition for rule-making that accompanied initiation of the Network Inquiry. The second contract permitted us to obtain the virtually exclusive services of Professor Schuessler for approximately five months in the legal analyses of every prior Commission network-regulation proceeding. These analyses were integral parts of our comprehensive concluding report to the Commission.

Kenneth Mazer - FCC-0554-0

During FY 80 it became apparent that we had a need for research in two areas: (1) a detailed factual investigation of the technology and economic structure of the satellite and microwave industries that interconnect local broadcast stations, cable systems and other program outlets; (2) a thorough compilation and review of dozens of statutes and judicial decisions that address the question of the extent of the FCC's present jurisdiction to regulate television networks. This contract enabled us to utilize Mr. Mazer for these purposes. We selected him because he had previously performed similar research for the Network Inquiry at a very high level of proficiency

and because during his prior experience as an intern at the Citizens Communication Law Center, a public interest law firm, Mr. Mazer had acquired a thorough familiarity with broadcast law and extensive knowledge of research methodology in this field.

Willard G. Manning - FCC-0604-0

Dr. Manning, an economist employed by the Rand Corporation, is co-author of the other (see Professor Roger Noll, upra) leading book on television economics. His contributions to this field include seminal work on the organization and behavior of the program supply industry. The purpose of this contract was to gain Dr. Manning's expert views on the research design for our own comprehensive examination of the program supply industry and his review of preliminary drafts of that report.

Kristin G. Glen - FCC-0854-0

Professor Glen was, at the time this contract was awarded, on the faculty of the Hofstra University Law School. She has subsequently accepted an appointment to the New York Law School faculty and has been elected to a judicial post in the New York court system. Professor Glen was awarded this contract to provide papers for inclusion in our final report on Commission regulation of pay television services (so-called "anti-siphoning" rules) and alternative uses of multi-point distribution service facilities. Professor Glen was selected for these projects because she had previously prepared for the Network Inquiry extensive analyses of the subscription television (STV) and multi-point distribution service (MDS) industries and she therefore had the unique ability to execute this follow-up work. Her STV and MDS reports had been released by the Network Inquiry for public comment and were included in our final set of reports.

Dennis John Dort - FCC-1348-0

Mr. Dort, former staff attorney for the Carnegie Commission study of the public (non-commercial) broadcast system (PBS), had been undertaken during FY 79 to prepare for the Network Inquiry a comprehensive report on the networking aspects of PBS. The present contract was awarded because it was necessary to prepare to re-evaluate that report in light of public comments and to enable the Network Inquiry to obtain further documentation, where appropriate, for assertions in the report. Because Mr. Dort had prepared the basic study, he was uniquely qualified to undertake these tasks.

Lucas A. Powe, Jr. - FCC- 1470-0

The Network Inquiry had a specific need to analyze the extent to which the First Amendment constrained the FCC's ability to regulate the network practices we studied. Professor Powe, of the University of Texas Law School, is one of the most experienced law school teachers in the field of broadcast regulation and has published more major articles on the applicability of the First Amendment to television than anyone else in the past ten years. At the time this contract was awarded, he had also completed an excellent major paper on another topic for the Network Inquiry.

Frederick A. Raines - FCC-1601-0

Dr. Raines, Professor of Economics at Washington University in St. Louis, is widely regarded as a leading authority in theoretical and applied econometrics. As part of our examination of the program supply industry, we decided to attempt an analysis of some of the determinants of the prices

paid by the networks for independently produced programs. We had accumulated data that appeared especially well-suited for these purposes, but such an analysis had never before been attempted. We concluded, therefore, that we could not proceed without an especially careful, outside, objective study of the reliability and significance of our data and the propriety of the statistical methods to be employed in analyzing it. Dr. Raines was especially well-versed in these theoretical statistical issues and was awarded the contract to provide this assistance.

Rand Corp. - Dr. R.E. Park - FCC- 0335

In the early 1970's, the Rand Corporation issued a report by Dr. R. E. Park that estimated the relative importance of various financial and technological conditions inhibiting the emergence of additional television networks. That report is an excellent analytic document and is unique in the field. As part of the comprehensive, concluding report of the Network Inquiry we wished to present the Commission an up-dated version of that study, employing recent data and making technical improvements in the mode of analysis. The Rand Corporation and Dr. Park seemed obviously uniquely well-qualified to prepare such a paper. In addition, substantial copyright questions might have emerged had someone else been awarded the contract and the underlying computer model system for the project was already in place at the Rand Corporation.

Mr. Thomas Krattenmaker - FCC- 2647-0

When I accepted the job as co-Director of the Network Inquiry, it was with the clear understanding that I would be free to return to my position as Professor of Law at Georgetown University for the Fall, 1980 semester.

During the Spring and Summer of 1980 it became clear that the work of the Inquiry would continue into October, 1980 and that administrative loose-ends would remain for some time thereafter. Consequently, it became necessary to arrange to have the Co-Director position filled for an indeterminate time after August, 1980. Since I had filled that position since June, 1978 and the position was to be abolished shortly, I was necessarily uniquely qualified and it was determined to handle my remuneration through a consultant contract because I would not relinquish my position at Georgetown.

I hope the foregoing serves to answer the questions posed in the memo of October 31. I would be glad to try to answer any questions that remain. Stan Besen and I endeavored to be especially careful in allocating our research budget among competing alternative uses and in choosing contractors. We believe that we obtained very substantial amount of work, at a very high level of proficiency, from our sole-source contracts and that it may have been otherwise impossible to obtain comparable output for the costs incurred.

SOLE SOURCE JUSTIFICATION

FCC 2797-0

A sole source contract was awarded to John M. Taff, a highly qualified engineer who was extensively involved with allocation matters during his thirty years at the FCC for two reasons:

- Commissioner Lee needed expert assistance from an engineer with extensive experience in allocation matters who was thoroughly knowledgeable of the Commission's processes, and;
- the community of qualified people is narrow. Most of the engineers with the required expertise are employed either at the FCC or are in private industry in positions which would involve a conflict of interest.

Consulting Services to the Separated Trial
Staff in the AT&T Private Line Rate Structure
CC Docket No. 79-246

November 4, 1980

Contract Number FCC-0330, ED-80-14A

The statement of sole source justification was as follows: "The Trial Staff of the Common Carrier Bureau desires to contract with Dr. Lee L. Selwyn, Economics and Technology, Inc., 101 Tremont Street, Boston Massachusetts 02108 to perform the tasks described in the attached Statement of Work. We believe that Dr. Selwyn and his organization are uniquely able to perform the necessary work, and that a request for proposals would result in a finding that he is the most qualified bidder. Several considerations lead to this conclusion.

"First, the proceeding for which the tasks are to be performed is on a very tight time schedule. The Commission in its Notice of Inquiry and Notice of Proposed Rulemaking (FCC 79-565 released October 17, 1979) set January 7, 1980 as the date for the filing of the first comments in the proceeding. The Trial Staff was not so designated until an Order (Mimeo No. 22853) was released October 31, 1979 naming the chief of the Hearing Division and his staff as the separated Trial Staff. Moreover, the dates for subsequent filings in the proceeding are February 22 and March 24, 1980. Thus, work must begin in earnest. The normal time period required to solicit and consider competitive bids would undoubtedly hinder substantially the Trial Staff's ability to prepare for and submit timely worthwhile comments. As can be seen from a reading of the Commission's

NOI/NPRM, the Trial Staff and its consultants must address some very complex tariffs and questions concerning those tariffs. Time is of the essence.

"A review and an analysis of the existing rate structure of AT&T's private line offerings plus recommendations concerning possible restructuring of those rates are the primary tasks assigned to the Contractor in the associated Statement of Work. The Contractor must have both general knowledge of all sorts of rate structures and intimate knowledge of AT&T's private line offerings. The Contractor must also have the facility to reconstruct or generate rate structures. Furthermore, the complexity of this proceeding requires the use of resources such as computerized data base generation and adept manipulation of that data base in order to analyze and comment on existing and proposed rate structures. Dr. Selwyn and ETI have all of these capabilities and they utilize them excellently. Indeed, in a recent case (Docket No. 20690 -- AT&T's 1.544 Mbps DDS offering), Dr. Selwyn, among other things, performed analysis of an existing rate structure, pointed out its deficiencies and generated a different rate structure. The Administrative Law Judge in his Initial Decision (FCC 79D-36 released July 27, 1979) adopted Dr. Selwyn's approach and result with minor omissions, if any. Exceptions to the Initial Decision are now pending before the Commission. Moreover, ETI and Dr. Selwyn have done computerized data base work for the Minnesota Public Service Commission which forms an excellent starting point in terms of technique

and software availability for the tasks required in this proceeding.

"Accordingly, it is concluded that the contract for the tasks assigned in the associated Statement of Work for CC Docket No. 79-246 should be awarded to Dr. Lee L. Selwyn, Economics and Technology, Inc., on a sole source basis."

James O Juntilla
Chief, Hearing Division
Common Carrier Bureau

JULIEN J. STUDLEY, INC.
1333 NEW HAMPSHIRE AVENUE, N. W.
WASHINGTON, D. C. 20036

CONSULTING TIME SHEET

Time: 0800 - 0900, 0900 - 2000

Date: August 7, 1980

FCC
Client

Gettysburg, 2000 L, etc.
Location

269
Sequence Number

NATURE OF CONSULTATION

Meeting with Tom Campbell at the Bread Oven. Meeting with Perez and LeMasters.

ACTION REQUIRED

EXPENSES & ALLOCATIONS

	Hours	Fee	Dollars
Total Used This Report	12 hrs	$85.00	$1,020.00

FCC - PROJECT EXODUS

1. The FCC requirements currently layout to 28 floors in both towers. This is because of the following reasons:

   a. Large administrative support requirement - 40% of total requirement. The current requirements should be further investigated to determine if this is a realistic amount:

      135,053 square feet x $16.00 square foot = $2,160,848/year

   b. The bureaus and departments allocated to Tower 2 are the largest in the agency; when these requirements are separated into floors, extra unnecessary square footage develops on each floor. Approximately 32,000 square feet are currently wasted because of the proposed stacking plan. It is suggested that the FCC reanalyze this plan.

      32,000 square feet x $16.00 square foot = $512,000/year

   c. Proposed open-office furniture creates a 6% (103,000 square feet) savings. Usually modular furniture will decrease the required floor space by 16 to 20 percent. The lower percentage of projected savings due to the large administrative support space and the fact that GS Levels 1-6 are already housed in 60 square feet. The projection was based that GS 1-13 would utilize modular furniture.

      103,000 square feet x $16.00 square feet - $648,000/year

2. To further reduce the projected floors of the towers, the FCC might consider reducing the size of the offices below current GSA standards.

3. Does the FCC prefer higher initial costs and lower life-cycle costs or lower initial costs and higher life cycle costs?

   Example:

   $16/square foot x 18,650 square feet x 28 floors = $8,314,880.00
   Durable carpet, life expectancy 10 years

   $15/square foot x 18,650 square feet x 28 floors = 7,795,200.00
   Inexpensive carpet, life expectancy 5 years

   Initial Cost Difference = $ 519,680.00

   Cost of carpet replacement in 5 years with like quality
   $1.20/square foot x 18,650 square feet x 28 floors = $626,640.00

   Savings of durable carpet in 5 years = $106,960.00

1000 Wilson Blvd.
Tower One - Phase I

FLOOR	SF/FLR	USER GROUP	GROUP SF	EXTENDED SF	SF.DIFF
19	13,5790	Sci & Tech-Chief	6,937	6,937	
		Research & Analysis	5,815	12,752	+827
18	13,5790	S&T-Spec Mgt	7,468	7,468	
		P.R.-Rules	6,084	13,552	+27
17	13,5790	P.R.-Chief	4,512	4,512	
		Policy Dev	1,440	5,952	
		Compliance	4,945	10,897	
		Licensing	512	11,409	
		CTV-Spec R&M	2,265	13,674	-95
16	13,5790	CTV-Chief	1,685	1,685	
		Policy Review	757	2,442	
		Research	1,120	3,562	
		Records & Sys.Mgt	3,600	7,162	
		Comp.	1,232	8,394	
		Exec.Dir-Env.Ser	2,196	20,590	
		Personnel-Train	2,355	12,945	+634
15	13,5790	Exec.Dir-Operation Support	13,579	13,579	0
14	13,5790	Exec.Dir-Operation Support	13,579	13,579	0
12	13,5790	Exec.Dir-Operation Support	1,513	1,513	
		Visiual Info.	742	2,255	
		Emer. Comm	1,975	6,575	
		Procurement	1,397	7,972	
		C.C.-Account & Audit	4,415	12,387	
		Hearing	2,345	4,600	+1192
11	13,5790	C.C.-Dom. Fac.	9,270	9,270	
		Enforcement	3,545	12,815	
		Exec Dir-Record Mgt	1,120	13,935	-356
10	13,5790	B.B.-Hearing	4,380	4,380	
		Review Board	3,943	8,323	+5256
9	13,5790	ALJ	11,845	11,845	+1734

FCC
1000 Wilson Blvd.
Tower One - Phase Two

FLOOR	S.F./FLR	USER GROUP	GROUP S.F.	EXTENDED S.F.	S.F. DIFF.
22	13,921SF	FOB-Chief	4,464	4,464	
		Violations	2,246	6,710	
		Enforcement	4,379	11,089	
		Regional Services	2,499	13,588	+333
21	13,921SF	FOB-Engineering	1,684	1,684	
		B.B.-Renewal & Tran.	9,435	11,119	
		Sci. & Tech.- Author & STD.	1,560	12,679	+1242
20	13,389SF	S&T-Chief	6,937	6,937	
		Research & Analysis	5,815	12,752	+637
19	13,579SF	S&T-Spec. Mgt.	7,468	7,468	
		P.R.-Rules	6,084	13,552	+27
18	13,579SF	P.R.-Chief	4,512	4,512	
		Policy Development	1,440	5,952	
		Compliance	4,945	10,897	
		Licensing	512	11,409	
		C.T.V.-Spec. R&M	2,265	13,674	-95
17	13,579SF	CTV-Chief	1,685	1,685	
		Policy R&D	757	2,442	
		Research	1,120	3,562	
		R&S Mgt	3,600	7,162	
		Comp.	1,232	8,394	
		Exec. Dir- Eniv. Ser.	2,196	10,590	
		Person. Train.	2,355	12,945	+634
16	13,579SF	Exec. Dir. - Oper. Sup't.	13,579	13,579	0
15	13,579SF	Exec. Dir. - Oper. Sup't.	13,579	13,579	0
14	13,579SF	Exec. Dir. - Oper. Sup't.	1,513	1,513	
		Visual Info.	742	2,255	
		C.C. - Hearing	2,345	4,600	
		B.B. - Hearing	4,380	8,980	
		Review Bd.	3,943	12,923	+656
12	13,579SF	C.C.-Enforcement	3,545	3,545	
		Dom. Fac.	9,870	13,415	+164
11	13,579SF	OED - Procurement	1,397	1,397	
		Record Mgt.	1,120	2,517	
		Emergency Comm.	1,975	4,492	
		OED (Oper.) & Finance	4,585	13,492	+87
		C.C. - ACC & Audit	4,415	8,907	

FCC
1000 Wilson Blvd.
Tower One - Phase Two

FLOOR	S.F./FLR	USER GROUP	GROUP S.F.	EXTENDED S.F.	S.F. DIFF.
10	13,579SF	ALJ	11,845	11,845	+1734
9	13,579SF				

1000 Wilson Blvd.
Tower Two-Phase Two

FLOOR	SF/FLR	USER GROUP	GROUP S.F.	EXTENDED S.F.	S.F. DIFF.
22	13,921SF	Chairman & Commissioners	12,855	12,855	+1066
21	13,921SF	Commissioners	9,240	9,240	
		Q.C.-Chief	3,270	12,510	
		Exec. Dir. Main Off.	1,124	13,634	+287
20	13,389SF	G.C.-Litigation	3,175	3,175	
		Legislation	1,335	4,510	
		A.C.	2,980	7,490	
		Office Trans. & Policy	5,695	13,185	+204
19	13,579SF	C.C.-Chief	5,295	5,295	
		Int. Conf. Staff	2,060	7,355	
		Int. Fac. Planning	2,820	10,175	
		Int. Fac. Author. & Lic.	2,775	12,950	+625
18	13,579SF	CC-Consumer Affairs	1,925	1,925	
		Policy & Planning	2,465	4,390	
		Tariff	6,300	10,690	
		Gen. Req.	1,700	12,390	+1189
17	13,579SF	CC-Mobile Services	5,990	5,990	
		ECON	4,725	10,715	
		Credit Union	470	11,185	
		Health Unit	985	12,170	+1409
16	13,579SF	B.B.-Facilities	12,295	12,295	+1284
15	13,579SF	B.B.-Chief	5,585	5,585	
		License	7,065	12,650	+929
14	13,579SF	B.B.-Complaints & Compliance	6,330	6,330	
		Public Affairs	7,378	13,708	-129
12	13,579SF	B.B.-Policy & Rules	9,620	9,620	
		Office of Sec'y.	3,500	13,120	+459
11	13,579SF	Office of Sec'y.	11,859	11,859	
		Info. Mgt. GP	1,600	13,459	+120
10	13,579SF	Info. Mgt. GP	13,579	13,579	0
9	13,579SF	Info. Mgt. GP	13,579	13,579	0

Form A-78
March 1976

#3 MCMC 7/1

RC. CAM REFERENCE NO. 5D80-41A

BUREAU/OFFICE REF. NO.

PURCHASE REQUEST

FILE

I - RESPONSIBILITY CENTER/CENTRAL ACCOUNT MANAGER

APPROPRIATION YEAR	OBJECT	EXPENSE ELEMENT
1980	23	25.15

ORDERED BY (Name): Tom Campbell

II - PROCUREMENT DIVISION

PURCHASE ORDER NO. | DATE

TELEPHONE NO.: 25316 | DATE REQUIRED: 9-29-80 | DELIVER TO ROOM: 848

ITEM NO.	STOCK MODEL PART NUMBER	DESCRIPTION REMARKS	QTY	UNIT	UNIT COST	TOTAL COST
		Modification to FCC Contract 332 Julien J. Studley, Inc. Increase $30,000.00 Work for the Exodus project.			$30,000	$30,000
				GRAND TOTAL →		$30,000

APPROVED BY BUREAU OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL: DATE

R. D. Lichtwardt, Executive Director

I certify sufficient funds are available in the above OBAR/PE for this purchase.

(All previous editions of this form are cancelled.)

INSTRUCTIONS

HEADQUARTERS:

1. FORWARD ORIGINAL AND 1 COPY TO THE PROCUREMENT DIVISION.
2. USE THIS FORM ONLY FOR REQUESTING PURCHASE OF ITEMS OR SERVICES TO BE CHARGED AGAINST THE OPERATING BUDGET OF THE ORIGINATING OFFICE. FOR ITEMS WITH NO FEDERAL STOCK NO. GIVE FULL DESCRIPTION INCLUDING MFG MODEL/PART NO. USE FORM A-124 FOR REQUESTING OFFICE EQUIPMENT AND FURNISHINGS AND A MEMO TO CAM FOR REQUIREMENTS UNDER HIS AUTHORITY.
3. THIS FORM MUST BE SIGNED BY BUREAU/OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL.

FIELD INSTALLATIONS:

1. FILL IN ADDITIONAL INFORMATION BELOW AND FORWARD ORIGINAL AND 3 COPIES TO HEADQUARTERS.

APPROVED BY (FIELD OFFICE)

DELIVER TO (ADDRESS)

RECEIVED SEP 29, 1980

320

STANDARD FORM 30, JULY 1966
GENERAL SERVICES ADMINISTRATION
FED PROC REG (41 CFR) 1-16.101

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

PAGE 1 OF 2

1. AMENDMENT/MODIFICATION NO.	2. EFFECTIVE DATE	3. REQUISITION/PURCHASE REQUEST NO.	4. PROJECT NO. (If applicable)
3	9/29/80	FC-80-41A	

5. ISSUED BY CODE

Federal Communications Commission
Procurement Branch
P.O. Box 19408
Washington, D.C. 20036

6. ADMINISTERED BY (If other than block 5) CODE

7. CONTRACTOR NAME AND ADDRESS CODE FACILITY CODE

Julien J. Studley, Inc.
1333 New Hampshire Avenue N.W.
Washington, D.C. 20036
(Street, city, county, state, and ZIP Code)

8. ☐ AMENDMENT OF SOLICITATION NO. _____
DATED _____ (See block 9)

☒ MODIFICATION OF CONTRACT/ORDER NO. FCC-0332
DATED 1/14/80 (See block 11)

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:

(a) By signing and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10. ACCOUNTING AND APPROPRIATION DATA (If required)

APPROPRIATION	OBAN	EE	INCREASE	ADJ TOTAL
2700100S&E,FCC,1980	23	25.15	$30,000.00	$93,160.00

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS

(a) ☒ This Change Order is issued pursuant to 41 USC(252) (C)(10)

The Changes set forth in block 12 are made to the above numbered contract/order.

(b) ☐ The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 12.

(c) ☐ This Supplemental Agreement is entered into pursuant to authority of _____

It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION

1. By increasing this order by the amount listed in Block 10, above.

MR 9/29/80

Except as provided herein, all terms and conditions of the document referenced in block 8, as heretofore changed, remain unchanged and in full force and effect.

13. ☒ CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT ☐ CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE

14. NAME OF CONTRACTOR/OFFEROR

BY _____
(Signature of person authorized to sign)

15. NAME AND TITLE OF SIGNER (Type or print)

16. DATE SIGNED

17. UNITED STATES OF AMERICA

BY _____
(Signature of Contracting Officer)

18. NAME OF CONTRACTING OFFICER (Type or print)

Kenneth A. Gordon MPR/jf

19. DATE SIGNED

UNITED STATES GOVERNMENT

memorandum

DATE: OCT 3 1980

REPLY TO ATTN OF: Associate Executive Director for Operations

SUBJECT: Purchase Request

TO: Chief, Procurement Branch

Reference my Purchase Request in the amount of $30,000 dated September 29, 1980, for the J. J. Studley contract.

Take action to cancel this requirement by no later than October 6, 1980.

Thomas P. Campbell

RECEIVED
OCT 3 3 47 PM '80
PROCUREMENT BRANCH, FCC

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

ISSUED BY: 1919 "M" Street, N.W. Washington, D. C. 20554

Date of Order: 1979

This number must appear on all packages and papers relating to this order.

Page ____ of ____

→ VENDOR ATTENTION: Fill in columns (6) and (7), certify as Payee on Copy 1 of this form and submit as your INVOICE. Retain Copy 2 for your copy of the ORDER. See further instructions on Copy 2 of this form.

Order No. 0327-0(23225.15)

Bureau Schedule No.

Contract No.

Bureau Voucher No.

ACCOUNTING AND APPROPRIATION DATA

Appropriation: 2700100 S&E, FCC, 1980
OBAN: 23
EE:
DN: 25.15

Requisitioning Office/Number: ED-007-80

Purchase Authority: USC 41 (252) (C) (3)

VENDOR (Name and address including ZIP Code)

TO →

Computer Sciences Corporation
Systems Division Headquarters
6565 Arlington Blvd.
Falls Church, VA 22046

Attn: Tom Le Masters

SHIP TO (Consignee and address, including ZIP Code)

Federal Communications Commission
1919 M St., N.W. Room 848
Washington, D.C. 20554

VIA

Shipping Point

GOVERNMENT BILL OF LADING NO.

DELIVERY TERMS

Delivery required on or before: 12/31/79

Discount Terms: Net

Type of Order: Purchase [X] — Reference your QUOTE, DATED ____ [ ] Written [X] Oral

Delivery [ ] — Delivery F.O.B. [X] Destination [ ] Origin

UNITED STATES OF AMERICA

Signature of Auth. Purchasing or Contracting Officer
H. R. Sharp 10/9/79

Description (1)	Unit (2)	Unit Price (3)	Quantity Ordered (4)	Amount (5)	Quantity Shipped (6)	Amount Billed (7)
1. Services, nonpersonal, necessary to provide all plant, labor, material and engineering expertise to prepare office landscaping, to perform inspection services of in-progress and completed work, and to assist in preparation of a Statement of Work for office landscaping and to inspect construction of same. Estimated cost of these services not to exceed $10,000.00.	Job	$10,000.00	1	$10,000.00		
(CHECK ONE) [X] Small [ ] Large [ ] Inter-Governmental			TOTALS →	$10,000.00		

10/10/79

MEMORANDUM

MPR 10/9/79

FCC Form 147 (2-77) ed

6. PROCUREMENT DIVISION COPY

SOLE SOURCE JUSTIFICATION

The Agency has an urgent requirement for the performance of specialized drafting, architectural, and construction services in connection with office space acquisition. This requirement is time-sensitive and requires expedited action to meet urgent expansion requirements imposed by the Congress. The peculiar and unique qualifications of Computer Science Corp., Arlington, VA, are immediately available and will satisfy the exigencies of this requirement without time delay incidental to normal 75-90 days in a Procurement cycle.

ISSUING OFFICE: 1919 "M" Street, N.W. Washington, D. C. 20554

Date of Order: JAN 23 1980

This number must appear on all packages and papers relating to this order.

Page ____ of ____

→ VENDOR ATTENTION: Fill in columns (6) and (7), certify as Payee on Copy 1 of this form and submit as your INVOICE. Retain Copy 2 for your copy of the ORDER. See further instructions on Copy 2 of this form.

Order No.: 1076-0(23223.15)

Bureau Schedule No.:

Contract No.:

Bureau Voucher No.:

ACCOUNTING AND APPROPRIATION DATA

Appropriation: 2700100 S&E, FCC, 1980
OBAN: 23
EE: 25.15
DN:

Requisitioning Office/Number: ED-SO-16A

Purchase Authority USC 41 (252) (C) (3)

VENDOR (Name and address including ZIP Code)

TO →
Computer Sciences Corporation
Systems Division Headquarters
6565 Arlington Blvd.
Falls Church, VA 22046

Attention: Tom LeMasters

SHIP TO (Consignee and address, including ZIP Code)

Federal Communications Commission
1919 M St., N.W., Room 848
Washington, DC 20554

VIA

Shipping Point

GOVERNMENT BILL OF LADING NO.

DELIVERY TERMS

Delivery required on or before: 2/29/80

Discount Terms: Net

Type of Order: Purchase [X] Delivery [ ]

Reference your QUOTE, DATED ____ [ ] Written [X] Oral

Delivery F.O.B. [X] Destination [ ] Origin

UNITED STATES OF AMERICA

By: Signature of Auth. Purchasing or Contracting Officer
Marguerite Walsh Sharp

Description (1)	Unit (2)	Unit Price (3)	Quantity Ordered (4)	Amount (5)	Quantity Shipped (6)	Amount Billed (7)
1. Services, non-personal, necessary to provide all plant, labor, material and engineering expertise to prepare office landscaping, to perform inspection services of in-progress and completed work, and to assist in preparation of a statement of work for office landscaping and to inspect construction of same. Cost of this work not to exceed $10,000.00	Job	$10,000.00	1	$10,000.00		
(CHECK ONE) [X] Small [ ] Large [ ] Inter-Governmental			TOTALS →	$10,000.00		

FINANCE BRANCH 17 46

OBLIGATED

SHIPMENT NUMBER: PARTIAL / FINAL

DATE RECEIVED

RECEIVED AND INSPECTED AT:

REPORT OF REJECTIONS

SIGNATURE OF AUTHORIZED U.S. GOV'T REPRESENTATIVE RECEIVING MATERIALS AND OR SERVICES

DATE

TITLE

✓ WHEN MATERIALS AND OR SERVICES HAVE BEEN RECEIVED SIGN, DATE & RETURN TO PROCUREMENT DIVISION IMMEDIATELY

Signature: [signature] Date: 2/19/80

5. RECEIVING REPORT (Procurement Division)

FCC Form 117 12 77 ed.

SOLE SOURCE JUSTIFICATION

The Agency has an urgent requirement for the performance of specialized drafting, architectural, and construction services in connection with office space acquisition. This requirement is time-sensitive and requires expedited action to meet urgent expansion requirements imposed by the Congress. The peculiar and unique qualifications of Computer Sciences Corp., Arlington, VA, are immediately available and will satisfy the exigencies of this requirement without time delay incidental to normal 75-90 days in a Procurement cycle.

FCC-0337 | RFP-80-16 ☐ ADVERTISED (IFB) ☒ NEGOTIATED (RFP) | 2-29-80 | ED-80-23A

ISSUED BY: Procurement Branch, Federal Communications Commission, P.O. Box 19408, Washington, D.C. 20036

CODE

ADDRESS OFFER TO (If other than block 7): if hand carried: 1229 20th St., N.W. Room A-104 Procurement Branch

In advertised procurement "offer" and "offeror" shall be construed to mean "bid" and "bidder"

SOLICITATION

9. Sealed offers in original and 6 copies for furnishing the supplies or services in the Schedule will be received at the place specified in block 8, or if handcarried, in the depository located in see 8, until 3-3-80 (Date) local time 4:00 (Hour)

If this is an advertised solicitation, offers will be publicly opened at that time.

CAUTION – LATE OFFERS: See para. 7 and 8 of Solicitation Instructions and Conditions.

All offers are subject to the following:

1. The Solicitation Instructions and Conditions, SF 33-A, 7-77 edition which is attached or incorporated herein by reference.
2. The General Provisions, SF 32, _____ edition, which is attached or incorporated herein by reference.
3. The Schedule included herein and/or attached hereto.
4. Such other provisions, representations, certifications, and specifications as are attached or incorporated herein by reference. (Attachments are listed in schedule.)

FOR INFORMATION CALL (Name & telephone no.) (No collect calls) ▶

SCHEDULE

10 ITEM NO	11 SUPPLIES/SERVICES	12 QUANTITY	13 UNIT	14 UNIT PRICE	15 AMOUNT
1.	Services, nonpersonal, necessary to provide all plant, labor, material and engineering expertise to prepare office landscaping, to perform inspection services of in-process and completed work, and to assist in preparation of a statement of work for office landscaping and to inspect construction of same.	1	job	indefinite quantity	

See 2.304(c)(1) and (2) of FPR, page 4

OFFER (pages 2 and 3 must also be fully completed by offeror)

In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

6. DISCOUNT FOR PROMPT PAYMENT (See par. 9, SF 33-A)
10 CALENDAR DAYS | 20 CALENDAR DAYS | 30 CALENDAR DAYS | CALENDAR DAYS

17. OFFEROR — CODE | FACILITY CODE

NAME AND ADDRESS (Street, city, county, State and ZIP code): COMPUTER SCIENCES CORPORATION, Systems Division, 6565 Arlington Boulevard, Falls Church, Virginia 22046

AREA CODE AND TELEPHONE NO ▶ (703) 533-8877

☐ Check if remittance address is different from above – enter such address in Schedule

18. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print): R. W. Steele, Vice President

19. SIGNATURE: R W Steele

20. OFFER DATE: 3/3/80

AWARD (To be completed by Government)

21. ACCEPTED AS TO ITEMS NUMBERED: all

22. AMOUNT: see individual delivery orders

23. ACCOUNTING AND APPROPRIATION DATA: APPROPRIATION 2700100 S&E,FCC,1980 | OBAN 23 | EE 25.15

24. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK 7

25. NEGOTIATED PURSUANT TO: 10 U.S.C. 2304(a)( ) | X 41 U.S.C. 252(c)(10)

26. ADMINISTERED BY (If other than block 7) — CODE

27. PAYMENT WILL BE MADE BY — CODE: Finance Officer, 1919 M Street, N.W., Washington, D.C. 20554

28. NAME OF CONTRACTING OFFICER (Type or print): Kenneth A. Gordon, CJG

29. UNITED STATES OF AMERICA — BY (Signature of contracting officer): Kenneth A Gordon

30. AWARD DATE: 3-5-80

Award will be made on this form, or on Standard Form 26, or by other official written notice.

FEDERAL COMMUNICATIONS COMMISSION TOTAL CONTRACTS*

YEAR	NUMBER OF CONTRACTS	AMOUNT	NUMBER OF COMPETITIVE	AMOUNT	NUMBER OF NON-COMPETITIVE	AMOUNT	PERCENTAGE OF COMPETITIVE CONTRACTS	PERCENTAGE OF NON-COMPETITIVE CONTRACTS
1977	26	$1,523,671	18	$1,189,471	8	$334,200	69%	78%
1978	30	$889,950	15	$591,824	15	$298,126	50%	67%
1979	49	$2,790,673	18	$1,184,714	31	$1,605,959	37%	42%
1980	35	$2,244,446	9	$1,347,437	26	$897,009	26%	60%

*Prepared from information supplied Chairman Baucus by the Federal Communications Commission.

UNITED STATES GOVERNMENT

memorandum

REPLY TO ATTN OF: Associate Executive Director - Operations

SUBJECT: Sole Source Justification for Julian J. Studley and Computer Science Corp. Contracts - FY 1981

TO: Chief, Procurement Branch

As you know we have two important space projects underway: Gettysburg Consolidation and Exodus. The Studley Company and Computer Science Corporation have been deeply involved in both projects. We are now within a few weeks of completing the lease on Gettysburg and the Exodus project is still continuing. Given the detailed knowledge both contractors have of these two projects, I believe it would be substantially disadvantageous to the Government to go through the competitive process and the necessary delays on both space projects. Therefore I am requesting that sole source contracts with both companies be initiated for FY 1981. I have attached the appropriate A-78's.

Thomas P. Campbell

Attachment

FCC PROCUREMENT DIVISION
RECEIVED
SEP 29, 1980
11:55 A.M.

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
(REV. 7-76)
GSA FPMR (41 CFR) 101-11.6
5010-112

Form A-78
March 1976

New Contract

RC/CAM REFERENCE NO.	BUREAU/OFFICE REF. NO.	PURCHASE REQUEST	FILE NO.
~~ED~~ED81-02A			

I - RESPONSIBILITY CENTER/CENTRAL ACCOUNT MANAGER			II - PROCUREMENT DIVISION	
APPROPRIATION YEAR	OBAN	EXPENSE ELEMENT	PURCHASE ORDER NO.	DATE
FY 1981	23	25.15		
ORDERED BY (Name)			PHONE NO.	DATE REQUIRED / DELIVER TO ROOM
Thomas P. Campbell				

ITEM NO.	STOCK/MODEL/ PART NUMBER	DESCRIPTION/ REMARKS	QTY	UNIT	UNIT COST	TOTAL COST
		Services, nonpersonal, necessary to provide realty services to the FCC in support of the consolidated move to Gettysburg, Pa. and on Project Exodus. Julian J. Studley Inc. 1333 New Hampshire Ave. N.W. Sole-Source Justification Attached				

APPROVED BY BUREAU/OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL — DATE 9/29/80

GRAND TOTAL → $20,000

I certify sufficient funds are available in the above OBAN/EE for this purchase.

(All previous editions of this form are cancelled.)

INSTRUCTIONS

HEADQUARTERS:

1. FORWARD ORIGINAL AND 1 COPY TO THE PROCUREMENT DIVISION.
2. USE THIS FORM ONLY FOR REQUESTING PURCHASE OF ITEMS OR SERVICES TO BE CHARGED AGAINST THE OPERATING BUDGET OF THE ORIGINATING OFFICE. FOR ITEMS WITH NO FEDERAL STOCK NO. GIVE FULL DESCRIPTION INCLUDING MFG MODEL/PART NO. USE FORM A-124 FOR REQUESTING OFFICE EQUIPMENT AND FURNISHINGS AND A MEMO TO CAM FOR REQUIREMENTS UNDER HIS AUTHORITY.
3. THIS FORM MUST BE SIGNED BY BUREAU/OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL.

FIELD INSTALLATIONS:

1. FILL IN ADDITIONAL INFORMATION BELOW AND FORWARD ORIGINAL AND 3 COPIES TO HEADQUARTERS.

APPROVED BY (FIELD OFFICE) — DATE

DELIVER TO (ADDRESS)

330

Form A-18
March 1976

HC CAM REFERENCE NO.	BUREAU/OFFICE REF. NO.	PURCHASE REQUEST	FILE NO.
ED81-03A			1

I - RESPONSIBILITY CENTER/CENTRAL ACCOUNT MANAGER			II - PROCUREMENT DIVISION	
APPROPRIATION YEAR	OBAN	EXPENSE ELEMENT	PURCHASE ORDER NO.	DATE
FY 1981	23	25.15		

ORDERED BY (Name)	PHONE NO.	DATE REQUIRED	DELIVER TO ROOM
Thomas P. Campbell			

ITEM NO.	STOCK/MODEL/ PART NUMBER	DESCRIPTION/ REMARKS	QTY	UNIT	UNIT COST	TOTAL COST
		Services, nonpersonal, necessary to provide support services, monitoring/ inspection services for construction/ site preparation of Gettysburg facility and 2000L Street facility; support services for the FCC Consolidation Project to include conceptual layouts, preliminary drawings, working drawings, for all space needs. Computer Sciences Corporation 6565 Arlington Blvd. Falls Church, VA 22046 (703) 533-8877 Sole Source Justification Attached				

APPROVED BY BUREAU/OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL: Dutrowski DATE 9/29/80

GRAND TOTAL → 65,000

I certify sufficient funds are available in the above OBAN/EE for this purchase.

(All previous editions of this form are cancelled.)

INSTRUCTIONS

HEADQUARTERS:

1. FORWARD ORIGINAL AND 1 COPY TO THE PROCUREMENT DIVISION.
2. USE THIS FORM ONLY FOR REQUESTING PURCHASE OF ITEMS OR SERVICES TO BE CHARGED AGAINST THE OPERATING BUDGET OF THE ORIGINATING OFFICE. FOR ITEMS WITH NO FEDERAL STOCK NO. GIVE FULL DESCRIPTION INCLUDING MFG MODEL/PART NO. USE FORM A-124 FOR REQUESTING OFFICE EQUIPMENT AND FURNISHINGS AND A MEMO TO CAM FOR REQUIREMENTS UNDER HIS AUTHORITY.
3. THIS FORM MUST BE SIGNED BY BUREAU/OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL.

FIELD INSTALLATIONS:

1. FILL IN ADDITIONAL INFORMATION BELOW AND FORWARD ORIGINAL AND 3 COPIES TO HEADQUARTERS.

APPROVED BY (FIELD OFFICE) DATE

DELIVER TO (ADDRESS)

UNITED STATES GOVERNMENT

memorandum

DATE: SEP 30 1980

REPLY TO ATTN OF: Associate Executive Director - Operations

SUBJECT: FY 1981 CSC Contract

TO: Chief, Procurement Branch

I have recently received Computer Science Corporation's proposals for their FY 1981 efforts on our various space projects.

At this time, I would like their FY 1981 contract to total $30,000. This amount will provide $24,600 for Gettysburg work and $5,400 for miscellaneous work on the consolidation project. No additional work is necessary on the Washington project.

Thomas P. Campbell

FCC PROCUREMENT DIVISION
RECEIVED
SEP 30 1980
3:04 PM

Buy U.S. Savings Bonds Regularly on the Payroll Savings

ISSUING OFFICE

Federal Communications Commission
Procurement Division
1919 "M" Street, N.W.
Washington, D. C. 20554

ORDER - INVOICE - VOUCHER

Date of Order: 05 SEP 1979

This number must appear on all packages and papers relating to this order.

Page ____ of ____

Order No.: 2656-9(23E25.1)

Bureau Schedule No.

Contract No.

Bureau Voucher No.

→ VENDOR ATTENTION: Fill in columns (6) and (7), certify, sign and return Copy 1 of this form and submit as your INVOICE. Retain Copy 2 for your copy of the ORDER. See further instructions on Copy 2 of this form.

ACCOUNTING AND APPROPRIATION DATA

Appropriation: 2790100 S&E, FCC, 1979
CBAN: 23
EE: 25.1
EN:

Requisitioning Office/Number: ED-79-50A

Purchase Authority: USC 41 (252) (C) (3)

VENDOR (Name and address including ZIP Code)

TO → Julien J. Studley, Inc.
1900 M St., N.W.
Washington, D.C. 20036

SHIP TO (Consignee and address, including ZIP Code)
Federal Communications Commission
1919 M St., N.W., Room 843
Washington, D.C. 20554
VIA

Shipping Point

GOVERNMENT BILL OF LADING NO.

DELIVERY TERMS

Delivery required on or before: 9/30/79

Discount Terms: Net-30

Type of Order: Purchase [X] Delivery [ ]

Reference your QUOTE, DATED ____ [ ] Written [X] Oral

Delivery F.O.B. [X] Destination [ ] Origin

UNITED STATES OF AMERICA

By: Signature of Auth. Purchasing or Contracting Officer
N. R. Sharp
NPR/hc

Description (1)	Unit (2)	Unit Price (3)	Quantity Ordered (4)	Amount (5)	Quantity Shipped (6)	Amount Billed (7)
Services, nonpersonal, necessary to provide consultant services to assess the office space availability in the Washington, D.C., and Gettysburg, PA, areas, and to provide assistance in preparing a solicitation for space in both areas.	day	$600.00	10	$6,000.00		
OBLIGATED SEP 4 1979 FINANCE OFFICE						
(CHECK ONE) [X] Small [ ] Large [ ] Inter-Governmental			TOTALS →	$6,800.00		

9/30/79
3:47

MEMORANDUM

6. PROCUREMENT DIVISION COPY

UNITED STATES GOVE

memorandi

(MK) 2656

file

DATE: August 27, 1979

REPLY TO ATTN OF: Chief, Financial Management Division

SUBJECT: Sole-Source Justification

TO: Chief, Procurement Division

This is in reference to our Purchase Request to contract with Julien J. Studley, Inc. for assistance in preparing our upcoming office space solicitation. As you know, the Congress has included a provision in our Fiscal year 1980 Appropriation Act to allow us to directly lease office space in the downtown Washington area. We have been seeking office space since January 1978. Therefore, it is essential that we move as quickly as possible to acquire the space as soon after October 1, 1979 as possible. To do this we need immediate support in this new and complex program. Therefore, due to these time constraints, we believe that it is appropriate to obtain the services on a sole-source justification.

Thomas P. Campbell

AUG 27 12 1 PM '79

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 1
REV. 7-76
GSA FPMR (41 CFR) 101-11.6
5010-112

ISSUING OFFICE: Federal Communications Commission
Procurement Division
1919 "M" Street, N.W.
Washington, D. C. 20554

ORDER - INVOICE - VOUCHER

Date of Order:

This number must appear on all packages and papers relating to this order.

Page ____ of ____

→ VENDOR ATTENTION: Fill in columns (6) and (7), certify as Payee on Copy 1 of this form and submit as your INVOICE. Retain Copy 2 for your copy of the ORDER. See further instructions on Copy 2 of this form.

Order No. 0279-C(23825.5)

Contract No.

Bureau Schedule No.

Bureau Voucher No.

ACCOUNTING AND APPROPRIATION DATA

Appropriation: 2700100 S&E, FCC, 1979
OBAN: 23
EE: 25.15
DN:

Requisitioning Office/Number: ED-80-3A

Purchase Authority USC 41 (252) (C) (3)

VENDOR (Name and address including ZIP Code)

TO → Julion J. Studley, Inc.
1900 M St., N.W.
Washington, D.C. 20036

SHIP TO (Consignee and address, including ZIP Code)

Federal Communications Commission
1919 M St., N.W., Rm. 848
VIA Washington, D.C. 20554

Shipping Point

GOVERNMENT BILL OF LADING NO.

DELIVERY TERMS

Delivery required on or before: 10/30/79

Discount Terms: Net 30

Type of Order: Purchase [X] — Reference your QUOTE, DATED. [ ] Written [X] Oral

Delivery [ ] — Delivery F.O.B. [X] Destination [ ] Origin

UNITED STATES OF AMERICA

By: Beverly Sharp

Signature of Auth. Purchasing or Contracting Officer

B. J. Sharp

Description (1)	Unit (2)	Unit Price (3)	Quantity Ordered (4)	Amount (5)	Quantity Shipped (6)	Amount Billed (7)
Services, non-personal, necessary to provide consultant service to assess the availability of office space in the Washington, D.C. & Gettysburg, PA areas and to provide assistance in preparing a solicitation for space in both areas.	days	$680.00	13	$8,840.00		
(CHECK ONE) [X] Small [ ] Large [ ] Inter-Governmental		TOTALS →		$8,840.00		

OCT 9 1979

SHIPMENT NUMBER: PARTIAL / FINAL

DATE RECEIVED

RECEIVED AND INSPECTED AT:

REPORT OF REJECTIONS

SIGNATURE OF AUTHORIZED U.S. GOV'T REPRESENTATIVE RECEIVING MATERIALS AND OR SERVICES

DATE

TITLE

WHEN MATERIALS AND OR SERVICES HAVE BEEN RECEIVED SIGN, DATE & RETURN TO PROCUREMENT DIVISION IMMEDIATELY

Signature: [signature] Date: 11/20/79

FCC Form 147 [illegible] ed.

5. RECEIVING REPORT (Procurement Division)

SOLE SOURCE JUSTIFICATION

Services, non-personal for the following tasks:

1. Based on the FCC space requirements, which will be provided, assess the office space availability in the Washington, D.C. and Gettysburg, Pennsylvania areas.

2. Provide assistance as required in the preparation of a solicitation for space for both our Washington, D.C. and Gettysburg offices.

3. Mrs. Pryor's work on 2656-9 qualifies her as a sole source for this new requirement.

SOLICITATION, OFFER AND AWARD

3 CERTIFIED FOR NATIONAL DEFENSE UNDER DPS REGULATION DMS REG 1 — RATING

4 PAGE 1 OF

CONTRACT (Proc. Inst. Ident.) NO. FCC-0332

2 SOLICITATION NO. RFP-80-10 — ☐ ADVERTISED (IFB) ☒ NEGOTIATED (RFP)

5 DATE ISSUED

6 REQUISITION/PURCHASE REQUEST NO. ED-80-13A

ISSUED BY — CODE
Federal Communications Commission
Procurement Branch
P.O. Box 19408
Washington, D.C. 20036

8 ADDRESS OFFER TO (If other than Block 7)

In advertised procurement "offer" and "offeror" shall be construed to mean "bid" and "bidder"

SOLICITATION

Sealed offers in original and _____ copies for furnishing the supplies or services in the Schedule will be received at the place specified in block 8, or if handcarried, in the depository located in _____ until _____ local time _____ (Hour) (Date)

If this is an advertised solicitation, offers will be publicly opened at that time.

CAUTION – LATE OFFERS: See pars. 7 and 8 of Solicitation Instructions and Conditions.

All offers are subject to the following:

1. The Solicitation Instructions and Conditions, SF 33-A, _____ edition which is attached or incorporated herein by reference.
2. The General Provisions, SF 32 _____ edition, which is attached or incorporated herein by reference.
3. The Schedule included herein and/or attached hereto.
4. Such other provisions, representations, certifications, and specifications as are attached or incorporated herein by reference. (Attachments are listed in schedule.)

~~SOLICITATION CALL (Name & telephone not to be collect-able.)~~

SCHEDULE

10 ITEM NO	11 SUPPLIES/SERVICES	12 QUANTITY	13 UNIT	14 UNIT PRICE	15 AMOUNT
1.	Services, nonpersonal, necessary to provide consultant services to assess the office space availability in the Washington, D.C. and Gettysburg, PA, areas and to provide assisstance in preparing a solicitation for space in both areas.	30	DAY	$680.00	$20,400.00

See continuation of schedule on page 4

OFFER (pages 2 and 3 must also be fully completed by offeror)

In compliance with the above, the undersigned agrees, if this offer is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

DISCOUNT FOR PROMPT PAYMENT (See par. 9 SF 33-A)
10 CALENDAR DAYS — 20 CALENDAR DAYS — 30 CALENDAR DAYS — CALENDAR DAYS

OFFEROR — CODE — FACILITY CODE

NAME AND ADDRESS (Street, city, county, State and ZIP code)
Julien J. Studley, Inc.
1333 New Hampshire Avenue, NW
8th Floor-Washington, D.C. 20036

AREA CODE AND TELEPHONE NO.

☐ Check if remittance address is different from above — enter such address in Schedule

18 NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)
Peter SPEIER
SR Vice President

19 SIGNATURE

20 OFFER DATE 1/3/80

AWARD (To be completed by Government)

21 ACCEPTED AS TO ITEMS NUMBERED: All

22 AMOUNT: $20,400.00

23 ACCOUNTING AND APPROPRIATION DATA: 2700100-S&E, FCC, 1980 — OBAN 23 — EE 25.15

24 SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK 7

25 NEGOTIATED PURSUANT TO — 10 U.S.C. 2304(a) ( ) — ☒ 41 U.S.C. 252(c) (10)

26 ADMINISTERED BY (If other than block 7) — CODE

27 PAYMENT WILL BE MADE BY — CODE
Finance Officer
Federal Communications Commission
Washington, D.C. 20554

28 NAME OF CONTRACTING OFFICER (Type or print)
Kenneth A. Gordon — MPR/eh

29. UNITED STATES OF AMERICA
BY (Signature of contracting officer)

30 AWARD DATE

Award will be made on this form, or Standard Form 26, or by other official written notice

3-131

Standard Form 33 Page 1 (REV. 3-77)
Prescribed by GSA, FPR (41 CFR) 1-16.101

STANDARD FORM 30, JULY 1966
GENERAL SERVICES ADMINISTRATION
(FED. PROC. REG. (41 CFR) 1-16.101)

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

PAGE 1 OF 1

1. AMENDMENT/MODIFICATION NO. #1
2. EFFECTIVE DATE 4/17/80
3. REQUISITION/PURCHASE REQUEST NO. FCC-80-29A
4. PROJECT NO. (If applicable)
5. ISSUED BY CODE
Federal Communications Commission
Procurement Branch
P.O. Box 19408
Washington, DC 20036
6. ADMINISTERED BY (If other than Block 5) CODE

7. CONTRACTOR NAME AND ADDRESS CODE FACILITY CODE
(Street, city, county, state, and ZIP Code)
Julien J. Studley, Inc.
1333 New Hampshire Avenue, NW
Washington, DC 20036
Attn: Barbara L. Fryor

8. ☐ AMENDMENT OF SOLICITATION NO. _____
DATED _____ (See block 9)
☒ MODIFICATION OF CONTRACT/ORDER NO. FCC-0332
DATED 1/14/80 (See block 11)

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS
☐ The above numbered solicitation is amended as set forth in Block 12. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.
Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:
(a) By signing and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10. ACCOUNTING AND APPROPRIATION DATA (If required)

APPROPRIATION	OBAN	EE	INCREASE	ADJ. TOTAL
2700100 S&E, FCC, 1980	23	25.15	$21,760.00	$42,160.00

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
(a) ☒ This Change Order is issued pursuant to 41 USC (252)(C) (10)
The Changes set forth in Block 12 are made to the above numbered contract/order.
(b) ☐ The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in Block 12.
(c) ☐ This Supplemental Agreement is entered into pursuant to authority of _____
It modifies the above numbered contract as set forth in Block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION

1. By changing the quantity of this contract to: 62 days.
2. By increasing this contract by the amount listed in Block 10 above.
3. By changing the completion date for this contract to: September 30, 1980.

AJR 4/22/80

Except as provided herein, all terms and conditions of the document referenced in Block 8, as heretofore changed, remain unchanged and in full force and effect.

13. ☐ CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT ☒ CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 5 COPIES TO ISSUING OFFICE

14. NAME OF CONTRACTOR/OFFEROR
BY _____ (Signature of person authorized to sign)

15. NAME AND TITLE OF SIGNER (Type or print)
Peter M. Speier
Senior Vice President

16. DATE SIGNED

17. UNITED STATES OF AMERICA
BY _____ (Signature of Contracting Officer)

18. NAME OF CONTRACTING OFFICER (Type or print)
Kenneth A. Gordon MPR/eh

19. DATE SIGNED

STANDARD FORM 30, JULY 1966
GENERAL SERVICES ADMINISTRATION
PRO PROC REG (41 CFR) 1-16.101

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1

1 AMENDMENT/MODIFICATION NO	2 EFFECTIVE DATE	3 REQUISITION/PURCHASE REQUEST NO	4 PROJECT NO (If applicable)
#2	9/18/80	ED-80-40A	

5 ISSUED BY — CODE
Federal Communications Commission
Procurement Branch
P.O. Box 19408
Washington, DC 20036

6 ADMINISTERED BY (If other than Block 5) — CODE

7 CONTRACTOR NAME AND ADDRESS — CODE — FACILITY CODE
(Street, city, county, state, and ZIP Code)
Julien J. Studley, Inc.
1333 New Hampshire Avenue, NW
Washington, DC 20036

8
☐ AMENDMENT OF SOLICITATION NO _____
DATED _____ (See block 9)
☒ MODIFICATION OF CONTRACT/ORDER NO FCC-0332
DATED 1/14/80 (See block 11)

9 THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.

Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods:

(a) By signing and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10 ACCOUNTING AND APPROPRIATION DATA (If required)

APPROPRIATION	OBAN	EE	INCREASE	ADJ. TOTAL
2700100 SSE, FCC, 1980	23	25.15	$21,000.00	$53,160.00

11 THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS

(a) ☒ This Change Order is issued pursuant to 41 USC (252) (c) (10)

The Changes set forth in block 12 are made to the above numbered contract/order.

(b) ☐ The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 12.

(c) ☐ This Supplemental Agreement is entered into pursuant to authority of _____

It modifies the above numbered contract as set forth in block 12

12 DESCRIPTION OF AMENDMENT/MODIFICATION

1. By increasing this contract by the amount listed in Block 10, above.

MPL 9-19-80

Except as provided herein, all terms and conditions of the document referenced in block 8, as heretofore changed, remain unchanged and in full force and effect

13 ☒ CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT ☐ CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE

14 NAME OF CONTRACTOR/OFFEROR
BY _____ (Signature of person authorized to sign)

15 NAME AND TITLE OF SIGNER (Type or print) — 16 DATE SIGNED

17 UNITED STATES OF AMERICA
BY _____ (Signature of Contracting Officer)

18 NAME OF CONTRACTING OFFICER (Type or print): Kenneth A. Gordon MPR/eh — 19 DATE SIGNED

U.S. GOVERNMENT PRINTING OFFICE 1974 O—546-546

Form A-78
March 1970

MC-9/18 (877)

HC/CAM REFERENCE NO.	BUREAU/OFFICE REF. NO.	PURCHASE REQUEST	FILE NO.
	ED-80-40A		

MJR

I - RESPONSIBILITY CENTER/CENTRAL ACCOUNT MANAGER

APPROPRIATION YEAR	ORAN	EXPENSE ELEMENT
FY 80	23	25.15

Thomas P Campbell

II - PROCUREMENT DIVISION

PURCHASE ORDER NO.	DATE
7CC-0332	

PHONE NO.	DATE REQUIRED	DELIVER TO ROOM
632-5316	ASAP	

ITEM NO.	STOCK, MODEL/ PART NUMBER	DESCRIPTION/ REMARKS	QTY	UNIT	UNIT COST	TOTAL COST
		Services non-personal necessary to provide consulting services to assess office space availability in Washington, DC and Gettysburg, Pa. and provide assistance in preparation of solicitation for space in both areas. Supplemental funds to present contract J. Stubley				

APPROVED BY BUREAU/OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL — DATE

Helga A. Mancy — 7/18/80

GRAND TOTAL → $21,000

I certify sufficient funds are available in the above OBJECT CODE for this purchase.

All previous editions of this form are cancelled.

INSTRUCTIONS

HEADQUARTERS:

1. FORWARD ORIGINAL AND 1 COPY TO THE PROCUREMENT DIVISION.
2. USE THIS FORM ONLY FOR REQUESTING PURCHASE OF ITEMS OR SERVICES TO BE CHARGED AGAINST THE OPERATING BUDGET OF THE ORIGINATING OFFICE. FOR ITEMS WITH NO FEDERAL STOCK NO. GIVE FULL DESCRIPTION INCLUDING MFG MODEL/PART NO. USE FORM A-124 FOR REQUESTING OFFICE EQUIPMENT AND FURNISHINGS AND A MEMO TO CAM FOR REQUIREMENTS UNDER HIS AUTHORITY.
3. THIS FORM MUST BE SIGNED BY BUREAU/OFFICE CHIEF, DEPUTY OR DESIGNATED OFFICIAL.

FIELD INSTALLATIONS:

1. FILL IN ADDITIONAL INFORMATION BELOW AND FORWARD ORIGINAL AND 3 COPIES TO HEADQUARTERS.

APPROVED BY (FIELD OFFICE) — DATE

DELIVER TO (ADDRESS)

STANDARD FORM 30, JULY 1966
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

PAGE 1 OF

1. AMENDMENT/MODIFICATION NO.: 4
2. EFFECTIVE DATE: 9/30/80
3. REQUISITION/PURCHASE REQUEST NO.: FD-82-43A
4. PROJECT NO. (If applicable)
5. ISSUED BY CODE:
Federal Communications Commission
Procurement Branch
P.O. Box 19408
Washington, DC 20036
6. ADMINISTERED BY (If other than Block 5) CODE:

7. CONTRACTOR NAME AND ADDRESS CODE FACILITY CODE
Julian J. Studley, Inc.
1333 New Hampshire Avenue, NW
Washington, DC 20036
(Street, city, county, state, and ZIP Code)

8. ☐ AMENDMENT OF SOLICITATION NO. _____
DATED _____ (See block 9)
☒ MODIFICATION OF CONTRACT/ORDER NO. FCC-0332
DATED 1/14/80 (See block 11)

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS
☐ The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of Offers ☐ is extended; ☐ is not extended.
Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:
(a) By signing and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If, by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10. ACCOUNTING AND APPROPRIATION DATA (If required)

APPROPRIATION	OBAN	EE	INCREASE	ADJ TOTAL
2700100,S&E,FCC,1980	23	25.15	$5,160.00	$98,320.00

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
(a) ☒ This Change Order is issued pursuant to 41 USC (252)(c)(10)
The Changes set forth in block 12 are made to the above numbered contract/order.
(b) ☐ The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 12.
(c) ☐ This Supplemental Agreement is entered into pursuant to authority of _____
It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION

1. By increasing this contract by the amount listed in Block 10, above.

Except as provided herein, all terms and conditions of the document referenced in block 8, as heretofore changed, remain unchanged and in full force and effect.

13. ☒ CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT ☐ CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE

14. NAME OF CONTRACTOR/OFFEROR
BY _____
(Signature of person authorized to sign)

15. NAME AND TITLE OF SIGNER (Type or print)

16. DATE SIGNED

17. UNITED STATES OF AMERICA
BY _____
(Signature of Contracting Officer)

18. NAME OF CONTRACTING OFFICER (Type or print)
Kenneth A. Gordon, MPR/mr

19. DATE SIGNED

STANDARD FORM 30, JULY 1966
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

PAGE 1 OF

1. AMENDMENT/MODIFICATION NO. 3
2. EFFECTIVE DATE 9/29/80
3. REQUISITION/PURCHASE REQUEST NO. FD-80-41A
4. PROJECT NO. (If applicable)

5. ISSUED BY CODE
Federal Communications Commission
Procurement Branch
P.O. Box 19408
Washington, D.C. 20036

6. ADMINISTERED BY (If other than block 5) CODE

7. CONTRACTOR NAME AND ADDRESS CODE FACILITY CODE
Julien J. Studley, Inc.
1333 New Hampshire Avenue N.W.
Washington, D.C. 20036
(Street, city, county, state, and ZIP Code)

8. ☐ AMENDMENT OF SOLICITATION NO. _____
DATED _____ (See block 9)
☒ MODIFICATION OF CONTRACT/ORDER NO. FCC-0332
DATED 1/14/80 (See block 11)

9. THIS BLOCK APPLIES ONLY TO AMENDMENTS OF SOLICITATIONS
☐ The above numbered solicitation is amended as set forth in block 12. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended.
Offerors must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation, or as amended, by one of the following methods:
(a) By signing and returning _____ copies of this amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE ISSUING OFFICE PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

10. ACCOUNTING AND APPROPRIATION DATA (If required)

APPROPRIATION	OBAN	EE	INCREASE	ADJ TOTAL
2700100S&E,FCC,1980	23	25.15	$30,000.00	$93,160.00

11. THIS BLOCK APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS
(a) ☒ This Change Order is issued pursuant to: 41 USC(252) (C)(10)
The Changes set forth in block 12 are made to the above numbered contract/order.
(b) ☐ The above numbered contract/order is modified to reflect the administrative changes (such as changes in paying office, appropriation data, etc.) set forth in block 12.
(c) ☐ This Supplemental Agreement is entered into pursuant to authority of: _____
It modifies the above numbered contract as set forth in block 12.

12. DESCRIPTION OF AMENDMENT/MODIFICATION

1. By increasing this order by the amount listed in Block 10, above.

MR 9/29/80

Except as provided herein, all terms and conditions of the document referenced in block 9, as heretofore changed, remain unchanged and in full force and effect.

13. ☒ CONTRACTOR/OFFEROR IS NOT REQUIRED TO SIGN THIS DOCUMENT ☐ CONTRACTOR/OFFEROR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ COPIES TO ISSUING OFFICE

14. NAME OF CONTRACTOR/OFFEROR
BY _____ (Signature of person authorized to sign)

15. NAME AND TITLE OF SIGNER (Type or print) 16. DATE SIGNED

17. UNITED STATES OF AMERICA
BY _____ (Signature of Contracting Officer)

18. NAME OF CONTRACTING OFFICER (Type or print)
Kenneth A. Gordon MPR/jf

19. DATE SIGNED