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Statement of  
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Assistant Comptroller General  
before the  
Subcommittee on Oversight of Government Management  
Committee on Governmental Affairs  
United States Senate  
on  
[Control of Year-end Spending]

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss proposals for strengthening controls over year-end spending.

This is not a new issue. There is a recurring concern expressed publicly and in Congress that wasteful Government spending may result from agency practices of obligating substantial amounts of funds during the last weeks and months of the fiscal year in order to keep them from lapsing at year-end. I want to emphasize that just because funds are obligated or spent near the end of the year does not

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automatically mean that they were spent wastefully or inappropriately. But, where monitoring of budget execution is not effective, abuses can and do occur. The General Accounting Office has reported that presently the monitoring of budget execution is not as effective as it could and should be, that year-end spending is disproportionately high at this time and that there have been contracting problems.

In an effort to deal with these problems, the House Committee on Post Office and Civil Service reported out H.R. 4717, concerning personnel ceilings and contracting out, section 3 of which would require that agencies obligate not more than 20 percent of their funds in the last 2 months of the fiscal year.

Generally, we do not favor these types of limitations because they are difficult to administer and because they address a symptom rather than correcting underlying management problems. We wish OMB would manage budget execution voluntarily and aggressively, but we have seen no evidence of OMB's willingness to do so. We believe that a temporary 20 percent limitation, to be imposed through the apportionment process with flexibility to adjust the limitation to avoid program disruption, is the most appropriate means available to the Congress to force OMB and the agencies to pay more attention to budget execution and to do a better job of planning and managing it.

In our view, the underlying problem is that, over the years, the agencies and the Office of Management and Budget have not effectively monitored and managed the execution of the budget. This does not mean that effective monitoring would eliminate all year-end spending surges. In some cases, seasonal variation in obligation rates is inherent in the nature of a program. Numerous examples of this have been cited during the course of these and other hearings. In other cases, delays in the enactment of appropriations disrupt agency operating plans and may lead to year-end surges.

Nevertheless, we believe it is fair to assume that overall obligation rates should be reasonably evenly distributed over the year, and that the burden of proof should rest on those managers who see a need to depart from such a pattern to justify this departure.

The Congress has created a mechanism--the apportionment process--which was intended to be the primary means for monitoring and controlling the efficient and effective use of funds. The law, generally known as the Anti-Deficiency Act (31 U.S.C. 665), gives OMB the responsibility and authority to manage budget execution through the apportionment process. Thus, we believe that the apportionment process is the appropriate vehicle for administering any limitation on year-end spending. Accordingly, we have recommended an alternative to the present section 3 of H.R. 4717. We would be happy to

provide the proposed language to this Committee as well.

The main features of this approach are as follows:

- It would use the existing apportionment process to administer the limitation, thereby assigning responsibility to those in the executive branch who should be monitoring and controlling spending.
- It would have general applicability to all obligational authority planned for use in a fiscal year, thereby, basing the limitation on the agencies' financial plans for each fiscal year and covering all uses, not just contractual services.
- It would limit total agency spending in the last 2 months of each fiscal year to 20 percent of planned spending for the year.
- It would allow the Director of the Office of Management and Budget to authorize exceptions to avoid serious disruption to the execution of operations and programs, thereby allowing some executive flexibility; but it would require that departures be reported to the Congress.
- It would be in effect for 3 fiscal years, thereby allowing the executive time to strengthen the budget execution and procurement processes and, perhaps, eliminate the need for the limitation.

--It would require (1) that after the first 2 years, the Director report to the Congress on the results of administration of this limitation and actions taken to strengthen the budget execution and procurement processes and to make recommendations concerning the continuation of the limitation and (2) that the Comptroller General review the report and provide the Congress with his analysis and recommendations; thereby, providing the Congress with information upon which to decide whether to continue the limitation or allow it to expire.

--It would exempt actions taken to satisfy this limitation from the reporting requirements of the Impoundment Control Act of 1974.

We must recognize that administering this limitation will not be easy. Nor will it, alone, solve all the problems associated with inadequate management of budget execution.

For example:

--The limitation on the quantity of year-end spending will not assure that funds spent under the limitation are spent wisely.

--In the absence of a carefully developed--and carefully monitored--agency spending plan, the surge in spending could just be advanced by 2 months, rather than becoming a smoother process.

--The timely and reliable data on obligations needed to assess whether the limitation is being complied with may not always be available.

--A limitation of 20 percent in the last 2 months on total planned spending by a department or agency will still allow considerable flexibility for variation among programs.

Notwithstanding these considerations, we support the temporary use of a limitation on year-end spending as a means of conveying Congress' concern--not only with year-end spending itself--but with the need to strengthen the budget execution and procurement processes.

As part of this testimony, we were asked to address a number of specific topics. I have prepared detailed information which I would like to offer for the record. I would, however, like to comment briefly on three of the topics:

(1) the status of our ongoing review of civilian agencies' year-end contracting and grant activities, (2) examples of contracting problems, and (3) GAO's role in reducing the undesirable effects of year-end spending.

#### Ongoing Review of Year-end Spending Practices

We are conducting a review of civilian agencies' year-end contracting and grant activities at selected procurement offices of the Departments of the Interior; Health, Education, and Welfare; and Housing and Urban Development; and at the

Environmental Protection Agency. We are finding some problems. However, our review is not yet complete and it would be premature to discuss it at this time. We expect to be able to report on our work this summer.

#### Contracting for Consultants

In one of our recent reports--"Controls Over Consulting Service Contracts at Federal Agencies Need Tightening," PSAD-80-35, March 20, 1980,--we discussed the last quarter spending aspects of 111 randomly selected contracts valued at \$19.9 million. We found that 57 contracts valued at \$10.7 million, were awarded in the last 90 days of the fiscal year. The procurement request in 20 of these 57 contracts originated in the last quarter. We believe that such awards can cast doubt on the legitimacy of the agencies' requirements for the contract service.

We also found in studying these consulting service contracts that agencies can act very swiftly in making contract awards at the end of the fiscal year. We believe the "rush" to award contracts can seriously impair the objectivity as well as thoroughness of the proposal evaluation process.

#### GAO's Role

GAO has a specific role in our suggested legislation to review the report required from OMB on the implementation of the legislation. We also have much broader responsibilities

which impact on this problem. These include our general audit responsibilities, our role under the Impoundment Control Act, and our bid protest function.

One example of our audit function responsibilities involves the Veteran's Administration's (VA) computer procurement, about which you asked. As a result of inquiries from various committees concerning VA's fiscal year 1979 year-end spending, we have identified \$19.1 million of fourth quarter data processing procurements. Much of this was for the medical data processing program contracts you asked about. We are in the process of examining the basis for the decision to terminate certain of those contracts and are not in a position at this time to state whether or not these terminations were warranted. However, this review provides an example of how our broad audit responsibilities impact on investigation of year-end spending.

Impoundment control reporting could be effected by the limitation on year-end spending. It is another area in which we have responsibilities. We believe it is necessary to exempt actions taken under a year-end spending limitation from coverage by the Impoundment Control Act to avoid a possible flood of routine deferral reports and the potential for OMB getting caught in a conflict between the two laws. Our proposed limitation provides that the Comptroller General's authority under section 1015 of the Impoundment Control Act to report

a reserve or deferral to the Congress is not affected. That is, GAO can report any inappropriately excluded reserve or deferral to Congress. This authority will serve as a check by GAO against abuses.

GAO's bid protest function may also curb some types of year-end spending problems. That is, the knowledge that this remedy is available could prevent agencies from acting in haste at year-end without adequately meeting all required procurement procedures. On occasion bidders or others interested in Government procurements may have reason to believe that a contract has been or is about to be improperly or illegally awarded or that in some way they have been unfairly denied a contract or an opportunity to compete for one. When that occurs, what avenues of relief are open to them? They can, of course, register their objections with the Government department or agency doing the buying. They can also turn to the courts (although a judicial remedy, when available, may be costly and time-consuming). Taking the matter to GAO is another alternative. This procedure has become known as a "bid protest." For over 50 years the GAO has provided an objective, independent, and impartial forum for the resolution of disputes concerning the award of contracts.

This concludes my prepared statement. I would be happy to respond to any questions.

## Questions to be Addressed in GAO Testimony

1. What is the progress of the GAO's investigation concerning Senator Cohen's September 26, 1979, request that the GAO determine agency compliance with OMB memoranda concerning year-end spending? If the GAO has not made a final determination, what are the interim findings? Regardless of whether agencies complied with the memoranda, would the memoranda be effective in eliminating the problems attending year-end spending if they were followed, or are there too many exceptions to make the directives meaningful?

Our review of civilian agencies' year-end contracting and grant activities, initially requested by the Chairman, Subcommittee on Human Resources of the House Committee on Post Office and Civil Service, covers Senator Cohen's areas of interest and includes almost all of the OMB's instructions for curtailing year-end spending. The detailed review is being done at selected procurement offices of the Departments of the Interior; Health, Education, and Welfare; and Housing and Urban Development; and at the Environmental Protection Agency.

Tentative results of our review suggest that there are problems. However, our review is not yet complete and it would be premature to discuss it at this time. We expect to issue the overall report on this review of civilian agencies' year-end spending practices this summer.

We believe that the OMB August 7, 1979, directive on controlling year-end buying is a step in the right direction. Further, in hearings before the House Subcommittee on Legislation and National Security in March 1980, we agreed that a limitation of 20 percent of total obligations during the last

2 months of the fiscal year tied to the apportionment process was also desirable, with some provision to depart from the requirement for exceptional cases.

Some agencies have sought to rationalize the extent of year-end procurement by the fact that they do not receive their appropriations until after several months of the fiscal year have passed. We believe, however, that agencies need not hold up initiating the procurement process until the appropriations are approved. Agencies can generally predict with some confidence which programs will be approved by Congress. Therefore, on these programs, the agencies could initiate many phases of the procurement process before the final appropriation approval.

2. What other evidence does the GAO have to suggest that surges in year-end spending are problematic? For example, does GAO believe that OMB spends too little, the right amount, or too much time on budget execution relative to budget formulation? What are the possible dangers of the current OMB use of its own management resources?

Our December 20, 1979, report to Congressman Bennett Stewart-- "Spending Patterns of the Departments and Agencies of the Federal Government," PAD-80-43--analyzes gross obligations incurred during fiscal years 1977, 1978, and the first half of 1979. A disproportionate amount of obligations occurred in the last quarter of the fiscal year and in the last month of that quarter. Additional work currently being done for Congressman Stewart McKinney indicates that this also holds true for the end of fiscal year 1979. As I have stated earlier, however, just because funds are obligated near the end of the year does not automatically mean that they were spent wastefully or inappropriately. It is necessary to examine the appropriateness of spending on a case-by-case basis.

An area in which GAO has recently looked at year-end spending is consulting service contracts. We randomly selected 111 contracts valued at \$19.9 million for review. Of these, 57, valued at \$10.7 million (54 percent), were awarded in the last 90 days of the fiscal year. The procurement request in 20 cases (or 35 percent) of these 57 contracts originated in the last quarter. We believe that such awards can cast doubt on the legitimacy of the agencies' requirements for the contract service.

You asked whether OMB spent the proper amount of time on budget execution. At the request of the Chairman, House Committee on Appropriations, we studied the effectiveness of the Federal apportionment process. We reported that there is a low priority on using the apportionment process to ensure the effective and economical use of funds. Individual budget examiners are key in this process. For them, budget execution is third priority, ranking below budget formulation, and legislative and policy proposals and analysis.

We have observed that budget examiners are so pressed to accomplish tasks related to these other priorities that they are unable to give much attention to budget execution. Thus, a good management tool is not being fully utilized. Increased use of this capability would encourage and promote more effective and economical use of funds.

3. Are, in GAO's view, executive agencies using the performance standards mandated in the Civil Service Reform Act to the greatest extent practicable for encouraging sound procurement planning that would eliminate year-end spending sprees?

It is too early to assess the extent to which agencies will hold managers and executives accountable for sound procurement planning and elimination of year-end spending sprees.

Our preliminary work indicates that agency Senior Executive Service performance appraisal systems do provide the potential for encouraging sound procurement planning and budgeting. Managers and executives can and should be held accountable for sound management practices which contribute to organizational efficiency and effectiveness. Holding managers and executives accountable for sound management practices, however, requires the interest and commitment of all levels of management. We have become convinced that poor accountability for performance is born of the fact that there are more disincentives than incentives for good performance. The disincentive of potentially reducing a manager's budget or workforce, and hence his or her grade level, is well known, as is the fact that accountability makes managers' performance more visible. We feel there are useful approaches to overcoming these disincentives and to fostering successful performance appraisal and related accountability. Some of these approaches are:

--Requiring greater use of performance measures in the budget process;

--Linking managers'/executives' pay and bonuses to sound management practices; and

--Auditing and reporting on the effectiveness of performance appraisal systems,

The budget process provides an appropriate method for encouraging management improvement in agencies. We believe the Office of Management and Budget and the Congress should give added emphasis to improving management by providing meaningful incentives to agency managers and executives. For example: (1) giving managers greater flexibility to manage their resources and (2) allowing agencies to share in savings produced in their programs.

For managers and executives the performance of the organization for which the individual is responsible is one of the most important facets of performance appraisal. The responsible manager's performance standards should include the expected organizational accomplishments for which the manager is to be held accountable. Thus, executives and managers at almost any level could be held accountable for the efficiency and effectiveness of the organizations they direct, the individuals they supervise, and the processes they manage. If those executives and managers, whose performance exhibits sound management to the greatest extent practicable, are recognized and rewarded we will have come a long way toward providing the required attitudinal change.

Using the audit function to point out the status and improvements needed has proven to be effective and we can continue to count on it being responsive. However, it is an after-the-fact correction. Sound management is preventive.

The Civil Service Reform Act requires that performance appraisal systems used in connection with merit pay be in place by October 1981. OPM regulations require that Senior Executive Service (SES) performance appraisal systems be operable no later than October 1980. In view of the earlier requirement for SES appraisal systems, agencies have been concentrating on developing and implementing these systems. Very few agencies have implemented and intend to use appraisal results this year for merit pay decisions affecting GS-13 through 15 managers and supervisors.

Accordingly, our early emphasis has also been on SES systems. In accordance with our legislative mandate, we have initiated a review of the processes that will be used to appraise the performance of senior executives. We will be reporting our findings to the Congress, the Office of Personnel Management, and agency heads about September 1980. We also plan to examine non-SES systems starting in July or August.

4. Do all Federal agencies use "state of the art" procurement planning systems? If some are of poorer quality than others, what is the reason for the difference?

Civilian agencies are required by Federal regulations to maintain an advance procurement planning system. Under this system the efforts of all personnel responsible for procurement of goods and services are to be coordinated as early as possible in order to obtain the required items of requisite quality, on time, and at the lowest price. Lack of an advance procurement planning system may contribute to wasteful procurement practices, including greater use of noncompetitive procurements, higher prices, overtime and excessive requirements at the end of the fiscal year. About half of the offices visited in our ongoing review for the Subcommittee on Human Resources discussed earlier had an advance procurement planning system. From discussions with agency officials the development of such plans could be quite lengthy. We did not attempt a quality review of the procurement planning systems. Factors that may affect the quality of such systems are (1) complexity of goods and services being purchased, (2) number of trained personnel, and (3) workload.

5. What would the GAO do to eliminate the problems suggested by spending surges, or documented by actual audits? What portion of this solution would focus on OMB? What portion, if any, should be implemented by changes in Congressional procedures? What role should GAO play in any administrative or legislative scheme to reduce the undesirable effects of year-end contracting? What are the costs of the solution GAO advocates? How effective can it be expected to be?

The year-end spending problem will not be eliminated easily or through a rigid, statutory percentage limitation. Ultimately, the right answer is good planning and conscientious, competent management. As I have testified previously, we support the temporary use of a limitation on year-end spending as a means of conveying concern not only with year-end spending but with the need to strengthen the budget execution and procurement processes.

Congress can insist that OMB use the tools it already has--namely the apportionment process--to oversee and manage the execution of the budget. OMB's existing apportionment authority under the "Anti-Deficiency Act" (31 U.S.C. 665 (c)) is broad enough for this purpose. The act provides that apportionment should achieve the most effective and economical use of funds and prevent the need for deficiency or supplemental appropriations.

We wish OMB would manage budget execution voluntarily and aggressively, but we have seen no evidence of OMB's willingness to do so. We believe that a temporary 20 percent limitation, to be imposed through the apportionment process with flexibility to adjust the limitation to avoid program

disruption, is the most appropriate means available to the Congress to force OMB and the agencies to pay more attention to budget execution and to do a better job of planning and managing it.

A version of our proposed amendment to H.R. 4717 has been introduced as H.R. 7044 by Congressman Dickinson. This bill is also based on controlling through the apportionment process but applies 25 percent in the last quarter rather than 20 percent in the last 2 months.

GAO has a specific role in the proposed legislation to review the report required from OMB on the implementation of the legislation. We also have much broader responsibilities which impact on this problem. These include our general audit responsibilities, our role under the Impoundment Control Act, and our bid protest function.

One example of our audit function responsibilities relates to the VA computer procurement about which you asked. As a result of inquiries from various committees concerning VA's fiscal year 1979 year-end spending, we have identified \$19.1 million of fourth quarter ADP procurements. Much of this was for the Medical ADP program contracts you asked about. We are in the process of determining the basis for the decision to terminate certain of those contracts and are not in a position at this time to state whether or not these terminations were warranted. However, this review provides an example of

how our broad audit responsibilities impact on investigation of year-end spending.

Impoundment control is another area in which we have responsibilities. It was necessary to exempt actions under this legislation from coverage by the Impoundment Control Act to avoid a possible flood of routine deferral reports and the potential for putting OMB in the position of getting caught in a conflict between the two laws. Our proposed amendment provides that the Comptroller General's authority under section 1015 of the Impoundment Control Act to report a reserve or deferral to the Congress is not affected. That is, GAO can report any inappropriately excluded reserve or deferral to Congress. This authority will serve as a check against abuses.

Finally, our bid protest function may curb some types of year-end spending problems. That is, the knowledge that this remedy is available could prevent acting in haste at year-end without adequately meeting all required procedures. On occasion bidders or others interested in Government procurements may have reason to believe that a contract has been or is about to be improperly or illegally awarded or that in some way they have been unfairly denied a contract or an opportunity to compete for one. When that occurs, what avenues of relief are open to them? They can, of course, register their objections with the Government department or agency doing the buying. They can also turn to the courts (although a judicial remedy, when available, may be costly and time consuming).

Taking the matter to GAO is another alternative. This procedure has become known as a "bid protest." For over 50 years the GAO has provided an objective, independent, and impartial forum for the resolution of disputes concerning the award of contracts.

You asked us the costs of the proposed legislation. It will be minimal since it utilizes an existing system--the apportionment process.

The success in solving the problem will depend upon the extent to which conscientious and competent management is applied by OMB and other executive branch managers. No arbitrary limit will do the job. Only dedicated people managing effectively will cure the problem.

As agreed, we are addressing the questions in Senator William S. Cohen's April 16, 1980, letter in terms of the following topics:

- Specific Contracting Problems and Budget Execution
- VA ADP Procurement
- Supplementals
- Bid Protests
- Sole Source Procurement

Specific Contracting Problems  
and Budget Execution

As previously noted, in one of our recent reports-- "Controls Over Consulting Service Contracts at Federal Agencies Need Tightening" PSAD-80-35, March 20, 1980,--we reported on last quarter spending as it related to 111 randomly selected contracts valued at \$19.9 million. Of those, 57, valued at \$10.7 million (54 percent), were awarded in the last 90 days of the fiscal year. The procurement request, in 20 cases (or 35 percent) of these 57 contracts originated in the last quarter. We believe that such awards can cast doubt on the legitimacy of the agencies' requirements for the contract service.

We also found in studying these consulting service contracts that agencies can act very swiftly in making contract awards at the end of the fiscal year. The "rush" to award contracts can seriously impair the objectivity as well as thoroughness of the proposal evaluation process.

As stated in answer to your question on progress of Senator Cohen's September 26, 1979, request to GAO regarding agency compliance with OMB memoranda on year-end spending, tentative results of our review suggest that there are problems. However, our review is not yet complete and it would be premature to discuss it at this time.

You asked for specifics on monitoring budget execution and what it means. The Anti-Deficiency Act (31 U.S.C. 665) gives OMB the responsibility and authority to manage budget execution through the apportionment process. Specifically, it states (emphasis added):

"(c) Apportionment of appropriations; reserves; distribution; review

(1) Except as otherwise provided in this section, all appropriations or funds available for obligation for a definite period of time shall be so apportioned as to prevent obligation or expenditure thereof in a manner which would indicate a necessity for deficiency or supplemental appropriations for such period; and all appropriations of funds not limited to a definite period of time, and all authorizations to create obligations by contract in advance of appropriations, shall be so apportioned as to achieve the most effective and economical use thereof. As used hereafter in this section, the term "appropriation" means appropriations, funds, and authorizations to create obligations by contract in advance of appropriations.

(2) In apportioning any appropriation, reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.], for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection. Reserves established pursuant to this subsection shall be reported to the Congress in accordance with the Impoundment Control Act of 1974 [31 U.S.C. 1400 et seq.].

(3) Any appropriation subject to apportionment shall be distributed by months, calendar quarters, operating seasons, or other time periods, or by activities, functions, projects, or objects, or by a combination thereof, as may be deemed appropriate by the officers designated in subsection (d) of this section to make apportionments and reapportionments. Except as otherwise specified by the officer making the apportionment, amounts so apportioned shall remain available for obligation, in accordance with the terms of the appropriation, on a cumulative basis unless reapportioned.

(4) Apportionments shall be reviewed at least four times each year by the officers designated in subsection (d) of this section to make apportionments and reapportionments, and such reapportionments made or such reserves established, modified, or released as may be necessary to further the effective use of the appropriation concerned, in accordance with the purposes stated in paragraph (1) of this subsection."

## VA Medical ADP Procurement

On behalf of the Subcommittee on Government Information and Individual Rights, House Committee on Government Operations, we have been looking into VA's medical ADP program. As part of this effort and as a result of inquiries from various committees concerning VA's fiscal year 1979 year-end spending, we have identified \$19.1 million of fourth quarter ADP procurements. Of this total, \$15.7 million can be directly attributed to the medical ADP program as follows:

--\$1.3 million involving 5 procurements for Health Care Information System (HCIS) studies, which VA has identified as a major system acquisition project pursuant to OMB Circular A-109; and

--\$14.4 million involving 11 procurements for other ADP medical projects which, at the year-end, were considered interim solutions to immediate problems.

It is these 16 procurements that have been of the greatest interest to the Congress.

Subsequent to the award of these 16 procurements, OMB reviewed and recommended termination on April 7, 1980, of 7 contracts--2 for HCIS and 5 for other medical ADP projects. These contracts totaled approximately \$3.67 million. Of these, VA has terminated or is taking steps to terminate 4 contracts (\$1.5 million) and is discussing with OMB modifications or options available for the remaining 3 contracts.

OMB's recommendation to terminate these contracts is based on a number of apparent irregular procurement practices (OMB has referred two of the seven contracts to the Department of Justice for investigation of possible criminal violations) and in some instances programmatic deficiencies.

We are in the process of determining the basis for OMB's decision to terminate the 7 above mentioned contracts and are not in a position at this time to state whether or not these terminations were warranted.

## Supplemental Appropriations

You asked that we discuss the relationship between supplemental appropriations and year-end spending, and whether it would be appropriate for Congress to provide, through general legislation or limitations on spending legislation, that no appropriation shall revert to the Treasury within 6 months of the date of its enactment.

By definition, supplemental appropriations provide additional budget authority beyond original estimates for programs or activities for which the need for funds is too urgent to be postponed until enactment of the next regular appropriation act. Therefore, extension beyond the end of the fiscal year would not be appropriate. If obligation of the funds could reasonably be postponed until the next fiscal year, a supplemental would not be justified.

An additional problem that would be caused by such an action is that the scorekeeping system and tracking against budget targets and ceilings for a given year would be unduly complicated.

## Bid Protests

You asked for our thoughts on bid protest and certain aspects of sole source procurement. We would agree that the remedy of bid protest could serve to curb some types of year-end spending problems. That is, the knowledge that this remedy is available could prevent acting in haste at year-end without adequately meeting all required procedures. On occasion bidders or others interested in Government procurements may have reason to believe that a contract has been or is about to be improperly or illegally awarded or that in some way they have been unfairly denied a contract or an opportunity to compete for one. When that occurs, what avenues of relief are open to them? They can, of course, register their objections with the Government department or agency doing the buying. They can also turn to the courts (although a judicial remedy, when available, may be costly and time consuming). Taking the matter to GAO is another alternative. This procedure has become known as a "bid protest." For over 50 years the GAO has provided an objective, independent, and impartial forum for the resolution of disputes concerning the award of contracts.

## Sole Source Procurement

You asked the point at which sole source contracts must be reported in the Commerce Business Daily.

The Commerce Business Daily (CBD) provides industry with information concerning current Government contracting and subcontracting opportunities. Section 8(e) of the Small Business Act, 15 U.S.C. §637(e), requires that, with certain exceptions, proposed defense procurement of \$10,000 and above, and proposed civilian agency procurement actions of \$5,000 and above, be synopsisized and published in the CBD "immediately after the necessity for the procurement is established \* \* \*."

Section 1-1003 of the Defense Acquisition Regulations (32 C.F.R. §1-1003) and section 1-1.1003 of the Federal Procurement Regulations (41 C.F.R. §1-1.1003) implement the statute. The regulations (32 C.F.R. §1-1003.2 and 41 C.F.R. §1-1.1003-6) require procuring activities to publicize proposed procurements 10 calendar days before issuance of the solicitation. If this is not feasible, the synopsis should arrive at the CBD not later than the date of issuance of the solicitation.

Sole source procurements are subject to these requirements. However, there are a number of general exceptions to the publication requirements which may apply to sole source procurements. For example, the statute does not require publication with respect to procurements--

"(4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made

more than 15 days after the issuance of the invitation for bids or solicitation for proposals," or

"(10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator [of Small Business], that advance publicity is not appropriate or reasonable."

Section 304 of the proposed "Federal Acquisition Reform Act," S. 5, 96th Congress, would specifically require that notice of intent to award a sole source contract be published in the CBD at least 30 days in advance of solicitation of a proposal from the prospective contractor or at least 30 days in advance of the proposed award date. GAO has supported the enactment of S. 5, subject to certain proposed changes not relevant here.