

# Report To The Congress

## OF THE UNITED STATES

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### Civil Servants And Contract Employees: Who Should Do What For The Federal Government?

Federal agencies use contractors to do work that GAO believes Federal employees should do because the work involves basic management decisions. Although contractors may not be making final decisions, GAO is concerned about the extent to which contractors are influencing agencies' control of Federal programs and policies.

Ironically, while Federal agencies use contractors for work that should be done in-house, they use Government employees to provide commercial services that contractors could provide in many cases at a lower cost.

GAO recommends that the Congress and the Office of Management and Budget improve oversight and management of the Federal contract work force.



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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

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To the President of the Senate and the  
Speaker of the House of Representatives

This report discusses contractors' excessive involvement in executive branch agencies' basic management functions. We performed this review because we were concerned about agencies using contractors to do work that should be done by Federal employees. GAO believes that Federal employees' performance of this work would assure that agencies control the direction of Government programs.

We are sending copies of this report to the Director, Office of Management and Budget.

*Milton J. Fowler*

Acting Comptroller General  
of the United States



C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	OMB Circular A-120	3
	OMB Circular A-76	3
	Objectives, scope, and methodology	4
2	CONTRACTORS' INVOLVEMENT IN THE PERFORMANCE OF BASIC MANAGEMENT FUNCTIONS	6
	Contractor involvement is continuing	6
	Distinguishing performance from advice is difficult	10
	No specific agency plans to correct problem	11
	Rapid cost growth in the contract work force	12
3	CONTRACTING FOR COMMERCIAL SERVICES AS RE- QUIRED CAN HELP LESSEN CONTRACTORS' IN- VOLVEMENT IN MANAGEMENT FUNCTIONS	15
	Executive branch policy is to rely on the private sector	16
	Many Government employees provide commer- cial services	18
4	CONTRACT REFORM BILLS IN THE 96TH CONGRESS EMPHASIZE DISCLOSURE	21
	Legislation aimed at areas needing improvement	21
	Agency reports should disclose whether contractors were used	23
5	CONCLUSIONS AND RECOMMENDATIONS	26
	Conclusions	26
	Prior GAO recommendation to the Congress	27
	Recommendation to the Director, OMB	27
	Recommendation to the Congress	27
	Agency comments and our evaluation	27

APPENDIX

		<u>Page</u>
I	Letter dated April 24, 1981, from the Deputy Director, Office of Management and Budget	29
II	Digest from GAO's June 5, 1980, report "Government Earns Low Marks On Proper Use Of Consultants," (FPCD-80-48)	31
III	List of 12 GAO Reports on Consulting Services	39

ABBREVIATIONS

DOD	Department of Defense
GAO	General Accounting Office
OMB	Office of Management and Budget

D I G E S T

Federal agencies have used contractor personnel to do work that GAO believes Federal employees should do because the work involves basic management decisions. Although contractors may not be making final decisions, GAO is concerned about the extent to which contractors are influencing agencies' control of Federal programs and policies. (See p. 6.)

Recently, GAO found that the Departments of Energy and Defense used contractors to

--substantially determine or influence national energy policies and

--identify the requirements for national defense.

These Government functions are the responsibility of the Secretary of Energy and Secretary of Defense, respectively. Agency officials often cite personnel ceilings as the reason for not having enough in-house personnel to perform this work. (See p. 10.)

At the same time that Federal agencies are using contractor personnel for work that should be done in-house, they are using Government employees to provide commercial services that contractors could provide in many cases at a lower cost. Although it has been the executive branch's general policy since 1955 to rely on contractors for these commercial goods and services, agency compliance with this policy has been inconsistent and relatively ineffective. (See p. 15.)

RAPID COST GROWTH IN  
THE CONTRACT WORK FORCE

The size of the Federal work force is controlled primarily through personnel ceilings which the Office of Management and Budget (OMB) establishes for each agency. Agencies often

cite these ceilings as a primary reason for not having enough Federal employees to perform essential functions.

If Federal agencies cannot directly hire enough people to carry out Federal programs and functions approved by the President and the Congress, they can turn to contracts with private firms (or grants to nonprofit institutions) to acquire needed services. Persons providing these services are neither included in personnel ceilings nor counted as part of the Federal work force, but are paid with Federal funds. (See p. 12.)

From 1970 to 1980, the size of the civilian executive branch work force has decreased by about 120,000 employees (from 2.94 million to 2.82 million), as total Federal expenditures have increased about 195 percent. Concurrently, Federal expenditures for service contracts, adjusted for inflation, increased 28 percent. In our opinion, the rapid growth in service contract expenditures partly reflects agencies' reaction to personnel ceilings and the increased demands of new or expanded Government programs. (See p. 13.)

#### DIFFICULT TO DISTINGUISH ADVICE FROM PERFORMANCE OF A GOVERNMENT FUNCTION

Although OMB Circular A-76 does not permit contracting for performance of Government functions--basic management decisions--it does permit agencies to obtain contractors' "advice" on Government functions. However, it is sometimes difficult to tell where "advice" stops and "performance" begins.

Agency officials often contend that contractors do not perform Government functions--they only advise on the performance of such functions since a Federal official approves resultant policy directives or reports before they are issued. In GAO's view, performance begins when the contractor's involvement in basic management functions is so extensive (as GAO found at Energy and Defense) that an agency's ability to develop options other than those proposed by the contractor is limited. (See p. 10.)

In response to continuing abuses in Federal contracting practices, the Director, OMB, required Federal agencies in July 1980, to develop plans for a management control system for improving all procurements, with particular emphasis on consulting services. However, none of the plans prescribe specific actions to correct the problem of contractors' excessive involvement in basic management functions. (See p. 11.)

MANY GOVERNMENT EMPLOYEES  
PROVIDE COMMERCIAL SERVICES

Circular A-76 provides that it is the executive branch's general policy to rely on the private sector for goods and services unless it is more economical to provide them in-house. Federal purchases of goods and services from the private sector cost about \$117 billion in fiscal year 1980. Although this policy to rely on the private sector has existed for over 25 years, OMB information shows that as many as 400,000 Federal employees are currently operating more than 11,000 commercial or industrial activities at almost \$19 billion annually. These employees represent almost one-fourth of the total executive branch civilian work force. (Janitorial and keypunching services are examples of commercial activities that could be contracted.) (See p. 15.)

CONTRACTING OUT COMMERCIAL SERVICES  
AS REQUIRED CAN HELP LESSEN CONTRACTOR  
INVOLVEMENT IN MANAGEMENT FUNCTIONS

Circular A-76 requires agencies to inventory their commercial or industrial activities and establish schedules for comparing costs, when appropriate, to determine the most economical source of performance--contract or in-house.

The Department of Defense has conducted more A-76 cost comparisons than any other Federal agency. About 60 percent of these comparisons show that it is more economical to convert the in-house activity to a contract. (See p. 18.)

If additional cost comparisons (required to be completed by September 1982; September 1985 for Defense), show that a large percentage of the Government's commercial and industrial activities could be provided more economically by contract, agencies should be able to reallocate many of these existing in-house commercial positions to governmental work that must be performed by Federal employees without increasing personnel ceilings. OMB estimated savings of \$3.6 billion during fiscal years 1982-87 if all agencies fully implement A-76.

PRIOR GAO RECOMMENDATION  
TO THE CONGRESS

A 1978 GAO study of A-76's basic policy of reliance on the private sector found agencies' compliance inconsistent and relatively ineffective. To assure that agencies implement A-76 consistently, GAO recommended that the Congress legislate a national policy of reliance on the private sector. As of May 1981, action had not been taken on this recommendation. (See p. 19.)

In view of the little progress agencies have made since 1978 to effectively carry out this policy, GAO continues to believe that the Congress should act on its earlier recommendation. Such legislation would enhance the Government's ability to reallocate existing in-house commercial positions to governmental work and thereby lessen the problems highlighted in this report. (See p. 27.)

RECOMMENDATION TO  
THE DIRECTOR, OMB

The Director, OMB, should issue guidelines that will better distinguish between contractors' advice on Government functions and their performance of such functions. (See p. 27.)

CONTRACT REFORM BILLS  
EMPHASIZE DISCLOSURE

Numerous bills were introduced in the 96th Congress which, if enacted, would have required

agencies to disclose contractors' involvement in agency activities. For example, several bills required agencies to disclose how contractors were used in preparing issued reports. (See p. 23.)

A recent GAO review found that agencies do not fully disclose consulting service contractors' roles in preparing congressionally mandated reports. OMB's reasons for not acting on GAO's 1980 recommendation to require such disclosure are not convincing. (See p. 24.)

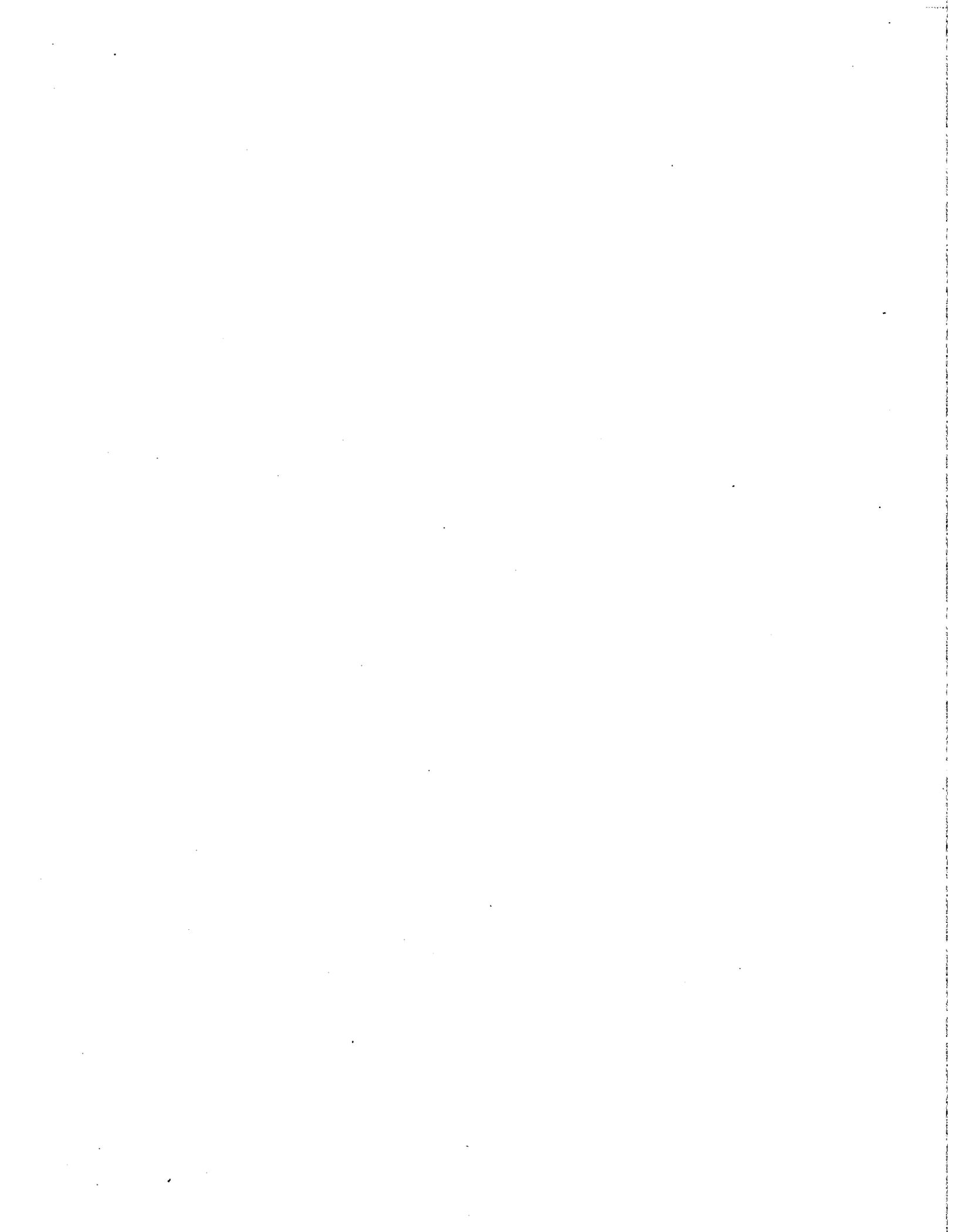
#### RECOMMENDATION TO THE CONGRESS

To help assure that the Congress is fully apprised of consulting service contractors' assistance in preparing congressionally mandated reports, GAO recommends that the Congress enact legislation requiring Federal agencies to fully disclose when such services are used in preparing these reports. (See p. 27.)

#### AGENCY COMMENTS

OMB said it would not oppose legislation on A-76 if the legislation clearly states that the Government's general policy is to rely on competitive private enterprise for needed goods and services. In view of OMB's earlier opposition to this same recommendation, GAO believes OMB's current position may be a significant opportunity for the Congress and OMB to agree on a national policy of reliance on the private sector. Also, OMB agreed with the recommendation to clarify the difference between contractors' performance of a Government function and advice in performing such a function. (See p. 27.)

OMB disagreed with the need for legislation requiring agencies to disclose contractors' assistance in preparing congressionally mandated reports. GAO believes the history of extensive contractor involvement in agency management functions, as well as congressional interest in disclosure, justifies the need for this information. (See app. I.)



## CHAPTER 1

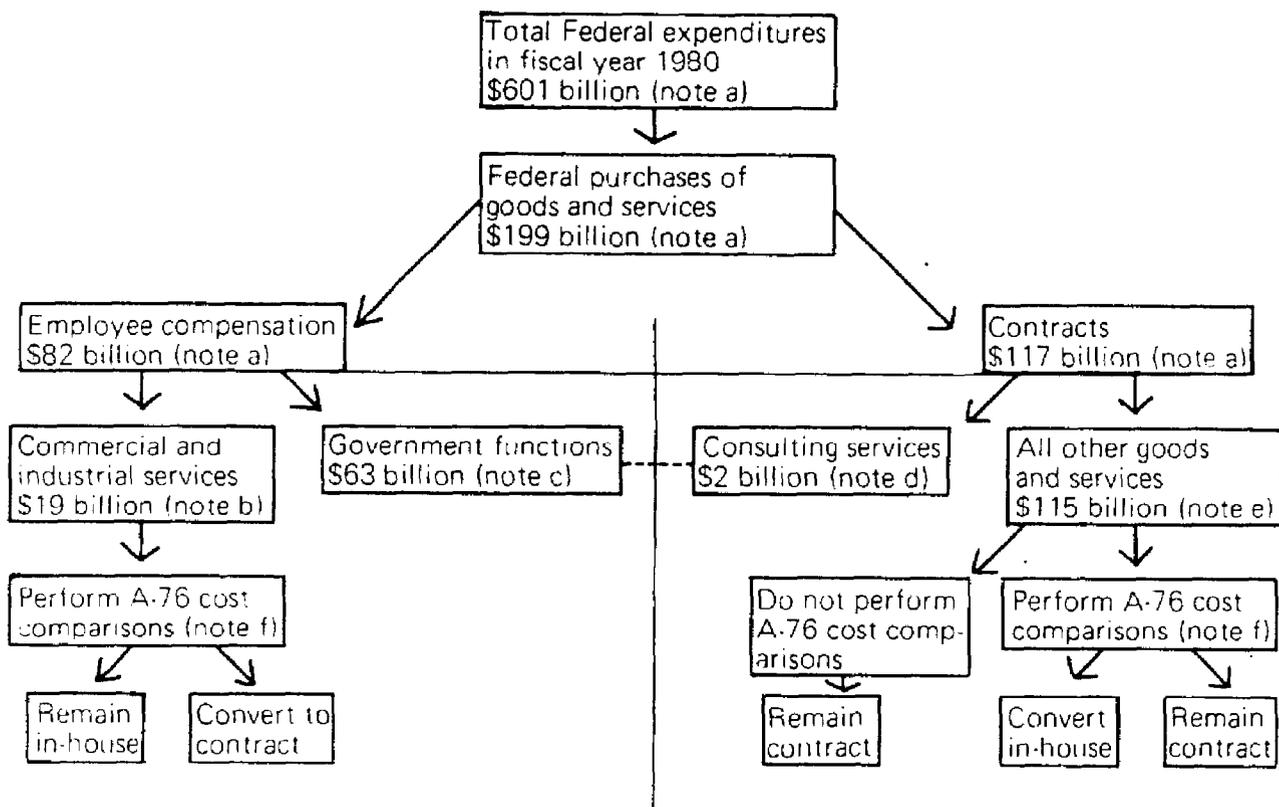
### INTRODUCTION

Federal agencies purchase various types of goods and services, including consulting services, to accomplish their mission. These missions flow from the national needs shown in the President's budget and are assigned to the agencies by legislation or Presidential order. Federal expenditures for goods and services fall into two major categories: (1) compensation for Government employees' services and (2) payments to contractors in the private sector in exchange for their goods and services.

According to the Department of Commerce, \$199 billion of a total \$601 billion in Federal expenditures was spent for goods and services in both categories during fiscal year 1980. Of this amount, about \$82 billion was paid to Federal employees and \$117 billion to contractors. The chart on p. 2 shows a breakdown of these expenditures.

About three-quarters of the \$82 billion in Federal employee compensation is paid for work that can only be performed by Government employees because it involves governmental authority. Examples of this work are the management of Government programs requiring value judgments, tax collection and revenue disbursements, and the regulation of industry and commerce. On the other hand, many Government employees are paid to operate commercial and industrial activities such as janitorial and keypunching duties, that could be operated by contractors. OMB information shows that Federal employees are currently operating over 11,000 commercial and industrial activities at almost \$19 billion annually. OMB Circular A-76 requires agencies to compare costs, when appropriate, of these commercial and industrial activities to determine the most economical source of performance--contract or in-house. Similar cost comparisons of contractor-operated activities are required only when an agency believes it is both feasible and more economical to perform the activity in-house. (See p. 16.)

The second major category of Federal purchases, payments to contractors, consists of expenditures for all other types of goods and services, including consulting services. Consulting services are considered separately since OMB defines them as advice on Government functions. This advice would normally be provided by Government employees but, for various reasons, is obtained from contractors. While accurate data is not available, we estimate that Federal expenditures for consulting services in fiscal year 1979 were about \$2 billion. Other goods and services contracted include items such as furniture, tanks, computers, keypunching, architect, and engineering services.



----- Indicates these contracts are for advice on Government functions.

a/ Source is Department of Commerce, Bureau of Economic Analysis.

b/ Source is the Office of Management and Budget (OMB), Office of Federal Procurement Policy. According to an OMB official, about 65 percent of the \$19 billion is for compensation paid to Federal employees and about 35 percent for noncompensation expenditures (e.g. rent).

c/ Arrived at by subtracting the nearly \$19 billion in annual operating costs for in-house commercial and industrial activities operated by Government employees from the total \$82 billion in employee compensation.

d/ GAO estimate (FPCD-80-48).

e/ Arrived at by subtracting the \$2 billion estimated consulting service expenditures from the total \$117 billion in Federal contract expenditures.

f/ OMB Circular A-76 requires agencies, when appropriate, to conduct cost comparisons of these commercial and industrial activities to determine the most economical source of performance--contract or in-house. Similar cost comparisons of contractor-operated activities are required only when an agency believes it is feasible to perform the activity in-house and at a cost that is less than contract performance.

## OMB CIRCULAR A-120

OMB Circular A-120 establishes policy and guidelines to be followed by executive branch agencies in determining and controlling the appropriate use of consulting services. The circular defines consulting services as "those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management."

Agencies obtain consulting services by (1) appointing consultants to the civil service, (2) awarding a procurement contract, and (3) appointing members to advisory committees. According to agencies' figures reported to OMB, the Government spends far more for consulting service contracts than for salaries paid to appointed consultants.

The circular states that consulting services may be used, when essential to the mission of the agency, to get:

- Specialized opinions or professional or technical advice which does not exist or is not available within the agency or another agency.
- Outside points of view to avoid too limited judgment on critical issues.
- Advice regarding developments in industry, university, or foundation research.
- Opinions of noted experts whose national or international prestige can contribute to the success of important projects.
- Citizen advisory participation in developing or implementing Government programs that, by their nature or by statutory provision, call for such participation.

## OMB CIRCULAR A-76

Since 1955 the executive branch's policy has been to rely on contractors in the private sector to provide the goods and services it needs to act on the public's behalf. This policy was expressed in temporary bulletins issued as early as 1955 and was made more permanent when OMB issued Circular A-76, in 1966. The current revision of A-76, dated March 29, 1979, reaffirms the general policy of reliance on the private sector for goods and services. The circular states that agencies may use military personnel, civilian employees, and contract services to perform Federal work and that all three methods have been responsive and dependable. It also states that Government functions must be performed by Government employees and that appropriate emphasis be placed on comparative cost.

In many cases it is easy to determine whether the Government or the private sector is the best source of needed goods and services. However, other cases worth billions of dollars fall into an area which makes it difficult for Federal managers to decide whether to perform services in-house or to contract them. The circular provides information to help managers make these decisions.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

We conducted this study because of the Congress' continued interest in contract reform. In the 96th Congress several committees held hearings and numerous contract and consulting service reform bills were introduced.

The objectives of this review were to

- analyze the various contract reform bills introduced in the 96th Congress and their relationship to those areas we identified as needing improvement,
- determine the status of executive branch implementation of management controls to reform agency contract practices,
- compare changes in the size of the Federal indirect contract work force with the direct work force,
- analyze our prior reports involving contractors used to do work that should have been done by Government employees, and
- determine the extent to which Government employees perform commercial services.

We analyzed only those bills introduced in the 96th Congress that directly related to one or more of the seven consulting service problems identified in our June 5, 1980, report "Government Earns Low Marks On Proper Use of Consultants," (FPCD-80-48). (See app. II.) Several of these bills included provisions that went beyond the OMB definition of consulting services to include other contract services.

We also reviewed the testimony and the printed hearings that related to these bills. We did not analyze the numerous other bills concerning agency procurement practices in general since they did not specifically relate to the agency contract practices discussed in this report. We also did not include in our analysis various amendments to appropriation bills unless the amendment would, in our opinion, significantly contribute to one or more of the areas we identified as needing improvement. Although we attempted to review all relevant bills, we may have inadvertently omitted bills contributing to contract reform because of the

difficulty in distinguishing between those that relate to procurement in general rather than the contract practices discussed in this report.

To determine the status of executive branch implementation of management controls to reform agency contract practices, we:

- Analyzed the plans from all 17 agencies required to develop a management control system for improving contract practices.
- Discussed the implementation of the plans with representatives of 12 Inspectors General offices. The Director, OMB, assigned the responsibility to review and comment on the agency plans to the Inspectors General.
- Interviewed officials from OMB's Office of Federal Procurement Policy concerning their review and approval of the plans.
- Discussed with Department of Defense (DOD) officials their progress in implementing their specific plan.

The Office of Federal Procurement Policy provided copies of summary data on all major executive branch agencies' implementation of OMB Circular A-76. This data consisted of annual operating expenses for commercial and industrial activities. It was not within the scope of our study to review the accuracy of the data. We interviewed an official from the Office of Federal Procurement Policy to obtain an estimate of the number of Government employees required to operate commercial and industrial activities.

The Bureau of Economic Analysis in the Department of Commerce provided data on various types of Federal expenditures. We used this data to measure changes on Federal contract service costs. Since contracts are classified according to the predominant good or service being purchased, we assumed service contracts would be predominantly for the services of persons working under the contracts. Service contracts, however, could include costs for nonservice items. For example, a janitorial contract could include costs for janitors' supplies in addition to their compensation. We assumed that the proportion of service contract expenditures for nonservice items would remain proportionally constant over time. We did not confirm the accuracy of the data provided by the Bureau of Economic Analysis.

## CHAPTER 2

### CONTRACTORS' INVOLVEMENT IN THE PERFORMANCE OF BASIC MANAGEMENT FUNCTIONS

Federal agencies have used contractors, including consulting service contractors, to perform work that should be done by Federal employees because it involves basic management decisions. Although contractors may not be making final decisions, we are concerned about the extent to which contractors are influencing agencies' control of Federal policies and programs. Several of our previous reports found that various Federal agencies used contractors to perform basic management functions that should have been performed by Government employees. Our recent review of DOD's and the Department of Energy's contracting practices show this problem is continuing as more demands are placed on a declining Federal work force. Energy and DOD used contractors, for example, to

- substantially determine or influence national energy policies and
- identify the requirements for national defense.

These Government functions are the responsibility of the Secretary of Energy and the Secretary of Defense, respectively, and should be performed by Federal employees to assure control over the direction of agency policies and programs.

Although OMB Circular A-76 states that Government functions must be performed by Federal employees, it recognizes that it is proper to get contractors' "advice" on Government functions. However, it is sometimes difficult to tell where "advice" stops and "performance" begins.

In response to continuing abuses in Federal contracting practices, the Director, OMB, required Federal agencies in July 1980 to develop plans for a management control system for improving all procurements, with particular emphasis on consulting services as defined in Circular A-120. OMB has approved all agencies' plans; however, none of the plans prescribe specific actions to correct the problem of contractors' excessive involvement in agency management functions.

#### CONTRACTOR INVOLVEMENT IS CONTINUING

In 12 reports issued since 1961, we stated that various Federal agencies used consulting services obtained by contract or by appointment to perform work that should have been performed by full-time Government employees. (See app. III.) Six of these reports stated that consultants were involved in performing basic

management functions. The remaining six reports involved agency operating activities that, although not managerial, should have been performed by Federal employees. Our June 5, 1980, report showed that Federal agencies, during the past 20 years, have failed to make satisfactory progress to improve their management of consulting services. Many of the same problems that existed as far back as 1961 still existed at the time of our latest report. (See app. II.)

#### Department of Energy

Our November 2, 1979, report stated that numerous contracts at Energy appeared to offer contractors opportunity to either determine or substantially influence national energy policies. 1/ After reviewing 124 contracts in five Energy organizations, we concluded that the potential for contracts requiring the performance of basic management functions existed throughout Energy.

One contract for \$9,900 was to determine Energy's authority to control anticompetitive practices of common-carrier petroleum pipelines. Energy officials told us that the study resulting from this contract is the basic document for making policy decisions on petroleum pipeline regulation.

Another contract for \$363,157 required the contractor to perform the basic management functions of planning, developing, and establishing goals and priorities in the area of energy storage. Specifically, the contractor was to

- determine the need for, and timing of, energy storage products;
- review and update energy storage plans; and
- support the program office with quick responses on issues arising from congressional requests, budget information, and congressional hearings.

Another contract for \$87,000 was to (1) identify Energy's responsibilities for dealing with emergencies, (2) design, develop, and define a strategy for implementing an energy emergency planning process, and (3) assist in establishing a strategy for distributing fuels in periods of short supply.

Agency officials often cited the lack of available in-house expertise as a reason for hiring a contractor. This lack of

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1/"The Department Of Energy's Practices For Awarding And Administering Contracts Need To Be Improved" (EMD-80-2).

expertise would, in our view, limit Energy's ability to consider policy, planning, or priority options other than those proposed by the contractor.

Energy's Inspector General reported similar findings in a December 13, 1979, report on consulting service contracts. The Inspector General found that many of the activities performed under one contract appeared to supplant policymaking and managerial functions that should have been performed by agency staff. The report also stated that the services being performed under the contract appeared to be directly related to management's responsibilities for budgeting funds, coordinating programs, and establishing priorities--"functions that we would expect DOE [Energy] staff to handle."

#### Other civilian agencies

Our March 1980 report on consulting service contracts awarded by six civilian agencies, concluded that, in many of the 111 contracts reviewed, the work being contracted should have been done by the agency. <sup>1/</sup> For example, one Department of Labor contract for \$78,000 was to provide a personnel classification survey. The work, according to a Labor official, was of a regular and recurring nature and should have been done by in-house staff. The contract was terminated because agency officials felt that in-house staff could do the work. Similar contracts were found at the Departments of Commerce, and Housing and Urban Development.

Our November 1974 report (B-164031(1)) involving the Department of Health, Education, and Welfare, found a \$49,642 sole-source contract to prepare an overall national strategy and detailed action plan for the Head Start program. It was to contain guidelines and procedures for regional offices' use in implementing the program locally. The same firm was subsequently awarded a \$139,947 contract to continue planning the Head Start program. Program officials stated the contractors' services were essentially the normal day-to-day planning and management functions which officials would have performed. We concluded that performance under the two contracts appeared to have violated the intent of OMB Circular A-76 which states that agencies will perform for themselves those basic management functions necessary to retain essential control of their programs, such as planning.

In an April 12, 1979, Comptroller General decision involving the General Services Administration (B-193035), a contractor was required to perform a management function that was the direct responsibility of agency officials. The National Center for Productivity and Quality of Working Life awarded a contract requiring

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<sup>1/</sup>"Controls Over Consulting Service Contracts At Federal Agencies Need Tightening," (PSAD-80-35, Mar. 20, 1980).

contractor personnel to "negotiate final contract prices prior to award." In our opinion, this requirement violated OMB's policy that work of a policy or managerial nature be performed by Federal employees. We held this opinion despite the fact that a Center employee continued to function as the Government's contracting officer and retained final signature authority for contract awards. The authority to negotiate final prices is so integrally related to the contracting officer's authority that we considered it a basic function which management must perform to retain essential control of agency programs.

#### DOD

Our March 31, 1981, report on DOD contracting practices showed that contractors are playing a significant role in identifying defense needs and, in effect, are articulating and performing DOD management functions. 1/ The result is that DOD is weakening its ability to perform in-house work essential to fulfill its mission.

For that report, we randomly selected 256 contracts awarded in fiscal year 1979 for management support and consulting services valued at about \$175 million. Our analysis of these contracts showed that 183 (71%), valued at \$108 million, raised the issue of in-house capability within DOD.

Several of the contracts, in our opinion, pre-empted DOD's prerogatives in directing national defense and in managing and directing the armed services. For example, DOD was using contractors to

- develop plans and organizational responsibilities in the event of mobilization;
- review the performance of other contractors; and
- prepare basic contracting documents, evaluate other contractors' proposals, and help negotiate the final contract.

The Office of the Secretary of Defense awarded a sole-source contract to review Army support unit requirements for the first 30 days of a war. We believe that DOD personnel should have performed this task since it involves critical defense requirements. Also, one of the tasks under a Navy contract required the contractor to assist in preparing the technical aspects included in the request for proposals to purchase upgraded range equipment, evaluate technical proposals submitted by other contractors, and

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1/"Controls Over DOD's Management Support Contracts Need Strengthening" (MASAD-81-19).

participate in negotiating the final contract. Under the same Navy contract, contractor personnel were used to oversee the performance of aircraft production contractors. Both of these Navy functions should have been done in-house if the Navy is to properly administer major system acquisitions. Program officials in each of the services told us that the expertise to perform these contract functions simply was not available, and many officials cited personnel ceilings as one of the reasons. They also cited the relatively low Government pay scales for highly qualified technical talent--especially engineers.

DISTINGUISHING PERFORMANCE  
FROM ADVICE IS DIFFICULT

Although Circular A-76 states Federal employees must perform Government functions, it recognizes that agencies can obtain contractors' advice on Government functions. However, it is difficult to tell where advice stops and performance begins. Similarly, OMB Circular A-120, dated April 14, 1980, defines consulting services as "those services of a purely advisory nature relating to the governmental functions," but does not specify when advice on Government functions stops and performance of Government functions begins.

Definition of Government function

Circular A-76 defines Government function as "a function which must be performed in-house due to a special relationship in executing governmental responsibilities." The circular specifically states:

"Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees."

Governmental functions can fall into several categories:

- Discretionary application of Government authority requiring value judgments, as in the direction of the national defense, selection of program priorities, or direction of Federal employees.
- Controlling monetary transactions and entitlement, as in Government tax collection and revenue disbursements, control of the public treasury, and administration of public trusts.
- Maintaining needed core capabilities in the area of research, development, and testing needed for technical analysis and evaluation.

OMB Circular A-120, also prohibits agencies from contracting out inherently governmental work by emphasizing that "consulting services will not be used in performing work of a policy-decisionmaking or managerial nature which is the direct responsibility of agency officials." This same policy was stated earlier in OMB Bulletin 78-11, dated May 5, 1978.

Agency officials often contend that contractors do not perform Government functions--they only advise on such functions since a Federal official approves any resultant policy directive or report before it is issued. In our opinion, extensive contractor involvement in basic management functions (as we found at Energy and Defense) can limit an agency's ability to develop options other than those proposed by the contractor.

Energy program officials disagreed with the Inspector General's conclusion (see p. 8) that contractors were apparently supplanting basic management functions. The officials contended that the contractors only supported this function:

"While we agree that severe staffing shortages and a rapidly increasing workload associated with our Office of Solar Applications may have contributed materially to the possible improper use of contractor personnel during contract performance, we do not agree that their use has supplanted policymaking and managerial responsibilities. Statement of work for these contracts involve the development of work products which directly support these activities. Decisions on matters of policy and their implementation are the responsibility of Solar Applications program personnel."

Our November 2, 1979, report on Energy contracting practices found that it was difficult to delineate between advice and performance of a Government function. For example, we cited a \$500,000 study using eight contractors to determine the feasibility of establishing a national power grid system for an electrical transmission. While Energy officials may make the ultimate policy decision concerning the power grid, contractors performed the bulk of the study, including the utility industry which had a vested interest in the outcome of the study. We concluded that the contracts allowed for considerable contractor influence over Energy's decision on this matter.

#### NO SPECIFIC AGENCY PLANS TO CORRECT PROBLEM

In July 1980, in response to continuing abuses in Federal contracting practices, OMB gave Federal agencies 1 month to submit plans for a management control system for improving all procurements, with particular emphasis on consulting services. OMB required agencies to give immediate attention to effecting the

provisions of Circular A-120, including the provision that consulting services will not be used to perform work which is the direct responsibility of agency officials. Agencies' plans were to include specific actions needed to assure effective implementation of the system, a schedule for implementation, and an evaluation by each agency's Inspector General. Each agency was required to designate a career Senior Executive Service manager responsible for implementing the system. This manager was to retain this responsibility until the agency incorporated the guidelines and management controls specified by Circular A-120.

OMB has approved all agencies' plans. Although most of the 17 agency plans submitted referred to the OMB requirement that consulting services not be used to perform inherently governmental work, no plan prescribed any specific actions to stop this practice. Most agency plans were scheduled for implementation by December 1980. However, as of early February 1981, many agencies had not implemented all of their plans' provisions.

DOD's plan provided that it would issue a regulation in November 1980 making DOD contracting officers responsible for determining whether a proposed procurement action is for consulting services. It should be noted, however, that OMB Circular A-120 required DOD to issue this regulation by June 1980. This was a critical provision since none of the management controls in the circular apply unless the proposed contract is first classified as a consulting service. As of February 1981, DOD still had not issued the regulation. A DOD official stated that it will take an additional 3 to 6 months for the DOD council to approve the regulation. The General Services Administration issued a similar regulation in August 1980 for civilian agencies.

#### RAPID COST GROWTH IN THE CONTRACT WORK FORCE

The size of the Federal work force is controlled primarily through Congress' appropriating funds for personnel and OMB establishing personnel ceilings for each agency. <sup>1/</sup> Agency officials often cite these ceilings as a primary reason for not having enough Federal employees to perform essential Government functions. If Federal agencies cannot directly hire enough people to accomplish Federal programs and functions approved by the President and the Congress, they can turn to contracts with private firms, or grants to nonprofit institutions. Although persons providing these services are not included in personnel ceilings or counted as part of the Federal work force, they are paid with Federal funds.

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<sup>1/</sup>Also, since fiscal year 1975 the Congress has set civilian personnel ceilings for DOD.

From 1970 to 1980, the size of the civilian executive branch work force has decreased by about 120,000 employees (from 2.94 million to 2.82 million), as total Federal expenditures have increased about 195 percent. Concurrently, Federal expenditures for service contracts, adjusted for inflation, increased 28 percent. In our opinion, the rapid growth in service contract expenditures partly reflects agencies' reaction to personnel ceilings and the increased demands of new or expanded Government programs. 1/

#### Contractor personnel supplement Federal work force

Our March 1981 report on DOD contracting practices showed that DOD lacks the ability to perform many functions which should be performed in-house. Program officials in each military service told us that the expertise simply was not available, and many of them cited personnel ceilings as one of the reasons. The gap in expertise to accomplish essential management functions is, for the most part, being filled indirectly through contracts with private firms and is a significant part of DOD's work force. For the contracts included in our review, DOD purchased a total of 2,077 staff-years for about \$101 million (includes compensation and contractor overhead costs).

#### Need for effective work force planning

In our opinion, an effective work force planning system would help to assure that agency officials have sufficient personnel to perform all essential Government functions. Increasing competition for limited funds makes it essential that work force requirements and personnel management decisions be based on appropriate and credible work force planning systems and procedures. Personnel decisions made without credible work force planning data are suspect, open to challenge, and subject to arbitrary and subjective actions.

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1/We recognize, however, that other factors need to be considered in analyzing this relationship. For example, increases in Federal productivity could result in accomplishing a growing number of complex programs without increasing the size of the Federal work force.

Our December 30, 1980, report states that a lack of central leadership and guidance has led Federal managers to downgrade the importance of this essential management tool. 1/ Arbitrary personnel ceiling constraints are a major reason why Federal agencies have not extensively used sound work force planning procedures and techniques to determine work force requirements and staffing needs. In our opinion, top agency management must be convinced that the benefits derived from such an effective work force planning system will be used as the basis for personnel budget decisions.

We recommended that OMB and the Office of Personnel Management establish a Federal policy and procedures for work force planning. We also recommended that a special work force planning improvement project be developed and tested in several Federal facilities to demonstrate feasibility and benefits.

Both OMB and the Office of Personnel Management agreed with the basic message of the report and recognized the importance of sound work force planning. The Office of Personnel Management stated that the proposed project will require a major investment in resources. OMB expressed a preference that a work force planning policy and procedures package be developed after a demonstration project.

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1/"Federal Work Force Planning: Time For Renewed Emphasis," (FPCD-81-4).

## CHAPTER 3

### CONTRACTING FOR COMMERCIAL SERVICES AS REQUIRED

#### CAN HELP LESSEN CONTRACTORS' INVOLVEMENT IN

#### MANAGEMENT FUNCTIONS

Despite the executive branch's policy to rely on contractors to provide the goods and services it needs, OMB information shows that an estimated 400,000 Federal employees are currently operating over 11,000 commercial or industrial activities at an estimated cost approaching \$19 billion annually. 1/ These employees, representing almost one-fourth of the total executive branch civilian work force, 2/ are performing work that could generally be contracted without endangering an agency's control over the direction of its programs. Janitorial, guard, laundry, and keypunching services are examples of commercial and industrial activities that could be contracted because the work is not of a policy, decisionmaking, or managerial nature.

Our 1978 report found that agencies' compliance with the policy to rely on the private sector was inconsistent and relatively ineffective. 3/ To assure consistent implementation and compliance, the report recommended that the Congress legislate a national policy of reliance on the private sector to provide the goods and services the Government needs. OMB opposed this recommendation, and the Congress has not acted on it as of May 1981. Since our report was issued, agencies have made little progress to implement this policy as evidenced by a recent OMB directive.

OMB Circular A-76 requires agencies to compare costs, when appropriate, to determine the most economical source of performance for these commercial and industrial activities--contract or in-house. If the cost comparisons show that a significant percentage of the Government's commercial or industrial activities could be provided more economically by contract, agencies should be able to reallocate a large number of Federal positions to governmental work that must be performed by Government employees. Comparisons completed by DOD show that more than half of its commercial activities could be obtained more economically by contract.

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1/According to an OMB official, about 65 percent of the \$19 billion is for compensation and about 35 percent for noncompensation expenditures (e.g. rent).

2/1.86 million employees in 1980, excluding Postal Service.

3/"Development of a National Make-Or-Buy Strategy--Progress and Problems," (PSAD-78-118, Sept. 25, 1978).

EXECUTIVE BRANCH POLICY IS TO  
RELY ON THE PRIVATE SECTOR

Circular A-76, when first issued in 1966, contained the basic policy that had been expressed in previous temporary bulletins as early as 1955--reliance on the private sector for commercial or industrial activities. The current revision of this circular, dated March 29, 1979, reaffirms this general policy of reliance but for the first time gives explicit recognition to the precepts that governmental functions must be performed by Government employees and requires appropriate emphasis be placed on comparative costs. Comparing costs of in-house commercial or industrial activities with those in the private sector are now required.

OMB has estimated savings of \$3.6 billion during fiscal years 1982-87 if all agencies fully implement A-76. These projected savings assume that (1) 60 percent of the cost comparisons will continue to show it is more economical to convert the in-house activity to contract and (2) conversions to contract will save an average of 20 percent over in-house costs.

Commercial or industrial activities

Circular A-76 states:

"The Government's business is not to be in business. Where private sources are available, they should be looked to first to provide the commercial or industrial goods and services needed by the Government to act on the public's behalf."

"When private performance is feasible and no overriding factors require in-house performance, the American people deserve and expect the most economical performance and, therefore, rigorous comparison of contract costs versus in-house costs should be used, when appropriate, to decide how the work will be done."

The circular defines a Government commercial or industrial activity as one which is operated and managed by a Federal executive agency and which provides a product or service that could be obtained from a private source. Such activities must be (1) separable from other functions to be suitable for performance either in-house or by contract and (2) needed regularly.

The circular cites numerous examples of Government commercial and industrial activities:

--Art and graphics services.

--Film and videotape production.

- Keypunching and data entry services.
- Laundry and dry cleaning.
- Operation of cafeterias and mess halls.
- Guard and protective services.
- Architect and engineering services.
- Custodial and janitorial services.

The circular states that the Government is authorized to operate a commercial or industrial activity when

- no satisfactory commercial source is available,
- the activity is inherently related to the Nation's defense,  
or
- the Government can provide or is providing a product or service at a lower total cost than if it were obtained from a private commercial source.

When are A-76 cost comparisons required?

Agencies must conduct cost comparisons, when appropriate, to

- justify continued Government performance of a commercial or industrial activity,
- justify converting a Government commercial or industrial activity to contract,
- determine how new Government requirements (that can feasibly be performed in-house) will be met most economically, and
- determine if a product or service currently contracted could be provided more economically in-house.

After the initial cost study, activities approved for continuation are to be reviewed again at least once every 5 years. The circular states that, ordinarily, agencies should not incur the delay and expense of comparing costs to justify a Government commercial or industrial activity for products or services estimated to be less than \$100,000 in annual operating costs. Activities below this threshold should be contracted unless in-house performance is justified.

Agencies must prepare inventories and compare costs

As the first step in comparing costs to determine the most economical source of performance, the circular states that each agency will prepare a complete inventory of all Government commercial or industrial activities which they operate. The inventory should include, for each activity, the amount of the Government's capital investment, the annual cost of operation, the date the activity was last reviewed, and why the activity is being continued under the circular.

Generally, agencies must also maintain an inventory of all service contracts exceeding \$100,000 annually which they determine could reasonably be performed in-house.

Agencies are to prepare a detailed schedule for reviewing each commercial or industrial activity and contract in both of these inventories to determine if their operation complies with the circular.

MANY GOVERNMENT EMPLOYEES PROVIDE COMMERCIAL SERVICES

As of February 1981, agencies reported to OMB that they were operating 11,637 commercial or industrial activities at an annual operating cost totaling \$18.5 billion. <sup>1/</sup> An OMB official estimated that about 400,000 Federal employees operate these activities. The activities are providing a commercial product or service that could generally be obtained from a private source. An OMB official stated that some agencies have not reported all of their commercial and industrial activities and that the total annual operating cost could reach \$30 billion when complete data is available.

Contracting for commercial services can free positions for governmental work

DOD has conducted more A-76 cost comparisons than any other Federal agency. About 60 percent of the comparisons (190 out of 304) show that it is more economical to convert the in-house activity to contract. An in-house activity cannot be converted to contract unless the contract saves at least 10 percent in personnel costs. If additional cost studies (required to be completed

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<sup>1/</sup>Excludes commercial and industrial activities with annual operating costs of less than \$100,000.

by September 1982; September 1985 for DOD) show that a significant percentage of the Government's commercial and industrial activities could be provided more economically by contract, agencies should be able to reallocate a large number of Federal positions to work that must be performed by Government employees. For example, if the comparisons show that contract work would be more economical for commercial and industrial activities representing 50 percent of the total positions, as many as 200,000 existing Federal positions (50% of the OMB estimate) could be reallocated for governmental work without increasing personnel ceilings. However, other factors, such as the pay cap on salaries for top-level Government officials, can affect agencies' ability to hire qualified persons for reallocated positions.

Previous GAO study shows  
need for congressional action

Our September 1978 report (PSAD-78-118) discussed the overall effectiveness of executive agencies' policies and programs for acquiring commercial or industrial products and services for Government use. We found that

- the A-76 policy was not perceived as a national policy with full executive and legislative branch approval and support;
- over the years, policy pronouncements and applications were controversial and unsettled;
- executive departments and agencies' implementation was inconsistent and relatively ineffective; and
- make-or-buy decisions were not necessarily based on sound management principles that would result in an economical and effective Government.

We also pointed out that, since the executive branch first established a general policy of reliance on the private sector in 1955, emphasis has shifted from almost outright reliance on the private sector to reliance with exceptions. For all of these reasons we stated a need for a national policy, endorsed and supported by both the legislative and executive branches, directing how the Government will acquire its goods and services. We recommended that the Congress, through legislation or otherwise:

- Endorse a national policy of reliance on private enterprise for the Government's needed goods and services to

the maximum extent feasible, insofar as doing so is consistent with the national interest, within the framework of procurement at reasonable prices and

--Require executive agencies to report on their progress in supporting that national policy.

As of May 1981 the Congress had not acted on our recommendations. However, OMB revised Circular A-76 in March 1979 to explicitly recognize (1) the need for economy in Government and (2) that Government functions must be performed by Government employees. Before this revision, the principle that certain functions are inherently governmental and must be performed in-house had, for the most part, only been implicit.

Although A-76 is controversial and the procedures established to implement it have not been totally accepted by many interested parties, including GAO, we do support its general policy. An example of a procedural problem is contained in our April 22, 1981, report. We noted two areas in which the A-76 guidelines appear to need revision to enhance comparability and equity in making cost comparisons. 1/ The rules concerning the treatment of unoccupied in-house positions and the adjustment of in-house personnel costs for inflation tend to favor contracting out. We recommended that OMB assess the need to modify the guidelines.

#### Agencies' progress slow

On April 8, 1981, the Deputy Director, OMB, in a directive to executive branch agencies, concluded that overall implementation of A-76, with few exceptions, has been in a "vacuum." The Deputy Director stated "This Administration strongly supports the general policy of reliance on competitive private enterprise to supply the products and services needed by the Government." Agency officials were urged to become more involved in A-76 and provide the overall leadership necessary to fully implement the circular.

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1/"Factors Influencing DOD Decisions To Convert Activities From In-house To Contractor Performance" (PLRD-81-19).

## CHAPTER 4

### CONTRACT REFORM BILLS IN THE 96TH CONGRESS

#### EMPHASIZE DISCLOSURE

Numerous bills were introduced in the 96th Congress to improve Federal contracting practices. For example, several bills would have made agency contract expenditures more visible to the Congress and the public and would have limited the amount of funds agencies can spend on contracts in the last quarter of the fiscal year.

Although these bills were aimed primarily at disclosing contractors' involvement in agency activities rather than prohibiting contractors' involvement in management functions, the bills did address many of the other areas GAO has identified as needing improvement. For example, legislation was proposed to require that agencies disclose in their reports how contractors were used in preparing them. If enacted, this would enable readers to better assess the reports' objectivity. Agencies' congressionally mandated reports often do not disclose this information.

#### LEGISLATION AIMED AT AREAS NEEDING IMPROVEMENT

Our June 5, 1980, report concluded that Federal agencies failed to make satisfactory progress during the past 20 years to improve their management of consulting services obtained by contract or by appointment. It pointed out that many of the same problems that existed as far back as 1961 still exist. We identified the need for practically every major Federal agency to better manage consulting services. The most common problems were:

- Failure to maintain adequate information on the number and cost of consulting services.
- Failure to obtain adequate competition in awarding procurement contracts for consulting services.
- Inconsistent, improper, or excessive rates of pay for consulting services.
- Use of consulting services to perform work that should be performed by regular Government employees.
- Possible duplication of consultant studies.
- Potential conflicts of interest between consultants' advice and their outside interests.

--Disproportionate number of consultant contracts awarded at the end of the fiscal year.

The following chart compares the major provisions proposed in the various bills with the most common problems we identified. The chart shows only those major provisions that directly relate to one or more of the areas needing improvement.

Agency problems	Proposed bills to address agency problem areas			
	S. 2890 H.R. 7674 H.R. 8306	S. 3141	H.R. 7542 (note a)	S.2788
	----- (Resolution) -----			
Failure to maintain information on number and cost of consulting services	<ul style="list-style-type: none"> <li>--Make list of contracts available to public</li> <li>--Require a line item in the budget for contracts</li> </ul>		<ul style="list-style-type: none"> <li>--Require agencies to submit consulting services budget justification to Appropriation Committees</li> </ul>	
Failure to obtain adequate competition in awarding consulting contracts	<ul style="list-style-type: none"> <li>--Require more contracts to be advertised in Commerce Business Daily</li> </ul>	<ul style="list-style-type: none"> <li>--Eliminate exceptions for competing contracts</li> </ul>		
Inconsistent, improper or excessive pay for consulting services	<ul style="list-style-type: none"> <li>--Require agencies to disclose how contractors were used in preparing reports</li> </ul>	<ul style="list-style-type: none"> <li>--Conduct a survey before awarding contract to determine if services are available in-house</li> </ul>		<ul style="list-style-type: none"> <li>--Require agencies to disclose how contractors were used in preparing reports</li> </ul>
Possible duplication of consultant studies				<ul style="list-style-type: none"> <li>--Send all contract reports to GAO</li> </ul>
Potential conflicts of interest between consultants' advice and outside interests	<ul style="list-style-type: none"> <li>--Define conflict of interest</li> <li>--Require contractors to disclose conflicts</li> <li>--Give authority to terminate contracts if contractor fails to disclose conflict</li> </ul>			
Disproportionate number of consultant contracts awarded at end of fiscal year (note b)	<ul style="list-style-type: none"> <li>--Limit amount of funds spent in last 2 months of fiscal year</li> </ul>			

a/Among the six bills, this was the only one enacted (Public Law 96-304, sec. 307).

b/Other bills were introduced to correct the yearend spending problem.

As the chart shows, several bills required agencies to publicly disclose more information on their use of contractors. For example, H.R. 7542 required agencies to identify in their budget justifications sent to the House and Senate Appropriations Committees the amount of funds requested for consulting services and the major programs requiring these services. This bill was later enacted requiring consulting service budget justifications as recommended in our June 5, 1980, report. Other bills, such as S. 2880 and H.R. 7674, required each agency to prepare and make available to the public a list of all its contracts. In addition, it required a line item in each agency's budget for all contracts and required more contracts to be advertised for competition before they are awarded.

AGENCY REPORTS SHOULD DISCLOSE  
WHETHER CONTRACTORS WERE USED

Several bills recognized in their "statement of policy" that, if contractors were permitted to perform policymaking and decisionmaking activities which are inherently related to the public interest, the integrity of the governmental process could be compromised. However, none of the bills, if made law, would require agencies to comply with the policy in Circulars A-76 and A-120 that inherently governmental work be performed by Government employees. Several bills would have, however, made agencies' use of contractors more visible to the Congress and the public.

Four bills--S. 2880, H.R. 7674, H.R. 8306, and S. 2788--required, among other things, that agencies' written reports contain information on the extent to which contractors were used in preparing them. The first three bills, for example, would have required agencies to disclose

- the name and address of the contractor,
- the cost of the contract,
- the type of procurement process used in the award of the contract, and
- a description of the work performed.

Our August 19, 1980, report showed the importance of disclosing such information in agency reports mandated by the Congress. <sup>1/</sup> We obtained information from seven agencies on their use of consulting service contractors to prepare congressionally mandated reports. These reports are either specifically required

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<sup>1/</sup>"Agencies Should Disclose Consultants' Roles In Preparing Congressionally Mandated Reports" (FPCD-80-76).

by statute or requested in congressional committee reports. Results showed that consulting service contracts were used in preparing responses to meet over 40 percent of the agencies' congressionally mandated reporting requirements.

The types of disclosure ranged from full descriptions of the contractor's work and its relationship to the overall study, to simply citing the names of the contractor personnel in the acknowledgement, in an appendix reference, or as a footnote with little or no information on the contractor's role. Agencies either did not disclose or inadequately disclosed contractors' assistance in preparing approximately 60 percent of the reports. Since congressionally mandated studies can influence the congressional oversight process and future direction of Government programs, it is important that the Congress be fully apprised of contractor assistance.

Accordingly, our August 1980 report recommended that the Director, OMB, revise Circular A-120 to require Federal agencies to fully disclose consulting service contracts used in reports required by law or at the request of congressional committees or subcommittees. This basic information is essential for informed congressional decisionmaking.

#### OMB disagreed with previous recommendation

The Deputy Director, OMB, in a November 19, 1980, letter to the Chairman, House Government Operations Committee, concluded that a revision to Circular A-120 was unnecessary since OMB already requires similar information to be disclosed on the cover of all consulting service contractor reports containing recommendations to an agency. OMB's reasoning is not well founded and could be misleading. (See p. 28 for a discussion of OMB's current position on a related recommendation.)

OMB began requiring basic disclosure information in all consulting service contractor reports after we had completed our review but before we issued our report. It is important to recognize, however, that OMB requires this information be disclosed only in reports submitted by the contractor to an agency--not by the agency to the Congress--and then only if the report contains recommendations to the agency. We pointed out the need for OMB to also require agencies to disclose such information in their reports to the Congress.

It is difficult to reconcile OMB's position requiring contractors to disclose information in preparing reports submitted to agency heads with its position that such information is not needed in agency reports submitted to the Congress. The Congress, like agency heads, should also be given an opportunity to assess the objectivity of agencies' reports on the basis of full disclosure of contractors' assistance in preparing them.

For disclosure information to be of maximum value, it must be readily available to report readers. OMB points out that a description of tasks performed and their significance would be included in the official agency contract file and concludes that our recommended disclosure requirements would merely present, in a different format, information already available to the Congress and the public. It is unlikely, however, that the person reading the report will see the need to request disclosure information from the agency when the report does not indicate whether contractors were used. Even in those cases where readers know that a contractor was used, it is not practical to make them request and wait for information from the agencies, as OMB suggests, when this information could be easily included.

## CHAPTER 5

### CONCLUSIONS AND RECOMMENDATIONS

#### CONCLUSIONS

There are undoubtedly many causes for excessive contractor involvement in the performance of basic agency management functions. In our opinion, significant ones include (1) the increasing demands for governmental work being placed on a declining Federal work force as Government programs increase in number, cost, and complexity, (2) the lack of sufficient guidance from OMB to distinguish between advice and performance of a Government function, and (3) agencies' inconsistent and relatively ineffective compliance with the executive branch policy to rely on contractors for commercial services. If the number and complexity of Government programs continue to increase as personnel ceilings limit the size of the Federal work force, agency officials will probably experience more pressure to perform governmental work by hiring additional people indirectly through service contracts. In our opinion, this pressure can be lessened if agencies reallocate in-house commercial positions to governmental work.

Since 1955 the emphasis of the executive branch's A-76 policy has shifted from almost outright reliance on the private sector to reliance with several exceptions. Our 1978 recommendation that the Congress, through legislation or otherwise, endorse a national policy of reliance on the private sector was based on the view that until Federal departments and agencies perceive that the policy is a firm national resolve, they will not carry it out effectively. Given the little progress agencies have made since our 1978 report, we continue to hold this view.

Without legislation, the executive branch can continue to unilaterally shift policy emphasis. Congressional action can preclude such unilateal shifts and establish a stable national policy. Such action would provide the necessary incentive for Federal agencies to implement the policy with assurance that it could not be changed again without congressional approval. Effective implementation should free up many existing commercial-type positions that can be reallocated to governmental work and thus lessen contractors' involvement in basic management functions.

Although agencies are permitted to obtain contractors' advice on Government functions, it is sometimes difficult to tell where advice stops and performance begins. In our view, performance begins when contractors' involvement is so extensive that it limits agencies' ability to develop options other than those proposed by the contractor. OMB needs to issue guidelines to help agencies distinguish between advice and performance to assure they maintain control of Government policies and programs.

Extensive contractor involvement in basic management functions raises serious concerns about agencies' control of Federal programs and policies. We have, as a general policy, consistently supported the need for agencies to disclose how contractors' are used and what activities they perform. Since congressionally mandated reports can influence the oversight process and future direction of Government programs, we believe it is essential for agencies to disclose how consultants were used in preparing such reports. OMB's reasons for not requiring such disclosure are not convincing; we believe legislation is necessary.

#### PRIOR GAO RECOMMENDATION TO THE CONGRESS

1 We believe the Congress [should act on our earlier recommendation to legislate a national policy of reliance on the private sector for goods and services.]

#### RECOMMENDATION TO THE DIRECTOR, OMB

2 The Director, OMB, should [prepare written guidelines that will better distinguish between contractors' advice on Government functions and their performance of such functions. These guidelines should clearly indicate where advice stops and performance begins.]

#### RECOMMENDATION TO THE CONGRESS

Also, to help assure that the Congress is fully apprised of consulting service contractors' assistance in preparing congressionally mandated reports, we recommend that the Congress enact legislation requiring Federal agencies to fully disclose when such services are used in preparing the reports.]

#### AGENCY COMMENTS AND OUR EVALUATION

In a letter dated April 24, 1981 (see app. I), OMB said that it would not oppose legislation incorporating the basic policy of reliance on the private sector in A-76 provided it clearly states "It is the general policy of the Government to rely on competitive private enterprise to supply the products and services it needs." OMB believes this would provide a clear basis in law for the executive branch requirement that agencies comply with the policies in the circular while leaving the execution and administration of the policy to the executive branch. In view of OMB's opposition to this same recommendation in our 1978 report, we believe that OMB's current position may be a significant opportunity for the Congress and OMB to agree on a national policy of reliance on the private sector.

Our draft report proposed that the legislation make explicit reference to the policy in A-76 that Government functions be performed by Federal employees. However, since this policy is inherent in the general policy of reliance on the private sector (since A-76 does not permit contractors to provide Government functions, Federal employees must provide such functions), we have deleted explicit reference to the Government functions policy in the recommendation.

OMB agreed with our recommendation that it provide guidance differentiating between advice and performance of a Government function. Accordingly, OMB is proposing changes to Circular A-120 that will, among other things, require additional management controls to insure that Government functions are not performed by contractors.

OMB has taken action concerning a proposal in the draft report that the number of Federal employees performing commercial or industrial activities and Government functions be reported to the Congress. On April 8, 1981, OMB issued Bulletin 81-15 requiring agencies to provide OMB with various information, including the number of Federal employees performing commercial or industrial activities. We believe this action, coupled with OMB's willingness to provide such information to the Congress, accomplished the proposal's objective. We have deleted the reference to this proposal from the report.

OMB disagreed with our recommendation that the Congress legislate a requirement for agencies to disclose contractor's involvement in preparing congressionally mandated reports on the basis that all reports sent to the Congress should be judged on their merits, not on the source of the data. OMB believes the recommendation assumes that, if a contractor was involved in preparing the report, the content of the report is "suspect." On the contrary, we believe the history of extensive contractor involvement in basic agency management functions, as well as a high degree of congressional interest in disclosure (as evidenced by ch. 4), justifies the need for disclosure information. Perhaps if agencies routinely disclosed the extent of contractor involvement, the Congress would have adequate information to decide whether the reports' findings and recommendations should be "suspect." At present, the Congress does not have this information.



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

April 24, 1981

Mr. William J. Anderson  
Director, General Government Division  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D. C. 20548

Dear Mr. Anderson:

This is in reply to your letter of March 23, 1981, in which you requested that OMB comment on the GAO draft report concerning use of consulting, management and support-type contracts.

We believe that consulting services, when properly and judiciously used, offer agency managers an excellent tool to obtain expert advice regarding the accomplishment of their mission.

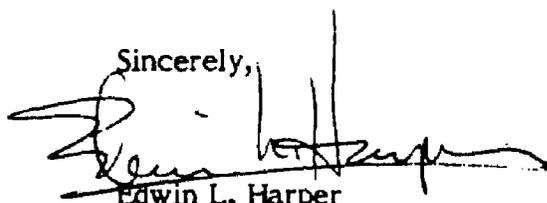
OMB would not oppose a Joint Resolution incorporating the basic policy in OMB Circular No. A-76 provided it clearly states "It is the general policy of the Government to rely on competitive private enterprise to supply the products and services it needs." This Resolution would provide a clear basis for the Executive Branch requirement that agencies comply with the policies of OMB Circular No. A-76, while leaving the execution and administration of the policy to the Executive Branch. We would, however, be forced to review our position on such an initiative if Congress made substantive changes to such a general policy statement during the legislative process.

We concur with the recommendation that the difference between contractor performance of a Governmental function and advice or assistance in performing such a function needs to be clarified. Accordingly, we are proposing changes to OMB Circular No. A-120, "Guidelines for the Use of Consulting Services," that will, among other things, require additional management controls to ensure that Governmental functions are not performed by contractors. This, coupled with a section on Governmental functions that will be included in the planned OFPP pamphlet on the use of consulting services, should alleviate the problem.

In your second recommendation, you stated that the number of Federal employees performing commercial or industrial activities and Governmental functions should be reported to Congress. We have taken action to obtain this information. We recently published OMB Bulletin No. 81-15, which will provide us information on the number of Federal employees performing Government commercial or industrial activities, as well as the total number and cost of these activities. This data will be collected from agencies until the Circular is fully implemented and will be available to Congress upon request.

We do not concur with the last recommendation, which states that Congress should enact legislation requiring Federal agencies to fully disclose the names of contractors used in preparing reports requested by Congress. We believe that all reports sent to Congress should be judged on their merits, not on the source of the data. In our opinion, this recommendation presumes that if a contractor was involved in preparing the report, the content of the report is "suspect." However, in the final analysis, the agency submitting the report is responsible for its content, regardless of the sources --contract or in-house -- that were used in developing the report.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edwin L. Harper', written over a horizontal line.

Edwin L. Harper  
Deputy Director

COMPTROLLER GENERAL'S  
REPORT TO THE CONGRESSGOVERNMENT EARNS LOW MARKS  
ON PROPER USE OF CONSULTANTSD I G E S T

During the past 20 years, Federal agencies have failed to make satisfactory progress to improve their management of consulting services. During this period, GAO has issued over 30 audit reports identifying the need for practically every major Federal agency to better manage these services. (See p. 7.) Many of the same problems that existed as far back as 1961 exist today.

Although executive branch agencies reported \$278 million in consulting service contracts during fiscal year 1979, actual expenditures could approximate \$2 billion. (See p. 9.) Obtaining consulting services by appointing consultants as part-time Government employees accounts for a minor portion of total Federal expenditures for these services.

The proper use of consulting services is a normal, legitimate, and economical way to improve Government services and operations. Agencies must continue to have the option to use consulting services where appropriate.

Solutions to the consulting service problem are long term. In the interim, GAO is recommending several ways that the Office of Management and Budget (OMB) and the Congress can improve their oversight of these services. (See pp. 32 and 41.)

In November 1977 GAO reported that it was not possible to determine how many consulting service arrangements the Government had, at what cost, and for what purposes. This information is still not available. Although there has been considerable progress in developing the Federal Procurement Data System that could provide this data, the reported data is inaccurate. Federal agencies have

experienced difficulty in using the OMB definition of consulting services to report their expenditures. (See p. 9.)

LITTLE PROGRESS IN 20 YEARS TO  
OBTAIN ADEQUATE COMPETITION

Since 1961 GAO has issued nine reports which found that various Federal agencies did not obtain adequate competition in awarding consulting service contracts. GAO's March 1980 report found that 74 (67%) of 111 contracts awarded by 6 Federal agencies totaling \$12.1 million were sole source. The procedures used in contracting for consulting services at all agencies reviewed do not show that adequate competition is obtained nor that controls exist to minimize costs. (See p. 14.)

QUESTIONABLE FEES PAID  
FOR CONSULTING SERVICES

GAO has issued six reports since 1961 which have questioned the reasonableness of fees paid for consulting services. In addition, the Department of Energy's Inspector General and the Subcommittee on Civil Service and General Services, Senate Committee on Governmental Affairs, have questioned the reasonableness of these fees. For example, the Department of Energy paid a consulting service contractor \$500 a day for 15 days to critique the first issue of a new journal. The same contractor had worked within the past year as a Department of Energy subcontractor at \$250 a day. (See p. 15.)

QUESTIONABLE NEED FOR  
CONSULTING SERVICES

GAO has also issued 11 reports from 1961 to 1980 which found that various Federal agencies used consulting services to perform work that should have been performed by regular Government employees. GAO's March

1980 report on 111 contracts awarded by 6 Federal agencies questioned the need for many of the contracts. (See p. 18.)

#### POTENTIAL FOR DUPLICATION

Four Federal repositories can be used to locate a substantial portion of the studies performed by Government employees and consulting services. GAO has found that agencies are not searching these repositories before initiating new studies, and many completed studies are not submitted to the repositories. (See p. 19.)

#### POTENTIAL FOR CONFLICT OF INTEREST

Several reports cited instances of agencies' awarding consulting service contracts when there was an appearance of a conflict of interest that could (1) diminish the contractor's capacity to give impartial, objective advice or (2) result in the contractor's being given an unfair advantage when competing for future contracts. OMB anticipates issuing Government-wide regulations on organizational conflicts of interest in 1981. (See p. 21.)

#### YEAREND SPENDING

Agencies are awarding a disproportionate number of consulting service contracts in the final quarter of the fiscal year. The "rush" to award contracts in the final quarter can seriously impair the objectivity as well as the thoroughness of the proposal process. (See p. 23.)

#### OMB'S EFFORTS TO IMPROVE AGENCIES' MANAGEMENT OF CONSULTING SERVICES HAVE NOT BEEN EFFECTIVE

In May 1978 OMB issued a bulletin defining consulting services and establishing a

series of controls intended to improve the management of these services. It also surveyed agencies' expenditures for consulting services in 1977 and 1978. (See p. 25.)

However, GAO has found little improvement in agencies' management of these services. GAO recommended that OMB instruct Federal agencies to establish more rigorous procedures for approving consulting service contracts. (See p. 30.)

GAO also found that agencies were experiencing difficulty in using the definition of consulting services and had different interpretations of the definition. The executive branch views it in a much more narrow way than does the Congress. GAO recommended that the OMB Director work with the Congress to achieve a better and more uniform understanding of the definition. (See p. 28.)

In April 1980 OMB issued a new circular to tighten management controls over agencies' approval of these services and to provide more guidance on the definition.

The OMB Director plans to direct the agencies to reduce by 15 percent the amount of funds in the fiscal year 1981 budget for consulting services. The agencies are to do this by reducing their appropriation accounts which include funds for many different types of services. (See p. 31.)

These actions, along with monitoring the agencies' application of the definition, should help to assure that consulting services are properly managed and accurately reported. There is no assurance, however, that the planned 15-percent reduction in fiscal year 1981 funds for consulting services will not be circumvented by agency reductions in funds for other services.

Until there is a common understanding of the definition and improved "budget visibility" for consulting services, any efforts to reduce these funds will be difficult to monitor. (See p. 31.)

GAO recommends that the Director, OMB:

- Assure that agencies establish effective procedures to fully implement the prescribed management controls.
- Monitor the reports available from the Federal Procurement Data System to make sure the additional written guidance provided to the agencies results in a common understanding of the definition.

CONGRESSIONAL EFFORTS TO CONTROL  
GOVERNMENT'S USE OF CONSULTING  
SERVICES ARE INCREASING

Recently, several congressional committees have increased their efforts to restrict agencies' use of consulting services, including placing ceilings on the amount of funds agencies can spend for these services. GAO has found that the effectiveness of restrictions is limited. For example, agency personnel ceilings can be a barrier to effective manpower management since they can often cause Federal managers to contract with the private sector. More effective measures should be sought to improve management accountability. (See p. 32.)

Representatives of the consulting service industry have objected to congressional ceilings on agencies' funds and have identified several disadvantages, such as hindering the agencies' ability to perform congressionally mandated studies and evaluations. (See p. 37.)

MATTERS FOR CONSIDERATION  
BY THE CONGRESS

While GAO's work has not specifically pinpointed underlying causes for agencies' continued failure to manage consulting services properly, it appears they are numerous and complex. A major cause could be the arbitrary use of personnel ceilings. (See p. 39.)

Solutions to assure the Government's proper use of consulting services may take several years and will require the cooperation of the agencies, OMB, and the Congress.

A critical first step is to resolve the confusion among the agencies and the Congress surrounding the OMB definition of consulting services. Until the Congress and the executive branch agree on the definition, effective congressional oversight and management accountability will not be realized.

Secondly, agencies need to establish more stringent procedures to assure policies and management controls prescribed by the new OMB circular are followed.

The third step is already in place but not fully tested--the principle inherent in civil service reform of providing Federal managers with additional flexibility to manage resources while holding them accountable for performance.

The Congress can encourage agencies to initiate long-term improvements and to improve its oversight of these services by requiring each:

--Major Federal agency to submit annually to the House and Senate Appropriations Committees, as part of their budget justification, the amount of funds requested for consulting services; the appropriation

accounts in which these funds are located; and a brief description of the need for these services, including a list of those major programs that require consulting services. This information can be used to determine whether the funds requested are appropriate. (See p. 40.)

--Inspector General to submit to the Congress, along with the agency's budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System. (See p. 40.)

If the Congress, in reviewing the budget justifications, determines that reductions in the funds requested are appropriate, such reductions should take into consideration several factors, including the agencies' legitimate needs for consulting services to assist them in carrying out a growing number of complex Federal programs. The reductions should not be so drastic that they restrict agencies' proper use of consulting services.

GAO recognizes that these reductions only address the quantity of expenditures, not the quality, and will not assure that agencies manage these services properly. However, they would draw management's attention to the immediate need to correct the problems that have existed for 20 years. (See p. 41.)

GAO believes it is critical for agencies to have the capability to intelligently acquire consulting services, monitor performance, and evaluate results. One way to achieve this capability is for agencies having Government-wide management responsibilities and/or a high level of expertise in particular fields to advise and assist other agencies in acquiring and evaluating consulting

services. In this regard, the Office of Personnel Management has established an Office of Consulting Services to advise and assist other agencies in various personnel management areas, such as performance appraisal and general management analysis. While GAO has not assessed this office's performance, it is an encouraging development that merits attention by other agencies having a high level of expertise in other fields.

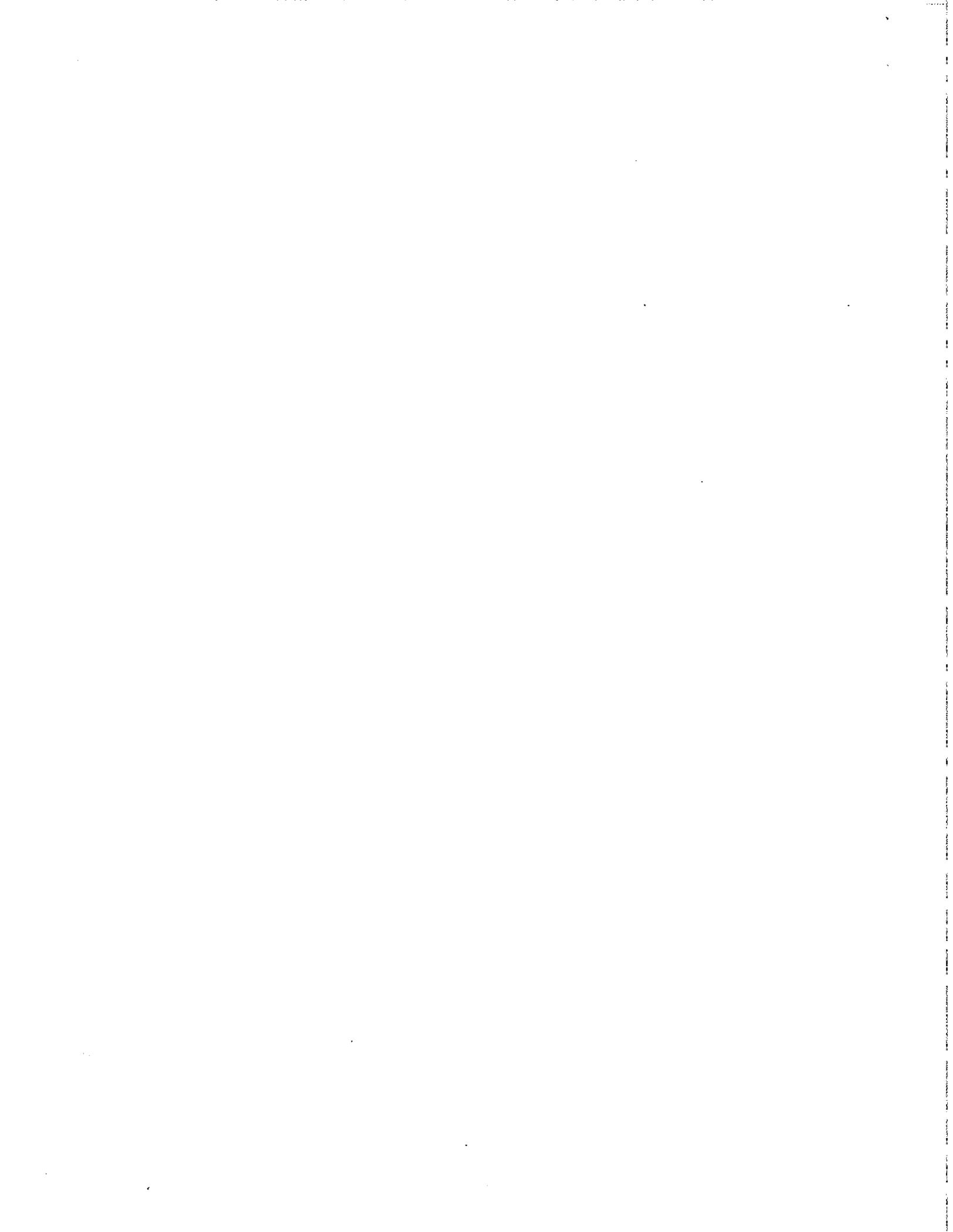
AGENCY COMMENTS

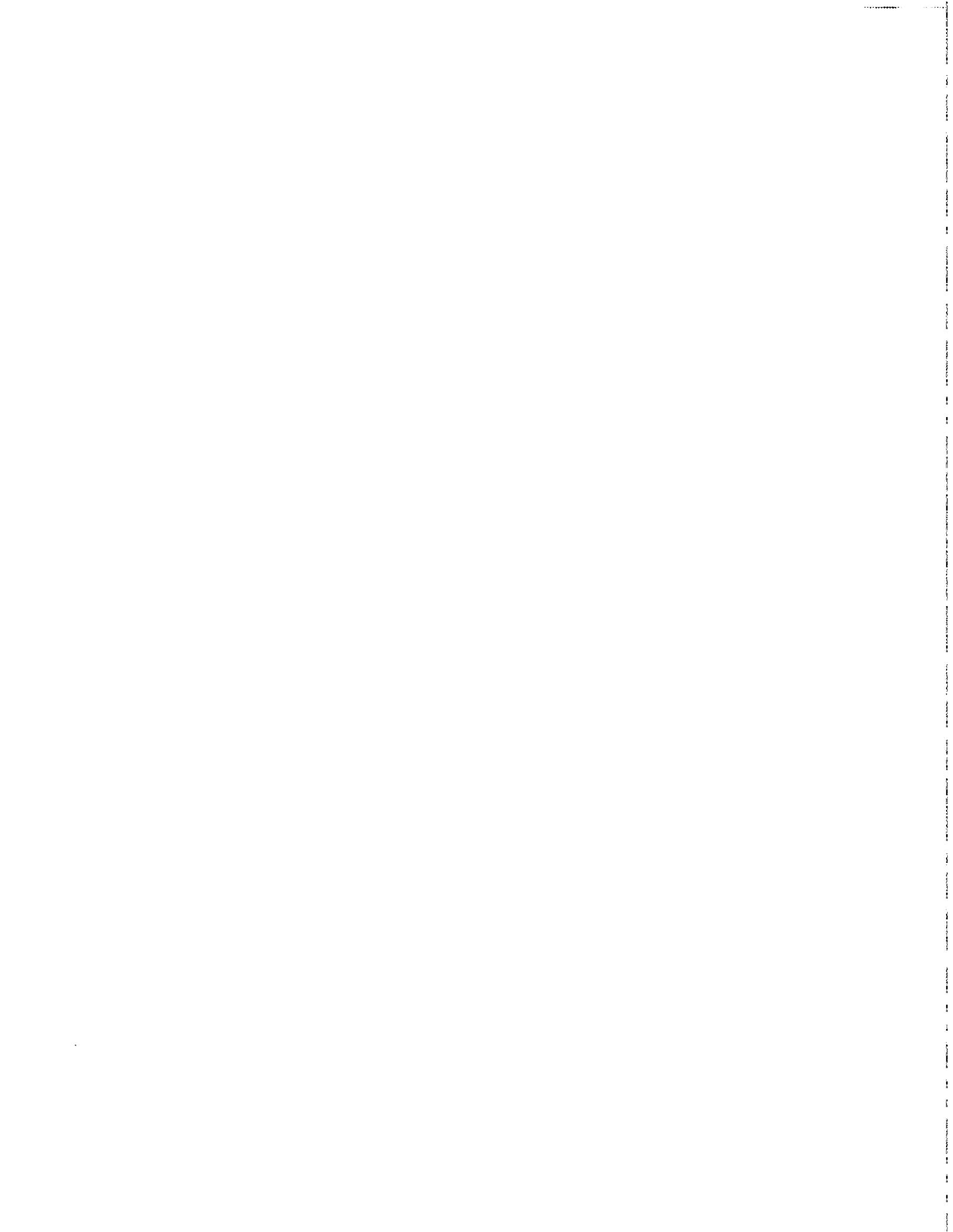
At the request of the Chairman, Subcommittee on Civil Service and General Services, Senate Committee on Governmental Affairs, GAO did not obtain official agency comments.

LIST OF 12 GAO REPORTS WHICH FOUND THAT AGENCIES  
USED CONSULTING SERVICES TO PERFORM WORK THAT SHOULD  
HAVE BEEN PERFORMED BY REGULAR GOVERNMENT EMPLOYEES

<u>Agency</u>	<u>Report title, date, and number</u>
Government-wide	Review of Practices of Government Agencies And Department In The Hiring Of Individual As Experts And Consultants And Organizations And Firms For Management Advisory Services (Jan. 1961, B-143330)
HEW	Procedures And Practices For Employment Of Consultants And Experts Need Improvement (Apr. 1971, B-164031(1))
Office of Economic Opportunity	Review Of The Office Of Economic Opportunity's Use Of Experts And Consultants (Sept. 1973, B-130515)
HEW	Role Of Three Counsultants In Award Of Emergency School Assistance Program/Community Groups Grants (Sept. 1973, B-164031(1))
HEW	Letter report--no title (Nov. 1974, B-164031(1))
Law Enforcement Assistance Administration	Alleged Improper Personnel Practices At The Law Enforcement Assistance Administration (Aug. 1975, FPCD-75-159)
Energy Research and Development Administration	Letter report--no title (Sept. 1976, EMD-76-11)
Agency for International Development	Improvements And New Legislation Needed In AID's Contracting For Consultants And Advisors (Dec. 1976, ID-76-82)
Department of Energy	A Review Of The Department Of Energy's Energy Tax Policy Analysis (Mar. 1979, EMD-79-26)
Department of Energy	The Department Of Energy's Practices For Awarding And Administering Contracts Need To Be Improved (Nov. 1979, EMD-80-2)
Six civilian agencies	Controls Over Consulting Service Contracts At Federal Agencies Need Tightening (Mar. 1980, PSAD-80-35)
DOD	Controls Over DOD's Management Support Service Contracts Need Strengthening (Mar. 1981, MASAD-81-19)

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