



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

IN REPLY
REFER TO: B-115398

May 23, 1978

The Honorable Strom Thurmond
United States Senate

Dear Senator Thurmond:

This replies to your letter of May 1, 1978, in which you raised certain questions about the Executive branch's actions regarding production of the B-77 gravity bomb. Specifically, you ask whether there has been an impoundment of budget authority in regard to B-77 bomb production activities and if the Executive branch has acted in compliance with prior opinions of this Office expressed in connection with the termination of Minuteman III Intercontinental Ballistic Missile production activities. Detailed answers to your questions follow.

I. WHETHER B-77 PRODUCTION FUNDS HAVE BEEN IMPOUNDED:

There has been an impoundment of those funds that would be used for production of the B-77 gravity bomb. In his eighth special message for fiscal year 1978 dated May 12, 1978, the President proposed to the Congress a deferral of \$23,497,322 in budget authority that was appropriated for the use of the Department of Energy. The special message states in part:

"It has been determined that a modernized B-43 bomb, together with other weapons in the stockpile, may be able to fulfill requirements previously identified for the B-77 bomb, but at significantly lower costs. As a result, it may not be necessary to modify current weapon production facilities for the B-77 bomb. Therefore, the funds associated with B-77 bomb production facilities modification [\$23,497,322] are being deferred. In addition, it has been requested that in FY 1979 funding be redirected to B-43 bomb production and to other

purposes. The amount deferred, totalling \$23.5 million, will be applied to reduce the appropriation request for these activities in FY 1979."

A copy of the deferral message is enclosed.

II. WHETHER EXECUTIVE BRANCH ACTIONS REGARDING PRODUCTION OF THE B-77 BOMB ARE IN ACCORD WITH PRIOR OPINIONS OF THIS OFFICE:

In the course of our analysis of this question, we contacted representatives of the Office of Management and Budget and the Department of Energy concerning the status of the B-77 and B-43 bomb programs. Based upon these discussions, we understand that, at present, there is no work of any nature being undertaken within the Department of Energy weapons complex for the B-43 bomb modification program. Shortly after the President's decision to modernize the B-43 bomb rather than produce the B-77 bomb, the Department of Energy began preliminary design work at one of its laboratories. This work was terminated, however, when the Chairman of the House Committee on Armed Services, Representative Melvin Price, formally notified the Department by letter dated February 24, 1978, that he did not concur in the decision to use fiscal year 1978 funds to develop a modified B-43 bomb design. We understand that as a result of Chairman Price's letter, B-43 bomb design work ceased and that, in toto, such activities were minimal --lasting just a matter of weeks.

We further understand that Department of Energy efforts on the research, development, and testing of the B-77 bomb are continuing and will continue until completed. When this phase of the program is completed, all designs and B-77 bomb technology will be "shelved." We also understand that presently there are no actions being taken with regard to the production of the B-77 bomb. All B-77 bomb production-related work was discontinued on December 20, 1977, when the Department of Energy's Division of Military Applications advised the Manager of the Albuquerque Operations Office to cease such efforts.

Representatives of the Office of Management and Budget and the Department of Energy have also informed us that there

is, at this time, no intention to use the \$23.5 million that has been proposed for deferral to the Congress for either the B-77 or B-43 bombs in this fiscal year.

As indicated in your letter of May 1, 1978, we have previously had occasion to consider the Executive branch's actions regarding termination of Minuteman III production. As you know, a similar situation existed with regard to termination of production activities on the B-1 bomber. In both of those cases we found that actions had been taken to curtail the programs prior to the time the Congress had an opportunity to review the matter under the procedures of the Impoundment Control Act. As a result we notified the Executive branch that when a decision is made to terminate or curtail a program, it is more in keeping with the spirit of the Impoundment Control Act that such decisions be made jointly by the Congress and the Executive branch.

In the case of the B-77 bomb we are once again troubled that orders were issued as early as December 20, 1977, to terminate all B-77 bomb production-related activities. Yet, it was not until February 21, 1978, that the cognizant committees of the Congress were notified of this major decision. On that date, the Department of Energy formally advised those committees of the decision to devote funds to B-43 bomb modification at the expense of B-77 bomb production efforts. As noted, Chairman Price promptly communicated to the Department his disagreement with this plan on February 24, 1978. Nevertheless, it appears that the Executive branch had implemented its revised plans regarding B-77 bomb production over two months before the congressional committees were advised.

Another result of the December 20, 1977, production termination orders was that the funds only recently proposed for deferral -- \$23.5 million -- were effectively impounded since that date. This analysis of the matter is not disputed by representatives of the Office of Management and Budget.


The Executive branch has taken an excessive amount of time to report this deferral to the Congress under the Impoundment Control Act. Also, as noted above, the Executive branch has acted to implement a major decision -- one

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affecting the production of an important nuclear bomb -- without notifying the Congress in a timely manner. Based upon the information currently available, we cannot say at this time whether the Executive branch's actions have had, or will have, an adverse effect on the cost to produce B-77 bombs in the event Congress decides that such bombs should be produced rather than approve use of the budgetary resources for modification of the B-43 bombs.

We hope the foregoing will be of assistance to you.

Sincerely yours,


ACTING Comptroller General
of the United States

Enclosure