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

APR 19 1978

D-183079

The Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate

6/11/78

Dear Mr. Chairman:

7-19-77 7-27-77

As you will recall during our testimony on S. 1264 we supported the general objectives of the legislation and applauded your initiative in introducing the bill. We would like to reinforce this earlier testimony and provide additional views.

S. 1264 would carry out the main thrust of the Procurement Commission's recommendations:

- to modernize the Federal procurement process;
- to develop a single, unified statutory and regulatory framework; and
- to place much greater emphasis on use of competition.

With respect to Section 509, we testified earlier that GAO supports eliminating unnecessary requirements. We quite agree that whenever the usefulness of Government surveillance and red tape cannot be demonstrated, they should be waived. Certainly, contractors working in a truly competitive environment would be a good starting place. One way to attack this problem would be to assign OFPP responsibility for making a Government-wide review and reporting its findings and recommendations to the Congress. We would support such an addition to S. 1264.

As the March 22, 1978, version of S. 1264 stands, we support the bill except that we continue to oppose the Cost Accounting Standards waiver in Section 509(c)(3).

Public Law 91-379 established the Cost Accounting Standards Board as an agent of the Congress to promulgate cost accounting standards designed to achieve uniformity and consistency in the cost accounting principles followed by defense contractors and subcontractors.

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The Board is authorized "to prescribe rules and regulations exempting from the requirements of this section such classes or categories of defense contractors or subcontractors under contracts negotiated in connection with national defense procurements as it determines, on the basis of the size of the contracts involved or otherwise, are appropriate and consistent with the purpose sought to be achieved by this section."

The Board has from time to time granted an exemption to certain classes or categories of contracts. Most recently the Board amended its regulation to exempt entirely any "small business concern" (as defined in 15 U.S.C. 537(b)(6), and the rules and regulations of the Small Business Administration, 13 CFR 121). The same amendment also generally exempts from all but two Standards addressed primarily to assuring consistency, business units with comparatively small amounts of covered contracts. This exemption applies to any business unit which in its preceding cost accounting period received less than \$10 million in negotiated contract awards, provided that such awards represent less than 10 percent of the unit's total sales. This latter provision would therefore apply to companies or segments of companies engaged primarily in commercial business. The Board's expanded exemption regulation became effective March 10, 1978.

The Board's exemption for small business and predominately commercial business did not take effect until after your Committee voted to report S. 1264. Section 509(c)(3) of the bill provides a waiver for any activity of a contractor if in the preceding fiscal year (1) more than 75 percent of its revenue was derived from commercial sales or fixed-price contracts awarded on the basis of price; and (2) costs incurred under its cost-type contracts, fixed-price contracts negotiated on the basis of costs, fixed-price incentive contracts and time and material contracts did not exceed \$10 million.

The Board's own exemption regulation has, and Section 509(c)(3) would have, the desirable effect of considerably reducing the effort related to the administration of cost accounting standards. However, different contractors would be affected by the two versions. The Board's own regulation would exempt any small business and predominately commercial businesses. Section 509(c)(3) would permit a waiver for those contractor activities based not only on commercial business but also on work under competitively awarded Government contracts. While some small business contractors could be included in this category, many would still be subject to cost accounting standards.

The Board's action in granting the March 10, 1978, exemptions will understandably do much to relieve the burden on Government contractors. While the impact of the Board's exemption regulation is somewhat different than that provided by this bill, it is consistent with the purpose of Section 509 in reducing costly contract administration.

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However, enactment of Section 509(c)(3) would result in overlapping provisions dealing with waiver and exemption of contractors that could introduce major new complications in the procurement process. To avoid these complications the CASB may be obliged to rescind its March 10, 1978, promulgation as well as other earlier exemption provisions.

In the light of the foregoing and particularly because the Board has a continuing responsibility to consider further exemptions from its standards and regulations, I urge that Section 509(c)(3) be stricken from the bill when it is considered by the Senate.

You have my assurance as Chairman of the Board that the Board will continue to study the feasibility of exemptions from its standards and regulations with the goal of granting further exemptions where it can be demonstrated that the requirements for cost accounting standards do not contribute to purposes for which the Cost Accounting Standards Board was established.

Also, we believe that the provisions of 509(c)(5) allowing waiver of the provisions of the Renegotiation Act should be carefully considered in connection with S. 2790 and S. 2791, amending the Renegotiation Act, which were reported by the Committee on Banking, Housing, and Urban Affairs on March 22, 1978.

Sincerely yours,

[Signature]
Comptroller General
of the United States