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

B-183079

APR 19 1978

The Honorable William Proxmire
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate

Dear Mr. Chairman:

This is in reference to your letter dated April 4, 1978, dealing with your concerns about section 509 of S. 1264, the Federal Acquisition Act of 1977. As you noted, section 509 provides for the waiver of certain Government surveillance requirements for contractor locations if they have more than 75 percent of their business in commercial or competitive Government contracts.

You correctly noted that in testimony on S. 1264 and in a letter dated July 14, 1977, to the Senate Committee on Governmental Affairs, we opposed section 509 and urged its deletion. The version of section 509 that we were discussing, however, was significantly different from the one now under consideration.

The objective of the waiver provision is to lessen the red tape and the burdensome Government surveillance effort that so many Government contractors are complaining of. A basic defect in the earlier version of the waiver provision was that it would have applied to many major defense contractor activities. For this reason, we worked with Senator Chiles' staff to develop limitations on the application of the waiver in order to preserve essential Government controls on major Government procurements while relieving smaller contractors of some of the surveillance requirements. Thus, the \$10 million limitation was written into section 509. Essentially, any contractor activity that incurs more than \$10 million in annual costs under nonprice-competitive contracts cannot obtain a waiver. We believe this effectively excludes the major Government contractor activities. For example, statistics indicate that only one of the contractors' locations covered in our report on "Increased Costs to Government Under the Department of Defense Program to Reduce Audits" could qualify for waivers under the currently proposed section 509 language. In this regard, it is also important to note that, during the period covered by our review, a contractor activity could become qualified for a waiver if it could show that 50 percent of its costs were incurred under commercial or competitively awarded firm-fixed-price contracts. This rate was subsequently increased by the Department of Defense to 75 percent and section 509 also requires the 75 percent rate. The higher percentage rate makes it much more difficult for a contractor to become eligible for a waiver of Government surveillance requirements.

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Another important provision of section 509 is that a waiver can be cancelled at any time or may be withheld altogether if the agency head determines the waiver should not apply. The Government auditors will be in a good position to determine whether such steps should be taken since, with respect to indirect overhead costs, section 509 only applies to waivers of determinations of reasonableness. The auditors are still required to determine allowability and allocability of such costs. Thus, in completing their required work, if any indication arises that costs may be unreasonable, the auditors will be in a good position to alert procurement officials of the need for corrective action.

A further control is provided in that our Office conducts continuing reviews to determine the effectiveness of the various Government procurement practices. One area we plan to cover is the implementation of section 509.

In summary, in an attempt to minimize Government red tape for the smaller contractor activities while maintaining essential controls, we would not object to seeing section 509 tested with respect to sections 509(c)(1), 509(c)(2), and 509(c)(4). However, we oppose the Cost Accounting Standards Act waiver in section 509(c)(3). Also, we believe that the provisions of section 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 your Committee on March 22, 1978.

We trust that the above clarifies our position on section 509.

Sincerely yours,

(Signed) *ELMER B. STUBBS*

Comptroller General
of the United States