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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548



OFFICE OF GENERAL COUNSEL

B-192920

NOV 3 1978

Mr. T. G. Cassidy
Acting Deputy Director
Defense Acquisition
Regulatory System
Washington, D.C. 20301

Dear Mr. Read:

By letter dated September 13, 1978 you transmitted for our comment proposed changes to the DAR to encourage prime contractors to place subcontracts in urban areas.

We are informed that the intent of the coverage is to encourage the placement of subcontracts in urban areas listed in the proposed clause "Urban Area Subcontracting Incentive" through normal competitive contracting techniques. An Urban Area Subcontract Incentive Base will be established and prime contractors exceeding that base will be rewarded for their accomplishments.

You indicate that it is planned to use DOD contract administration activities to assist prime contractors in locating urban area subcontractors and to assist urban area firms by identifying DOD prime contractors with urban area assistance requirements.

We understand that this incentive clause was developed as a method of rewarding contractors for doing business in urban areas, where there is high unemployment, in a manner which would not conflict with the "Maybank Amendment." The "Maybank Amendment" which has been enacted in each Department of Defense (DOD) appropriation act since 1954 provides that no appropriated funds may be used for the payment of a price differential on contracts for the purpose of relieving economic dislocation. This Office has construed the "Maybank Amendment" as prohibiting DOD from making awards on a total set-aside basis to firms performing substantially in labor surplus areas or areas of concentrated unemployment or underemployment. See 40 Comp. Gen. 489 (1961) and 57 Comp. Gen. 34 (1977), 77-2 CPD 333.

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We are not convinced that the proposed clause overcomes the Maybank Amendment. Also, we note that the clause does not conform with the traditional use of incentive provisions. Essentially such provisions are used to transfer a portion of the cost risk to the contractor in order to motivate more efficient performance. In this instance the result sought does not directly affect contract performance.

Your letter does not explain the legal basis for making the payments authorized by the proposed clause. Since in our view there is some question as to the authority to make the payments contemplated by the proposed clause, on the basis of what has been presented to us we are unable to concur with the proposed changes.

Sincerely yours,

~~WILTON~~ SOCOLAR

For Paul G. Dembling
General Counsel