

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

B-214545

August 7, 1985

The Honorable William V. Roth, Jr.  
Chairman, Committee on  
Governmental Affairs  
United States Senate

RELEASED

Dear Mr. Chairman:

By letter dated June 28, 1985, you requested our comments on the multiyear contracting authority proposed by Senate bill S. 678. This bill would permit civilian procuring agencies that receive annual appropriations to award contracts for the purchase of property or services for periods not exceeding 5 years when such contracts are determined to be in the government's best interest.

We have, for many years, supported the concept of multiyear contracting. We have previously reported and testified that multiyear contracting should be pursued and used when feasible and practicable. Accordingly, we endorse the proposed expansion of multiyear contracting to civilian agencies contained in S. 678. It should be noted, however, that while we support multiyear contracting in principle, we believe that there will be a need for determinations of its desirability in specific situations based on case-by-case assessments of potential savings and the added risks that result from awarding a multiyear contract.

OBSERVATIONS

You requested our views on the provisions of S. 678 and recommendations for possible committee action. On April 2, 1984, we provided written comments to your committee on the proposed multiyear contracting legislation contained in S. 2300. These observations were also provided to the Chairman, House Committee on Government Operations, by letter dated July 20, 1984, and to the Chairman, Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, by letter dated March 28, 1984. We believe these views are still appropriate and apply to S. 678. Therefore, we offer the following observations on S. 678 which are consistent with our comments on S. 2300.

### A test period may be desirable

In view of the lack of data on civilian agency use of multiyear contracting, the alternative of providing a test period (3 to 5 years) may be preferable to a permanent change in procurement authority. Use of a test period could provide feedback on actual cases before deciding whether to grant permanent multiyear procurement authority to civilian agencies.

### Cancellation ceiling

The proposed legislation does not require the agencies to notify appropriate congressional committees before awarding a contract that contains a cancellation ceiling in excess of a threshold amount. Establishing a threshold would be consistent with the law authorizing multiyear contracting for the Department of Defense, which sets a threshold of \$100 million. It would prevent the civil agencies from creating liability for large cancellation costs without congressional review.

### Other suggested changes

2 U.S.C. § 651 provides that it will not be in order for either the House of Representatives or the Senate to consider a bill providing new spending authority (this includes the authority to enter into contracts which obligate the United States to make outlays, the budget authority for which is not provided in advance by appropriation acts) unless the bill also provides that "such new spending authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts." We recognize that section 2 (d) (1) of S. 678 provides for cancellation of a multiyear contract if appropriated funds are not available for expenditure during the second or any subsequent fiscal year included in the contract term. We recommend, however, that specific reference be made to section 651 in S. 678 to comply with the specific requirements of this section.

The bill provides contracting authority that otherwise would be prohibited by the Anti-Deficiency Act, 31 U.S.C. 1341. Nevertheless, the bill does not contain language needed to overcome the prohibition of section 1502(a) of 31 U.S.C. which provides that an appropriation may only be used to pay for bona fide needs attributable to the year or years for which the appropriation was made. Although the bill provides multiyear contracting authority for up to 5 years, there could arise instances where goods or services or portions of goods are purchased in one year of a multiyear contract that will not be

needed until a later fiscal year within the contract term. This would violate section 1502(a) since fiscal year appropriations would be used to pay for goods or services in one fiscal year even though they would be bona fide needs of a later fiscal year. Accordingly, we recommend the bill be revised to authorize the advance procurement of components, parts, and materials, notwithstanding the requirements of section 1502(a).

We also suggest the following two changes in wording to page 2 of S. 678,

--change line 19 to either "reducing costs" or "reducing costs compared to an annual contract," and

--replace "or" with "and" at the end of line 23.

These changes will clarify the language of the proposed bill and assure that potential savings are considered when agencies decide whether to award multiyear contracts. We believe that potential savings are key to justifying use of multiyear contracts. We further believe that use of other justifications--(2)(A)(ii) through (iv)--without potential savings are not sufficient to warrant a multiyear award. This could occur if the word "or" remains on line 23 of S. 678. If the intent of the bill is to require the agency head to make determinations on all four criteria in (2)(A)(i) through (iv), we believe the word "and" should be substituted for "or" at the end of line 23.

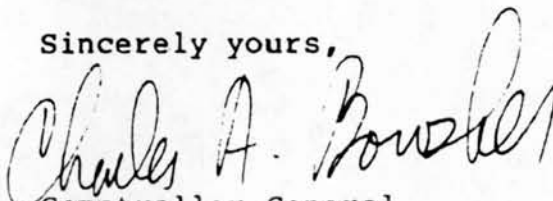
#### Paperwork and regulatory impact

You also requested our assessment of the possible paperwork and regulatory burdens which might result from the passage of S. 678. While we have not evaluated the regulatory impact that would result, it does not appear that the bill would result in an increased regulatory burden. Moreover, a potential benefit of multiyear contracting should be savings from reduced administrative costs. This could include reducing the paperwork attributable to repetitively soliciting and evaluating bids and awarding contracts.

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We trust this information satisfies your request.

Sincerely yours,



Comptroller General  
of the United States