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SAPC 17866a
Copy 4 of 4

OGC Has Reviewed

26 JUL 1957

**MEMORANDUM FOR: Special Assistant to the Director
for Planning and Coordination**

**SUBJECT: Project AQUATONE Procurement for
Air Force and Navy**

1. This Agency has been acting as Procurement Agent for the Air Force and the Navy for supplies, equipment, materiel, and services developed under Project AQUATONE. Prior to undertaking this role, we considered carefully the legal basis for so doing and the legal problems involved in carrying out the agencies. I discussed this at length with Mr. John A. Johnson, General Counsel of the Air Force, and with various Air Force fiscal and procurement officials. It is my understanding we are in agreement on the legal aspects and believe that the role of the Agency as Procurement Agent under these circumstances and the manner in which it carries out its role are consistent with applicable law.

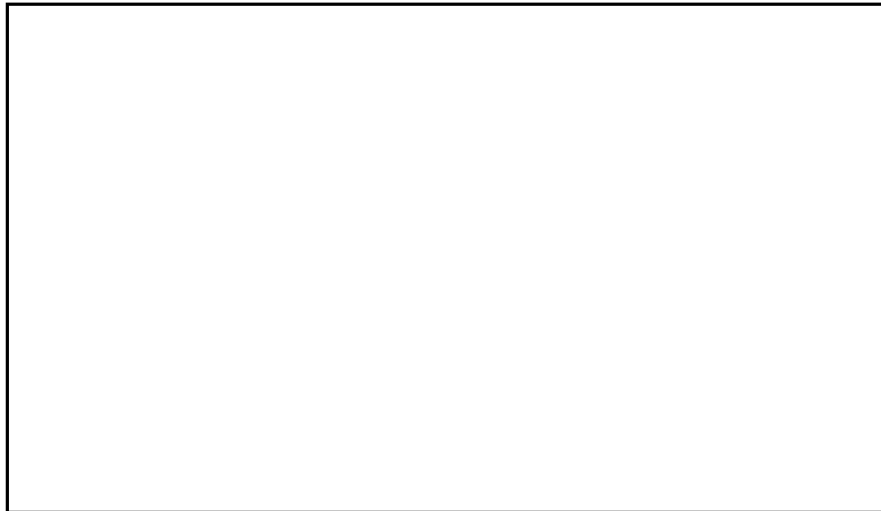
2. First, as to the legal authority to act as Procurement Agent for other departments or establishments, the following comments should suffice:

a. Mr. Johnson and I believe that we are properly proceeding under either of two authorities. Section 686 of Title 31 U. S. C. A. provides that any executive department or independent establishment or bureau or office may place orders with any other executive establishment for materials, supplies, equipment, work, or services which the requisitioned agency may be in a position to


furnish if the requesting agency has funds therefor and the head of which determines it to be in the interest of the Government. The Army and Navy are specifically authorized by this section to place orders for such materials, supplies, equipment, work or services of any kind that the requisitioned Federal agency may be in a position to supply, render, or obtain by contract. There is no question in my mind, therefore, that this section authorizes the arrangement we have with the Navy, provided that an appropriate official of the Navy Department has made the determination that this arrangement is in the interest of the Government. I understand that such a determination has been made. In my opinion such a finding would be required not only by the security aspects, but also because the Government's interest in spending efficiently and economically is also served. The Air Force is not specifically named in that section which authorizes furnishing the requisitioned items by contract, as the section was passed before the Air Force became an independent establishment. Mr. Johnson informs me, however, that under their own authorities subsequently granted, the Air Force is in a position to enter into similar arrangements.

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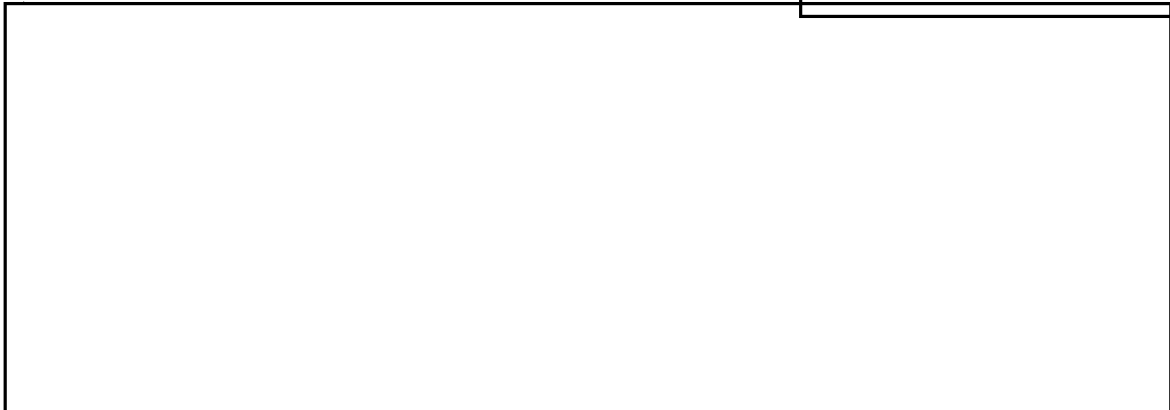




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3. We have also reviewed the manner in which the various procurement contracts under these arrangements are being negotiated and administered. In my opinion we have not and will not exercise any procurement authorities which are not available to the Air Force and the Navy, and we are not, therefore, through these arrangements circumventing any legal prohibitions on those services. The one area in which our arrangements depart from those normally authorized for the services is in connection with methods of payment and audit. We have arranged channels and methods of payment required by security which normal services' practices would be unable to follow. Also the funds involved are certified to by the Director and are not subject to General Accounting Office audit other than a review of his final certification. However, it should be noted that the Bureau of the Budget specifically approved our entering into the arrangements with the Air Force and the Navy on the basis of the security requirements, and the funds involved, therefore, 

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S/
LAWRENCE R. HOUSTON
General Counsel

cc: DD/S
Comptroller
✓ General Counsel
OGC:LRH:jeb

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Approved For Release 2002/11/19 : CIA-RDP62B00844R000200040015-3

| | UNCLASSIFIED | CONFIDENTIAL | SECRET | | | | | | | | | | | | |
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| CENTRAL INTELLIGENCE AGENCY OFFICIAL ROUTING SLIP | | | | | | | | | | | | | | | |
| TO | | INITIALS | DATE | | | | | | | | | | | | |
| 1 | ADCI | | | | | | | | | | | | | | |
| 2 | OGC - 221 East | | | | | | | | | | | | | | |
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| FROM | | INITIALS | DATE | | | | | | | | | | | | |
| 1 | Office of General Counsel 221 East | | 9/3 | | | | | | | | | | | | |
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| <table style="width: 100%; border: none;"> <tr> <td><input type="checkbox"/> APPROVAL</td> <td><input type="checkbox"/> INFORMATION</td> <td><input type="checkbox"/> SIGNATURE</td> </tr> <tr> <td><input type="checkbox"/> ACTION</td> <td><input type="checkbox"/> DIRECT REPLY</td> <td><input type="checkbox"/> RETURN</td> </tr> <tr> <td><input type="checkbox"/> COMMENT</td> <td><input type="checkbox"/> PREPARATION OF REPLY</td> <td><input type="checkbox"/> DISPATCH</td> </tr> <tr> <td><input type="checkbox"/> CONCURRENCE</td> <td><input type="checkbox"/> RECOMMENDATION</td> <td><input type="checkbox"/> FILE</td> </tr> </table> <p>Remarks:</p> | | | | <input type="checkbox"/> APPROVAL | <input type="checkbox"/> INFORMATION | <input type="checkbox"/> SIGNATURE | <input type="checkbox"/> ACTION | <input type="checkbox"/> DIRECT REPLY | <input type="checkbox"/> RETURN | <input type="checkbox"/> COMMENT | <input type="checkbox"/> PREPARATION OF REPLY | <input type="checkbox"/> DISPATCH | <input type="checkbox"/> CONCURRENCE | <input type="checkbox"/> RECOMMENDATION | <input type="checkbox"/> FILE |
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Approved For Release 2002/11/19 : CIA-RDP62B00844R000200040015-3

TAB

B

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SAPC-18402
Copy / of 3

MEMORANDUM FOR: MR. DULLES

9 August 1957

SUBJECT : AQUATONE Procurement for the Air Force and
the Navy

You have on occasion expressed some concern lest our procurement undertaken for the Air Force and the Navy might be subject to criticism. I have asked the General Counsel again to look into this matter. His brief comments are attached hereto. If you want the longer paper referred to in his memorandum, please advise me.

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RICHARD M. BISSELL, JR.

Attachment:

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SAPC 17866b
Copy 1 of 4

20 JUN 1957

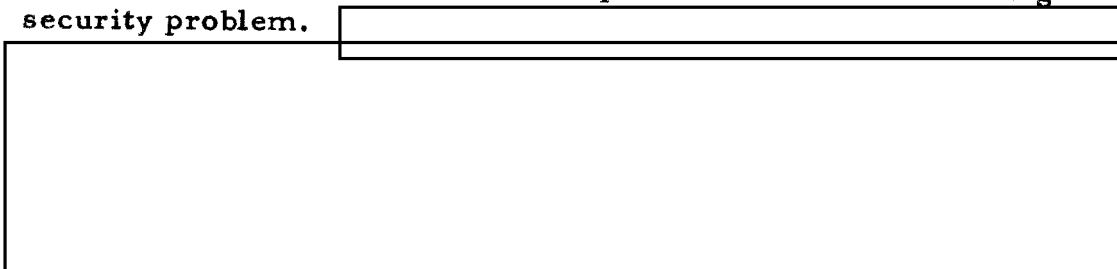
MEMORANDUM FOR: Special Assistant to the Director
for Planning and Coordination

SUBJECT: Project AQUATONE Procurement for
Air Force and Navy

1. I understand the Director wanted to be informed whether our acting as agent for the Navy and the Air Force on procurement matters circumvented any legal restrictions they might otherwise operate under. We had, of course, gone into this before and I am satisfied with our position and have prepared the accompanying memorandum on points of law involved. You may wish to show this to the Director or brief him on it.

2. There is, in my opinion, one point which may cause difficulties and which we should keep in mind with the lessening security problem.

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3. From the audit point of view I have no particular concern about a General Accounting Office review of the contracts involved. Inasmuch as the security considerations are far less restrictive than in the initial stages, and so far as procurement is concerned will continue to reduce, we should give consideration to permitting a General Accounting Office audit at some future date. This could be done by either opening all contracts to their inspection or else authorizing the Air Force and the Navy to make available their portion of the procurement to GAO.

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cc: DD/S

LAWRENCE R. HOUSTON

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| TRANSMITTAL SLIP | | DATE | 14 August 1957 |
| TO: | | <input type="text"/> <i>q/z</i> | |
| ROOM NO. | BUILDING | | |
| REMARKS: | | | |
| <p>Before Mr. Dulles left he asked Mr. Bissell for the attached information. Will you please see that he gets it upon his return. General Cabell may be interested in this also.</p> | | | |
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REPLACES FORM 36-8
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MEMORANDUM FOR: GENERAL COUNSEL

I would appreciate your comments on
the attached before I forward it to the
Director.

RICHARD M. BISSELL, JR.

25 October 1957
(DATE)

Attachment: SAPC-20671 (Cy 3)

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

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SAPC-20671/
Copy / of 10

25 October 1957

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : AQUATONE Procurement for the Air Force
and the Navy

REFERENCE : Memorandum for DDCI from Acting General
Counsel, same subject, dated 9 September 1957
(SAPC-19052)

1. This memorandum is for information only.

2. The referenced document has been reviewed by the Deputy Director of Central Intelligence who has concurred in the views expressed therein. I understand you desire my comments also and these are set forth below.

3. I am in general agreement with the views set forth in the Acting General Counsel's memorandum of 9 September 1957. I am of the opinion that our procurement and audit procedures offered the Government all the protection possible under the extremely difficult conditions imposed by security and time factors in the AQUATONE program.

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4.

[Redacted]

The first step in such an approach might well be a discussion with the Comptroller General himself in which, without any allusion to AQUATONE, the main relevant circumstances surrounding our procurement for the Navy and the Air Force could be explained. These are; that the Agency caused to be developed and has procured limited quantities of certain specialized hardware of use in intelligence collection; that this development and procurement along

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SAPC-20671

Page Two

with the actual employment of the hardware in an important intelligence collection project had been surrounded with the tightest security; that after the development was substantially completed and the equipment in operational use by the Agency, the Air Force and later the Navy determined that they had requirements of their own for additional quantities of this equipment; and that, primarily to preserve security but also to secure the advantages of single Service procurement from already established sources, the Agency undertook the procurement in question on behalf of the other two Services. It could be explained to the Comptroller General that, even in the absence of overriding security requirements, there could have been no question of opening the Air Force and the Navy procurement to competitive bids, since the quantities required by these two Services were small and could undoubtedly be furnished under more advantageous terms and more speedily by the Agency's contractors who were already producing the items in question. Finally, the main features of the contracts could be outlined to the Comptroller General to make clear that they were prudently drawn in such a manner as to give full protection to the Government.

5. As a further measure of protection, it would seem to me quite feasible, after such an informal discussion with the Comptroller General, to set forth the above circumstances in writing in a letter to the Comptroller General. As an annex to such a letter, reasonably detailed information could be furnished on an unclassified basis, or under low classification, as to the terms of our contracts. I have in mind such information as the character of the contract (whether Cost-Plus-Fixed-Fee or Redetermination Fixed Price), benefit rates allowed, provisions for audit, and provisions for redetermination. Such a letter could be so drafted as to conceal not only the nature of the equipments procured but also the names of the companies, the dollar amounts of contracts, and delivery dates. Even without revealing this classified information, the Comptroller General would have full information as to the manner in which the interest of the Government as a buyer had been protected.

6. I must repeat that the above suggestions are not intended as a recommendation, since I have already stated my concurrence with

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| | views. | |
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7. I trust that the above opinions will be helpful to you. Should you desire that I contact the GAO in your behalf to explore this problem, please advise me.

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RICHARD M. BISSELL, JR.
Special Assistant to the Director
for Planning

RMB:gjg

Distribution:

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- 3-General Counsel

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for their files.*

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SAPC 20933 ✓

4 NOV 1957

**MEMORANDUM FOR: Special Assistant to the Director
for Planning**

**SUBJECT: AQUATONE Procurement for the Air Force
and the Navy**

1. The main point of my original suggestion has been amply considered. I had no fixed views on whether or not we should open the Air Force and Navy portion of the AQUATONE procurement through General Accounting Office. I merely wished the question to be seriously studied and a determination made. I am quite satisfied with the reasons for recommending that these contracts not be opened to General Accounting Office audit and will join in the recommendation. I believe that such a determination would serve to answer queries from General Accounting Office or the Comptroller General. This being the case I believe we should not approach the Comptroller General unless we have some indication that he is aware of and bothered by the problem.

2. If the Comptroller General's office raises the question it will almost certainly come to me through Lyle Fisher, the CG General Counsel, with whom we have had a long and highly satisfactory liaison. Further, if for any reason we decided to approach the Comptroller General's office, I would feel very strongly that our approach should be made through Mr. Fisher. He has a keen understanding of our legal problems but also of our operational and security problems and has demonstrated time and again that he is as little legalistic as his position permits and will support a sound practical determination.

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3. Mr. Fisher would be somewhat unhappy as a matter of principle that Army and Navy contracts will not receive General Accounting Office audit due to utilization of our Agency as procurement agent, as he has raised the point before. But since in this case we had the approval of the Bureau of the Budget for the arrangements we have entered into, I am confident that he will accept that we had valid legal authority to enter into these arrangements. I would have no hesitation in describing such arrangements to Mr. Fisher and the contracts which have been entered into, as I agree with you that they have been soundly conceived and well-administered.

4. If you agree with the foregoing, might your approach to the Director be merely that we are unanimous in recommending against opening the contracts for audit and that if any problem arises in connection with General Accounting Office or the Comptroller General you and I will handle it preferably in the first instance with Mr. Fisher or if necessary with the Comptroller General himself.

SIGNED

LAWRENCE R. HOUSTON
General Counsel

Att--CC of SAPC 20671
Copy 3 of 10, same
subject, dtd 25 Oct 57

Distribution
Orig & lcc-Addressee
lcc-General Counsel
OGC:LRH:jeb

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