

PROPOSED EXECUTIVE BRANCH POSITION/IMPLEMENTATION FOR

RECOMMENDATION # J-2 OF THE

REPORT OF THE COMMISSION ON GOVERNMENT PROCUREMENT

Date:

Position Paper

I. TITLE

Recommendation J-2 of the Commission on Government Procurement (COGP).

II. STATEMENT OF COGP RECOMMENDATION

Extend the Truth in Negotiations Act to all Government procurement agencies and develop coordinated regulations for interpretation and application of its provisions.

III. PROPOSED POSITION

Adopt Recommendation J-2.

IV. BACKGROUND

(a) The Commission's report recognized that the Federal Procurement Regulations had extended the Truth in Negotiations Act to all civilian executive agencies. It went on to note that extension of the Act would give the requirements statutory standing and permanence and greater legal force and effect. The latter remark identifies the primary objective of the recommendation.

(b) As noted elsewhere, alternative means of satisfying the objective were considered.

V. FINDINGS

Public Law 87-653 was enacted on September 10, 1962, and amended the provision of Title 10 of the United States Code, which is referred to as the Armed Services Procurement Act (ASP Act) P.L. 87.653

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The ASP Act applies only to DOD, NASA, and the Coast Guard. Accordingly, the Truth in Negotiations Act also is limited in its application to those agencies. The Act requires prime contractors and subcontractors to submit certified cost or pricing data in connection with the award of negotiated prime contracts, subcontracts or contract changes or modifications which exceed \$100,000. Certain exceptions are specified with respect to this requirement.

Implementing procedures, with respect to the Truth in Negotiations Act were promulgated in the Armed Services Procurement Regulation (ASPR). In the interest of prescribing uniform Government-wide policies and procedures, the Administrator of General Services prescribed similar policies and procedures in the Federal Procurement Regulations (FPR) in 1964. The FPR's have been modified from time to time to keep it on a common footing with ASPR.

VI. CONCLUSION

The reasons for adopting outweigh the reasons for rejecting the recommendation.

VII. DISCUSSION

(a) Extend the Truth in Negotiations Act to all Government agencies.

(1) Arguments for:

(A) The presence of a statute would remove any lingering

doubts that may remain regarding the applicability of the provisions of the Truth in Negotiations Act to civilian executive agency contracts.

(2) Arguments against:

(A) The purpose of the Truth in Negotiations Act have been applied to all civilian executive agencies by way of policies and procedures in the FPR. It is not necessary, therefore, to enact legislation comparable to the Truth in Negotiations Act which is applicable to civilian executive agencies in order to achieve the objectives of such an act, with respect to such agencies.

(B) The absence of such legislation has very positive benefits. These benefits take the form of desirable flexibility in connection with the issuance of related policies and procedures.

(b) Develop coordinated regulations for interpretation and application of its provisions

(1) Regulations comparable to those in ASPR have been and will continue to be adopted in the FPR.

(2) Coordination of these regulations in the future should be by the organization or organizations (currently GSA and DOD) having primary responsibility for Government-wide regulations.

(3) Current regulations are adequate. However, nothing in the field of Government procurement regulations is static and interpretations and additions will be forthcoming, from time to time, as the need arises.

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VIII. PROPOSED IMPLEMENTATION

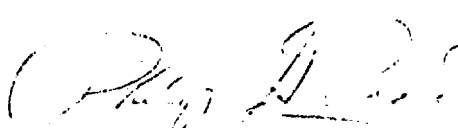
(a) Include the Truth in Negotiations Act in the Proposed Uniform Procurement Statute to be developed under recommendation A-2.

(b) H. R. 9061 has been introduced which would repeal the present provisions of the Armed Services Procurement Act of 1947 (10 U.S.C., Chap. 137) which includes the Truth in Negotiations Act (10 U.S.C. 2306). Section 10 of the Bill sets provisions comparable to the latter statute.

(c) No further implementation is necessary.

IX. DISSENTING VIEWS

None.


Task Group Leader: _____

Philip G. Read

Members: None

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Chief, PMS/OL 1226 Ames Center Building	EXTENSION 3046	NO. DATE 18 NOV 1973
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TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		

1. AGC/OL	18 NOV 1973		
2. D/L	14 NOV 1973		
3. OGC 7D01 Headquarters	11/17/73	3/19	RW
4. OLC 7D43 Headquarters			
5.			
6.			
7. PMS/OL 1226 Ames Bldg.			
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Recommend concurrence in proposed executive branch position to extend the Truth in Negotiations Act by legislation to all Government procurement agencies not presently covered. PMS/OL will prepare response to GSA or inform them of our position.

STATINTL

4507: **ILLEGIB**

CONGRESSIONAL INDEX

THE WEEK IN CONGRESS

(34)

October 5, 1973

Washington, D. C.



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TRADE REFORM

The House Ways and Means Committee gave final approval to the Trade Reform Act of 1973, H.R. 10710. The Committee ordered the bill reported by a vote of 20 to 5. Most Committee members stated their satisfaction with the bill and the Administration indicated only strong displeasure with the provision tying most-favored-nation trade status to a foreign country's emigration policy.

Before giving final approval to the bill the committee agreed to language that would require the Tariff Commission and the Treasury Department to make a finding that a foreign nation is using unfair trade practices that results in a domestic producer having a substantial reduction in sales before the President can utilize the provided for reliefs. This provision would also give the Congress veto power over such actions taken.

SOCIAL SECURITY INCREASE VOTED

The Senate Finance Committee, meeting in executive session this week on H.R. 3153, a bill to make technical and conforming changes in the Social Security Act, tentatively agreed to an amendment raising social security benefits seven percent. The increase would become effective upon enactment of H.R. 3153 and would be in lieu of the recently enacted 5.9 percent increase scheduled to take effect in June of 1974. The seven percent increase would increase benefits by approximately \$2 billion.

PENSION BILL

The House Ways and Means Committee began consideration of pension reform legislation. Treasury Deputy Secretary Frederick Hickman briefed the committee on the various bills before it and said that although the Senate-passed bill, which was attached as an amendment to H.R. 4200, is riddled with errors, it is the best bill available. He suggested that the Committee take more than just a few weeks in its deliberations so that taxpayers, actuaries, and other pension experts can come forward and point out changes necessary to make the Senate version more workable. He said to proceed at a faster pace would be disastrous.

Some of the provisions Hickman suggested be modified include: the termination insurance provisions, which he admitted go to remedy tragic pension plan failures but could result in otherwise uncalled for bankruptcies and thus unemployment; the vesting provisions, here Hickman said the Rule of 50 would be a fairer and a more efficient way to vest covered employees; and the provisions which would end the income tax deduction for certain nonqualified plans, which he urged be deleted.

GAO AUDITS OF FRB ACTIVITIES

The House Banking and Currency Committee held hearings on and subsequently approved H.R. 10265, a bill providing for auditing of Federal Reserve Board activities by the General Accounting Office. The main controversy over the bill developed over whether the GAO's authority should extend to the FRB's Open Market Committee. The Committee reached a compromise on this provision by allowing audits only every three years and by allowing the FRB to delay audits of operations concerning open market transactions and discount policy for at least one fiscal year when the FRB determines that they are sensitive.

URBAN MASS TRANSPORTATION

BILL PASSES

The House despite strong indications of an impending Presidential veto passed by a vote of 219 to 195 its version of S. 386, which would provide \$800 million over the next two fiscal years for operating subsidies to urban mass transportation systems. The bill had been held from floor consideration since it was reported by the Banking Committee last April.

The House struck from the bill a section providing for the establishment of State and local Mass Transportation Advisory Councils. These councils were to assist State or local public bodies or agencies in the establishment of policies and the making of decisions affecting mass transit service in their respective areas. The House also prohibited the expending of the bill's funds

Language that was incorporated in the Federal Highway Trust bill, which is now public law.

The bill consists of a catastrophic health insurance plan, a medical assistance plan, and a voluntary certification program for private basic health insurance to encourage the availability of adequate private health insurance.

WILLIAMS INTRODUCES SECURITIES MEASURE

The Senate Banking Committee's Securities Subcommittee Chairman Harrison A. Williams, Jr. introduced this week legislation, S. 2519, the National Securities Market System Act of 1973, which is designed to facilitate the development and regulation of a national market system. Sen. Williams said that S. 2519 is the fourth measure to be introduced as a result of the Subcommittee's study of the securities industry. The other bills are S. 2508, S. 2474, and Senate-passed S. 470.

The catastrophic health insurance would cover all persons covered by the social security system, their spouses, and dependents. It would pay for medical bills after a family has incurred \$2,000 in medical bills in a year and would cover hospital costs after 60 days. The medical assistance plan would provide basic health benefits coverage with uniform national eligibility standards for all low-income individuals and families.

The bill among other things would: facilitate the development of a national market system by giving the SEC authority over all securities-related communications system; require the SEC to remove and prevent barriers to competition and to otherwise perfect the mechanism of a national market system; and strengthen the SEC's ability to regulate all market makers to insure that regulatory authority will be available to back up the competitive pressure to make tight and continuous markets.

BRIEFS

The Senate and House passed and cleared for the President S.J. Res. 160, which places a ceiling on interest rates paid on 4-year certificates of deposit of less than \$100,000. ... The Senate passed the military procurement authorization bill, H.R. 9286. ... The Senate after adopting numerous amendments passed S. 2325, the Foreign Aid bill.

SOCIAL SERVICES AMENDMENTS

Senators Mondale, Javits, Bentsen, and Packwood introduced legislation this week, S. 2528, the Social Services Amendments of 1973. Sen. Mondale stated that the legislation is designed to resolve what he termed the basic problems that remain in the HEW social services regulations issued January 16.

The House Agriculture Committee announced that it will begin hearings on Oct. 16 on operations of the Commodity Exchange Authority Act and include in its review the possibility of creating an independent Commodity Exchange Commission modeled after the SEC. ... The Senate Antitrust Subcommittee began hearings on the impact of U.S. antitrust laws on American companies transacting business abroad.

The legislation includes the following provisions that would: guarantee that private contributions may be included in the State's share for federal matching; allow the States to serve past recipients who have been on welfare within two years, and potential recipients likely to be on welfare within five years; and provide additional flexibility to serve potential welfare recipients and add child protective services to the list of services available to the working poor as well as those on welfare.

The Senate passed the \$33.4 billion appropriations bill for HEW-Labor, H.R. 8877. ... The Senate after modifying provisions dealing with the distribution of funds for State and local education passed H.J. Res. 727, making further continuing appropriations for fiscal 1974. ... Senators Lawton Chiles and William V. Roth announced that the first bill to be considered by their ad hoc subcommittee on federal procurement of the Senate Government Operations Committee will be S. 2510, which would create an Office of Federal Procurement Policy.

In a related development, the Senate Finance Committee tentatively agreed to postpone HEW social services regulations, currently scheduled to become effective November 1, 1973, for two months until January 1, 1974.

HEALTH INSURANCE PLAN INTRODUCED

Senate Finance Committee Chairman Long and Sen. Ribicoff introduced a three-part, \$8.9 billion national health insurance bill this week, S. 2513, the Catastrophic Health Insurance and Medical Care Act of 1973.

COMMERCE CLEARING HOUSE, Inc.

HR 9059

FEDERAL PROCUREMENT OFFICE DELAYED?

The plea for a deferral of action on the proposed Office of Federal Procurement Policy (OFPP) made last summer by a number of executive agencies before the House Committee on Government Operations was echoed in the opening two-days of hearings on S. 2510 held before the newly-formed Senate Ad Hoc Subcommittee on Government Procurement.

Testifying on the companion bill to H.R. 9059, spokesmen from the OMB, HEW, the AEC, NASA, DOT and the Department of Agriculture agreed that the executive branch should be given further opportunity to make key changes in the procurement process, as suggested by the Commission on Government Procurement, without legislative interference. Citing their conviction that the OMB/GSA team management arrangement begun last spring will prove a satisfactory substitute, the spokesmen said they fear an OFPP that would become "another unwieldy layer of bureaucracy", to result in "further confusion, duplication, and competition for authority."

FOREIGN INDEBTEDNESS TO U.S.

The Senate Finance and Resources Subcommittee held a one-day oversight hearing this week on foreign indebtedness to the U.S. Sidney Weintraub Deputy Assistant Secretary for International Finance and Development, Department of State, testified that the vast majority of the indebtedness to the U.S. is honored and repaid on schedule, only two percent of the outstanding debt is delinquent by 90 days or more, and an even smaller percentage has been rescheduled or otherwise renegotiated.

John M. Hennessy, Assistant Treasury Secretary for International Affairs said that international debts owed the U.S. is a matter of considerable importance, affecting our budget, our balance of payments and our bilateral relations with other countries. He added that the collection of foreign debts has been of serious concern to the executive branch and over the past four years a vigorous effort has been undertaken to improve performance in the area.

CONSUMER CREDIT

Chairman of the House Banking Committee's Consumer Affairs Subcommittee Rep. Leouer K. Sullivan announced

on consumer credit protection that she was in the near future going to introduce an omnibus bill amending the consumer Credit Protection Act of 1968, which would be much more comprehensive than any of the bills now pending.

Both FDIC Chairman Frank Wille and FHLBB Chairman Thomas R. Bomar voiced their opposition to a proposal made by the National Commission on Consumer Finance that an independent agency be established to supervise examination and enforcement functions under the Consumer Credit Protection Act. Both said that an additional layer of bureaucracy for this purpose is not necessary. Both felt that these functions could be adequately carried out by existing regulatory agencies although Wille did suggest that perhaps one of the regulatory agencies could be mandated to issue substantive regulations in the area of consumer protection with enforcement residing in the appropriate agency.

TRADE NAMES AND PRESCRIPTION DRUGS

Legislation that would outlaw trade names on prescription drugs, S. 2633, was introduced this week by Sen. Nelson. He said the purpose of the bill was to drive down consumer drug prices and to provide an additional safeguard against a drug tragedy such as the Thalidomide disaster.

S. 2633 would amend the Food, Drug, and Cosmetic Act to prohibit the labeling, advertising, or promotion of a drug by any name other than its established, generic, name. According to Sen. Nelson, Food and Drug Administration figures show some 20,000 prescription drug products on the market but only 700 different drug compounds causing a multiplicity of names and a wide price range for the same drug.

BRIEFS

The Senate by a vote of 54 to 42, two-thirds of the Senators present and not voting in the affirmative, failed to override the President's veto of S. 1317, authorizing funds for activities of the U.S. Information Agency for fiscal year 1974. ...The House passed H.R. 9456, which would extend the Drug Abuse Education Act and include alcoholism education in the act.

The House Rules Committee obliged the Chairman of the House Banking Committee's Consumer Affairs Subcommittee Rep. Leouer K. Sullivan announced that he has referred action on the Education and Labor Committee's pension reform bill, H.R. 2, until early December.