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Statement of

WALTON H. SHELEY, ACTING DIRECTOR
PROCUREMENT AND SYSTEMS ACQUISITION DIVISION

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS
HOUSE COMMITTEE ON ARMED SERVICES

ON

SUSPENSION OF THE VINSON-TRAMMELL ACT

Mr. Chairman and Members of the Committee:

At your request, we are here today to present our views on H.R. 7247--the proposed legislation to waive the application of the Vinson-Trammell Act to October 1, 1981.

As you know, the Vinson-Trammell Act, enacted in 1934, places fixed limits on profits of contracts and subcontracts over $10,000, for the manufacture or construction of all or part of a complete military aircraft or naval vessel. With the abolition of the Renegotiation Board, this Act, dormant for many years became operative.

Although restricted to the ship and aircraft categories, the scope and implications of the Act are far-reaching. Because of its low-dollar-minimum reporting requirement, it would cover practically all tiers of subcontractors and material suppliers

that contribute to a completed aircraft or vessel. This requirement will affect many small businesses never previously subject to a profit limiting statute. In addition, it will affect those contractors selling commercial products that become part of an aircraft or ship.

There is almost unanimous agreement, both inside and outside of Government, that the Vinson-Trammell Act, in its present form, is not workable. The defense picture has changed so radically since its passage that it is no longer relevant. The dollar threshold is far too low--many thousands of small contracts with relatively miniscule profits would be covered, creating a paper avalanche that would serve no useful purpose. The classification of items covered (only ships and aircraft) is so restrictive that it will exclude many major procurements, while at the same time being so imprecise as to be impossible to enforce.

While the General Accounting Office agrees that the Vinson-Trammell Act is outdated and should be replaced, we believe that the question of whether or not this Act should be replaced with a new statute is a matter of policy, which the Congress should determine after considering all of the advantages and disadvantages. As we all recognize, the subject of profit limitations is both exceedingly complex and controversial. In order that a careful and thoughtful process of consideration take place, it is necessary that the implementation of the Vinson-Trammell Act be concurrently suspended.

This suspension would not only provide for further study, but, at the same time, remove the burdens and inequities on contractors during this interim period. Therefore, we support the proposed legislation to postpone implementation of the Act until October 1981.

As requested in your letter of June 12, 1980, we compared the language of H.R. 7247 with a similar provision included in the 1981 Defense Authorization Bill recently approved by the Senate Armed Services Committee. Although we have been unable to obtain a copy of the Senate bill, we were able to gain limited information from portions of the Senate Report accompanying the bill.

While both bills have the same objective, i.e., to suspend the application of the Vinson-Trammell Act on particular contracts and subcontracts, they differ in their timing and approach toward accomplishing the objective. The Senate amendment proposes to exempt contracts and subcontracts if performance was completed prior to October 1, 1981. According to the Report of the Senate Armed Services Committee, the Committee expects that the Department of Defense will issue regulations defining when performance on a contract can be said to have been completed. The House bill, H.R. 7247, exempts only those contract and subcontracts with respect to which final payment has been made prior to that date.

Liability for excess profits under the Vinson-Trammell Act attaches to contracts and subcontracts completed during

a taxable year. Existing administrative regulations define completion of contract as "date of delivery" of the item or portion thereof covered by the contract or subcontract. If the Department of Defense follows this definition, then all contracts and subcontracts to which liability for excess profits would have attached would be exempt under the Senate bill. In the event that the Department adopts some other definition of completed performance, then the coverage under the bill could be different.

The language of H.R. 7247 is more specific as to coverage. It would exempt only those contracts where final payment has been made. Contracts that have been completed prior to October 1, 1981, on which final payment has not been made prior to that date, and contracts still active would not be covered under this waiver. If the Vinson-Trammell Act is subsequently retained in October 1981, these contracts would be subject to its profit limitations.

We note that the House bill excludes the October 1, 1976, date. This is the date when the Act became effective again. If the intent of this exclusion is to exempt, as a precautionary measure, those contracts entered into prior to that date which for some reason may be affected by the Act, then we would have no objection.

Another provision in the Senate amendment prohibits the responsible agencies from requiring any reports under current law, nor issuing regulations to implement that law before

October 1, 1981. It is our opinion that this provision is not necessary to produce the desired effect. However, we would have no objection to its inclusion in H.R. 7247.

In summation of H.R. 7247, in our opinion, the language therein presents no definitional problems, and for simplicity of administration, the approach taken appears to be a reasonable one. Its effect will be to (1) waive the applicability of the Vinson-Trammell Act on contracts and subcontracts entered into before October 1, 1981, on which final payment has been made, and (2) retain the applicability of the Act on all other contracts and subcontracts for which final payment has not been made.

On the other hand, the stated effect of the Senate amendment is to (1) exempt from the Vinson-Trammell Act contracts and subcontracts entered into before or after October 1, 1976, if they are completed before October 1, 1981, and (2) continue the application of such act to contracts and subcontracts entered into after October 1, 1976, but which are not completed until after October 1, 1981, except that there would be no reporting requirement until after October 1, 1981.

In our opinion, a major factor in the Senate amendment is the subsequent definition of completed performance.

In conclusion, the General Accounting Office has supported profit limitating legislation in the past and, as we have recently testified, believe that some type of statute is needed

in certain cases and during a period of national emergency. It is our opinion, however, that the present Vinson-Trammell Act is unworkable. We endorse legislation to suspend the statute to allow the Congress the opportunity to reconsider the entire area of profit limitations on Government contracts. We believe that in determining which contracts would be exempt in the interim period, from a practical standpoint, the final payment approach in H.R. 7247 would appear to present the least administrative difficulties.

This concludes my prepared statement. I will be glad to answer any questions you may have at this time.