

# Report To The Congress

## OF THE UNITED STATES

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### Government Earns Low Marks On Proper Use Of Consultants

During the past 20 years, Federal agencies have failed to make satisfactory progress to improve their management of consulting services. Many of the same problems that existed as far back as 1961 exist today. Areas needing improvement include:

- Identifying expenditures for consulting services.
- Obtaining adequate competition when awarding consulting service contracts.
- Justifying the need for consulting services.
- Assuring that consultant studies are not duplicated.
- Implementing effective management controls to assure the proper use of these services.

This report recommends that the Congress and the Office of Management and Budget strengthen their oversight of consulting services.



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

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To the President of the Senate and the  
Speaker of the House of Representatives

*CW000001*

This report summarizes the major issues related to the Federal Government's use of consulting services and the efforts made by the executive branch and the Congress to deal with a longstanding management problem. We made this review at the request of the Chairman, Subcommittee on Civil Service and General Services, Senate Committee on Governmental Affairs.

The report points out that effective solutions to consulting service problems are long term and recommends interim actions that the Congress can take until the executive branch demonstrates that it has improved the management of consulting services.

We are sending copies of this report to the Directors, Office of Management and Budget and Office of Personnel Management.

*James A. Stacks*  
Comptroller General  
of the United States

*SE 106610  
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D I G E S T

During the past 20 years, Federal agencies have failed to make satisfactory progress to improve their management of consulting services. During this period, GAO has issued over 30 audit reports identifying the need for practically every major Federal agency to better manage these services. (See p. 7.) Many of the same problems that existed as far back as 1961 exist today.

Although executive branch agencies reported \$278 million in consulting service contracts during fiscal year 1979, actual expenditures could approximate \$2 billion. (See p. 9.) Obtaining consulting services by appointing consultants as part-time Government employees accounts for a minor portion of total Federal expenditures for these services.

The proper use of consulting services is a normal, legitimate, and economical way to improve Government services and operations. Agencies must continue to have the option to use consulting services where appropriate.

Solutions to the consulting service problem are long term. In the interim, GAO is recommending several ways that the Office of Management and Budget (OMB) and the Congress can improve their oversight of these services. (See pp. 32 and 41.)

In November 1977 GAO reported that it was not possible to determine how many consulting service arrangements the Government had, at what cost, and for what purposes. This information is still not available. Although there has been considerable progress in developing the Federal Procurement Data System that could provide this data, the reported data is inaccurate. Federal agencies have

experienced difficulty in using the OMB definition of consulting services to report their expenditures. (See p. 9.)

LITTLE PROGRESS IN 20 YEARS TO  
OBTAIN ADEQUATE COMPETITION

Since 1961 GAO has issued nine reports which found that various Federal agencies did not obtain adequate competition in awarding consulting service contracts. GAO's March 1980 report found that 74 (67%) of 111 contracts awarded by 6 Federal agencies totaling \$12.1 million were sole source. The procedures used in contracting for consulting services at all agencies reviewed do not show that adequate competition is obtained nor that controls exist to minimize costs. (See p. 14.)

QUESTIONABLE FEES PAID  
FOR CONSULTING SERVICES

GAO has issued six reports since 1961 which have questioned the reasonableness of fees paid for consulting services. In addition, the Department of Energy's Inspector General and the Subcommittee on Civil Service and General Services, Senate Committee on Governmental Affairs, have questioned the reasonableness of these fees. For example, the Department of Energy paid a consulting service contractor \$500 a day for 15 days to critique the first issue of a new journal. The same contractor had worked within the past year as a Department of Energy subcontractor at \$250 a day. (See p. 15.)

QUESTIONABLE NEED FOR  
CONSULTING SERVICES

GAO has also issued 11 reports from 1961 to 1980 which found that various Federal agencies used consulting services to perform work that should have been performed by regular Government employees. GAO's March

1980 report on 111 contracts awarded by 6 Federal agencies questioned the need for many of the contracts. (See p. 18.)

#### POTENTIAL FOR DUPLICATION

Four Federal repositories can be used to locate a substantial portion of the studies performed by Government employees and consulting services. GAO has found that agencies are not searching these repositories before initiating new studies, and many completed studies are not submitted to the repositories. (See p. 19.)

#### POTENTIAL FOR CONFLICT OF INTEREST

Several reports cited instances of agencies' awarding consulting service contracts when there was an appearance of a conflict of interest that could (1) diminish the contractor's capacity to give impartial, objective advice or (2) result in the contractor's being given an unfair advantage when competing for future contracts. OMB anticipates issuing Government-wide regulations on organizational conflicts of interest in 1981. (See p. 21.)

#### YEAREND SPENDING

Agencies are awarding a disproportionate number of consulting service contracts in the final quarter of the fiscal year. The "rush" to award contracts in the final quarter can seriously impair the objectivity as well as the thoroughness of the proposal process. (See p. 23.)

#### OMB'S EFFORTS TO IMPROVE AGENCIES' MANAGEMENT OF CONSULTING SERVICES HAVE NOT BEEN EFFECTIVE

In May 1978 OMB issued a bulletin defining consulting services and establishing a

series of controls intended to improve the management of these services. It also surveyed agencies' expenditures for consulting services in 1977 and 1978. (See p. 25.)

However, GAO has found little improvement in agencies' management of these services. GAO recommended that OMB instruct Federal agencies to establish more rigorous procedures for approving consulting service contracts. (See p. 30.)

GAO also found that agencies were experiencing difficulty in using the definition of consulting services and had different interpretations of the definition. The executive branch views it in a much more narrow way than does the Congress. GAO recommended that the OMB Director work with the Congress to achieve a better and more uniform understanding of the definition. (See p. 28.)

In April 1980 OMB issued a new circular to tighten management controls over agencies' approval of these services and to provide more guidance on the definition.

The OMB Director plans to direct the agencies to reduce by 15 percent the amount of funds in the fiscal year 1981 budget for consulting services. The agencies are to do this by reducing their appropriation accounts which include funds for many different types of services. (See p. 31.)

These actions, along with monitoring the agencies' application of the definition, should help to assure that consulting services are properly managed and accurately reported. There is no assurance, however, that the planned 15-percent reduction in fiscal year 1981 funds for consulting services will not be circumvented by agency reductions in funds for other services.



Until there is a common understanding of the definition and improved "budget visibility" for consulting services, any efforts to reduce these funds will be difficult to monitor. (See p. 31.)

GAO recommends that the Director, OMB:

- Assure that agencies establish effective procedures to fully implement the prescribed management controls.
- Monitor the reports available from the Federal Procurement Data System to make sure the additional written guidance provided to the agencies results in a common understanding of the definition.

CONGRESSIONAL EFFORTS TO CONTROL  
GOVERNMENT'S USE OF CONSULTING  
SERVICES ARE INCREASING

Recently, several congressional committees have increased their efforts to restrict agencies' use of consulting services, including placing ceilings on the amount of funds agencies can spend for these services. GAO has found that the effectiveness of restrictions is limited. For example, agency personnel ceilings can be a barrier to effective manpower management since they can often cause Federal managers to contract with the private sector. More effective measures should be sought to improve management accountability. (See p. 32.)

Representatives of the consulting service industry have objected to congressional ceilings on agencies' funds and have identified several disadvantages, such as hindering the agencies' ability to perform congressionally mandated studies and evaluations. (See p. 37.)

MATTERS FOR CONSIDERATION  
BY THE CONGRESS

While GAO's work has not specifically pinpointed underlying causes for agencies' continued failure to manage consulting services properly, it appears they are numerous and complex. A major cause could be the arbitrary use of personnel ceilings. (See p. 39.)

Solutions to assure the Government's proper use of consulting services may take several years and will require the cooperation of the agencies, OMB, and the Congress.

A critical first step is to resolve the confusion among the agencies and the Congress surrounding the OMB definition of consulting services. Until the Congress and the executive branch agree on the definition, effective congressional oversight and management accountability will not be realized.

Secondly, agencies need to establish more stringent procedures to assure policies and management controls prescribed by the new OMB circular are followed.

The third step is already in place but not fully tested--the principle inherent in civil service reform of providing Federal managers with additional flexibility to manage resources while holding them accountable for performance.

The Congress can encourage agencies to initiate long-term improvements and to improve its oversight of these services by requiring each:

--Major Federal agency to submit annually to the House and Senate Appropriations Committees, as part of their budget justification, the amount of funds requested for consulting services; the appropriation

accounts in which these funds are located; and a brief description of the need for these services, including a list of those major programs that require consulting services. This information can be used to determine whether the funds requested are appropriate. (See p. 40.)

--Inspector General to submit to the Congress, along with the agency's budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to the Federal Procurement Data System. (See p. 40.)

If the Congress, in reviewing the budget justifications, determines that reductions in the funds requested are appropriate, such reductions should take into consideration several factors, including the agencies' legitimate needs for consulting services to assist them in carrying out a growing number of complex Federal programs. The reductions should not be so drastic that they restrict agencies' proper use of consulting services.

GAO recognizes that these reductions only address the quantity of expenditures, not the quality, and will not assure that agencies manage these services properly. However, they would draw management's attention to the immediate need to correct the problems that have existed for 20 years. (See p. 41.)

GAO believes it is critical for agencies to have the capability to intelligently acquire consulting services, monitor performance, and evaluate results. One way to achieve this capability is for agencies having Government-wide management responsibilities and/or a high level of expertise in particular fields to advise and assist other agencies in acquiring and evaluating consulting

services. In this regard, the Office of Personnel Management has established an Office of Consulting Services to advise and assist other agencies in various personnel management areas, such as performance appraisal and general management analysis. While GAO has not assessed this office's performance, it is an encouraging development that merits attention by other agencies having a high level of expertise in other fields.

#### AGENCY COMMENTS

At the request of the Chairman, Subcommittee on Civil Service and General Services, Senate Committee on Governmental Affairs, GAO did not obtain official agency comments.

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### DIGEST

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ABBREVIATIONS

FPDS	Federal Procurement Data System
GAO	General Accounting Office
HEW	Department of Health, Education, and Welfare
OMB	Office of Management and Budget
OPM	Office of Personnel Management





## CHAPTER 1

### INTRODUCTION

In recent years the Congress and the executive branch have intensified their efforts to determine the extent to which the Federal Government uses and properly manages consulting services. In response to this growing concern, our November 29, 1977, study, "Government Consultants: Standard Definition and Uniform Data Needed" (FPCD-78-5), concluded that it was not possible to determine how many consulting service arrangements the Federal Government had, at what cost, and for what purposes. We stated that (1) a Government-wide definition of "consultant" should be developed and used as a basis for an information system that would provide reliable data on the cost and extent of consulting services and (2) the Office of Management and Budget (OMB) should be the single authority for prescribing the standard definition, the data to be maintained, and the reports to be prepared.

### CURRENT GOVERNMENT-WIDE DEFINITIONS

At present, two definitions of "consultant" and "consulting services" are used Government-wide: the Office of Personnel Management's (OPM's) definition of "consultant" and OMB's definition of "consulting services."

OPM defines "consultant" in chapter 304 of the Federal Personnel Manual as follows:

"Consultant means a person who serves as an adviser to an officer or instrumentality of the Government, as distinguished from an officer or employee who carries out the agency's duties and responsibilities. He gives his views or opinions on problems or questions presented him by the agency, but he neither performs nor supervises performance of operating functions. Ordinarily, he is expert in the field in which he advises, but he need not be a specialist. His expertness may consist of a high order of broad administrative, professional, or technical experience indicating that his ability and knowledge make his advice distinctively valuable to the agency."

The OPM definition applies only when there is an employer-employee relationship. It does not apply to individuals or organizations providing consulting services under a procurement contract when there is no employer-employee relationship.

OMB issued Bulletin 78-11 on May 5, 1978, defining consulting services as "those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management." OMB's definition includes the services of appointed consultants, as defined by OPM, as well as consulting services provided by a contractor where there is no employer-employee relationship. Since the terms "consultant" and "consulting services" are generally perceived as having the same meaning, we have used the terms interchangeably throughout the report.

The OMB bulletin states also that these services are normally provided by persons or organizations who are generally considered to have knowledge and special abilities that are not generally available within the agency. It states that consulting services may be used to get:

- Specialized opinions unavailable in agencies.
- Outside points of view needed to avoid limited judgment on critical issues.
- Advice on developments in industry, college, university, and foundation research.
- Opinions of noted experts whose national or international prestige contributes to the success of important projects.
- Citizens' advisory participation to develop or implement Government programs that call for citizen participation.

### THREE WAYS TO OBTAIN CONSULTING SERVICES

Agencies obtain consulting services in three ways by (1) appointing consultants to the civil service, (2) awarding a procurement contract, and (3) advisory committee membership. For those consultants appointed to the civil service, the relationship established is that of employer-employee. An appointed consultant who works more than 130 days a year is regarded as a special Government employee but is subject to all the laws and regulations that apply to

regular Government employees. An appointed consultant that works 130 days or less a year is considered a special Government employee and is subject to many but not all of the laws and regulations applicable to regular Government employees.

An organization or individual providing consulting services under a procurement contract is considered an independent contractor and does not have the status of a Government employee. While the Government monitors the contractor's work to insure specifications in their agreement are met, the relationship between the agency and the contractor is one of buyer-seller rather than employer-employee. In this buyer-seller relationship, the contract is the medium for resolving disputes over the means, method, and manner of performing the work. The agency exercises no control over individual contractor workers outside the terms of the contractual agreement. If the agency determines that it needs direct employer-employee control over the individual worker, then it should make that individual a Federal employee through a civil service appointment.

OMB Circular A-63, Advisory Committee Management, governs policy and procedures regarding advisory committees and their membership. The employment status of an advisory committee member depends primarily on the function of the particular committee. If the committee's purpose is to reflect the views of those outside the Government, the individual members would probably not be Government employees.

According to agency figures reported to OMB, the Government spends far more for consulting service contracts than for salaries paid to appointed consultants. For example, the Government reportedly spent \$413 million for consulting service contracts in effect as of June 1, 1978, compared to only \$17 million for consultant appointments.

OPM views the proper use of appointed experts and consultants as a normal, legitimate, and economical way to improve Government service and operations. It stated in a November 1979 legislative proposal to OMB that:

"The use of outside experts and consultants for intermittent or temporary periods has been a long-accepted practice in private business and Government. By bringing their highly specialized talents and insights to bear on new or unusual problems, these individuals help an organization to operate more economically and effectively. Because the service they provide

is unique and because the length of their service is often short and uncertain, they are usually not subject to the same employment procedures as regular personnel. In the Federal service, exceptions from normal employment requirements have been authorized for experts and consultants at least as far back as the 1880's."

Conversely, chapter 304 of the Federal Personnel Manual states that the improper employment of experts and consultants is not only illegal, it is wasteful and destroys the morale of career specialists. For example, it is improper to employ an expert or a consultant to (1) do work that can be done as well by regular employees, (2) do full-time continuous jobs, (3) avoid competitive employment procedures, and (4) avoid General Schedule pay limits.

The principal authority now governing the employment of most appointed consultants appears in section 3109 of title 5, United States Code. According to OPM, this section does not give regulatory authority to any agency. However, on the basis of its mission to insure the integrity of civil service and classification laws, OPM does have an implied authority to issue regulations governing the employment of consultants.

On April 1, 1980, the Chairman, Senate Committee on Governmental Affairs, introduced a bill (S. 2506) at the request of OPM that would amend section 3109 of title 5, United States Code. This proposal would, among other things, assign to OPM the explicit authority to issue regulations governing the employment of consultants. In commenting on the draft legislative proposal, we stated that it would be a step forward for achieving better control over the use of consultants. (See app. IV.) We also suggested several changes, most of which OPM incorporated into the final proposal sent to the Congress.

#### SCOPE OF REVIEW

The purpose of our review was to conduct a comprehensive study of the problems and issues related to the Government's use of consulting services and to assess the progress made by the Congress, OMB, and the agencies to resolve these issues. We were guided by the concerns expressed in a December 7, 1979, letter to us from the Chairman, Subcommittee on Civil Service and General Services, Senate Committee

on Governmental Affairs. The Chairman requested that we prepare an overview report on the issues surrounding the Government's use of consulting services. We were also guided by Federal policies on the proper use of consulting services, outlined in OMB Bulletin 78-11.

We reviewed:

- Prior GAO reports issued from 1961 to March 1980 as well as various Federal agencies' internal audit reports dealing with consulting services.
- Congressional hearings and reports on consulting services from February 1977 to March 1980 and, particularly, the extensive data obtained by the Senate Subcommittee on Civil Service and General Services.
- Information from a private profitmaking firm that monitors trends and practices in Federal procurements for consulting services. It acts as a clearinghouse for public and private organizations that are its clients.

We also interviewed OMB and OPM officials and reviewed documentation from these agencies.

We met with representatives from the Committee on Federal Contracting Practices to obtain their views on the issues discussed in this report. The Committee represents numerous private sector firms and organizations that provide consulting and other services to the Federal Government. The Committee gave us its written opinion of the issues discussed in this report and made suggestions for improving the Government's use of consulting services. (See app. II.)

The scope of this review did not include identifying contributions that have been made by individuals and organizations providing consulting services to the Federal Government. We believe, however, that it is important for agencies to continue to have the option of using consulting services. For example, consulting services may be the most appropriate way to provide

- objectivity in analyzing problems or evaluating program results to avoid institutional bias and
- flexibility in acquiring the advice of persons or organizations with special skills or experience without having to make a long-term employment commitment.

## CHAPTER 2

### LITTLE PROGRESS MADE TO RESOLVE CONSULTING SERVICE

#### ISSUES DURING THE PAST 20 YEARS

Many of the issues related to the Government's use of consulting services identified during the past 20 years still exist today. During this period, we have identified the need for practically every major Federal agency to better manage these services. The major issues identified in over 30 audit reports issued during the last 20 years include the:

- Failure to maintain adequate information on the number and cost of consulting services.
- Failure to obtain adequate competition in awarding procurement contracts for consulting services.
- Inconsistent, improper, or excessive rates of pay for consulting services.
- Use of consulting services to perform work that should be performed by regular Government employees.
- Possible duplication of consultant studies.
- Potential conflicts of interest between consultants' advice and their outside interests.
- Disproportionate number of contracts awarded at the end of the fiscal year.

The chart on page 7 identifies these GAO reports and the major findings related to consulting services. 1/

In addition, various congressional committees and Federal agencies' internal audit organizations in recent years have identified additional issues related to the Government's

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1/Due to the absence of a Government-wide definition of consulting services when most of these reports were issued, we had to make certain subjective decisions on whether the report findings were related to consulting services or some other type of services. In some cases, the services that we considered consulting services may not precisely correspond with the OMB definition.

Jan. 17, 1975	Fed. Energy Adm.	- Questionable procurement procedures were used to award consulting service contracts	OSP-75-8
Aug. 19, 1975	Law Enforc. Assis. Admin.	- Appointed consultants were used to perform work that should be performed by regular LEAA employees	FPCD-75-159
Aug. 28, 1975	HEW	- Consulting service contracts may have been administered in such a way as to create an improper employee-employer relationship	MWD-76-11
Sept. 18, 1975	Multi-Agency	- Federal agencies do not identify in their budgets the amount of funds requested for consulting services	PSAD-76-12
Mar. 19, 1976	Dept. of Commerce	- Federal agencies are not submitting their consultant reports to the Commerce Clearinghouse for possible use by other agencies to avoid duplication	GGD-76-66
Sept. 21, 1976	Energy Res. & Dev. Admin.	- Possible organizational conflict of interest in a consulting contract award - Contract consultant performed work that should be performed by ERDA	EMD-76-11
Dec. 27, 1976	AID	- Appointed consultants were paid excessive fees - Retired government employees working as appointed consultants were permitted by law to "Double-Dip"	ID-76-82
Sept. 15, 1977	5 Agencies	- Many agencies were awarding contracts, including some for consulting services, without obtaining adequate competition	PSAD-77-152
Sept. 22, 1977	HEW	- Controls over payments to experts and consultants were inadequate resulting in excessive payments	FGMSD 77-51
Nov. 29, 1977	Govt.-Wide	- Federal Government does not know how many consultants are used, at what cost, or for what purposes - There is no accepted government-wide definition of consultant or single authority to regulate their use	FPCD-78-5
Feb. 12, 1979	AID	- Information on the number and cost of consulting contracts not maintained - Possible duplication of consultant studies - Consulting contracts were awarded for work that could be done by AID	ID-79-13
Mar. 7, 1979	Nuclear Regula- tory Commission	- Contracts for consulting services were awarded without adequate competition and administered improperly - Justifications for hiring consultants and controls over their payments were inadequate	EMD-79-37
Mar. 13, 1979	DOE	- DOE plans to award a consulting contract to perform a study that should have been performed by DOE employees	EMD-79-26
July 2, 1979	DOE	- DOE did not have sufficient information to determine if there were organizational conflicts of interest for \$80 million in consulting contracts	EMD-79-85
Nov. 2, 1979	DOE	- Contracts for consulting services were awarded without adequate competition and were not administered properly - Consulting contracts were awarded to carry out DOE's mission and perform work that should have been performed by DOE employees - The type of contract used limited competition	EMD-80-2
March 20, 1980	6 Agencies	- Contracts for consulting services are being awarded without adequate competition - Consultants under contract performed work that could be performed by Agency employees - Consultants' reports were not delivered on time - Inaccurate reporting of consulting services contracts - Consultant's reports were not used - Year-end spending for consulting contracts	PSAD-80-35

## GAO REPORTS RELATED TO CONSULTING SERVICES

DATE	AGENCY	PRINCIPAL FINDINGS RELATED TO CONSULTING SERVICES	REPORT #
Jan. 10, 1961	Govt.-Wide	<ul style="list-style-type: none"> <li>- Failure to obtain adequate competition in awarding contracts for consulting services</li> <li>- Failure to write and administer contracts for consulting services properly</li> <li>- Inconsistent or excessive rates of pay for consultants</li> <li>- Use of consultants to perform work that could be performed by govt. employees</li> <li>- Failure to use the consultant's advice</li> <li>- Lack of information on the number and cost of consultants</li> </ul>	B-143330
Mar. 25, 1968	U.S. Army	<ul style="list-style-type: none"> <li>- Failure to write and administer contracts for consulting services properly</li> <li>- Failure to use the consultant's advice</li> </ul>	B-133209
June 30, 1970	HEW	<ul style="list-style-type: none"> <li>- Subcontract consultant fees are not limited</li> <li>- No standard reporting requirements for documenting the subcontract consultants' work</li> </ul>	B-164031 (1)
Feb. 23, 1971	DOD	<ul style="list-style-type: none"> <li>- Possible duplication of consultant studies</li> </ul>	B-163074
Apr. 1, 1971	HEW	<ul style="list-style-type: none"> <li>- Appointed consultants were used to perform work that should be performed by regular HEW employees</li> </ul>	B-164031 (1)
Apr. 13, 1971	DOD	<ul style="list-style-type: none"> <li>- Consultants under contract received higher rates of pay than they would have if appointed to the Civil Service</li> </ul>	B-169457
Aug. 16, 1971	HEW	<ul style="list-style-type: none"> <li>- Five out of fourteen consultant studies were not used because contracts were written and administered improperly</li> </ul>	B-164031 (1)
Dec. 28, 1971	Office of Economic Opportunity	<ul style="list-style-type: none"> <li>- Ten out of fourteen consultant reports were not used</li> <li>- Consulting contracts were not written or administered properly</li> <li>- Possible organizational conflict of interest by consultants</li> </ul>	B-130515
Mar. 24, 1972	Dept. of Labor	<ul style="list-style-type: none"> <li>- Lack of adequate competition in the award of consulting contracts</li> <li>- Excessive fees paid to contract consultants</li> <li>- Failure to administer contracts properly resulted in consultant reports not being used</li> </ul>	No Number
Oct. 27, 1972	DOD	<ul style="list-style-type: none"> <li>- Possible duplication of consultant studies</li> <li>- DOD consultants under contract were conducting studies with little or no relevance to defense or military matters</li> </ul>	B-163074
Dec. 11, 1972	U.S. Army	<ul style="list-style-type: none"> <li>- Eight out of seventeen reports prepared by contract consultants were not used</li> </ul>	B-177372
Aug. 31, 1973	Appalachian Regional Comm.	<ul style="list-style-type: none"> <li>- Inadequate justification for awarding sole-source contracts for consulting services</li> </ul>	B-164031 (4)
Sept. 6, 1973	OEO	<ul style="list-style-type: none"> <li>- Appointed consultants were used to perform work that should be performed by OEO regular employees</li> </ul>	B-130515
Sept. 21, 1973	HEW	<ul style="list-style-type: none"> <li>- Appointed consultants were used to perform work that should be performed by HEW regular employees</li> <li>- Appointed consultants improperly influenced the award of contracts for consulting services to friends and associates</li> </ul>	B-164031 (1)
Mar. 15, 1974	Veterans Administration	<ul style="list-style-type: none"> <li>- Six out of seven contracts for consulting services were awarded without adequate competition</li> </ul>	B-114859
Nov. 7, 1974	HEW	<ul style="list-style-type: none"> <li>- Lack of adequate competition in the award of consulting service contracts</li> <li>- Consultants under contract were performing work that should be done by HEW</li> </ul>	B-164031 (1)



use of consulting services. Examples include the lack of information (1) in agencies' budgets on the planned use and expenditures for consulting services and (2) for comparing consultant costs with estimated agency costs if the work was performed internally.

DOES THE FEDERAL GOVERNMENT KNOW  
HOW MUCH IT SPENDS ON CONSULTING SERVICES?

The Government does not know how much it spends on consulting services. As early as January 1961, we reported that Federal agencies did not report their expenditures for consulting services. To obtain this information, we surveyed 65 Federal agencies and found nearly \$62 million in active consulting service contracts. We reported in November 1977 that little progress had been made to identify the extent of Federal expenditures for consulting services. Although executive branch agencies reported approximately \$278 million in consulting service contract obligations in fiscal year 1979, actual expenditures could approximate \$2.3 billion.

Agencies experience difficulty in using  
the definition of consulting services

Our March 1980 report 1/ found that agencies are experiencing considerable difficulty in using OMB's definition of consulting services to report their expenditures because it is ambiguous; yet, most agencies stated in response to a Senate questionnaire that the definition is adequate. (See p. 29.)

Federal Procurement Data System  
information is inaccurate and incomplete

In 1972 the Commission on Government Procurement 2/ recommended that the system for collecting and disseminating procurement data be improved to meet the needs of the Congress, the executive branch, and others. The Office of Federal Procurement Policy Act, Public Law 93-400, created the

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1/"Controls over Consulting Service Contracts at Federal Agencies Need Tightening," (PSAD-80-35, Mar. 20, 1980).

2/The Commission on Government Procurement was created by Public Law 91-129 in November 1969 to study and recommend to the Congress methods to promote economy, efficiency, and effectiveness of procurement by the executive branch. The statute provided for a 12 member body representing the public and private sectors.

Office of Federal Procurement Policy within OMB in August 1974 and assigned it the function of developing an improved procurement data system.

The Federal Procurement Data System (FPDS), which began operations in 1978, is an automated reporting system for most Government contracts. It is presently operated by the General Services Administration. For each contract over \$10,000, agencies must determine if it meets the definition of consulting services in OMB Bulletin 78-11. If so, each contract is then "coded" as a consulting service contract when reported by the agencies to FPDS.

Executive branch agencies reported about \$277.8 million for consulting service contracts to FPDS in fiscal year 1979. This figure does not include the cost of

- consulting service contracts under \$10,000,
- grants or contracts to provide consulting services to non-Federal entities (see p. 28),
- subcontracts for consulting services awarded by Federal prime contractors. (See p. 28.)

The Senate Subcommittee on Civil Service and General Services, Committee on Governmental Affairs, requested a report from FPDS on every consulting service contract awarded during fiscal year 1979. The FPDS report is shown in the following table:

2/12/80

FPDS  
Federal Contract Awards by Selected Category  
Fiscal Year 1979  
Special Report #0113

(1) <u>Executive department/agency</u>	(2) <u>Total contract dollars</u>	(3) <u>Consultant-type dollars</u>	(4) <u>Consultant negotiated noncompetitive dollars</u>	(5) <u>SVC codes R400-R599 dollars</u>
Federal Emergency Management Agency	\$ 1,458	\$	\$	\$ 362
Executive Office of the President	459			
Agriculture	1,524,771	6,879	4,931	21,408
Commerce	113,593	5,219	1,652	33,132
Defense	63,614,957	162,992	100,659	1,536,638
Health, Education, and Welfare	370,589	42,059	4,436	108,906
Energy	513,201	147	147	14,251
Housing and Urban Development	53,359	50	50	4,411
Interior	634,708	1,093	291	45,063
Justice	100,352	17,997	5,150	28,958
Labor	49,421	219	219	1,408
State	30,655	3,196	1,239	15,187
Transportation	323,806	892	338	26,930
Treasury	172,950	940	468	2,647
ACTION	13,179	293	148	1,422
Administrative Conference of the United States	127	89	89	
Agency for International Development	104,627	11,427	2,090	93,624
American Battle Monuments Commission	157			
Civil Aeronautics Board	1,071	15	15	183
Commission on Civil Rights	87	42		17
Commodity Futures Trading Commission	1,899			30
Community Services Administration	2,725	1,156	496	1,156
Consumer Products Safety Commission	968	38		651
Environmental Protection Agency	111,407	28		46,906
Equal Employment Opportunity Comm.	63			
Federal Communications Commission	3,712	1,171	657	922
Federal Election Commission	865	206	126	220
Federal Maritime Commission	200	140	140	
Federal Trade Commission	2,280	1,100	459	1,565
General Services Administration	1,888,719	3,846	55	298
Interstate Commerce Commission	1,977	104	104	486
International Communications Agency	26,751			1,396
International Trade Commission	225			
National Aeronautics & Space Admin.	1,946,490	1,429	894	237,712
National Capital Planning Commission	33			
National Foundation on Arts & Human.	1,430	179	179	1,395
National Labor Relations Board	1,006			292
National Mediation Board	45			45
National Science Foundation	44,742	52	52	6,188
National Transportation Safety Board	210	10		10
Nuclear Regulatory Commission	32,277	505	392	14,927
Office of Personnel Management	17,003	47	47	408
Occupational Safety & Health Review	393			76
Pennsylvania Avenue Development Corp.	11,413	1,081		150
Railroad Retirement Board	2,040	1,035	74	1,035
Securities Exchange Commission	1,262	92	58	68
Selective Service System	636			271
Small Business Administration	10,237	3,812	1,679	7,889
Smithsonian Institution	12,497			356
Tennessee Valley Authority	1,387,802	563	563	13,217
U.S. Arms Control & Disarmaments Agency	3,045	19	19	
Veterans Administration	765,214	7,698	3,858	14,120
Water Resources Council	525			525
<b>Total</b>	<b><u>\$73,903,643</u></b>	<b><u>\$277,860</u></b>	<b><u>\$131,774</u></b>	<b><u>\$2,286,861</u></b>
349,284 Records totaled				

Note: 000's have been omitted from each figure in table.

To clarify, column 2 shows the total value of all contracts awarded; column 3, the value of all contracts identified as consulting services; column 4, the value of all consulting service contracts awarded noncompetitively; and column 5, service codes discussed below. The Subcommittee requested FPDS to also provide the total value of all contract awards for various types of professional services that, by FPDS' description, were likely to represent consulting services. Examples of such services include program evaluation, economic studies and analyses, feasibility studies, regulatory studies, and policy review and development services.

Since many of these services appear to fall within the OMB definition of consulting services, it is likely that if an agency failed to properly identify a consulting service contract (to be reflected in column 3), it would then be reflected in column 5. For example, if a contract for program evaluation, which is listed in OMB Bulletin 78-11 as an example of a consulting service, was not classified by an agency as a consulting service, it would be picked up in column 5.

Total obligations reported for these services were \$2.3 billion. Although we recognize that some of the services were specifically excluded from the OMB definition, we believe this figure is more indicative of the total Federal expenditures for consulting service contracts than the \$278 million shown in column 3.

As an additional test of the accuracy of the data, we also reviewed 20 contracts classified by 6 agencies as consulting service contracts and found that only 10 were reported to FPDS as consulting service contracts.

We also found that many of the contracts reported as consulting services were actually for the purchase of products. For example, the Department of Defense identified contracts for meat, fish, poultry, and guided missile components as consulting service contracts. In addition several agencies classified, as consulting service contracts, services specifically excluded from OMB's definition, such as information system development, research, architect and engineering, medical services, and employee training and executive development.

Agency budgets generally do not identify the funds requested for consulting services

Generally, agency budgets submitted to the Congress do not contain enough information to determine the amount of funds requested for consulting services as defined by OMB.

In preparing a September 1975 report, we tried to gather information on the percent of the total Federal budget spent on consulting services. (See p. 7.) But agencies in our review did not maintain such data.

The House Appropriations Committee has been unable to determine the amount of funds the Department of Defense spends on consulting services. In its report on the Department of Defense Appropriations Bill for fiscal year 1979, the Committee stated:

"Each year the Department of Defense provides in the detailed (budget) justification material an exhibit which summarizes the total service support contracts in force. \* \* \* These 'services' include studies and analyses, management support and consultant services. \* \* \* The Committee has very little confidence in the overall accuracy of the estimates provided by Department of Defense for service support contracts. Regardless of the accuracy of the figures, the fact remains that the amounts being spent on such contracts have been rapidly increasing in recent years. \* \* \* The Committee considered placing a funding limitation in the bill on this type of study and service. Unfortunately the Department of Defense procedures for budgeting and accounting for this type of effort are such that it is impossible to determine how much money is being spent on them. The Committee expects that future budget justifications will include detailed lists of the subjects proposed for study each budget year."

According to the results of a questionnaire by the Senate Subcommittee on Civil Service and General Services in September 1979, some agencies apparently use research and development funds to pay for consulting services. One of the questions was: "Do you consider a contract for consulting services as defined in Bulletin 78-11, but paid for with research and development funds, as subject to the requirements of the Bulletin?" The Department of Energy, National Aeronautics and Space Administration, Environmental Protection Agency, Department of Defense, and National Science Foundation answered yes to this question.

ARE FEDERAL AGENCIES OBTAINING  
ADEQUATE COMPETITION IN AWARDING  
CONSULTING SERVICE CONTRACTS?

We have issued nine reports since 1961 which have found that various agencies did not obtain adequate competition in awarding consulting service contracts. (See p. 7.) Our March 1980 report on this issue indicates that agencies have made little progress in obtaining adequate competition.

Commission on Government Procurement  
recommends competition

The Commission on Government Procurement made an extensive study of procurement by the executive branch and specifically addressed the problems of contracting for consulting services in its December 1972 report to the Congress. The Commission noted in its report the existence of more than 10,000 professional service firms, including 2,000 specializing in management consulting and social sciences. It recommended that:

"The procurement of professional services should be accomplished, so far as practicable, by using competitive proposal and negotiation procedures which take into account the technical competence of the proposers, the proposed concept of the end product, and the estimated cost of the project, including fee. The primary factors in the selection process should be the professional competence of those who will do the work, and the relative merits of proposals for the end product, including cost, sought by the Government. The fee to be charged should not be the dominant factor in contracting for professional services."

We want to emphasize, as did the Procurement Commission, that cost is only one factor to be considered in evaluating a proposal. The quality of the services to be provided is likewise a primary consideration.

In our May 1979 report following up on the Procurement Commission recommendations, we pointed out that OMB's Office of Federal Procurement Policy had not as yet acted on the Commission's recommendation.

Little progress in 20 years  
to obtain adequate competition

Perhaps the best illustration of the lack of progress is a comparison of the findings we reported in 1961 and in 1980.

In our January 1961 report to a congressional committee on consulting service contracts awarded by 65 Federal agencies, we stated:

"All contracts with management advisory firms of various types reported to us were negotiated. In very few instances did we note an adequate solicitation of proposals from firms qualified in the area of the agency's need. We noted that frequently the reason given for negotiating a contract with a particular firm was that the firm was 'uniquely qualified,' although documentation of the unique qualifications was rarely available. Another reason offered was that the firm had performed well under an earlier advisory contract."

In our March 1980 report on 111 consulting service contracts awarded by 6 Federal agencies, we found that the procedures these agencies used in contracting for consulting services did not assure adequate competition or effective controls to minimize costs. We found sole-source contracting to be prevalent at all agencies reviewed. Of the 111 contracts valued at \$19.9 million, 74 (67%) totaling \$12.1 million were sole source. In addition, 64, valued at \$10.8 million, were justified on the basis that the contractor had unique expertise, previous experience with the agency, and/or time exigency.

The FPDS report on all consulting service contracts awarded during fiscal year 1979 indicates that 47 percent were awarded noncompetitively. (See p. 11.) Due to the questionable accuracy of FPDS data, however, this percentage may not be meaningful.

ARE THE FEES PAID FOR CONSULTING SERVICES FAIR AND REASONABLE?

We have issued six reports since 1961 which have questioned the reasonableness of fees paid by various agencies for consulting services obtained by appointment to the civil service or under a procurement contract. (See p. 7.) The Inspector General from the Department of Energy and the Senate Subcommittee on Civil Service and General Services also addressed this issue. Fees paid to appointed consultants are limited by legislation. Fees paid for consulting services under a procurement contract are not limited by legislation.

Generally the maximum daily rate of pay for an appointed consultant is equivalent to the maximum salary of a GS-18.

There is no maximum rate of pay if consulting services are obtained under a procurement contract; instead, the daily rate of pay is often based on the compensation paid to employees under the contractor's established policy.

The following example illustrates the inconsistent or unreasonable fees sometimes paid to organizations in the absence of a maximum rate of pay under a procurement contract. The Department of Energy awarded a procurement contract in February 1979 to an individual for \$500 a day, for 15 days, to critique the first issue of a new journal called the Solar Law Reporter. The contract file contained the following comments as justification for awarding this contract on a noncompetitive basis: "The breadth of experience which Mr. \_\_\_\_\_ offers is unlikely to be found elsewhere or at a lower price." Investigators from the Subcommittee on Civil Service and General Services discovered that the same contractor had worked within the past year as a Department of Energy subcontractor at \$250 a day. They also discovered that the ex-Secretary of Energy received the maximum daily rate of pay at that time for an appointed consultant (\$182 a day) to advise the new Secretary during the transition period.

This issue was also the subject of a December 1979 audit report from the agency's Inspector General. The Inspector General found:

"\* \* \* excessively high levels of compensation being paid to certain consulting firms that provide management support services to the Department of Energy (DOE). Based on our review of two of these types of firms, we found that the top executives of these contractors were receiving annual salaries of \$92,700 and \$75,000 respectively as of June 1979. Although ceilings on the salaries of government executives are subject to different constraints than those applicable to executives in the private sector, it is striking to note that the Secretary of DOE was only paid \$66,000 per year during the same time period. Similarly, during the performance of these contracts, the Department's most senior civil servants were subject to a salary ceiling of \$47,500."

This issue surfaced again in our March 1980 report on consulting services at six agencies. We found that one contract was awarded to a part-time employee on the basis of extensive knowledge in a particular area. The same individual has had a consultant personnel appointment every year since



January 1976. Our computations show that the Government would have saved approximately \$8,000 if the contracted work had been performed at the same rate the individual was paid under the personnel appointment.

Does it cost more or less to contract for consulting services than it would if Government employees performed these services?

It is difficult to determine if it would cost more or less if Government employees did the work now done by consulting service contractors. Consulting services are excluded from OMB Circular A-76 which requires agencies to compare costs for various services available from the private sector when in-house performance is feasible.

One source of information on this issue is a private firm that prepares an annual analysis of the "person-year" cost for consulting services obtained by procurement contract at most major Federal agencies. To arrive at this cost, the contract's total price is divided by the number of person-years needed to do the work as estimated in the agency's request for proposal. According to the firm, "Many agencies have adopted the person-year estimate as a means of telling bidders how much money they have to spend." This method is admittedly a gross way of computing the cost of a consultant person-year since factors such as the amount of travel funds in the price or later modifications to the contract are not accounted for. Given these qualifications, the data indicates the approximate cost of consulting services obtained by procurement contract.

The chart in appendix III shows the person-year cost for several agencies for fiscal years 1977 and 1978. Most agencies' average person-year costs were approximately \$60,000 in fiscal year 1978. This \$60,000 figure is not comparable to the salaries paid to Government employees since there are numerous cost factors that should be considered in any cost comparison.

Any attempt to compare in-house costs with contractor costs for consulting services would be difficult since many contracts for consulting services are for one-time studies. If the agency could foresee no continuing need for the expertise required to perform the study, it would not be practical for agencies to hire full-time Government employees to do the work since these employees probably could not be used productively at the conclusion of the study.

Another factor to be considered in any comparison of in-house to contractor costs would be the support costs incurred by the Government in administering the consulting service contract. Other cost factors to be considered include fringe benefits paid to Government employees, the Government's capital cost of providing offices, and the loss of tax revenues to the U.S. Treasury if the Government were to perform the work that would have been performed by for-profit firms and organizations.

ARE CONSULTING SERVICES USED TO  
PERFORM WORK THAT SHOULD BE  
PERFORMED BY GOVERNMENT EMPLOYEES?

We have issued at least 11 reports from 1961 to 1980 which found that various Federal agencies used consulting services to perform work that should have been performed by regular Government employees. (See p. 7.)

In May 1977, the President sent a memorandum to all executive branch agencies concerning the "excessive, unnecessary, and improper" use of consulting services. The President's memorandum cited the following problem that he wanted corrected "without delay": use of consultants to perform work of a policymaking or managerial nature which should be retained directly by agency officials. The President's concerns were later reflected in OMB Bulletin 78-11 on consulting services. This bulletin prohibits use of consulting services in performing work of a policy/decisionmaking nature which is the direct responsibility of agency officials.

In our March 1980 report on 111 consulting service contracts awarded by 6 Federal agencies, we questioned the need for many of the contracts because (1) there was little or no consideration given to in-house capability before awarding the contracts and (2) frequently little use was made of the results of the study products. In our opinion, much of this contracted work should have been within the agencies' capability.

For example, at the Department of Labor, an internal management memorandum dated January 1979 on the use of consulting services within the agency identified a major area of concern related to outside consulting arrangements awarded for jobs that could have been performed in-house. The study identified 17 arrangements in effect on June 1, 1978, valued at \$1,256,537 which could have been performed in-house. Our report confirmed that the situation still exists and management has done little to address the problem.

Similar findings were reported by the Inspector General at the Department of Energy in a December 13, 1979, report on consulting services contracts. The Inspector General found that many of the activities performed by the consultants under one contract appeared to supplant policymaking and managerial functions that should have been handled by agency staff. The report also stated that the services being performed by the consultants appear to be directly related to management's responsibilities for budgeting funds, coordinating programs, and establishing priorities, "functions that we would expect DOE staff to handle."

Agencies' use of consulting service arrangements, rather than Government employees, to perform certain work was addressed by the House Appropriations Committee report on the Department of Defense Appropriations Bill for Fiscal Year 1980:

"The Committee continues to see evidence of an expansion of the use of contractors to perform efforts that should be conducted in-house with existing personnel. An outstanding example is drawn from the recent effort to develop necessary and appropriate personnel and management systems required to implement the provisions of the Civil Service Reform Act (CSRA) and the Senior Executive Service. With the literally thousands of federal personnel and management experts on the rolls, the military departments have paid millions of dollars to many local contractors to 'study' the effects of CSRA and to develop performance appraisal and other personnel management systems to keep them in compliance with the new law. In some cases, several contracts were let to perform the same study so that the military department could have a choice of approaches. Such a situation cannot be continued, particularly since the present personnel do or should have the expertise to perform the work."

ARE CONTROLS TO PREVENT AGENCIES FROM  
DUPLICATING CONSULTANT STUDIES ADEQUATE?

Ideally, before any agency initiates a study, it should search the appropriate Federal repository to determine if a similar study is underway or has been recently completed. For such a search to be worthwhile, agencies should submit their completed studies to the appropriate repository. We

have issued four reports since 1961 on the potential for duplication. (See p. 7.) Because many agencies have not searched the repositories, nor submitted completed studies, there remains considerable potential for duplication.

In a May 12, 1977, memorandum to executive branch agencies, the President expressed particular concern over duplicate consultant efforts. This concern was later reflected in OMB Bulletin 78-11 which requires certification that each consulting service arrangement does not unnecessarily duplicate any services previously performed.

#### Existing repositories

No single repository or clearinghouse disseminates data on all federally funded studies. However, the following four Federal repositories can be used to locate a substantial portion of the reports by in-house personnel as well as by firms or organizations awarded consulting service contracts:

- National Technical Information Service operated by the Department of Commerce.
- Defense Documentation Center operated by the Department of Defense.
- Defense Logistics Studies Information Exchange operated by the Department of Defense.
- Smithsonian Science Information Exchange, Inc., operated by the Smithsonian Institution.

In addition to these major repositories, numerous specialized information systems catalog relevant material in particular fields, such as education. Also, agencies usually maintain some form of inventory of their ongoing and recently completed studies.

#### Repositories are not used effectively

Our Office and other organizations have issued several reports on the potential for unwarranted duplicate consultant studies. We found that the potential for duplication occurred because the agencies failed to search the appropriate Federal repository before initiating a new study or did not submit their final reports to the appropriate repository. For example, our October 1972 report found similarity and overlap among 10 Defense studies by 6 different contractor and military organizations. These studies cost more than \$876,000.

In its report on the Department of Defense appropriation bill for fiscal year 1978, the House Appropriations Committee discussed the Defense Documentation Center:

"The Department spends \$12.7 million a year to operate a data bank (the Defense Documentation Center) which is supposed to prevent duplication of these study efforts. However, many study sponsors do not interrogate the system to learn about previous efforts already paid for by the DOD."

Our February 1979 report on consultant studies states that the Agency for International Development does not require managers to analyze information already available and paid for, before undertaking new studies. We found that various divisions at this agency were conducting studies in the same general areas.

ARE THERE CONFLICTS OF INTEREST  
BETWEEN CONSULTANTS' ADVICE AND  
THEIR OUTSIDE INTERESTS?

Several audit reports found that agencies have awarded consulting service contracts where there was an appearance of conflict of interest that could (1) diminish the contractor's capacity to give impartial, objective advice or (2) result in the contractor being given an unfair advantage when competing for other contracts. OMB anticipates issuing Government-wide regulations on organizational conflict of interest in 1981.

Defining conflict of interest

Organizational conflicts of interest can come about when a present or prospective contractor has past, present, or currently planned interests that either directly or indirectly relate to the work to be performed under a Federal contract. These interests may (1) diminish the present or prospective contractor's capacity to give impartial, technically sound, objective assistance and advice or (2) result in the present or prospective contractor being given an unfair advantage when competing for other department contracts. These direct or indirect interests extend to the present or prospective contractor's chief executives and directors who are to be involved in the contract's performance and to proposed consultants and subcontractors who are to directly participate in the work. Indirect participants, such as subcontractors furnishing general supplies, are normally excluded.

In the President's May 12, 1977, memorandum to executive branch agencies concerning the use of consultants, he expressed a concern that there may be a conflict of interest between the consultant's advice provided to Federal agencies and their outside financial interests and affiliations. The President's concern was later reflected in OMB Bulletin 78-11 which states that each agency will assure that for all consulting service arrangements, "Appropriate disclosure is required of, and warning provisions are given to, the performer(s) to avoid conflict of interest."

Examples of the appearance of  
organizational conflict of interest

In September 1978, the Department of Energy's Inspector General questioned a procurement contract for consulting services awarded to a contractor in 1977 for \$127,000. The contractor was to review and analyze the Department's plans and procedures for auditing major oil companies. The Inspector General objected to this arrangement because it was public knowledge that the contractor was the independent accounting firm for 5 of the top 10 oil companies. The Inspector General concluded that:

"The general public may find it difficult to understand why the Government is asking a public accounting firm, so closely associated with the oil industry, to provide this important audit assistance regarding compliance with the government pricing regulations."

The Department's General Counsel concurred with the findings of the Inspector General and stated that firms having contracts with major oil companies to provide financial audit services should be excluded from bidding on agency contracts involving audit matters at major refiners.

Another Inspector General report at the Department of Energy issued in December 1979 found apparent conflicts of interest among consultants working for an Office of Solar Applications contractor. The report states that at least 11 consultants assigned to work on solar projects were in a position to use inside information to help their companies win contracts and grants. It also implies that two of these companies may have been warned about changing trends in Department programs because they received funding for unsolicited proposals in a new program area.

OMB's proposed regulation  
on conflict of interest

In September 1977, OMB's Office of Federal Procurement Policy issued a proposed regulation on organizational conflict of interest that would require contractors to (1) disclose existing or potential conflicts of interest when submitting proposals and (2) stay free of conflicts of interest during contract performance or be terminated. Public hearings were held on these proposed regulations in 1978, and an OMB official stated that the final regulations should be issued in 1981.

We have not reviewed the proposed regulations to determine if they would adequately address the problems identified in our prior reports. We are conducting two separate studies at the request of two congressional committees to determine the potential for conflict of interest with several agencies' consulting service contracts.

ARE FEDERAL AGENCIES AWARDING EXCESSIVE  
CONSULTING SERVICE CONTRACTS IN THE  
FINAL QUARTER OF THE FISCAL YEAR?

We found indications that Federal agencies are awarding a disproportionate number of consulting service contracts in the last quarter of the fiscal year. Our March 1980 report on consulting service contracts awarded by six Federal agencies found extensive spending in the fourth quarter of the fiscal year at all agencies reviewed. Of the 111 contracts reviewed valued at \$19.9 million, \$10.7 million, or 54 percent, were awarded in the last 90 days of the fiscal year. We believe such awards cast doubt on the legitimacy of agencies' requirements for the contract service. Furthermore, the rush to award contracts during this period can seriously impair the objectivity as well as the thoroughness of the proposal evaluation process.

In addition, a private firm's annual analysis of Federal competitive procurements in management consulting for fiscal year 1977 states that 50 percent of the requests for proposals issued by Federal agencies during fiscal year 1977 required interested firms to submit their proposals in the last quarter of the fiscal year. It stated that:

"Federal agencies have a long-standing tradition of putting off their contract spending until the last minute. An analysis of agency spending habits in fiscal year 1977 shows them in little danger of tarnishing that reputation. \* \* \*

"The RFP [request-for-proposal] flood is as bad for the government as for bidders. When 50 RFPs are released in one month, it must be hard to fill the requests and do the reviews they generate. Competition for bidders' time means fewer responses and more hurriedly prepared proposals. This has to mean less competition and poorer quality, when the whole process is meant to increase competition and identify the best performers."

It is important to emphasize that just because funds are obligated or spent near the end of the fiscal year does not automatically mean that they were spent wastefully or inappropriately. But where monitoring of budget execution is not effective, abuses can and do occur. We have reported that, presently, the monitoring of budget execution is not as effective as it could and should be and that yearend spending for many services, including consulting services, is disproportionately high. We plan to issue a comprehensive report in the summer of 1980 on yearend spending that will further address this problem and its causes.



### CHAPTER 3

#### OMB'S EFFORTS TO IMPROVE AGENCIES' MANAGEMENT OF CONSULTING SERVICES HAVE NOT BEEN EFFECTIVE

In response to the President's concern in May 1977 that Federal agencies were using consultants excessively, unnecessarily, and improperly, OMB took a number of steps designed to get agencies to better manage and accurately report their use of these services. A major step was an OMB bulletin defining consulting services and establishing a series of controls intended to improve the management of these services. In addition, OMB surveyed agencies' expenditures for consulting services in 1977 and 1978.

There has been little substantive improvement in agencies' management of these services since the bulletin was issued, despite agencies' assurances that they have implemented prescribed management controls. Also, the two Federal agencies that spend the most for consulting services have questioned the usefulness of the data they submitted to OMB in 1977 and 1978. In addition, many Federal expenditures for consulting services are not required to be reported.

#### PRESIDENT'S CONCERN

One of the first indications that the President was concerned with the agencies' excessive use of consultants was an April 27, 1977, memorandum to the heads of executive departments and agencies:

"At my request, the Director of the Office of Management and Budget has issued guidelines about the use of zero-based budgeting in the Executive Branch.

"This is a new system, and I recognize that your staff may need advice about how to interpret and apply it. Wherever possible, I want you to rely on OMB for information about this system, rather than turning to outside commercial consultants. \* \* \*

"\* \* \* This approach will help ensure that zero-based budgeting is applied uniformly throughout the Executive Branch and that we save the wasted effort and unnecessary cost of relying on consultants."

On May 12, 1977, the President sent a memorandum to the heads of 89 executive departments and agencies expressing concern that consultants were being used excessively, unnecessarily, and improperly. The President's specific concerns which he wanted "corrected without delay" included:

- Use of consultants to perform work of a policymaking or managerial nature which should be retained directly by agency officials.
- Use of consultant arrangements as a device to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.
- Intra-agency duplication of consultant efforts, especially in large, multiagency departments, such as Defense and Health, Education, and Welfare, because there is no central coordination of consulting efforts or dissemination of results.
- Conflicts of interest between consultants' advice and their other outside financial interests and affiliations.

The President directed the agencies to eliminate those consultant arrangements found to be neither appropriate nor necessary and to report total expenditures for consulting services to the Director of OMB by June 30, 1977. The President's memorandum to the agencies did not define consulting services, so each agency used its own definition to report expenditures for these services to OMB. Agencies reported almost 34,000 consultant arrangements, costing nearly \$1.8 billion.

#### IS OMB'S DEFINITION ADEQUATE?

OMB issued Bulletin 78-11 on May 5, 1978, which defined consulting services and directed the agencies to use it for reporting their expenditures for these services. Agencies are having difficulty in using the definition. Also, many Federal expenditures for consulting services are not required to be reported.

As stated in chapter 1, the bulletin defines consulting services as "those services of a purely advisory nature relating to the Governmental functions of agency administration and management and agency program management."

The bulletin required agencies to report to OMB the number and cost of all consulting service arrangements in effect as of June 1, 1978, using the OMB definition. OMB published the results in May 1979 which showed a substantial decline in the \$1.8 billion in consulting services expenditures first reported to OMB a year earlier. Agencies reported only about \$450 million in consulting service expenditures as of June 1, 1978. This large decline, however, was not due to an actual reduction but mainly by use of the new definition. The actual reduction in the use of consulting services was only 11 percent, or about \$200 million.

#### Questioned usefulness of expenditure data

The two Federal agencies that reported the most expenditures for consulting services in 1978--the Department of Defense and the Department of Health, Education, and Welfare (HEW) <sup>1</sup>--questioned the usefulness of the figures they reported to OMB. HEW, in responses submitted for the record at the May 1979 Senate Appropriations Committee hearings, stated:

"Differences between the two years cannot be explained because the fiscal year 1977 and 1978 data submitted to OMB were based on different definitions of consultant services and different criteria for the report. OMB did not define consultant services for the 1977 report so HEW responded using the definition which is used for the reports to the Congress. OMB did provide a definition for the 1978 report but the two are significantly different. Thus, the reports are not comparable. (Underscoring added.) There is a second major difference between the two reports. For the 1977 report, HEW reported the contracts awarded during the first six months of fiscal year 1977. For the 1978 report, HEW provided data for consultant arrangements in effect at June 1, 1978 \* \* \*."

Defense, in response to OMB concerning the draft bulletin, pointed out that contract data for the 1978 report would have to be drawn from Defense's existing contract information system which did not relate closely to the bulletin definition of consulting services. Defense felt use of the 1978 reported expenditures as a statistical baseline or as a consulting service management tool would be extremely limited.

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<sup>1</sup> On May 4, 1980, HEW's responsibilities were split between the new Department of Education and the Department of Health and Human Services.

Definition does not include  
two types of consulting services

OMB's definition of consulting services, which is the basis of agencies' reports to FPDS (see p. 10), does not include at least two categories of Federal consulting service expenditures: (1) contracts and grants to provide consulting services to non-Federal entities and (2) subcontracts for consulting services. As a result, even if all consulting services provided directly to Federal agencies are identified, a substantial portion of Federal expenditures for these services will not be included in FPDS. For example, over \$600 million in consulting services reported to OMB in 1977 would not now be included because the current OMB definition excludes consulting services provided directly to foreign governments or the public as part of the agencies' program of assistance.

Also, subcontracts for consulting services will not be identified unless the prime contract is for consulting services, because FPDS identifies only the predominant product or service procured by a Federal agency. An OMB official acknowledged that the bulletin does not address subcontracts for consulting services. The Inspector General from the Department of Energy, in a December 3, 1979, report was able to identify about 1,700 subcontracts for consultants who were paid about \$7 million by Federal funded research and development centers operating Government facilities in fiscal year 1978. Figures for subcontracts at other agencies were not available.

Agencies continue to experience  
difficulty with the definition

In our March 1980 report on consulting service contracts awarded by six agencies, we found that the agencies were experiencing considerable difficulty in using OMB's definition to report their expenditures for these services. Agency officials had different interpretations of the definition, and the responsibility for reviewing and classifying contracts in accordance with the definition was at different organizational levels. We recommended that the Director, OMB, intensify oversight of agencies' use of consulting services, assuring that all agencies are moving as rapidly as possible to report these services to FPDS, and to establish a focal point within the agencies for determining which contracts meet the definition.

Despite these findings, many agencies reported to a Senate Subcommittee that the definition was adequate. On September 5, 1979, the Senate Subcommittee on Civil Service and General Services, Committee on Governmental Affairs, sent a questionnaire on consultants to 24 Federal agencies. Fifteen of the 17 agencies that responded to a question on the OMB definition felt that it was adequate. Only the Environmental Protection Agency and the Law Enforcement Assistance Administration felt the definition needed to be changed or clarified.

In addition, our March 1980 report stated that congressional interest, as commonly expressed, over agencies' use of consulting services extends beyond the confines of the OMB definition to include the overall use of study-type contracts. We concluded that effective Federal agency control over the use of consulting services depends on a common understanding between the executive branch and the Congress on the definition of consulting services. We recommended that the Director, OMB, work with the Congress to achieve a better and more uniform understanding of the current definition.

#### MANAGEMENT CONTROLS OVER CONSULTING SERVICES NEED STRENGTHENING

The bulletin also established a series of management controls designed to improve agencies' management of these services. These controls required that:

- Every consulting service arrangement is appropriate and fully justified in writing.
- Work statements are specific, complete, and specify a fixed period of performance.
- Contracts for consulting services are competitively awarded to the maximum extent practical.
- Appropriate disclosure is required of and warning provisions given to the performer(s) to avoid conflicts of interest.
- Consulting service arrangements are properly administered and monitored to insure satisfactory performance.

On September 4, 1979, 16 months after the bulletin on consulting services was issued, OMB requested all executive branch agencies to furnish copies of directives and instructions used to implement the bulletin's guidance. According

to an OMB official, the agencies' responses indicated that most agencies had incorporated the prescribed policies and controls, while some had not completed implementation. Several agencies responded that they use so few consultants that changes to their internal regulations were not necessary.

Little substantive improvement  
since the bulletin was issued

Our March 1980 report covering \$19.9 million awarded for consulting service contracts by six Federal agencies found that there has been little substantive improvement in agencies' management of these services since the bulletin was issued. We found numerous examples of consulting service contracts at all six agencies that were inconsistent with the management controls in the bulletin. Our findings included:

- Questionable agency requirements for consulting services. Little or no consideration was given to in-house capability before the award of contracts, and several contracts resulted from unsolicited proposals.
- Extensive sole source awards which precluded effective price competition. Several such awards were made to former Government employees.
- A significant number of modifications that resulted in increased costs and delays in delivering the end-product.
- Questionable use made of end-products.
- Inaccurate reporting of consulting service contracts, caused in part by confusion over the OMB definition of consulting services.

In addition, we found extensive spending for consulting services in the final quarter of the fiscal year, adding further doubt as to the need for the services. We recommended that the Director of OMB instruct Federal agencies to establish more rigorous procedures for approving consulting service contracts.

In March 1980 OMB testified before joint congressional hearings that it planned to issue a new circular that would tighten management controls over agency approval of these services and provide additional guidance on the definition.

OMB issued the new circular on April 14, 1980. (See app. V.) These joint hearings were held by the House Subcommittee on Human Resources, Committee on Post Office and Civil Service; and the Senate Subcommittee on Civil Service and General Services, Committee on Governmental Affairs.

The Director, OMB, also plans to direct the agencies to reduce by 15 percent the amount of funds in the fiscal year 1981 budget for consulting services. This 15-percent reduction is to be made in the agencies' appropriation accounts which include funds for various types of services other than consulting services.

### CONCLUSIONS

OMB's efforts to improve agencies' management and reporting of consulting services have not been successful. Although agencies are ultimately responsible for improving their management and reporting of consulting services, OMB needs to take several actions to improve its oversight of these services. First, OMB must resolve the confusion agencies are experiencing in using its definition of consulting services. Until the agencies and OMB arrive at a common understanding of the definition, there will be no assurance that the consulting service expenditures reported to FPDS are accurate.

A second critical need is that OMB obtain assurance that all management controls in the circular have been fully implemented by the agencies. Until effective procedures to implement these controls are in place, there can be little progress in improving the management of consulting services.

OMB's recent actions to clarify the definition and tighten agencies' management controls over contract approval should help assure that consulting services are properly managed and accurately reported. There is no assurance, however, that the planned 15-percent reduction in fiscal year 1981 funds for consulting services will not be circumvented by agency reductions in funds for the other types of services included in the various appropriation accounts. Until there is a common understanding of OMB's definition of consulting services and improved "budget visibility" for consulting services, OMB's efforts to reduce these funds will be difficult to monitor.

RECOMMENDATIONS TO THE DIRECTOR, OMB

We recommend that the Director:

- Assure that agencies establish effective procedures to fully implement the prescribed management controls in the new circular.
- Monitor the reports available from FPDS to assure that the additional guidelines provided to agencies result in a common understanding of the definition.



## CHAPTER 4

### CONGRESSIONAL EFFORTS TO CONTROL THE GOVERNMENT'S

#### USE OF CONSULTING SERVICES ARE INCREASING

In recent years, several congressional committees have held hearings on the Government's use of consulting services. Several of these committees have increased their efforts to restrict agencies' use of consulting services, including placing ceilings on the amount of funds agencies can spend. We have found in prior reviews that the effectiveness of restrictions, such as personnel ceilings, is limited. More effective measures should be sought to improve management accountability. Representatives of the consulting service industry have objected to congressional ceilings on the funds agencies can spend for these services. They have identified several disadvantages resulting from these ceilings, such as hindering the agencies' ability to perform congressionally mandated studies and evaluations.

#### SENATE COMMITTEE ON APPROPRIATIONS

The Senate Committee on Appropriations has, for several years, placed controls on HEW's use of consulting services. To accomplish this, the Committee has required HEW, since 1974, to report all payments exceeding \$25,000 for the services of consultants, consulting firms, or other such institutions. It has also limited the amount of funds HEW can spend for consulting services.

On October 13, 1978, the Committee Chairman requested its Investigations Staff to study the Department's use of expert and consultant services obtained by direct appointments and through contracts. The Investigations Staff found HEW's National Institutes of Health may have been circumventing civil service regulations by filling continuing positions with consultants.

The Committee's report on HEW's fiscal year 1980 appropriations bill limited the amount of funds HEW could spend for consulting services to \$160 million. (The conference report on this bill increased the ceiling to \$170 million.) In addition, expenditures for all consulting services in the fourth quarter of fiscal year 1980 may not exceed 30 percent of the total annual expenditures for these services. The Committee took this action to express its displeasure over the expanded role that consultant organizations are playing

in the day-to-day operational and decisionmaking processes that are integral to the Department's mission. The Committee stated in Senate report 96-247 that it:

"\* \* \* is unaware of any significant program improvements that have been brought about by the Department's large annual investment in evaluation contracts with consultant organizations. It seems as though, year after year, the same programs get re-evaluated, yet never change. In addition, many consultant contracts have little apparent relevance to HEW's program priorities."

HEW's expenditures for consulting services have increased from \$47.8 million in fiscal year 1974 to \$169 million in fiscal year 1978. HEW officials have stated, however, that a major part of this increase is due to a change in the definition used to report these expenditures to the Committee which resulted in reporting activities that were not previously covered.

The Committee has also directed the Department of Labor to report all consulting service costs incurred since 1974 on a semiannual basis.

SUBCOMMITTEE ON REPORTS, ACCOUNTING, AND  
MANAGEMENT, SENATE COMMITTEE ON  
GOVERNMENTAL AFFAIRS

In October 1976 the Subcommittee on Reports, Accounting, and Management, Senate Committee on Governmental Affairs, sent a questionnaire to 178 departments, bureaus, and independent agencies in the executive branch to determine the extent and cost of the Government's use of consultants and contractors. The Subcommittee had found no centralized sources of data which accurately identified how many consultants were used by the Federal Government, for what purpose, or how much was spent to obtain their services.

The Subcommittee believed these questions must be answered to provide effective congressional and executive branch oversight. It was concerned that the Federal Government might be using consulting services in some instances to avoid personnel ceilings and to perform work that should be done by civil servants.

Each agency was asked to respond to 12 questions, including what definition of consultant it used, the policies

and procedures for using consultants, and specific information for each consultant who received \$5,000 or more during fiscal year 1976. The Subcommittee defined consultant, intermittent employment, and temporary employment, as they related to the questionnaire.

The Congressional Research Service compiled and analyzed the responses to the Subcommittee's questionnaire. The Service found it very difficult to summarize the responses because many agencies had negotiated with the Subcommittee staff about the information to be furnished on particular questions. Consequently, the agencies did not respond uniformly. The Service's analysis, published in the Subcommittee's August 7, 1977, report, "Consultants and Contractors: A Survey of the Government's Purchase of Outside Services," stated that:

- There appears to be no standard, Government-wide definition of "a party to a nonpermanent arrangement" for providing professional services to the Federal Government.
- The reporting agencies paid or obligated more than \$906 million for consultants and contractors in fiscal year 1976.
- The number of contractor/consultant work-years represented 28.4 percent of the reporting agencies' work forces as of June 30, 1976.

SUBCOMMITTEE ON CIVIL SERVICE  
AND GENERAL SERVICES, SENATE  
COMMITTEE ON GOVERNMENTAL AFFAIRS

The Senate Subcommittee on Civil Service and General Services, Committee on Governmental Affairs, held a hearing in October 1979 during which various witnesses testified on the improper uses of consulting services by Government agencies, including the Department of Defense. Witnesses included a consulting service contractor and the Deputy Inspector General for the Department of Energy.

As a result of the Subcommittee Chairman's concern that the Department of Defense was using consulting services excessively and improperly, the Chairman introduced an amendment to the fiscal year 1980 Department of Defense appropriation bill to reduce by \$100 million the amount of funds available for consulting services. The House and Senate conference report on the bill agreed to increase the Senate

reduction for consulting services from \$100 million to \$150 million. The bill was enacted on December 21, 1979.

In February 1980, the Senate Governmental Affairs Committee approved an amendment, co-sponsored by the Chairman of the Subcommittee on Civil Service and General Services. This amendment would require regulatory agencies to report annually to the Congress on the use of funds for documents provided by consultants on contract or on appointment for the performance of a regulatory function. On March 18, 1980, the Chairman of the Subcommittee co-sponsored a proposal for a Senate resolution that would reduce by \$500 million the amount of funds requested in the fiscal year 1981 budget for consulting services.

#### HOUSE APPROPRIATIONS COMMITTEE

The House Appropriations Committee has for several years expressed its concern about the apparent increases in the Department of Defense's use of consulting services. Although Defense's budget does not identify, by line item, the funds specifically requested for consulting services, the operations and maintenance (support service) section of the budget, which contains some of the funds for consulting services, has been increasing for several years. As a result, the Committee initially reduced the amounts Defense requested for these services in the fiscal year 1980 budget by \$300 million. As mentioned, the conference report on this bill agreed to a final reduction of \$150 million.

The Committee's report on Defense's appropriations bill for fiscal year 1980 stated:

"Last year the Committee took note of an OMB bulletin dated May 5, 1978 (No. 78-11) which provided new guidelines for procuring consulting services. As a result of the new policies laid down in this bulletin, the Committee expected to see a marked decline in the use of consultants within DOD during fiscal year 1979. This has not occurred. The Committee's recommended reductions for fiscal year 1980 should have this effect."

#### HOUSE SUBCOMMITTEE ON HUMAN RESOURCES COMMITTEE ON POST OFFICE AND CIVIL SERVICE

The Subcommittee Chairman has introduced an amendment to H.R. 3263, a regulatory reform bill, that would prohibit

regulatory agencies from using consulting services to prepare initial or final regulatory analysis. The purpose of the amendment is to insure that the Federal Government has the capacity to perform the regulatory analysis mandated by the legislation. The amendment was approved on February 20, 1980, by the House Administrative Law and Governmental Relations Subcommittee of the Judiciary Committee. As of March 19, 1980, the bill had not been reported out of the Subcommittee.

#### PROBLEMS WITH USING ARBITRARY RESTRICTIONS

The effectiveness of arbitrary restrictions on agency resources is limited. Generally, such restrictions deprive agency management of options for accomplishing essential work through the most effective and economical use of the most appropriate type of resource. For example, we found that personnel ceilings can be a barrier to effective manpower management since they can often cause Federal managers to obtain the services of additional persons by contracting with the private sector. 1/ Similarly, in a review of travel fund restrictions, we concluded that Federal managers will often find other ways of accomplishing their program objectives. 2/ Agencies should develop more effective methods to compare performance with established goals and to hold management accountable for the efficient use of people and other resources. 3/

#### CONSULTING INDUSTRY'S RESPONSE TO CONGRESSIONAL EFFORTS

The broad range of individuals and organizations that provide consulting services to the Federal Government (individuals, for-profit firms, nonprofit organizations, universities, etc.) makes it difficult to describe or categorize industry's view of the various congressional efforts to limit the Government's use of consulting services. Our review does indicate, however, that representatives from the consulting industry would (1) oppose congressional efforts to place ceilings on the funds available for consulting services in

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1/Personnel Ceilings--A Barrier to Effective Manpower Management (FPCD-76-88, June 2, 1977).

2/Travel in the Management and Operation of Federal Programs (FPCD-77-11, Mar. 17, 1977).

3/Federal Agencies Should Use Good Measures of Performance To Hold Managers Accountable (FPCD-78-26, Nov. 22, 1978).

agency budgets and (2) support efforts to spread contract awards more evenly over the course of the fiscal year.

In a June 4, 1979, letter to the Chairman of the Senate Appropriations Committee, 11 consulting firms voiced their concern about the Congress requiring agencies to obtain consulting services to perform congressionally mandated studies while, at the same time, restricting available funds:

"\* \* \* For Congress to place demands, directly or indirectly, upon Executive agencies to come up with specific data and evaluation information for the next reauthorization cycle on the one hand and then to take away the resources to enable this work to be performed creates obvious contradictions. The real loser in the long run will be Congress and its efforts to act on the behalf of the American people."

In addition, the Committee on Federal Contracting Practices has identified several possible effects resulting from congressional ceilings on funds agencies can spend for consulting services. The Committee represents a broad range of firms and organizations that provide consulting services to the Federal Government. The Committee believes that congressional ceilings on funds agencies can spend on consulting services could, among other things, reduce:

- The number of program evaluations at a time when they are most required to make critical judgments on the expansion and/or continuation of Federal programs.
- Agencies' ability to obtain unbiased and independent evaluations of Federal programs by non-Federal sources.

## CHAPTER 5

### MATTERS FOR CONSIDERATION BY THE CONGRESS

Federal agencies have failed to make satisfactory progress to improve their management of consulting services during the past 20 years. OMB's bulletin prescribing controls to improve the management of these services has been in effect for nearly 2 years; however, our March 1980 report found that significant problems still exist. While our work has not specifically pinpointed the underlying causes for agencies' continuing failure to manage consulting services properly, we believe that they are numerous and complex. A major cause could be the arbitrary use of personnel ceilings which force agencies to obtain the services of additional people indirectly through contracts with private firms. Another contributing factor might be the pressure placed on Federal managers to achieve program objectives timely.

Many of the problems we have found during the past 20 years concerning the use of consulting services are not necessarily unique--they are problems that are generally common to procurement. For example, we found similar problems in the past concerning agencies contracting for various goods and services. What is unique, however, is the lack of a commonly understood definition of consulting services, which has resulted in a lack of accountability for the proper use of these services. This lack of accountability is perpetuated by the fact that consulting services cut across program lines and therefore are not subject to normal congressional and executive branch controls for holding managers accountable.

Solutions to assure the Government's proper use of consulting services are long-term and will require the cooperation of the agencies, OMB, and the Congress. A critical first step is to resolve the confusion among the agencies and the Congress surrounding the current OMB definition of consulting services. Until the Congress and the executive branch agree on the definition and the types of services it should include, effective congressional oversight and management accountability will not be realized.

A second major improvement needed is agencies' establishment of more stringent procedures to assure that the policies and management controls prescribed by the new OMB circular are followed.

The third step to make the use of consulting services more effective is already in place but not fully tested; that is, the principle inherent in civil service reform of providing Federal managers with additional flexibility to manage resources while holding them accountable for performance. We believe this basic principle will be fully tested in coming years by agencies' willingness to correct the serious and longstanding problems cited in this report.

In recent years there has been strong congressional and public concern about abuses associated with the Government's use of consulting services. Several congressional committees have imposed restrictions on funds that can be spent for these services. We believe this trend will continue unless action is taken to correct past deficiencies.

It may be several years before the agencies and OMB can complete actions needed to solve the consulting service problem. The Congress can, however, take some interim steps designed to encourage agencies to initiate long-term improvements and to improve its oversight concerning the use of these services. Specifically, the Congress can require each Inspector General to evaluate and report to the Congress the progress made by the agency to (1) accurately and completely report consulting service expenditures to FPDS and (2) establish and consistently apply procedures to assure effective management control over the use of these services.

A second interim step available to the Congress is to require that agencies identify in their budget justifications sent to the House and Senate Appropriations Committees the amount of funds being requested for consulting services and the major programs that require these services. These budget justifications, if prepared properly, would provide the Congress with the "visibility" necessary to hold agencies accountable for their planned use of consulting services. Once this information is available, the Congress can, during the budget process, evaluate the appropriateness of the funds requested.

If the Congress, in reviewing the budget justifications, determines that the amount of funds requested is excessive and reductions in the funds requested are considered appropriate, such reductions should be tempered by several considerations. Until the Congress and the executive branch can achieve a better and more uniform understanding of the definition of consulting services in terms of coverage and clarity, any congressional reductions in funds will be difficult to monitor. In addition, such reductions in funds address only the quantity of consulting service expenditures, not



the quality. Reductions will not assure that agencies manage funds properly. Finally, any reductions in funds should fully recognize that the agencies' have a legitimate need for access to the best expertise and advice available from the private sector to assist them in carrying out a growing number of complex Federal programs. Reductions should not be so drastic that they restrict agencies' proper use of consulting services.

Although we recognize that reductions in the amount of funds for consulting services will not assure that agencies manage these services properly, such reductions would draw management's attention to the immediate need to correct the problems that have existed for 20 years.

#### RECOMMENDATIONS TO THE CONGRESS

We recommend that the Congress take the following interim actions until the executive branch demonstrates that it has implemented solutions to improve the management of consulting services:

- Require each major Federal agency to submit annually to the House and Senate Appropriations Committees, as part of its budget justification, the estimated amount of funds requested for consulting services; the appropriation accounts in which these funds are located; and a brief description of the need for these services, including a list of those major programs that require consulting services. This information can be used to determine whether the funds requested are appropriate.
- Require each Inspector General to submit to the Congress, along with the agency's budget justification, an evaluation of the agency's progress to institute effective management controls and improve the accuracy and completeness of the data provided to FPDS.

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We believe it is critical for agencies to be able to intelligently acquire consulting services, monitor performance, and evaluate results. One way to achieve this capability is to have agencies with Government-wide management responsibilities and/or a high level of expertise in particular fields advise and assist other agencies in acquiring and evaluating consulting services. This capability could be used to better define requirements for consulting services to be obtained from the private sector or, where resources permit, to provide consulting services directly to the client agency. In

this regard, OPM has established an Office of Consulting Services to advise and assist other agencies in various personnel management areas, such as performance appraisal, general management analysis, and financial management. This office not only assists other agencies in acquiring consulting services from the private sector, it also provides consulting services directly.

While we have not assessed the Office of Consulting Services' performance, it is an encouraging development that merits attention by other agencies having a high level of expertise in other fields. The President's April 1977 directive to all executive branch agencies that they obtain consulting services on zero-based budgeting from OMB rather than from the private sector is an example of this concept's implementation.

Before initiating any consulting service arrangement, Federal managers should make sure they have top management support and a capability for evaluating performance, especially since agencies often acquire these services in fields where they lack expertise. The Office of Consulting Services considers several factors before agreeing to assist an agency. We believe two of these factors are crucial in acquiring, monitoring, and evaluating any consulting service arrangement successfully:

1. The extent to which senior management at the client agency supports the need for the proposed work.
2. Chances of success in formulating practical recommendations to improve agency effectiveness.

If an agency's senior management fully supports the need for the proposed work, the chances for successful completion are enhanced. By the same token, if an agency is capable of assessing the practicality of the consultant's proposed recommendations, it improves the likelihood of their successful implementation.

The commitment and responsibility inherent in these two factors, in our opinion, tend to motivate agencies to manage these services properly and to safeguard the public's interest.

COMPTROLLER GENERAL'S  
REPORT TO THE SUBCOMMITTEE  
ON HUMAN RESOURCES  
COMMITTEE ON POST OFFICE  
AND CIVIL SERVICE  
HOUSE OF REPRESENTATIVES

CONTROLS OVER CONSULTING  
SERVICE CONTRACTS AT  
FEDERAL AGENCIES NEED  
TIGHTENING

D I G E S T

Federal agencies spend between \$1 billion and \$2 billion annually on consulting service contracts to obtain a variety of goods and services. Proper use of consulting services is a normal, legitimate, and economical way to improve Government services and operations, and agencies must continue to have the option to use consulting services where appropriate.

In spite of the considerable attention focused on misuse of these contracts, GAO found that serious, pervasive problems persist. Until agencies' management takes the initiative to control the need for and the contracting practices related to consulting service contracts, GAO believes there will be little or no improvement.

PAST ATTEMPTS INADEQUATE

Responding to presidential and congressional concern, the Office of Management and Budget, in May 1978, issued a bulletin to all executive agencies to better control and report the use of consulting services. However, in its review of 111 contracts, valued at \$19.9 million, in 6 agencies, GAO found the new guidance led to little substantive improvement. The problems GAO identified include:

- Questionable agency requirements for consulting services. Little or no consideration was given to in-house capability prior to the award of contracts, and several contracts resulted from unsolicited proposals. (See p. 5.)
- Extensive sole-source awards which precluded effective price competition. Several of these awards were made to former agency employees. (See p. 14.)

- A significant number of contract modifications resulting in increased costs and delays in delivery of the end product. (See p. 22.)
- Questionable use made of end products. (See p. 10.)
- Inaccurate reporting of consulting service contracts caused in part by confusion over the Office of Management and Budget definition for such contracts. (See p. 26.)

GAO also found significant spending for consulting services in the final quarter of the fiscal year, adding further doubt as to the need for the services. GAO also found that agencies often attributed their need for the services to various legislative mandates.

#### RECOMMENDATIONS

GAO recommends that the Director of the Office of Management and Budget should instruct Federal agencies to establish more rigorous procedures for approving consulting service contracts. Such procedures are necessary to assure the proper use of consulting services. One approach might be to establish an independent board within each agency or expand the functions of sole-source boards. The purpose of these boards would be to:

- Assure that in-house capability is adequately considered and assessed prior to award of contracts.
- Assure that the service is needed in terms of agency mission and established priorities.
- Assure that previous similar efforts have been adequately considered prior to award.
- Evaluate the necessity of using previous agency employees in performance of the contract tasks.
- Determine the reasonableness of using cost-plus-fixed-fee contracts in view of the nature of the proposed work.

In addition, GAO recommends that the Director of the Office of Management and Budget:

- Work with the Congress to achieve a better and more uniform understanding of the current definition of consulting services in terms of coverage and clarity as well as congressional needs. Also, a focal point should be established within the agencies to be responsible for determining which contracts meet the definition of consulting services.
- Intensify oversight on agencies' use of consulting services, including assuring that all agencies are moving as rapidly as possible to report those services to the Federal Procurement Data Center.

#### AGENCY COMMENTS

At the request of the Chairman, Subcommittee on Human Resources, House Committee on Post Office and Civil Service, GAO did not obtain official written agency comments.

**Committee on Federal Contracting Practices**

**Suite 1200  
1730 Pennsylvania Avenue, N.W.  
Washington, D. C. 20006**

March 3, 1980

*Reply to:*

Mr. H. L. Krieger  
Director, Federal Personnel and  
Compensation Division  
General Accounting Office  
441 G Street, N.W.  
Washington, D. C. 20548

Dear Mr. Krieger:

This letter is written on behalf of the Committee on Federal Contracting Practices, a special activity of the National Council of Professional Services Firms (NCPSF), to submit information and views on a series of questions your staff has posed relating to the Federal government's utilization of consultants.

The NCPSF, established in 1970, represents the professional services industry, firms working in the areas of research and development, management consulting, engineering, planning, information services, data processing, general studies, evaluations and other technical support services. The Professional Services Council includes the following eight associations:

American Consulting Engineers Council  
American Council of Independent Laboratories, Inc.  
American Society of Agricultural Consultants  
American Society of Consulting Planners  
Association of Consulting Management Engineers, Inc.  
Association of Productivity Specialists  
Information Industry Association  
Professional Engineers in Private Practice/NSPE

Additionally, approximately 200 individual professional services firms are members. The Committee on Federal Contracting Practices has brought together representatives of member firms and non-member organizations in the private and

*An Activity of the National Council of Professional Services Firms*

independent sector, to review existing procurement laws, practices and policies followed in the acquisition of professional services and to formulate recommendations for improvements. This review has included assessing current proposals to limit Federal utilization of private contractors or consultants.

The following represents the Committee's response to a series of specific questions which your staff formulated for our consideration. While we do not have data or clearly defined views in all cases, the issues are ones of vital interest to professional services organizations and firms. Some part of the work of these organizations and companies appears to be included within the definition of "consulting services" as defined in Office of Management and Budget (OMB) Bulletin No. 78-11, "Guidelines for the Use of Consulting Services", issued on May 5, 1978.

1. Does the Federal government know how much it spends on consulting services?

On May 22, 1979, OMB reported that as of June 1, 1978, procurement contracts for consulting services, as defined in Bulletin No. 78-11, exceeded \$412 million. The usefulness of this data is limited by the lack of a clear working definition of consulting services. The traditional understanding of this phrase incorporated in paragraph 4 of Bulletin No. 78-11, has been individuals or firms which supply personal services closely related to intrinsically government functions -- such as management. An attachment to the Bulletin lists some included activities, such as "policy and program analysis, evaluation and advice", which involve the delivery of a specific product to the Federal government, a research report or an evaluation study. Consulting services, as distinct from these research and evaluation type activities, consist of rendering advice and expert opinions not in the form of a deliverable product. We suspect, therefore, that the lack of a clear understanding by Federal departments and agencies of what consultant arrangements should be properly identified within the scope of the Bulletin No. 78-11 definition has exaggerated the amounts allegedly being spent for these services.

Not only is it important to distinguish between truly advisory services and the delivery of a specific product, such as a research report, evaluation, analysis,

survey, training, conference planning and the like, but there is also a critical distinction between individual experts and consultants retained to provide advice and corporate entities in the professional services organized to provide technical services in identifiable areas of expertise. OMB, in collecting the data, makes this distinction. For policy purposes, the two arrangements -- individual consultant versus corporate consultant -- present widely divergent policy ramifications. The expert capabilities of the corporate consulting industry represent substantial investments in recruiting and training skilled professionals capable of providing a range of services in specific areas of expertise. These skilled and experienced teams of professionals are a national resource of incalculable importance to the Federal government, as well as state and local government and the private sector.

We are not satisfied that distinctions between consultants and corporate consulting are reflected in the government-wide application of Bulletin No. 78-11 and Congressional deliberations relating to consultants. To the extent that there is no uniform understanding of the intent and scope of the present system to monitor consulting services of an advisory nature, the Federal government's ability to devise a workable management system to monitor an understandable class of transactions involving advisory services will be impaired and useful knowledge on how much the Federal government spends in consulting services will be impossible to assemble. OMB has made progress in beginning to define with precision consulting services -- it should continue to clarify what should be covered by its special management guidelines.

2. Have total Federal expenditures for consulting services increased or decreased?

An OMB memorandum dated May 22, 1979, reported that there had been an actual net reduction of over \$186 million in procurement contracts for consulting services from June 30, 1977 to June 1, 1978. This trend directly contradicts the need for more and better information to assist the Congress in its greatly expanded oversight activities and the Executive branch in its need for more and better assistance in meeting the complex challenge of the 1980s.



In an article in Business Week, dated May 21, 1979, on "The New Shape of Management Consulting", the rapid growth of private sector use of consulting services is documented. This growth is a function of the growing complexity of business operations, the rapidly changing operating environment for business and the need to maximize cost effectiveness. Companies need and want specialists to assist them in meeting the challenge of unprecedented change. It is ironic that Congress and the Executive branch of the Federal government should be creating new barriers and limitations to the use of these same private sector sources of expertise at a time when the problems facing the government have never been greater and the need to maximize the use of each tax dollar has never been more pressing.

3. Are Federal agencies obtaining adequate competition in the award of contracts for consulting services?

Federal departments and agencies vary widely in the number of contracts competitively awarded. For example, our experience reflects that the Department of Defense (DOD) has a far larger percentage of sole source contracts than the Department of Health, Education and Welfare (HEW), whose sole source awards appear to be few. Yet, DOD is generally conceded to have the most skilled procurement specialists.

We strongly support maximum competition in the award of all contracts, but we recognize that there are instances in which the best interests of the government, and the professional services industry, are best served through negotiated or sole source awards. In general, however, full and fair competition is as important to the industry as it is to the government and the taxpayers.

One of the best ways to insure proper award of contracts, as well as their effective administration, is for agency procurement staffs to be as well trained and competent as possible.

4. Are the fees paid to individual consultants fair and reasonable?

Our member organizations do not have experience with such contracts.

5. Should agency budgets identify funds requested for consulting services?

No. If OMB Circular No. A-76 and OMB Bulletin No. 78-11 are to be properly implemented, agencies must decide on a case-by-case basis how to manage their needs for professional services. Many of the determinations required by A-76, such as the availability of satisfactory commercial sources and cost comparisons between in-house and private commercial sources, cannot be made prior to budget submissions. OMB Bulletin No. 78-11 establishes policy and guidelines to be used in determining the appropriate use of consulting services. Whatever the limitations of that Bulletin, it does at least provide for Federal officials to use their discretion to make considered determinations that consulting service arrangements may be used, when essential, to the mission of the agency, to:

- a. Obtain specialized opinions or professional or technical advice which does not exist or is not available within the agency or another agency.
- b. Obtain outside points of view to avoid too limited judgment on critical issues.
- c. Obtain advice regarding developments in industry, university, or foundation research.
- d. Obtain the opinion of noted experts whose national or international prestige can contribute to the success of important projects.
- e. Secure citizen advisory participation in developing or implementing government programs that by their nature or by statutory provision call for such participation.

If Federal managers are to retain flexibility to make these judgments based on specific facts and analyses relating to their needs, there is no basis to try to identify funds requested for consulting services in agency budgets.

We have the same reservation regarding Congressionally mandated dollar limitations on expenditures for consulting services contracts. Both budgeting of contract

services and placing caps on such amounts ignore program objectives and the public interest in having the Congress and Federal managers decide how each of these objectives can be most appropriately met.

6. Are contracts for consulting services being awarded for work that should or could be performed by Federal government employees?

Undoubtedly contracts for consulting services (i.e., professional services) are being awarded for work that "could" be performed by Federal employees, whether they "should" be is quite another matter.

In a democratic free enterprise economic system, the Government should not compete with its citizens. The private enterprise system, characterized by individual freedom and initiatives, is the primary source of national economic strength. In recognition of this principle, it has been and continues to be the general policy of the Government to rely on competitive private enterprise to supply the products and services it needs.

With these words, OMB, in its March 29 1979 revision of Circular No. A-76, reaffirmed the general policy of reliance on private sector sources of services. Professional services available from diverse, capable and experienced private firms should be fully within this policy.

We acknowledge that agencies must preserve a "core capability" for analysis, management, evaluation and other kinds of professional services, and must conduct activities which have a special relationship to executing governmental responsibilities, including decision making and policy formulation. We want the government client to have a core capability, but once that core capability is established, agencies should rely on the private sector for services beyond the core capability.

There are currently two mechanisms which arbitrarily limit the wise exercise of Federal management responsibility in building core capability and relying upon the private sector for needed services beyond that core capability: (1) personnel ceilings, and (2) appropriation caps and spending

limitations such as those imposed upon HEW and DOD. OMB Circular No. A-76 prohibits agencies from entering contracts in order to avoid personnel ceilings, requiring, instead, a request to OMB for an adjustment of the personnel ceilings in conjunction with the annual budget review process. This same basic policy is provided in Bulletin No. 78-11. We concur in the A-76 principle that personnel ceilings should not interfere with performance of an activity in-house pursuant to the criteria in A-76 and Bulletin No. 78-11. Just as strongly, we believe that contracting for services pursuant to the criteria in A-76 and Bulletin No. 78-11 should not be arbitrarily limited through appropriation caps. Our reasons for concluding that sounder and wiser alternatives than caps and spending limitations must be implemented if national policy is to be served follows.

a. Well Established National Policies Direct The Federal Government To Rely On Private Sector Capabilities

Revised OMB Circular No. A-76 reaffirms the government's general policy of reliance on the private sector for goods and services, while providing a detailed process to achieve an equitable treatment of all parties and improved economy and efficiency in performing services needed by the government.

Circular No. A-76 represents a detailed management system to implement the sound utilization of the private sector. The guidelines governing consulting services can be logically understood and applied only within this broader framework. Imposition of a ceiling on expenditures for use of "consultants" imposed on agencies is simply inconsistent with sound implementation and administration of a Federal policy of reliance on private sector services, particularly when complex and honest differences of interpretation exist as to what can legitimately be characterized as a consulting service and when Federal programs are constantly undergoing dynamic change that require the use of both government and private sources of professional expertise.

b. Caps May Result In An Increase In Grants

An arbitrary ceiling on funds available for contract awards for consulting services ignores the potential for misuse of the grant process. The complex issue of when a transaction is a procurement, a grant

or a cooperative agreement, was the subject of legislation enacted by Congress in 1977 (P.L. 95-224). Firms engaged in contract work for the Federal government are highly regulated under present laws and regulations, while the grant process is much less competitive and regulated. One unintended consequence of a ceiling on contract awards is to encourage an unwarranted shift of such awards from contracts to grants, or alternatively, encourage wider use of Federal Contract Research Centers (FCRCs) on a noncompetitive basis.

c. Caps Force Work In-House Without  
Regard To Cost Effectiveness

An intended consequence of ceilings and other limitations on consultants is presumably to force work within the scope of consulting services to be performed by in-house government employees. In addition to the broad national policy considerations outlined above, we believe that there are very practical considerations relating to expertise, productivity, economy, efficiency, effectiveness and creativity, which dictate a different approach, as discussed in answer to the following question.

7. Does it cost more or less to obtain consulting services by contract than it would if performed by regular Federal government employees?

Although it is difficult to generalize, a recent study concluded that it is much more expensive for Federal employees to perform work which could be performed by private contractors. <sup>1/</sup> The professional services performed by our member organizations are, for the most part, subject to OMB Circular No. A-76, which in most circumstances rests the decision concerning whether or not to contract for needed goods and services on a cost comparison. We believe that the Cost Comparison Handbook for calculating costs of government operations understates the actual costs, particularly in overhead categories. Despite these reservations, we believe that an objective cost comparison will in the large majority of cases show that contract performance is more economical for the following reasons.

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<sup>1/</sup> Bennett, James T., Johnson, Manual H., "Tax Reduction Without Sacrifice: Private Sector Production Of Public Services", George Mason University, Fairfax, Virginia.

Much of the work that an agency needs is of a one-time nature that requires experts in specialized fields to be employed for limited periods of time. For example, a study of the changes in a rural community brought about by comprehensive changes in the school system might require an anthropologist. Or, a study of the effects of the delivery of emergency medical services might require the use of trained interviewers in each of several hundred communities for six weeks. It would be virtually impossible for an agency to mobilize the proper numbers and types of people needed at the right time. In addition, it would be costly and time-consuming, often resulting in project delays.

The real question comes after a study is completed -- what happens to the people hired for the staff? Either they would be terminated, a process which in the government is difficult at best, or they would be retained, adding more personnel to the payroll. A private firm doing that same work would transfer many of these staff from one project to another. Many talented professionals are available to a private concern on a part-time or temporary basis in a way not possible at the Federal level. Reduction in a private company's work force is handled more expeditiously if business conditions warrant than is the case in the public sector.

It should also be noted that when the private organization engaged in doing contract work is a for-profit firm, the Federal government collects about 46 percent of every dollar of their pre-tax earnings back through the Federal income tax.

8. Are the controls that exist to prevent agencies from duplicating consultant studies adequate?

No. Agencies should establish some method of coordinating their studies and analyses not only with other ongoing work, but with past and proposed efforts as well. Such a system could not only reduce duplication, but would enhance the value and use of the work done by professional services organizations. Any system devised must operate expeditiously, so as not to delay initiation or completion of studies which are needed within a short period of time, or to impede work because of other superficially similar, but materially different studies.

9. To what extent are there appearances of conflict of interest involving consultant's advice?

Insofar as there are appearances of conflicts of interest, we believe that disclosure of relationships which might appear to generate a conflict of interest is an important responsibility of potential contractors, and should be required in every procurement. "Appearances" often disappear under scrutiny and controls can be designed to avoid actual conflicts. Agencies should select the contractors most advantageous to the government, and should have all information relevant to that selection. The Office of Federal Procurement Policy (OFPP) has had under development a proposed policy governing organizational conflict of interest. We believe that Defense Acquisition Regulation Appendix G, dealing with organizational conflict of interest in the defense area, represents the kind of careful balancing of the government's interests which should be extended government wide.

Over a period of years, DOD has done a commendable and craftsman-like job of establishing these rules. The draftsmen have labored over each sentence, each example, and each definition. Refinements of this policy and extensions of it government wide should build on this strong base. We should all recognize the extreme complexity of this subject and not try to reach for simplistic solutions. Each case requires disclosure by the contractor of potential conflicts and requires an analysis of each requirement; including (1) what is the work, (2) who are the participants, and (3) what are the circumstances surrounding the work. With a guidance document, such as that promulgated by DOD, we have a chance for thoughtful and proper application of the policy. With less, we believe that what will happen in actual practice will range from actions not in the public interest to actions which are absolutely arbitrary.

10. Are Federal agencies awarding an excessive number of consulting service contracts in the final quarter of the fiscal year?

Historically, there has been a rush to issue contracts during the last few months of the fiscal year. To some extent this has resulted from delays in the appropriation process and in conducting procurements. Drafting statements of work, soliciting and evaluating proposals, and negotiating

the final contract can take many months. Agencies often do not obtain Congressional appropriations necessary even to begin this process until well into the fiscal year. This inevitably results in a large number of contract awards near the close of the fiscal year. On the other hand, undoubtedly much of the rush is due to fears that budgets will be cut in the ensuing year if prior year funds are not expended, a practice which properly generates concern.

The Committee on Federal Contracting Practices welcomes restrictions on expenditures at the end of fiscal years to avoid spending for spending sake. Ideally, 40 percent of the agency's new contracts will be awarded in the first two quarters and 30 percent in each of the last two quarters. However, in light of the very practical problems often faced by agencies in completing the procurement process before the final quarter, it would be prudent to authorize agencies to obligate appropriated funds over two fiscal years. The combination of year-end restrictions and two year appropriations should eliminate the current, unsatisfactory year-end rush.

#### Conclusion

Our experience has been that the Federal government in utilizing the services of contractors has been generally well served. Significant improvements have been brought about by the use of outside professional expertise. Indeed, we welcome the interest shown in these arrangements and the opportunity to develop better data and an improved understanding about the constructive contributions professional services make to policy formulation, program direction and other significant management and program objectives. The discussion of general principles and policy considerations should not cause us to lose sight of specific cases. These specific services which are the subject of new controls pursuant to OMB Bulletin No. 78-11 are generally essential to the sound accomplishment of national needs.

We believe that there are a number of ways in which the process of procuring consulting services can be improved. OMB has in Bulletin No. 78-11 provided a management system to deal with certain negative features of the present system: the lack of data and the need for better controls. Now what is needed are not arbitrary spending



limits and additional controls, but improvement of the government's method of procuring and utilizing outside services. In addition to suggestions already made relating to avoiding duplication, addressing organizational conflict of interest effectively, limiting year-end spending and making appropriations available for two fiscal years, training contract specialists to administer existing procurement rules and procedures efficiently, and the like, we urge that special incentives for exemplary contract performance in non-defense programs be investigated and implemented. These are just a few of the ways in which we believe a careful reforming of the procurement process to acquire services will make it possible for the government to get maximum returns on its investment in established private sources of expertise.

We continue to be available to assist in formulating specific suggestions to improve how the government acquires and uses professional services firms.

Very truly yours,



James S. Hostetler  
Counsel, Committee on Federal  
Contracting Practices

CONSULTANT PERSON-YEAR PRICE BY AGENCY

<u>Agencies</u>	<u>1978</u>		<u>1977</u>	
	<u>No. of data items</u>	<u>Average person-year price</u>	<u>No. of data items</u>	<u>Average person-year price</u>
Agriculture	3	\$61,003	(a)	(a)
Commerce	8	66,503	13	\$45,844
Consumer Product Safety Comm.	4	65,686	4	29,462
Defense	54	54,703	23	49,290
Dept. of Energy	38	58,694	19	56,686
Environmental Protection Agency	12	55,852	4	40,043
Housing and Urban Development	6	65,693	6	52,968
Labor	9	51,449	9	52,889
Miscellaneous	15	53,461	7	60,156
NASA	5	62,802	2	55,406
Nuclear Regulatory Commission	8	70,520	10	47,176
National Science Foundation	5	60,446	10	68,148
Department of State/ Agency for International Devel.	16	100,253	2	65,630

a/Too insufficient to calculate cost.

Source: Washington Representative Services, Inc.



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

B-90867

JAN 28 1960

The Honorable James T. McIntyre Jr.  
Director, Office of Management  
and Budget

Dear Mr. McIntyre:

In your letter of January 15, 1960, you requested our views on a draft bill to amend section 3109 of Title 5, United States Code, to clarify and update the system for appointment and compensation of experts and consultants and for other purposes.

The draft legislation would: (1) eliminate any reference to procuring by contract the services of individuals; (2) eliminate the requirement for each agency to have a separate statutory triggering authority before it can use the general authority; (3) increase the top pay rate to grade GS-18 in agencies otherwise subject to the classification and pay laws; (4) provide central regulatory authority and put definitions in the law.

There is undoubtedly a need for better control over the use of experts and consultants in the Executive branch as we have indicated in Congressional testimony and in our audit reports. As early as 1961, we recommended that the authority to hire consultants and experts be amended to provide greater control and uniformity. The proposed legislation would appear to be a step forward toward achieving this objective. However, we believe the likelihood of achieving the objective would be increased if certain changes and additions were made in the proposed legislation.

Definition of expert and consultant

We believe the definitions of "expert" and "consultant" in section 1 should be changed: (1) to clarify or emphasize the principal distinction between an expert and a consultant and (2) to avoid contradicting the administrative definition of expert in regards to OMB Bulletin 78-11.

The definition of expert in the proposed legislation states that "an expert usually serves in the performance of the operating functions of the agency, but may also perform advisory or consulting functions." We agree in principle with this definition, however, we believe that if

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the primary function of an expert is to perform an operating function then the definition should be changed to read: "An expert's primary function is to perform an operating function rather than to provide advisory or consulting services." This change would clarify the primary distinction between a consultant, who can only provide advisory services, and an expert. It would result in the classification of an individual as an expert or consultant according to the primary function to be performed. Such a change in the definition would not prohibit an agency from receiving advisory services from an expert but it would help to distinguish between these two types of employment.

To further distinguish between these two terms, we propose that the definition of "consultant" not contain the word "expertise". We believe the use of this word to define consultant is confusing and does not contribute to a clear distinction between a consultant and an expert. Rather we propose that the definition should read: "consultant means an individual who has certain knowledge, skills, or experience in a particular field..."

Furthermore, the results of a Senate Subcommittee on Civil Service and General Services questionnaire to various Federal agencies indicate that many agencies currently employ experts to provide advisory services only. In essence, these experts are providing advisory or consulting services similar or identical to the advisory services provided by consultants. If the definition of expert is changed as we proposed, then these individuals would be considered consultants since their primary function is to provide advisory services - not the performance of an operating function.

Another reason for making the suggested changes in these definitions is to avoid any contradiction with the definition of expert as used to implement OMB Bulletin 78-11 on consulting services. As you know, on May 22, 1979, OMB released figures on the use of consulting services by Executive branch agencies. In this memorandum, "experts" were excluded from the OMB definition of consulting services contained in the Bulletin. This was done ostensibly because "an expert is essentially a temporary employee which performs an operating function ..." as distinguished from a consultant who "is essentially an adviser and cannot perform operating functions. We believe that the results of the Senate Subcommittee questionnaire on consultants clearly indicate that some agencies employ experts only as advisers who do not perform operating functions.

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It is inconsistent for OMB to administratively exclude all experts from the definition of consulting services in OMB bulletin 78-11 while at the same time defining "expert" in the proposed legislation as a person who "also may perform advisory or consulting functions."

#### Other Observations

Section 1, subsection (d) would authorize OPM to prescribe regulations concerning the employment of individual expert and consultant appointments under this section. It also requires agencies to take corrective actions the Office directs in writing. We believe this requirement would be more effective if there was an additional provision that would give OPM the authority to indefinitely suspend an agency's authority to use section 3109 if the agency did not take the corrective actions recommended by OPM.

Furthermore, we believe that an amendment should be added to section 1 that would require Executive branch agencies to report to OPM at the end of each appointment the actual number of days that each expert or consultant worked and the total salary he or she received. At the present time, OPM does not have this type of information. As a result, OPM is limited in its ability to determine how frequently agencies exceed the maximum pay or length of service provisions of the law. The relatively infrequent OPM on-site evaluations do not provide the level of assurance that we believe is necessary to prevent agencies from abusing this authority. In addition, the OPM decision to delegate the hiring authority for these individuals from OPM to the agencies further justifies the need for more information on how agencies use this authority. The information on actual pay received and number of days worked would also be useful to OPM and perhaps GAO in deciding which agencies to visit for on-site evaluations of their use of experts and consultants.

Sincerely yours,

**R. F. KELLER**  
Deputy Comptroller General  
of the United States



EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

CIRCULAR NO. A-120

April 14, 1980

TO THE HEADS OF EXECUTIVE AGENCIES AND ESTABLISHMENTS

SUBJECT: Guidelines for the Use of Consulting Services

1. Purpose. The Circular establishes policy and guidelines to be followed by executive branch agencies in determining and controlling the appropriate use of consulting services obtained from individuals and organizations. This Circular supersedes OMB Bulletin No. 78-11, dated May 5, 1978, on the same subject.

2. Background. OMB Bulletin No. 78-11 was based largely upon data received from the agencies in response to the President's memorandum of May 12, 1977, which asked the heads of agencies to assure that consulting service arrangements of their organizations were both appropriate and necessary. The Bulletin was issued to meet the identified need for uniformity of definition, criteria, and management controls among the agencies.

This Circular provides permanent guidance in lieu of the interim guidance provided by the Bulletin. To assist agencies in identifying consulting services, as defined in the Bulletin and this Circular, an expanded list of examples is included in the Attachment to this Circular.

An additional policy is provided in this Circular with respect to responsibility for final determination of whether or not a proposed procurement action is for consulting services, as defined in this Circular.

3. Relationship to OMB Circular No. A-76. In summary, OMB Circular No. A-76, "Policies for Acquiring Commercial or Industrial Products and Services Needed by the Government" revised March 29, 1979, directs that:

- Governmental functions must be performed by Government employees (reference 4b and 5f of A-76);
- Commercial or industrial products and services should be provided in the most economical manner through the use of rigorous cost comparisons of private sector and Government performance (reference 4c of A-76); and
- Consulting services are not either of the above categories and should be provided either by Government staff organizations or from private sources, as deemed appropriate by executive agencies in accordance with executive branch guidance on the use of consulting services (reference 6d(5) of A-76).

4. Coverage. The provisions of this Circular apply to consulting services obtained by the following arrangements:

- a. Personnel appointment;
- b. Procurement contract; and
- c. Advisory committee membership.

5. Definition. As used for administrative direction in this Circular, Consulting Services means those services of a purely advisory nature relating to the governmental functions of agency administration and management and agency program management. (See Attachment for examples of the type of services to which this Circular applies.)

These services are normally provided by persons and/or organizations who are generally considered to have knowledge and special abilities that are not generally available within the agency. The form of compensation is irrelevant to the definition.

6. Basic Policy

- a. Consulting services will not be used in performing work of a policy/decision making or managerial nature which is the direct responsibility of agency officials.
- b. Consulting services will normally be obtained only on an intermittent or temporary basis; repeated or extended arrangements are not to be entered into except under extraordinary circumstances.
- c. Consulting services will not be used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.
- d. Former Government employees per se will not be given preference in consulting service arrangements.
- e. Consulting services will not be used under any circumstances to specifically aid in influencing or enacting legislation.
- f. Grants and cooperative agreements will not be used as legal instruments for consulting service arrangements.
- g. The contracting officer shall be responsible for determining whether a requested solicitation or procurement action, regardless of dollar value, is for consulting services. The contracting officer's determination shall be final. Prior to processing any solicitation or procurement action for consulting services, the contracting officer shall insure that the applicable provisions of this Circular have been adhered to and that documentation required by the Circular (see 8.a.

and 8.b.) is complete and included in the official contract file. The contracting officer will also insure that awards over \$10,000 are identified as consulting service contracts on either the agency's data collection form (which conforms to the requirements of the Federal Procurement Data System) or optional Form 279, for input into the Federal Procurement Data System (reference 9.b.).

7. Guidelines for use of Consulting Services. Consulting service arrangements may be used, when essential to the mission of the agency, to:

a. Obtain specialized opinions or professional or technical advice which does not exist or is not available within the agency or another agency.

b. Obtain outside points of view to avoid too limited judgment on critical issues.

c. Obtain advice regarding developments in industry, university, or foundation research.

d. Obtain the opinion of noted experts whose national or international prestige can contribute to the success of important projects.

e. Secure citizen advisory participation in developing or implementing Government programs that, by their nature or by statutory provision, call for such participation.

8. Management Controls

a. Each agency will assure that for all consulting service arrangements:

(1) Every requirement is appropriate and fully justified in writing. Such justification will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services;

(2) Work statements are specific, complete and specify a fixed period of performance for the service to be provided;

(3) Contracts for consulting services are competitively awarded to the maximum extent practicable to insure that costs are reasonable;

(4) Appropriate disclosure is required of, and warning provisions are given to, the performer(s) to avoid conflict of interest; and

(5) Consulting service arrangements are properly administered and monitored to insure that performance is satisfactory.

b. Each agency will establish specific levels of delegation of authority to approve the need for the use of consulting services, based on the policy and guidelines contained in this Circular. Written approval of all consulting service arrangements will be required at a level above the organization sponsoring the activity. Additionally, written approval for all consulting service arrangements during the fourth fiscal quarter will be required at the second level above the organization sponsoring the activity.



c. OMB Circular No. A-63, Advisory Committee Management, governs policy and procedures regarding advisory committees and their membership.

d. The Federal Personnel Manual (FPM), Chapter 304, governs policy and procedures regarding personnel appointments.

e. Until the Federal Acquisition Regulation is published, the Federal Procurement Regulation and the Defense Acquisition Regulation govern policy and procedures regarding contracts.

9. Data Requirements. The following data systems will continue to provide information on consulting service arrangements within the executive branch:

a. Central Personnel Data File (CPDF), operated by the Office of Personnel Management, will have data on personnel appointments, segregating consultants, experts, and advisory committee members (as defined in OMB Circular No. 63).

b. Federal Procurement Data System (FPDS) will have data on contract arrangements.


c. Advisory committee data will continue to be maintained in accordance with OMB Circular No. A-63.

10. Effective date. This Circular is effective immediately.

11. Implementation. All executive branch agencies have previously implemented OMB Bulletin No. 78-11. That implementation is applicable to this Circular and will continue under the guidance of this Circular.

To implement the new policy with respect to responsibility for final determination of whether or not a proposed procurement action is for consulting services, the Secretary of Defense and the Administrator for General Services are directed to incorporate the applicable provisions of this Circular (see 6.g.) into the Defense acquisition Regulation and the Federal Procurement Regulations, respectively, within sixty (60) days of the date of this Circular.

12. Inquiries. All questions or inquiries should be submitted to the Office of Management and Budget. Telephone Number (202) 395-6810.

  
James T. McIntyre, Jr.  
Director

Attachment

## ATTACHMENT

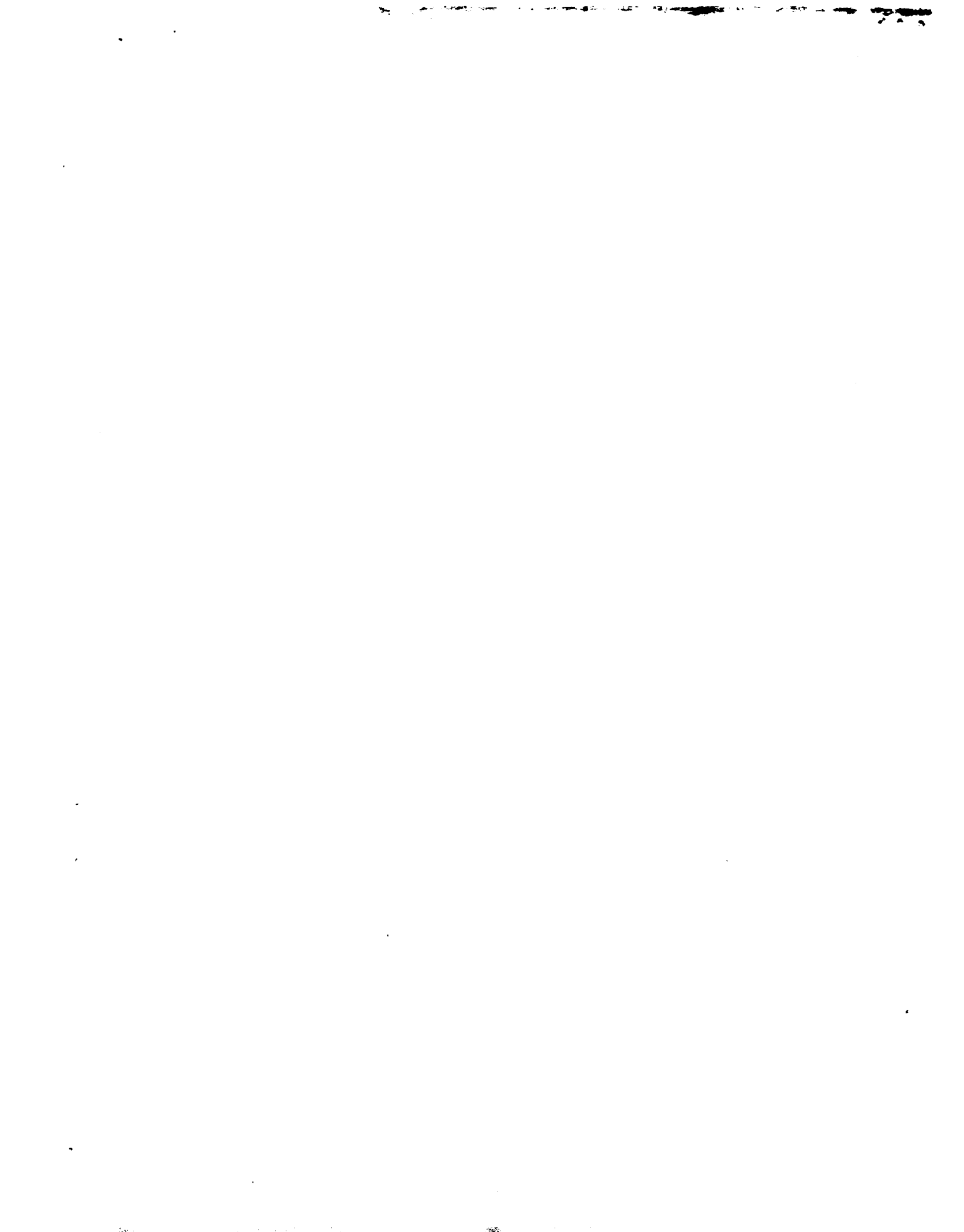
This attachment contains examples of the type of services which are consulting services, as defined in this Circular, and to which this Circular applies.

- o Advice on or evaluation of agency administration and management, such as:
  - Organizational structures;
  - Reorganization plans;
  - Management methods;
  - Zero-base budgeting procedures;
  - Mail handling procedures;
  - Records and file organization;
  - Personnel procedures;
  - Discriminatory labor practices;
  - Agency publications;
  - Internal policies, directives, orders, manuals, and procedures; and
  - Management information systems.
  
- o Advice on or evaluation of agency program management, such as:
  - Program plans;
  - Acquisition strategies;
  - Assistance strategies;
  - Regulations;
  - Assistance or procurement, solicited or unsolicited technical and cost proposals;
  - Legal aspects;
  - Economic impacts;
  - Program impact; and
  - Mission and program analysis.

This Circular also applies to any contract task assignment for consulting services given to Federally Funded Research and Development Centers.

See OMB Circular No. A-76 for examples of Governmental functions and commercial and industrial products and services. It should also be noted that the conduct of research and development and technology assessments are not consulting services.

(961110)



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