

Mr. Carter

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



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

Dear Mr. Chairman:

Your letter of July 16, 1981, requested our views on Senate Joint Resolution 93 which will clarify and reaffirm that it is the "general policy" (emphasis provided) of the Government of the United States to rely on competitive private enterprise to supply the products and services it needs whenever competitive industry prices are available. This policy shall be administered by the Director, Office of Management and Budget, in coordination with the Administrator, Office of Federal Procurement Policy."

Senator S. I. Hayakawa introduced this resolution in response to our June 19, 1981, report, "Civil Servants And Contract Employees: Who Should Do What For The Federal Government?" (FPCD-81-43). We believe this resolution has merit and, if enacted into law, would be an important step toward creating a firm national policy of generally relying on the private sector for goods and services. The resolution, however, leaves some unresolved issues that, in our opinion, the Congress should address if the Office of Management and Budget (OMB) is to administer the policy and issue specific regulations consistent with congressional intent. A discussion of these unresolved issues follows.

BACKGROUND

Since 1955, the executive branch has had a policy that agencies should rely on the private sector for needed goods and services. The current executive branch policy is prescribed in OMB Circular A-76, dated March 29, 1979. Basically, the circular provides that (1) agencies should generally rely on the private sector for commercial goods and services unless it is more economical to provide them in-house and (2) all Government functions must be performed by Federal employees. The General Accounting Office has consistently supported this policy while recognizing that procedures to implement it can be improved.

Our June 19, 1981, report states that executive branch agencies, with few exceptions, have made little progress to implement any part of this policy. OMB information shows that as many as 400,000 Federal employees operate more than 11,000 commercial or industrial

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activities at a cost of almost \$19 billion annually. According to OMB, these employees represent almost one-fourth of the total executive branch civilian work force. Our report concluded that many of these Federal activities provide services--such as janitorial, guard, keypunching, and laundry services--that the private sector could provide in many cases at a lower cost.

We first stated the need for the Congress to establish a national policy of relying on the private sector in our September 1978 report, "Development of a National Make-or-Buy Strategy--Progress and Problems" (PSAD-78-118). We concluded that

- the A-76 policy was not perceived as a national policy with full executive and legislative branch approval and support;
- over the years, policy pronouncements and applications were controversial and unsettled;
- executive departments and agencies' implementation was inconsistent and relatively ineffective; and
- make-or-buy decisions were not necessarily based on sound management principles that would result in an economical and effective Government.

We also pointed out that since 1955, when the executive branch first established a general policy of relying on the private sector, the emphasis has shifted from almost outright reliance on the private sector to reliance with exceptions. Support for the policy vacillated according to the administration in power. Agencies were thus reluctant to invest the resources necessary to implement the policy. For these reasons, we stated a need for a firm national policy, endorsed and supported by both the legislative and executive branches, directing how the Government will acquire its goods and services.

Given the little progress agencies have made since our 1978 report, we continue to believe that a firm national policy is needed. Congressional action can establish a stable national policy that would have the full force and effect of law. Such action would assure that the policy could not be changed again without congressional approval.

COST COMPARISONS

Although OMB Circular A-76 requires agencies to perform cost comparisons to determine when it would be more economical to provide goods and services in-house, most executive branch agencies have not met this requirement. On April 8, 1981, the Deputy

Director, OMB, issued a directive requiring all agencies to accelerate the completion of cost comparisons on commercial or industrial activities operated by over 92,000 Federal employees.

We believe the Congress, in considering Senate Joint Resolution 93, should take a position on the cost comparison issue. The resolution, as currently written, would neither encourage nor prohibit agencies from carrying out OMB's recent directive to perform cost comparisons. If the Congress decides to endorse the concept of requiring cost comparisons, we believe either the resolution or its legislative history should provide OMB with flexibility for making exceptions to the requirement. The following discussion addresses two possible exceptions.

Circular A-76 currently waives the requirement for cost comparisons for critical national defense activities. Presently, many Department of Defense (DOD) commercial activities are operated by military personnel. In the event of war, DOD would have to reassign many of these military personnel and immediately replace them with either civilian or contract personnel. In these circumstances, there would not be sufficient time for DOD to complete a detailed cost comparison before filling the vacated positions.

It might also be necessary for OMB to make exceptions to the general policy in this resolution to recognize other national policies that the Congress has established. For example, the Small Business Act made it a national policy that small businesses, including those owned and managed by disadvantaged persons, receive a fair share of Government contract awards. Consequently, OMB exempted certain authorized small business contracts from the following A-76 requirements: (1) conduct a cost comparison (for new starts only) and (2) review all contracts for possible in-house performance.

Other issues will undoubtedly surface that will require OMB discretion. We believe Resolution 93 should provide this flexibility.

GOVERNMENT FUNCTIONS

Senate Joint Resolution 93 does not currently address the executive branch policy (OMB Circular A-76) that all Government functions must be performed by Federal employees. We believe this policy is of equal importance to the policy that agencies should generally rely on the private sector for needed goods and services. Our June 19, 1981, report indicates that many agencies use contractors to do work that Federal employees should do because the work involves basic management decisions (Government functions). Although contractors may not be making final decisions, we are concerned about the extent to which

contractors are influencing agencies' control of Federal programs and policies.

Our report states that if agency cost comparisons show that a large percentage of commercial or industrial work currently provided in-house could be done more economically by contract, agencies should be able to reallocate such positions to work that must be performed by Federal employees--Government functions--without concern for increasing personnel ceilings. Thus, a contractor's involvement in basic management functions is reduced. To encourage agencies to properly allocate their positions, we believe the Congress, in considering this resolution, should endorse the existing policy that all Government functions be performed by Federal employees.

To conclude, if Senate Joint Resolution 93 is to be effective, it must strike a delicate balance between (1) the need to establish a firm national policy on how the Government can acquire its goods and services and (2) the need to keep the resolution's language somewhat general so that OMB has authority to approve exceptions to the general policy the Congress establishes. In our opinion, to establish an effective national policy, either the resolution or its legislative history should address the open issues discussed above.

Sincerely yours,

~~Acting~~ Comptroller General

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of the United States