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SSA

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

IN REPLY REFER TO: B-195505

JAN 4 1980

Rep

The Honorable William Carney
~~House of Representatives~~

Dear Mr. Carney:

This is in response to your letter of October 11, 1979, asking for our comments on H.R. 5525. The bill concerns the procurement and supply of personal property and nonpersonal services by the Administrator of General Services.

We believe the bill addresses in several ways the recommendations in our May 2, 1979, report on GSA's management of the multiple award schedule program (PSAD-79-11). We have, however, set forth in the enclosure to this letter, some matters for your consideration.

Some of the bill's provisions are broadly drafted and could have a far-reaching impact on well-established aspects of the Federal procurement process. Members of your staff have advised us that the bill is intended solely to respond to our report on the multiple award schedule program. Therefore, we have recommended that some provisions be limited in applicability to the schedule context, and that certain other broad provisions be eliminated altogether.

We also recommended in our May 2, 1979, report that the Congress put GSA under a mandatory timeframe for accomplishing management improvements. The multiple award schedule program is so big, and has been subject to such mismanagement, that it deserves special attention. We believe a complete review and evaluation of every item on the multiple award schedule program is necessary to determine whether the items are needed and the use of the scheduled procurement method is proper in each case. The sense of this recommendation could be incorporated into H.R. 5525.

Chairman Jack Brooks also wrote to us requesting comments on the bill, and we are providing a copy of these comments to him.

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Check for all addresses
Carney
Brooks

We appreciate your interest in correcting problems in GSA's procurement programs. If we can be of further assistance, please let us know.

Sincerely yours,

SIGNED ELMER B. STAATS

Comptroller General
of the United States

Enclosure

bc: Mr. Stolarow, PSAD
Mr. Flynn, PSAD/GP
Mr. Hagenstad, OCR
Mr. Anderson, OP
Mr. Fitzgerald, OCR
Ms. McIlwain, PSAD/GP
Mr. Bogar, PSAD/GP
Ms. Maris, OGC

PSAD-8920
CFR/gcc

ENCLOSURE

Suggestions for Improving
H.R. 5525

Section 2

This section would add a new subsection, subsection (f), to 40 U.S.C. §481.

New Subsection (f)

As presently written, the applicability of this subsection may extend beyond the subject of purchases made under the multiple award schedule program. It could well be interpreted to have a significant impact on long established and well accepted procurement procedures for both negotiated and formally advertised procurements. The use of the term "proposals" suggests that this subsection is applicable to negotiated procurements only; however, the intent is not clear and the provision could be interpreted to apply to formally advertised procurements as well. Either way, it would have a far-reaching impact on established procedures, going much beyond the type of changes envisioned in our report on the multiple award schedule program (PSAD-79-11, May 2, 1979).

For instance, in negotiated procurements there is presently no requirement that award be made to the offeror with the lowest price. This is primarily due to the fact that negotiation is often used for procurements of a unique or complex nature where technical considerations may often legitimately override cost considerations. In formally advertised procurements, the established rule is that award be made to the low bidder. However, in addition to offering the lowest price, the bidder must also be found to be both responsive and responsible. See 41 U.S.C. §253(b) (1976).

Congressman Carney has indicated that section 2 is in part intended to prevent agency abuse of the multiple award schedule program by the purchase of products at other than the lowest available price. Such a purpose is in accordance with our May 1979 report on the program. However, we do not believe that this provision would accomplish the intended purpose.

A significant finding contained in our report was that agencies were not buying the lowest priced product that met their minimum needs. What is really needed to solve this problem is a combination of safeguards: GSA monitoring of agency purchases; limiting the number of items available on the schedule; a requirement that agencies purchase from the schedule where the class or type of item needed is available on the schedule (with, perhaps, an exception for special use items subject to GSA approval); and a requirement that agencies purchase the lowest priced item on the schedule which meets their minimum needs.

Congressman Carney has also noted that another purpose of section 2 is to repeal Federal Property Management Regulation 101-26.401(a). That regulation forbids agencies from soliciting bids, proposals, quotations, or otherwise testing the market solely for the purpose of seeking alternative sources to Federal supply schedules.

It is not clear that the provision as written would accomplish that purpose. In addition, we believe that the existing regulation serves an important function and should not be repealed. In order for the Federal supply schedule program to function effectively, it is necessary that agencies be required to purchase from it rather than procuring identical or similar items through individual agency procurements. We have found that the failure of agencies to comply with mandatory use requirements is one reason for the present lack of the program's effectiveness. While it may be possible for agencies in isolated instances to procure an item more cheaply by conducting their own procurements rather than buying from the schedules, we believe that in terms of overall cost to the Government, a requirement that agencies use the Federal supply schedule is most efficient.

For the reasons stated above, we believe that the proposed new provision should be deleted from the bill.

Section 3

Subsections o and p

These subsections define "price data" and "cost data" respectively. We believe that they could be interpreted to establish definitions of cost and price data differing from those established by the current law on the subject.

The Armed Services Procurement Act presently requires that contractors submit cost and pricing data and certify that it is current, complete and accurate, in connection with negotiated contracts exceeding $100,000. 10 U.S.C. §2306(f) (1976). While the Act does not define the terms cost data and price data, the Defense Acquisition Regulation (DAR) does provide a definition of the term "cost and pricing data." See 32 C.F.R. §3-807.3(h) (1976).

The Federal Property and Administrative Services Act presently contains no requirement for the submission or certification of cost and price data. An equivalent requirement has, however, been instituted in the Federal Procurement Regulations (FPR). 41 C.F.R. §1-3.807-3 (1978). The FPR definition of "cost and pricing data" is virtually identical to that contained in DAR.

The Committee should be aware that the new definitions to be established by the bill could result in an interpretation of the terms "cost data" and "price data" inconsistent with the definitions established by the existing regulations as interpreted by the courts and the Armed Services Board of Contract Appeals.

We also note that these definitions are provided because section 5 of H.R. 5525 would add a requirement that the GSA Administrator prescribe price data and cost data to be submitted by contractors seeking awards under the multiple award schedule program. Since, as noted above, the Federal Property and Administrative Services Act contains no present requirement for the submission of cost and price data, the Committee may wish to consider deleting the definitions and instead adding an appropriate definition to section 5 of the bill. (In that regard, please see our comments on section 5, new subsection (e), questioning the need for the submission of cost data in the schedule context.)

Section 4

Subsection (a)(1)(A)

Subsection (a)(1)(A) amends 40 U.S.C. §481(a) to expand its coverage to all "Federal agencies." Section 481 presently applies only to all "executive agencies." As a result, the Administrator would be authorized to "prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including such related functions as contracting * * *" for all Federal agencies. 40 U.S.C. §472(b)

defines "Federal agency" to include any establishment in the legislative or judicial branch, exclusive of the Congress and the Architect of the Capitol, as well as any executive agency.

Thus, the proposed amendment would signficantly expand the scope of GSA's authority to prescribe policies and methods of procurement and supply beyond the executive branch of the Government. While the provision being amended is part of Title II of the Act, we believe that it could also possibly be interpreted to impact on the scope of Title III of the Act, which prescribes procurement procedures applicable to executive agencies only.

We do not believe that this expansion of GSA's authority beyond the executive branch of the Government is necessary in order to respond to the recommendations contained in our report. The proposed provision would have a significant impact on existing GSA authority not envisioned by any of our recommendations. Therefore, we believe it should be eliminated from the bill.

Subsection (a)(1)(B)

This subsection would amend the proviso to 40 U.S.C. §481(a). That proviso now authorizes the Secretary of Defense to exempt the Department of Defense from action taken by the Administrator under paragraphs (1) through (4) of subsection (a) (dealing with procurement, warehousing, and related functions) whenever he determines it to be in the best interest of national security, unless the President otherwise directs.

The proviso as amended would require that the Secretary of Defense henceforth obtain the consent of the Administrator for any such exemption. Exemptions made prior to the enactment of the provision would terminate one year after the date of enactment unless the Administrator consented to them. Disagreements would be referred to the President for resolution.

This provision appears to be unrelated to the recommendations contained in our report. If, however, there is a concern that the Secretary of Defense is improperly using this power to exempt the Defense Department from the use of the Federal supply schedule, we believe that the concern can be best dealt with in a different manner. (See our comments below on subsection (b) and the addition of new subsection (g)(2) to 40 U.S.C. §481.)

Subsections (a)(2)-(3)

These subsections expand the coverage of 40 U.S.C. §§481(c)-(e) to all Federal agencies. We recommend that these provisions be deleted from the bill as they are not related to the concerns raised in our report on the multiple award schedule program.

Subsection (b)

Subsection (b) would add new subsection (g) to 40 U.S.C. §481.

New Subsection (g)(1)

New subsection (g)(1) states that:

> "the policies and methods of procurement prescribed by the Administrator (including determinations of minimum needs) pursuant to this section shall be binding on all Federal agencies and, to the extent prescribed by the Administrator, all personal property and nonpersonal services shall be acquired by Federal agencies through the Administrator."

This provision needs clarification. As presently written, the requirement that agencies acquire all property and services through the Administrator could be interpreted very broadly. For example, it could be construed to mean that agencies must obtain the authorization of the Administrator before they enter into any procurement.

In our audit report on the multiple award schedule program we did recommend that Congress strengthen the posture of GSA as the primary supplier of products to agencies. This recommendation relates to our finding that in order for GSA to be in the best position to obtain the lowest price for multiple award schedule items, assurance is needed that agencies will buy their requirements from vendors to whom GSA has awarded contracts.

Implicit in our findings is the assumption that GSA should have the authority to determine the range of minimum needs of agencies when contracting with schedule vendors.

That is, GSA must make assumptions about which of the many items of the same type, and which ranges of features available in those items, it will contract for and require agencies to use.

However, in order to respond to the recommendations in our report, it is not necessary to enact a provision as broadly written as that presently contained in the bill. We believe that all that is really necessary is a statutory requirement making the use of Federal supply schedule contracts mandatory on executive agencies. It would, however, also be advisable to provide that the Administrator may exempt an agency from this requirement where the agency can show that it has a genuine need for an item different from those available through the schedule program.

New Subsection (g)(2)

New subsection (g)(2) requires executive agencies covered by one of the authorities referred to in 40 U.S.C. §474 to procure personal property and nonpersonal services "through the Administrator" unless the agency head believes any such authority would be impaired or adversely affected, and seeks and is granted an exemption from the Administrator. If the exemption is denied and the agency disagrees, the matter is to be referred to the President or his designee.

40 U.S.C. §474 lists a number of authorities which are not affected or impaired by the Act. Therefore, the effect of new subsection (g)(2) could be very significant. Among the authorities listed in 40 U.S.C. §474 are those of executive agencies named in the Armed Services Procurement Act, the Secretary of Defense under the Strategic and Critical Materials Stock Piling Act, and the Central Intelligence Agency.

New subsection (g)(2) as written, could be interpreted broadly to mean that the specified authorities are no longer to be considered exempt from the Act unless the Administrator grants them an exemption and that without one they must procure in accordance with the Act. This could cause unforeseen complications since the original rationale for exempting these authorities from the Act would be frustrated.

If the intent behind the provision is to further strengthen GSA's authority as the primary supplier of products to agencies, as recommended in our audit report, we believe this could

be accomplished by simply requiring that executive agencies covered by one of the authorities referred to in 40 U.S.C. §474 nevertheless procure items available on the Federal supply schedule from the Federal supply schedule, unless the Administrator exempts them. We suggest deleting the words "through the Administrator" in line 25 and substituting: "from the Federal supply schedule where the type or class of item being procured is available therefrom."

The provision should also then specifically indicate whether it applies to the military agencies named in the Armed Services Procurement Act notwithstanding the proviso contained in 40 U.S.C. §481(a)(4) (permitting the Secretary of Defense to exempt the Defense Department from actions taken by the Administrator under clauses (1)-(4) of section 481(a)).

New Subsection (g)(3)

New subsection (g)(3) would authorize the Administrator to monitor and review the procurement practices of Federal agencies, or to require that agencies conduct these reviews under the direction of the Administrator, and to direct that corrective action be taken where deficiencies are found. This provision appears to be directed at one of the deficiencies found in our report on GSA's management of the multiple award schedule program.

In our report we noted a lack of monitoring by GSA of agency purchasing practices. GSA responded that it did not have the responsibility for monitoring or enforcing compliance with Federal procurement regulations. This provision would help change that situation. It would, however, go beyond the scope of our report by allowing GSA to monitor all agency procurement practices, and not just those related to the schedule program.

Section 5

New Subsection (d)

This new subsection would be added to 41 U.S.C. §252 and would specifically authorize the Administrator to use multiple award schedules as a method of supply if he complies with certain requirements. For instance, the Administrator is authorized to use multiple award schedules if he determines that such method is the most economical and efficient. However, he can waive this use if he determines that the needs of Federal agencies cannot be limited, suitable

purchase descriptions are not available, or the estimated sales volume is of low dollar value.

These latter waiver determinations run counter to those in our report on the schedule program. In our report, we stated multiple award schedules should be restricted to products where:

1. Competitive single award procedures are not practical using commercial item descriptions or performance specifications.

2. Sales volume justifies centralizing procurement.

3. The majority of needs are divided among several functionally similar products with significant variances in price.

New Subsection (e)

This subsection would also be added to 41 U.S.C. §252. It would require the Administrator to prescribe price data and cost data to be submitted by contractors seeking awards under the multiple award schedule program where such data is not otherwise required. We are unsure what purpose the underscored language is intended to serve. The language should be clarified if its inclusion is deemed necessary to meet a particular concern of the Committee. If not, we believe that it should be deleted from the subsection.

New subsection (e) further provides that schedule contractors shall be required to certify that submitted price data and cost data is accurate, complete, and current. All schedule contracts would be required to provide for a price reduction where the price was increased because of reliance on data which was inaccurate, incomplete, or noncurrent "as of the date of submission."

Under current regulations contained in the FPR and DAR, the certification of accurate, complete, and current data is as of the date when price negotiations were concluded and the contract price was agreed to. (The date of execution of the certificate can be later.)

It appears that a "date of submission," standard could in some instances establish a different certification date than presently required. The Committee may, therefore, wish to consider coordinating this provision with existing regulations.

In addition, it is unclear whether the price reduction would apply retroactively to agency purchases under the affected contract made prior to the time when the price reduction took place. We believe that this should be clarified. We also are concerned that requiring a price reduction for defective data in the schedule context may prove impractical in actual application.

We believe that the Committee should carefully consider whether a requirement that cost data be submitted is really necessary here. In our report, we noted that GSA apparently does not receive reliable data from many vendors on such matters as past sales, other discounts offered, and commercial pricing structure. We believe that a requirement that price data be submitted by schedule contractors would help to meet these concerns. However, an additional requirement for the submission of cost data appears unnecessary and runs counter to the current statutory assumption that the competitive forces of the marketplace assure reasonable prices for commercially available items.

New Subsection (f)

This subsection would be added to 41 U.S.C. §252 and would permit the Administrator to debar a contractor who either knew or reasonably should have known that price or cost data submitted was inaccurate or noncurrent as of the date of submission.

A schedule contractor who submitted defective cost or price data thus would be subject by statute to possible debarment as well as a reduction in contract price. This provision, although permissive in nature, would provide statutory authority for debarment for submission of defective cost or price data under the schedule program while no equivalent provision exists in the nonschedule context, where much larger dollar amounts may well be involved. Therefore, assuming the price reduction could be effectively applied in the schedule context, the Committee might wish to delete the further sanction of debarment.

We note that the Administrator is required to establish procedures affording adequate notice and opportunity for a hearing with respect to proposed debarments. He is, however, also authorized to debar a contractor immediately if it is deemed necessary to protect the interests of the U.S., and

the contractor is "suspected" of furnishing defective data. Such debarment is to be for no longer than 180 days unless the matter is subject to a Justice Department investigation.

This immediate debarment procedure is similar to current procedures for administrative debarments which allow "suspension" of the contractor without a prior hearing. See 41 C.F.R. 1-1.605. These existing procedures do, however, provide for adequate notice and a hearing within twenty calendar days of a contractor's request for a hearing. (There are exceptions to the hearing requirement where there is an outstanding indictment or where possible criminal, civil, or labor proceedings would be affected.) These procedures are the result of the holding in Horne Brothers, Inc. v. Laird, 463 F.2d 1268 (D.C. Cir. 1972).

The Horne Brothers case establishes that fairness requires the contractor to be given specific notice of at least some of the charges against him and, in the usual case, given an opportunity to rebut those charges in a proceeding to be held within one month of suspension. National security and prejudice to prosecutorial action are cited as possible exceptions to this requirement.

The contractor in Horne Brothers faced suspension for 18 months or more. While the contractor under the proposed new provision can only be suspended for 180 days unless a Justice Department investigation is underway, we believe that the Horne Brothers requirements should be met here. The court in that case stated that under any proper procedural scheme, the Government should be permitted a reasonable time, not to exceed one month, after it has notified a suspended bidder of his suspension status, to conduct a proceeding attended by the contractor and his representatives, to provide an opportunity to offer evidence to rebut charges and confront accusers. Horne Brothers, Inc. v. Laird, supra at 1272.

Therefore, we suggest that the proposed new provision be amended to provide for adequate notice to the suspended contractor of the charges against him and for a hearing at the contractor's request within twenty days of the request. (Although this could be longer than one month after suspension, we believe such a provision assures fundamental procedural fairness, while allowing a hearing to be dispensed with where the contractor does not desire one.) We also recommend that the present standard for suspension, that is that it be supported by "adequate evidence," be specifically

included in this part of the proposed new provision. This could be accomplished by inserting "upon adequate evidence" after "suspected" in line 3 of page 9 of the bill.

A final suggestion is that the phraseology "immediately debar" be changed to "immediately suspend" since the terms "debarment" and "suspension" have come to have distinct meanings in the Government procurement context. "Suspension" more accurately describes the process developed to meet the situation where the contractor is only suspected of an offense and further investigation is needed.

SSA

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

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JAN 4 1980

HSE 1500

The Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of October 29, 1979, asking for our comments on H.R. 5525, which is sponsored by Congressman William Carney. The bill concerns the procurement and supply of personal property and nonpersonal services by the Administrator of General Services.

We believe the bill addresses in several ways the recommendations in our May 2, 1979, report on GSA's management of the multiple award schedule program (PSAD-79-11). We have, however, set forth in the enclosure to this letter, some matters for your consideration.

Some of the bill's provisions are broadly drafted and could have a far-reaching impact on well-established aspects of the Federal procurement process. Members of Congressman Carney's staff have advised us that their sole intent was to respond to our report on the multiple award schedule program. Therefore, we have recommended that some provisions be limited in applicability to the schedule context, and that certain other broad provisions be eliminated altogether.

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We appreciate your interest in correcting problems in GSA's procurement programs. If we can be of further assistance, please let us know.

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We do not believe that this expansion of GSA's authority beyond the executive branch of the Government is necessary in order to respond to the recommendations contained in our report. The proposed provision would have a significant impact on existing GSA authority not envisioned by any of our recommendations. Therefore, we believe it should be eliminated from the bill.

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This provision appears to be unrelated to the recommendations contained in our report. If, however, there is a concern that the Secretary of Defense is improperly using this power to exempt the Defense Department from the use of the Federal supply schedule, we believe that the concern can be best dealt with in a different manner. (See our comments below on subsection (b) and the addition of new subsection (g)(2) to 40 U.S.C. §481.)

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Subsection (b) would add new subsection (g) to 40 U.S.C. §481.

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If the intent behind the provision is to further strengthen GSA's authority as the primary supplier of products to agencies, as recommended in our audit report, we believe this could

be accomplished by simply requiring that executive agencies covered by one of the authorities referred to in 40 U.S.C. §474 nevertheless procure items available on the Federal supply schedule from the Federal supply schedule, unless the Administrator exempts them. We suggest deleting the words "through the Administrator" in line 25 and substituting: "from the Federal supply schedule where the type or class of item being procured is available therefrom."

The provision should also then specifically indicate whether it applies to the military agencies named in the Armed Services Procurement Act notwithstanding the proviso contained in 40 U.S.C. §481(a)(4) (permitting the Secretary of Defense to exempt the Defense Department from actions taken by the Administrator under clauses (1)-(4) of section 481(a)).

New Subsection (g)(3)

New subsection (g)(3) would authorize the Administrator to monitor and review the procurement practices of Federal agencies, or to require that agencies conduct these reviews under the direction of the Administrator, and to direct that corrective action be taken where deficiencies are found. This provision appears to be directed at one of the deficiencies found in our report on GSA's management of the multiple award schedule program.

In our report we noted a lack of monitoring by GSA of agency purchasing practices. GSA responded that it did not have the responsibility for monitoring or enforcing compliance with Federal procurement regulations. This provision would help change that situation. It would, however, go beyond the scope of our report by allowing GSA to monitor all agency procurement practices, and not just those related to the schedule program.

Section 5

New Subsection (d)

This new subsection would be added to 41 U.S.C. §252 and would specifically authorize the Administrator to use multiple award schedules as a method of supply if he complies with certain requirements. For instance, the Administrator is authorized to use multiple award schedules if he determines that such method is the most economical and efficient. However, he can waive this use if he determines that the needs of Federal agencies cannot be limited, suitable

purchase descriptions are not available, or the estimated sales volume is of low dollar value.

These latter waiver determinations run counter to those in our report on the schedule program. In our report, we stated multiple award schedules should be restricted to products where:

1. Competitive single award procedures are not practical using commercial item descriptions or performance specifications.

2. Sales volume justifies centralizing procurement.

3. The majority of needs are divided among several functionally similar products with significant variances in price.

New Subsection (e)

This subsection would also be added to 41 U.S.C. §252. It would require the Administrator to prescribe price data and cost data to be submitted by contractors seeking awards under the multiple award schedule program where such data is not otherwise required. We are unsure what purpose the underscored language is intended to serve. The language should be clarified if its inclusion is deemed necessary to meet a particular concern of the Committee. If not, we believe that it should be deleted from the subsection.

New subsection (e) further provides that schedule contractors shall be required to certify that submitted price data and cost data is accurate, complete, and current. All schedule contracts would be required to provide for a price reduction where the price was increased because of reliance on data which was inaccurate, incomplete, or noncurrent "as of the date of submission."

Under current regulations contained in the FPR and DAR, the certification of accurate, complete, and current data is as of the date when price negotiations were concluded and the contract price was agreed to. (The date of execution of the certificate can be later.)

It appears that a "date of submission," standard could in some instances establish a different certification date than presently required. The Committee may, therefore, wish to consider coordinating this provision with existing regulations.

In addition, it is unclear whether the price reduction would apply retroactively to agency purchases under the affected contract made prior to the time when the price reduction took place. We believe that this should be clarified. We also are concerned that requiring a price reduction for defective data in the schedule context may prove impractical in actual application.

We believe that the Committee should carefully consider whether a requirement that cost data be submitted is really necessary here. In our report, we noted that GSA apparently does not receive reliable data from many vendors on such matters as past sales, other discounts offered, and commercial pricing structure. We believe that a requirement that price data be submitted by schedule contractors would help to meet these concerns. However, an additional requirement for the submission of cost data appears unnecessary and runs counter to the current statutory assumption that the competitive forces of the marketplace assure reasonable prices for commercially available items.

New Subsection (f)

This subsection would be added to 41 U.S.C. §252 and would permit the Administrator to debar a contractor who either knew or reasonably should have known that price or cost data submitted was inaccurate or noncurrent as of the date of submission.

A schedule contractor who submitted defective cost or price data thus would be subject by statute to possible debarment as well as a reduction in contract price. This provision, although permissive in nature, would provide statutory authority for debarment for submission of defective cost or price data under the schedule program while no equivalent provision exists in the nonschedule context, where much larger dollar amounts may well be involved. Therefore, assuming the price reduction could be effectively applied in the schedule context, the Committee might wish to delete the further sanction of debarment.

We note that the Administrator is required to establish procedures affording adequate notice and opportunity for a hearing with respect to proposed debarments. He is, however, also authorized to debar a contractor immediately if it is deemed necessary to protect the interests of the U.S., and

the contractor is "suspected" of furnishing defective data. Such debarment is to be for no longer than 180 days unless the matter is subject to a Justice Department investigation.

This immediate debarment procedure is similar to current procedures for administrative debarments which allow "suspension" of the contractor without a prior hearing. See 41 C.F.R. 1-1.605. These existing procedures do, however, provide for adequate notice and a hearing within twenty calendar days of a contractor's request for a hearing. (There are exceptions to the hearing requirement where there is an outstanding indictment or where possible criminal, civil, or labor proceedings would be affected.) These procedures are the result of the holding in Horne Brothers, Inc. v. Laird, 463 F.2d 1268 (D.C. Cir. 1972).

The Horne Brothers case establishes that fairness requires the contractor to be given specific notice of at least some of the charges against him and, in the usual case, given an opportunity to rebut those charges in a proceeding to be held within one month of suspension. National security and prejudice to prosecutorial action are cited as possible exceptions to this requirement.

The contractor in Horne Brothers faced suspension for 18 months or more. While the contractor under the proposed new provision can only be suspended for 180 days unless a Justice Department investigation is underway, we believe that the Horne Brothers requirements should be met here. The court in that case stated that under any proper procedural scheme, the Government should be permitted a reasonable time, not to exceed one month, after it has notified a suspended bidder of his suspension status, to conduct a proceeding attended by the contractor and his representatives, to provide an opportunity to offer evidence to rebut charges and confront accusers. Horne Brothers, Inc. v. Laird, supra at 1272.

Therefore, we suggest that the proposed new provision be amended to provide for adequate notice to the suspended contractor of the charges against him and for a hearing at the contractor's request within twenty days of the request. (Although this could be longer than one month after suspension, we believe such a provision assures fundamental procedural fairness, while allowing a hearing to be dispensed with where the contractor does not desire one.) We also recommend that the present standard for suspension, that is that it be supported by "adequate evidence," be specifically

included in this part of the proposed new provision. This could be accomplished by inserting "upon adequate evidence" after "suspected" in line 3 of page 9 of the bill.

A final suggestion is that the phraseology "immediately debar" be changed to "immediately suspend" since the terms "debarment" and "suspension" have come to have distinct meanings in the Government procurement context. "Suspension" more accurately describes the process developed to meet the situation where the contractor is only suspected of an offense and further investigation is needed.