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STATEMENT OF

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BEFORE THE HOUSE SUBCOMMITTEE ON HUMAN RESOURCES

ON

H.R. 7674, THE CONSULTANT REFORM ACT OF 1980

Mr. Chairman and Members of the Committee:

We are pleased to be here today to discuss H. R. 7674, the proposed Consultant Reform Act of 1980. Before giving our views on the bill, I want to reaffirm our Office's position that the proper use of consulting services is a legitimate and economical way to improve Government services and operations. Agencies must continue to have the option of using consulting services where appropriate. They have a legitimate need for access to the best expertise and advice available from the private sector to assist in carrying out a growing number of complex Federal programs.

Although agencies normally rely on a permanent work force to carry out programs, in many instances, it is not economical to hire permanent employees. Accordingly, they draw upon the expertise available from the private sector without having to make a long-term employment commitment.

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While on the subject of economy, we would like to emphasize the importance of recognizing that, in acquiring consulting services, cost is but one factor to be considered. Quality is another primary consideration and, in this regard, one must look to the professional competence of those who will do the work and the relative merits of proposals for the end product, including cost.

Last week when the Comptroller General testified before Senator Pryor on this legislation, he stressed that the issue of consulting service abuse is complex and is driven by a number of factors among the most important of which is poor procurement practices. He also emphasized that other factors contributing to the consultant problem that are not addressed in this proposed legislation, are personnel ceilings, retention of expertise, and quality of management of Federal operations.

The Federal Government is losing the expertise it needs to implement and effectively manage the numerous complex programs that the Congress approves each year. When the accomplishment of Federal managers' program objectives is threatened by a personnel ceiling without a similar ceiling on procurement contracts, program managers will acquire additional manpower indirectly through contracts with private firms or by other means. While persons providing such services are neither included in personnel ceilings nor counted as part of the Federal work force, their cost is borne by the Government.

A contributing factor to retention of expertise is, in our opinion, the pay compression facing Federal managers. Pay adjustments that were to be provided to members of the Executive, Judi-

cial, and Legislative Schedules have been limited, reduced, or completely denied. As a result, many Federal managers have chosen to retire rather than continue working at frozen pay levels. Undoubtedly, some of these managers are leaving Government to join consulting and other firms in the private sector to earn a higher salary. In addition to losing our capability through retirement, compression also discourages younger people to stay with Government and makes more difficult the recruitment of qualified people for entry at responsible levels.

I realize that this hearing may not be the appropriate forum to discuss these issues further, but they need to be kept in the forefront as the Committee considers the legislation before it.

Concern about the Government's use of consulting services is not a new issue. During the past 20 years, we have issued over 30 audit reports identifying the need for practically every major Federal agency to better manage these services. Our most recent report, "Government Earns Low Marks on Proper Use of Consultants," (FPCD-80-48, June 5, 1980) concluded that many of the same problems that existed as far back as 1961 exist today. I share Senator Pryor's concern as expressed in his statement on this report:

> "Congressional action is necessary to bring this problem under control. Without action, we could well find a GAO report in the year 2000 saying that the problems found in 1980 still exist just as the problems of 1960 exist today. I urge the attention of my colleagues to this important issue."

The major issues identified over the 20 year period 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.

We recommended that the Office of Management and Budget (OMB) and the Congress take several actions to strengthen their oversight of consulting services. We are pleased that OMB and the Congress have already initiated actions to implement these recommendations as discussed in the attachment to my statement. We must recognize, however, that these actions represent but one step towards better management of consulting services. Many more steps must be taken.

It would be most helpful if this Committee, as well as other Committees, were to ask the senior agency officials testifying before the Congress what assurances they have that consulting services are being effectively managed. For example:

--Has the agency implemented the management controls outlined in OMB's new Circular A-120?

--Is the support of senior management required before using consulting services?

--What controls are in place to assure that consulting service contracts are administered properly so that the consultants' advice will be useful and the recommendations properly evaluated?

--Does the agency have the minimum level of expertise required to intelligently acquire and use consulting services? If not, how can this capability be developed?

--Is competition obtained whenever possible?

If members of the Congress continually ask these and other questions of senior agency officials, it will demonstrate the Congress' concern over this issue and highlight the fact that the Government's failure to use consulting services properly is essentially a management problem that must be resolved by Federal managers.

In commenting on our June 5, 1980, report, the Office of Personnel Management voiced general agreement with our recommendations but expressed a note of caution that we believe should be reiterated today. The Office pointed to the danger that the consulting process over time could become so rigid and regulated that a valuable tool in Government will be blunted and/or the regulatory process will become excessively costly. I urge Members of Congress to be alert to this danger and to guard against its occurrence.

I would like to make one final observation before discussing the proposed Consultant Reform Act of 1980. I call your attention to an encouraging development in the Office of Personnel Management. We believe it is critical that agencies be able to intelligently acquire consulting services, monitor performance, and evaluate results. One way to achieve this 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.

The Office of Personnel Management has established an Office of Consulting Services to advise and assist other agencies in various 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 Service's performance, we believe it merits attention by other agencies having a high level of expertise in other fields.

Turning now to the specific subject of this hearing. While we cannot support H. R. 7674 in its present form, we do support the general intent of the bill to reform consultant practices. Although entitled the Consultant Reform Act of 1980, many of title II's provisions apply to the procurement of all goods and services. Of primary concern to us is the enormous paperwork that would be required by certain sections of title II and the need for the bill to give additional recognition to the fact that solutions to consultant abuse can only be achieved by improved agency management.

For example, section 202(c) requires agencies to provide written notifications to the House and Senate Appropriations Committees whenever any contract is modified by $50,000 or more. Due to the large number of contracts entered into each year by the Federal Government, we are concerned that the paperwork generated by this section may overwhelm the Appropriations Committees. We suggest that this section be limited to contracts for consulting services only, which, as our reports indicate, is a particularly abused area.

While we will be discussing our general views on the bill, more specific comments and our suggestions for improvement are in the attachment to my statement. We fully support the policy statements in section 2 regarding (1) governmental policymaking and decisionmaking, (2) obtaining competition, and (3) the sometimes obscure fact that the Government, and ultimately the taxpayer, bears the cost of governmental activities regardless of whether they are performed in the private or public sector. We have issued several reports dealing with each of these matters.

As pointed out in our June 1980 overview report, a critical first step towards assuring the Government's proper use of consulting services is to resolve the confusion among the agencies and the Congress surrounding the current OMB definition of consulting services. It appears that the bill's definition of "report" is intended to cover those kinds of services that the Committee views as consulting services. We suggest that this be clarified in the bill. It would help to clear up the confusion surrounding the definition of consulting services and assure that such services are subject to the controls prescribed by OMB Circular A-120.

A major purpose of title I is to clarify the authority for appointing and compensating experts and consultants. We generally support title I. As early as 1961, we recommended that section 3109 of title 5, United States Code, be amended to provide greater uniformity in the compensation of experts and consultants and to clear up the confusion agencies experienced with the authority. However, as discussed more fully in the attachment, we believe

the language in section 101(g)(2) may be misinterpreted as a procurement authority and therefore should be deleted.

Turning to the organizational conflict-of-interest section of the bill, section 205 requires all contractors bidding on Federal contracts to disclose all relevant facts relating to an existing or potential conflict and requires the agencies to take certain steps to protect the Government's best interest before and after the contract is awarded.

Organizational conflict of interest is an extremely complex issue. It requires a careful balancing of the Government's need for private sector expertise with the need for reasonable controls to prevent a conflict of interest that could affect a contractor's ability to give impartial advice. It is uncertain what impact this section would have on the Government's ability to obtain private sector expertise. In addition, we are concerned about the disclosure requirement being placed on all contracts for goods and services and the possible problems that may result.

On the other hand, we believe that agencies should pay more attention to preventing or mitigating organizational conflicts of interest, particularly where the potential for conflict is the greatest. For these reasons, we believe this provision of the bill should first be tested at selected agencies for a 2-year period. OMB could monitor the agencies' experience, and at the end of the test period, prepare a report to the Congress on whether the legislation should be applied Government-wide.

We would also like to see the scope of the disclosure requirement changed from applying to all contracts for goods and services to just those categories of contracts where the potential for conflict is the greatest, such as consulting service and management support contracts. This change would preclude an agency from requiring a disclosure statement when awarding contracts for products and services where the potential for a conflict is practically nonexistent.

Section 207 requires agencies to evaluate all contracts exceeding $50,000 which provide for the preparation or submission of a report. The evaluation shall include a description of (1) the conclusions and recommendations in the report, (2) the actions taken by the agency in response to the report or the reasons why no action was taken, and (3) a summary of the contractor's performance in meeting the contract specifications.

We believe it is critical for agencies to assess the quality and use made of consulting services, including an appropriate justification for failing to use the results of these services. Findings presented in our March 20, 1980, report on consulting service contracts support the need for such evaluations. 1/ We found that one-third of the 60 completed contracts reviewed were of questionable or marginal value to the agencies. Previous GAO studies, dating back to 1961, as well as the Commission on Government Procurement have found that many Federal agencies do not, for various reasons, maximize the use of reports prepared under Federal consulting service contracts.

1/"Controls Over Consulting Service Contracts At Federal Agencies Need Tightening" (PSAD-80-35, March 20, 1980).

We suggest that the bill specify that evaluations be approved by an agency official at least two levels above that of the program manager responsible for monitoring a contractor's performance. We believe that if the evaluations are required to be approved at this higher level it will help to assure their objectivity and quality.

That concludes my remarks Mr. Chairman. I would be happy to answer any qustions at this time.

COMMENTS ON H.R. 7674

TITLE I

A major purpose of title I is to clarify the authority for appointment and compensation of experts and consultants. To preclude future statutes from inadvertently compromising the uniformity in the compensation of experts and consultants that this bill is intended to provide, we suggest that title I be amended to provide that a subsequent statute may not be held to supersede or modify this section except to the extent that it does so expressly. This would permit the Congress to expressly authorize necessary exceptions but would preclude any inadvertent exceptions to the general provisions of this title.

There is undoubtedly a need for better control over the use of appointed experts and consultants in the executive branch. The proposed legislation would appear to be a step toward achieving this objective. However, the inclusion of our Office in the coverage of this bill would abolish the special authorities which the Congress has granted to the Comptroller General in recognition of our unique responsibilities and the great diversity of highly technical and complicated programs with which it must deal in a completely competent and frequently expeditious manner. The need for the capability provided by these special authorities is greater today than it was when it was granted, and this need will continue to grow with the emergence of every new Federal program. In short, our Office, more than any other agency of which we are aware, must be able to obtain, without delay, highly qualified talent in a wide

variety of fields and to retain that talent for as long as necessary to accomplish the purpose for which it is needed if we are to effectively and efficiently discharge the obligations imposed on us by the Congress. Accordingly, we urge that our Office be excluded from the coverage of the proposed legislation.

Section 101

We believe section 101(g)(2) should be deleted. This section contains language that is inconsistent with one of the bill's objectives--to make section 3109 an appointing authority only by eliminating all reference to procuring by contract the services of experts and consultants.

Title 1, section 101(b) of the bill accomplishes this objective by specifying that section 3109 is only an authority to appoint experts and consultants. Section 101(g)(2), however, speaks to obtaining the services of experts and consultants by contract. We believe this language may be misinterpreted as a procurement authority.

TITLE II

Title II of the bill--contracts--prescribes various requirements pertaining to the procurement of goods and services. The bill will require an agency to make public its intentions to award a contract, to make the contract available to public scrutiny, and require consultants to disclose the role they played in preparing reports under Government contracts. In addition, the bill requires consultants to fully disclose any conflicts of interest they have that could result in biased advice when writing reports. It will

also require agencies to disclose in their budgets sent to the Congress the amount of funds requested for the procurement of goods and services and would require agencies to evaluate the contractor's performance in certain contracts which provide for the preparation of a report. It would make Federal managers accountable for their procurement actions by linking the determination of senior executive service bonuses and merit pay to managers' compliance with this bill's provisions. Finally, it would limit the amount of funds that agencies can spend in the final quarter of a fiscal year.

Section 202

We would like to see certain changes made to title II that will emphasize the agencies' responsibility to manage contract services properly and to safeguard the public's interest. For example, we are concerned that the paperwork required by section 202(c) may overwhelm the Appropriations Committees. At the same time, it may cause the agencies to spend an inordinate amount of time preparing written notifications.

However, we share the Senate Committee's concern that contracts are modified all too frequently. Our March 1980 report found that modifications to contracts were commonplace. Modifications were made in 70 of the 111 contracts reviewed, increasing the original contract values by 31 percent. Furthermore, modifications were frequently made for work not contemplated in the original contract. Use of such modifications thwarts the competitive bidding process and can result in the Government paying more

than it should. Accordingly, we suggest that section 202(c) be amended to limit the reporting requirements to contracts for consulting services only. Furthermore, we believe that the written notifications should be sent to the appropriate agency Inspector General rather than to the Appropriations Committees.

On July 2, 1980, the Director, OMB, assigned to the Inspectors General direct oversight responsibilities for consulting service contracts. This new responsibility includes an evaluation of the progress made by each agency to institute effective management controls as recommended in our June 5, 1980, report and implemented in section 307 of the 1980 Supplemental Appropriations Act. We believe the Inspectors General are in a better position to review specific contract modifications. Furthermore, results of such reviews could be reported to the Congress together with information on progress made in instituting effective management controls as required by the 1980 Supplemental Appropriations Act.

Section 203

We recommend section 203(a)(1) be revised to make the Federal Procurement Data Center, rather than each agency, responsible for preparing the list of contracts entered into by each agency within the preceding 24 months. This change recognizes that the data center already maintains all but one of the data elements required by this section. We believe that the data center can provide this information more economically since each agency will not have to maintain a separate capability for this purpose. The only data element not currently available from the data center is the name

of the Government employee who authorized the award of the contract. It may be more economical for each agency to maintain this information.

Section 204

Section 204 requires that each written report prepared by a contractor contain various information, including the name of the contractor that prepared the report, the dollar amount of the contract, and the type of procurement used in awarding the contract. We believe that such information is essential and should be readily available for those who want to scrutinize the expenditure of public funds.

At the request of the Chairman, Senate Subcommittee on Civil Service and General Services, we obtained information from seven agencies on their use of consultants to prepare congressionally mandated reports. These reports are either specifically required by statute or requested in committee reports. Results show that consulting services were used in preparing responses to meet over forty percent of the agencies' congressionally mandated reporting requirements.

Agencies did not disclose or inadequately disclosed consultants' assistance in preparing approximately 60 percent of the reports. The types of disclosure ranged from full descriptions of work performed by a consultant and its relationship to the overall study to simply citing the consultant's name in the acknowledgement, in an appendix reference, or as a footnote with little or no information on the consultant's role. Since congressionally mandated

studies have the potential to influence the congressional oversight process and future direction of Government programs, it is important that the Congress be fully apprised of consultants' assistance.

We suggest that an additional reporting requirement be added to this section of the bill, requiring disclosure in the reports of any organizational conflict of interest as determined by the agency in accordance with section 205 of title II. In our opinion, the existence of an organizational conflict of interest by a contractor preparing a Federal report is vital information to all report recipients. Without this information, the readers may not be aware of the potential for biased conclusions and recommendations.

Section 205

Section 205 prescribes various controls to prevent or mitigate organizational conflicts of interest. As discussed in our statement, we believe that section 205 should be tested for a 2-year period at selected agencies. As noted in our June 5, 1980, report, there have been several audit reports that found agencies had awarded consulting service contracts where there was an appearance of conflict of interest that could (1) affect the contractor's ability to give impartial advice or (2) result in the contractor being given an unfair advantage when competing for other contracts.

Additionally, we recently reviewed the potential for conflict of interest involving consulting service contracts at six agencies and testified on the results before the Subcommittee on Oversight and Investigation of the House Committee on Interstate and Foreign

Commerce. The specific issue focused on the potential conflict of interest which may arise when consulting firms employed by Federal agencies to do regulatory analysis also perform similar studies for the industry subject to regulation. The Subcommittee is continuing this investigation.

Our analysis of contract files identified potential conflict of interest in 101 of 156 contracts reviewed. It is important to recognize, however, that identifying a potentially conflicting situation does not necessarily mean that a conflict of interest actually exists. There is at times a valid need to obtain the expertise of knowledgeable individuals to assist in improving the many varied operations and activities of the Federal Government. We believe that if agencies see a need for this expertise, they should evaluate the risk of adverse impact from either a potential or actual conflict of interest and take steps to deal with this risk.

Section 206

Section 206 states that agency heads shall include, within their request for regular appropriations for each fiscal year, an itemized statement of the amounts requested by the agency for the procurement of goods and services, separately classified, and that this same information be included with the President's budget transmitted to the Congress. This would in effect call for additional special analyses in the budget.

The fiscal year 1981 budget contained 11 special analyses on subjects such as Federal credit programs, Federal aid to State and local governments, and civil rights activities. There are many demands for information and limited resources available to meet these demands. The existing system appears to be strained already. We believe that new requirements should be justified in relation to competing needs. Increased reporting may require eliminating some currently reported data. We are concerned about the ability of the budget formulation system to cope with this new requirement.

The 1980 Supplemental Appropriations Act requires agencies to provide a special budget analysis of the funds requested for consulting services in the fiscal year 1982 budget. This new congressional requirement will provide part of the budget analysis information required by this bill.

If the Congress believes the President's budget should contain a special analysis for procurement of all goods and services, we believe the requirement should be temporary--perhaps only for 2 or 3 years. In our opinion, special reporting should be used to determine the nature and scope of an identified problem and should continue only until improvements are put into effect. At the end of the temporary period, the costs and benefits of preparing this special budget analysis could be determined and, if justified, continued. Furthermore, we would suggest that the Congress, in reviewing this section of the bill, justify the need for this new requirement against the competing requirements for other budget analyses.

Section 208

Section 208 requires that the criteria for performance appraisals of the senior executive service and managers subject to merit pay include the degree of compliance with rules, regulations, and procedures applicable to the contracting out of agency functions and the promotion of policy in section (2) of this bill. We believe this section is unnecessary since section 4313 of title 5, United States Code, already contains five factors that must be considered in preparing performance appraisals for senior executive service officials. Several of these factors, such as cost efficiency and timeliness of performance, are broad enough to include many of the factors called for in section 208 when performance appraisals are prepared. In addition, we believe this provision could act as a precedent for adding other criteria which, if carried to an extreme, could make the performance appraisal system unwieldy and cumbersome.

Section 209

Section 209 requires the Director, OMB, to insure that no more than 20 percent of the total appropriations made available for procurement are obligated in the last 2 months of fiscal years 1981, 1982, and 1983. The language in this section closely parallels language in H.R. 7287 which we have supported. It does, however, differ in that it applies to appropriations for procurement of goods and services rather than total appropriations made available for each agency for any such fiscal year. We believe that a

broader Government management perspective is needed and, therefore, recommend that this section be revised to apply the yearend spending limitation to all appropriated funds.

Normally, we do not favor the type of limitation in section 209 because it is difficult to administer and because it addresses a symptom rather than correcting underlying management problems. We wish OMB would manage budget execution voluntarily and aggressively, but we have seen no evidence of its willingness to do so. For this reason, we would support a modified section 209 because we believe that a temporary limitation, with flexibility to adjust the limitation to avoid program disruption, is the most appropriate means available to the Congress to force OMB to pay more attention to budget execution and to do a better job of planning and managing it.

Section 210

Section 210 codifies the principle of the Federal Procurement Data System by requiring the Director, OMB, to issue a regulation establishing a data system for the collecting, processing, maintaining, and disseminating of information on the procurement activities of the Federal Government and of each agency. Under the system, each contract is to be classified as primarily for goods or services and, if for services, whether the services are primarily for the preparation of a report.

We have several reservations concerning the requirements of this section. It will require the data center to significantly expand the data elements currently collected on each Government

contract. Furthermore, some of the requested information is already available from other sources. We hesitate to endorse this additional requirement on the data center without knowing the additional costs that would be incurred.

Section 211

Section 211 requires each agency to make information produced or collected under a contract available to the public to the same extent as if collected by Government officials.

We question the need for this amendment because the original 1966 Freedom of Information Act legislative history shows that the act was based on the principle that all Government information, except those categories permissively exempted, should be available to the public.

Although this proposed amendment makes clear the status of contractor furnished work held by Government agencies, it does not clearly address the status of information produced or collected under a Government contract that is retained by the contractor. If this provision remains in the bill, we suggest that the report on this bill clarify the types of information currently not covered by the Freedom of Information Act that would be made available to the public under this section.