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UNITED STATES GENERAL ACCOUNTING OFFICE
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
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Monday, November 25, 1974

STATEMENT OF
ELMER B. STAATS
COMPTROLLER GENERAL OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON LEGISLATION AND MILITARY OPERATIONS
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS

H 1515

ON
S. 3514

AN ACT TO DISTINGUISH FEDERAL GRANT AND
COOPERATIVE AGREEMENT RELATIONSHIPS
FROM FEDERAL PROCUREMENT RELATIONSHIPS
AND FOR OTHER PURPOSES

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Mr. Chairman and Members of the Subcommittee:

I am pleased to present our views on S. 3514, the purposes of which are:

- (1) to characterize the relationship between the Federal Government and contractors and other recipients in the acquisition of property and services and in the furnishing of assistance by the Federal Government;
- (2) to establish Government-wide criteria for selection of appropriate legal instruments to achieve uniformity in the use by the executive agencies of such instruments, a clear definition of the relationships they reflect, and a better understanding of the responsibilities of the parties;
- (3) to promote increased discipline in the selection and use of contracts, grant agreements, and cooperative agreements and to maximize competition in the award of contracts and encourage competition, where deemed appropriate, in the award of grants and cooperative agreements; and
- (4) to require a study of the relationship between the Federal Government and grantees and other recipients in Federal assistance programs and the feasibility of developing a comprehensive system of guidance for the use of grant and cooperative agreements in carrying out such programs.

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The act would have the effect of adopting the substance of two recommendations (F-1 and F-2) of the Commission on Government Procurement. 457
As you know, I was a statutory member of the Commission and supported each of the two recommendations.

In connection with recommendation F-1, the Commission found that there is a fundamental conceptual difference between grant-type relationships and contracts, i.e., grant-type relationships are customarily used where Federal assistance of activities having a beneficial effect on public policy is desired while contracts are customarily used for the procurement of goods and services required for the conduct of the Government's business. Despite this fundamental difference, the Commission found confusion among Government agencies and in the non-Federal sector as to when contracts as opposed to grant-type agreements should be used and vice-versa. The Commission also found that in many instances, Government agencies have been forced to use contracts in situations where a grant-type agreement would be more appropriate because they lack necessary statutory authority for the use of grant-type agreements. Finally, the Commission drew a distinction between grant-type activities wherein little Government involvement is required during performance and those which require substantial Federal involvement during performance, recommending that the latter activities be classified as "cooperative agreements" and that instruments creating such agreements detail the nature and extent of Federal involvement contemplated.

In connection with recommendation F-2, the Commission pointed out that much of the attention devoted to the hundreds of assistance programs

is concentrated on achieving individual program objectives. It said much less effort has been devoted to generalizing from the methods used in assistance programs. The Commission said that if assistance methods can be standardized and cataloged, it should be possible to take a long step in the direction of consistency and simplicity, and at the same time enhance program effectiveness by establishing a system of guidance for generic aspects of the management of assistance programs.

The Commission said that the system that needs to be developed should cover all types of assistance relationships. It said the need is to: (1) identify the assistance universe comprehensively; (2) examine existing techniques and related considerations; (3) generalize to the extent possible from such data; and (4) explore the possibilities of developing new techniques. Further, it said an analysis and evaluation of assistance techniques should consider, in addition to the usual grant-type transactions, loans, direct payments, and all forms of non-financial assistance. The Commission said the study also should consider subsidies which usually are not regarded as "assistance" and that it also may be desirable to consider the applicability of assistance techniques to "revenue sharing." The Commission said systematic review of all forms of Federal assistance and their operational methods and techniques could assist in decisions on how new forms of assistance should be structured to achieve desired ends.

The Commission recognized in its report that other studies had been attempted but that more was needed.

Although there is some relationship between the two recommendations of the Commission, the basic issues involved are quite separable. Recommendation F-1, dealt with in sections 3 through 7 of the act, was designed to clearly distinguish between Federal procurement and Federal assistance and to require the use of legal instruments which are consistent with the different Federal/non-Federal relationships involved. Recommendation F-2, dealt with in section 8 of the act, was designed to gain a better understanding of the alternative means of implementing Federal assistance programs and to assess the feasibility of developing a comprehensive system of guidance to govern the administration of such programs.

On July 10, 1974, we testified before the Ad Hoc Subcommittee on Federal Procurement and the Subcommittee on Intergovernmental Relations, Senate Committee on Government Operations, regarding the then proposed bill S. 3514. We supported then, and support now, the adoption of both Commission recommendations, essentially as provided for in S.3514 as it passed the Senate on October 9, 1974, and for the same basic reasons offered by the Commission. In our prior testimony we offered some observations and suggestions which we hoped would assist the Senate subcommittees in their consideration of the bill. Our primary concern was that the study and report required by section 8 might fall short of the real interest and concern if the charting of a course for future action was not also required. We suggested the language that now appears in S. 3514 beginning at the end of line 17 on page 7 and ending with line 9 on page 8.

As we stated in our testimony on July 10, 1974, the definitions of the circumstances under which contracts, grants, and cooperative agreements are to be used, as provided in sections 3 through 6 of the act, are quite general and can be expected to give rise to some problems in choosing the proper instrument in particular sets of circumstances. These problems should be minimal in distinguishing between procurement relationships, where the contract instrument is to be used, and assistance relationships when either a grant or cooperative agreement is to be used. More difficulty will be experienced in distinguishing between circumstances in which a grant instrument versus a cooperative agreement should be used, since the choice will depend not on the basic nature of the Federal/non-Federal relationship, but upon the degree of involvement between the Federal Government and the non-Federal recipient during performance of the activity for which assistance is given. The degree of interaction between the Government and recipients varies widely among the many assistance programs and there will undoubtedly be questions as to where the line between substantial or not substantial involvement should be drawn in individual cases.

We do not consider such difficulties as may be encountered as being significant enough to bar the effective and beneficial implementation of the legislation. Rather, the legislation would countermand provisions of existing legislation which require (or bar) the use of contracts and/or grant instruments in particular programs or circumstances where the use of a different type of instrument would be more appropriate and consistent

with the Federal/non-Federal relationship involved. We consider this effect to be of much more importance than the question of where the line might be drawn between the use of a grant or a cooperative agreement in terms of the degree of Federal involvement. Each agency would be free to choose the type of instrument which is best suited to the type of relationship intended within the definitions provided in the bill.

We suggest the possibility, however, that with the benefit of experience in implementing sections 3 through 7, and with the benefit of the study called for by section 8, the definitional matters might be sharpened either through the system of guidance to which the section 8 provision should eventually lead or through later amendments to the sections directly involved.

In summary, Mr. Chairman, we believe enactment of S. 3514 would be a significant step forward and that the study called for by section 8, addressing the matters set forth in the relevant part of the Commission's report, should set the basis for further significant progress.

We will be happy to answer any questions you may have.

Mrs. Shea

NOTICE OF HEARINGS

Committee: House Government Operations
Subcommittee on Legislation and Military Operations

Subject: S. 3514, the Federal Grant and Cooperative Agreement
Act of 1974

Date: November 25, 1974

Time: 10 a.m.

Room: 2154 Rayburn House Office Building

Membership: Chet Holifield (D-Calif.), Chairman

Majority: (7D) Representatives Holifield, Rosenthal (N.Y.),
Wright (Tex.), St Germain (R.I.), Fuqua (Fla.),
Moorhead (Pa.), and Jones (Ala.)

Minority: (5R) Representatives Horton (N.Y.), Erlenborn (Ill.),
Wydler (N.Y.), Brown (Ohio), and Mallery (Vt.)

Principal staff: Herbert Roback, Staff Director
Michael McGinn, Defense Analyst

GAO witness: Elmer B. Staats, Comptroller General

Accompanied by: Dean K. Crowther, Deputy Director, MWD
Thomas F. Williamson, Senior Attorney, OGC
Robert A. Davis, Supervisory Auditor, PSAD
Roger L. Sperry, Legislative Adviser, OCR

Cars will leave G Street, 1st basement, at 9:45 a.m.

RS
Roger L. Sperry
Legislative Adviser, OCR