

2873

6 JUN 1977

MEMORANDUM FOR: Office of Legislative Counsel

ATTENTION: [Redacted]

FROM: [Redacted]

Chief, Procurement Management Staff, OL

SUBJECT: The Federal Acquisition Act
of 1977, S-1264

REFERENCES: a. Telephonic conversation [Redacted]
[Redacted] 1 June 1977, same subject

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b. Routing Sheet, dated 28 April 1977,
fm [Redacted] OLC to D/OL, same subject
Attachment I (OL 7 1919)

c. Routing Sheet, dated 26 May 1977, fm
OLC to DDA, same subject, Attachment II

1. Per reference a and pursuant to reference b, please find attachment III, a Memorandum for the Record, dated 25 May 1977, relating to a telephonic conversation between a representative of this office and Mr. Brian Walsh of Senator Lawton Chiles' staff concerning the subject legislation.

2. It is our understanding that attachment III will satisfy reference c (attachment II) request for an Office of Logistics comment concerning the proposed legislation.

[Redacted]

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Attachments

OL 7 2415a

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Legislative Counsel
6C19 HQ

EXTENSION

NO.

DATE

28 April 1977

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

STA

1. Director of Logistics
2G20B Page

99 APR 1977

2

Per our conversation yesterday here is a copy of H.R. 1264, Senator Chiles' bill on Federal procurement. After I talked with you, I spoke with Brian Walsh, on Senator Chiles' staff (his phone number is 224-0211) and alerted him that you would be calling him. He said he would be specifically interested in our views on sections 201 and 304(a)(3) of the bill, and in addition would have some general questions regarding Agency procurement. Please bear in mind that we should not impart any official Agency position on this bill since we expect to be submitting a formal views letter to the Committee on Governmental Affairs, which will be coordinated with OMB. Please review this bill to begin developing our position for a views letter. I would be interested in hearing about your conversation with Brian Walsh. Thanks for your help.

2. *o/pms*

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Office of Legislative Counsel

ATT. I
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OL 7 1979

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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM
 UNCLASSIFIED CONFIDENTIAL SECRET

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	DDA 7B18 HQ <i>BV-4</i>		
2	<i>D/O</i>		
3			
4			
5			
6			

<input type="checkbox"/>	ACTION	<input type="checkbox"/>	DIRECT REPLY	<input type="checkbox"/>	PREPARE REPLY
<input type="checkbox"/>	APPROVAL	<input type="checkbox"/>	DISPATCH	<input type="checkbox"/>	RECOMMENDATION
<input checked="" type="checkbox"/>	COMMENT	<input type="checkbox"/>	FILE	<input type="checkbox"/>	RETURN
<input type="checkbox"/>	CONCURRENCE	<input type="checkbox"/>	INFORMATION	<input type="checkbox"/>	SIGNATURE

Remarks: *OL 7 2415*

The Office of Legislative Counsel has reviewed the attached piece of legislation and determined it is necessary to evaluate it more comprehensively because of its direct or indirect impact on the Agency. It is requested that your office review this material and advise the Office of Legislative Counsel, Legislation Staff, as to its actual or potential effect(s) on the Agency, in terms of your office's area of expertise.

Please provide written comments by close of business 6 June 77.

We have received a formal request for our comments from the Senate Governmental Affairs Committee.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
OLC, 7D35 HQ	26 MAY 1977
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25 May 1977

MEMORANDUM FOR THE RECORD

STAT

FROM:
Procurement Management Staff, O/L

SUBJECT: "The Federal Acquisition Act of 1977," S.1264
(Attachment 1)

1. On 11 May 1977, the undersigned telephonically contacted a Mr. Brian Walsh of Senator Lawton Chiles' staff concerning the subject proposed legislation. Mr. Walsh was specifically interested in comments relating to Sections 201 and 304(a)(3) of the Bill.

2. The following comments were proffered:

a. TITLE II - ACQUISITION BY COMPETITIVE SEALED BIDS

Section 201 Criteria For Use

(1) Criteria (2) - "the public need can be practicably defined in terms not restricted by security or proprietary design."

Comment: [In the majority of Agency procurements, security considerations preclude public acknowledgement of this Agency's contractual relationships] whether or not the "public need" requirement is classified per se. Thus, there is justification under this criteria to forgo this acquisition method.

[Even in those instances where the Agency employs vouchered funds to effect an unclassified procurement, it is a condition precedent of contract award that the contractor will abide by a so-called NON PUBLICITY clause, which is set forth in the contract's General Provisions. Thus, all contracts of this Agency are treated in a confidential manner in order to maintain a low profile and [to preclude a hostile service from acquiring data concerning areas of technical interest or financial expenditure.]

OL 7 2334

SUBJECT: "The Federal Acquisition Act of 1977," S.1264
(Attachment 1)

Mr. Walsh appeared to be receptive to the above comment. He agreed that there may be valid security considerations which entirely preclude this Agency's procurements from formal advertising.

(2) Criteria (4) - "suitable products or services have been fully developed and previously supplied in comparable forms so to warrant the award of a fixed price contract to a successful bidder selected primarily on the basis of price."

Comment: This criteria appears to exclude all procurements which require any level of development; i.e., R&D, engineering development, prototyping, or a pilot production run.

Mr. Walsh concurred in the above assumption. He stated the thrust of the criteria is to exclude items which are not based on Federal or Military Specifications and Standards.

(3) The balance of the section appears relatively straightforward. It does not appear to complicate the procurement process.

b. TITLE III - ACQUISITION BY COMPETITIVE NEGOTIATION

Section 304 - Single Source Exceptions

(1) Subsection (a)(3) - "notice of intent to award such a contract is publicized in advance of the award, pursuant to section 637(e) of title 15, United States Code, and includes a description of the property or service to be acquired and the name of the prospective source."

Comment: "Both the above quoted subsection and Section 302(a) for solicitation of offers for award by competitive negotiation require publication in the "United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards" (Commerce Business Daily) pursuant to 15 USC 637(e). However, the cited statute provides that: "... nothing herein shall require publication of such notices with respect to those procurements (1) which for

SUBJECT: "The Federal Acquisition Act of 1977," S.1264
(Attachment 1)

security reasons are of a classified nature, and (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable." The cited statutory language appears to permit this Agency from publicizing the majority of its procurement actions. In the case of unclassified procurements, it appears that some coordination with the Administrator of the Small Business Administration is required.

Mr. Walsh concurred in the above assumptions.

3. Mr. Walsh appeared sympathetic to this Agency's need for confidential methods to procure supplies and services in support of its operations. He stated that a formal letter requesting executive agency comments on the subject legislation will be issued in the near future. The letter will also request a description of the procurement procedures employed in each agency. An annotated copy of the subject legislation appears at attachment 2.

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Attachments:
1 & 2