

U. S. DEPARTMENT OF TRANSPORTATION
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STATEMENT OF WILLIAM P. DAVIS, DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION,
BEFORE THE AD HOC SUBCOMMITTEE OF FEDERAL PROCUREMENT, TUESDAY, JUNE 25, 1974,
ON S. 3514.

Mr. Chairman and Members of the Committee:

I want to thank you for inviting me to testify today because we in the Department of Transportation consider S. 3514 an important bill and appreciate the chance to address the Subcommittee on its provisions. The DOT concurs in the stated purpose of the legislation. For too long, the Federal agencies, as well as the non-Federal sector, have lived with a situation where grants and contracts could be used interchangeably; where both instruments contained different and oftentimes conflicting requirements and where a host of other conditions existed which caused uncertainty regarding the appropriate use of a grant or contract. Each Federal agency has developed its own set of meanings and procedures. These often have been developed around the specific legislation that establishes the program and in cooperation with the recipients that are eligible to receive the assistance. This guidance works well on an individual basis, but when the same organization receives assistance under several programs, some under grants and others under contracts, very real problems can arise for all parties involved.

Within the Department of Transportation, it was clear that a better understanding of the two concepts was needed. We have tried to establish order and consistency in deciding when to use the grant or contract instrument. Under our policy, as developed to date, the primary factor in determining the appropriate instrument is the direct recipient of the goods or

services being purchased. In other words, our current premise is that the fundamental distinction between a procurement and an assistance relationship is based on which agency or person directly receives the benefits. We have concluded that as a general rule, a procurement relationship exists where the Federal Government is the direct beneficiary, and that an assistance relationship exists where the direct beneficiary is other than the Federal Government.

As we interpret them, these are the same basic distinctions between procurements and assistance relationships as those proposed in S. 3514. However, we in DOT are not convinced at this time that these definitions are comprehensive enough to be responsive to all program objectives for all Federal agencies.

In the deliberations of the inter-agency task group working on this matter under the Commission on Government Procurement Report, persuasive arguments have been presented that broad distinctions such as set forth in S. 3514 will not be uniformly applied in those programs falling into "gray areas". For instance, the results of the program may be beneficial to both the Federal Government and the grant or contract recipient and thus be subject to interpretation as either an acquisition for the direct benefit of the Federal Government or as a transfer to the recipient to accomplish a public purpose authorized by Federal statute.

On this basis, we recommend that action be deferred on S. 3514 until after the current inter-agency efforts have been completed to assure that the most comprehensive and responsive definitions and distinctions can be drawn. We feel that the distinctions sought to be drawn by S. 3514 are in

the correct direction -- we do not, however, believe that all aspects of this very difficult area have been substantially dealt with in order that permanent distinctions can be drawn at this time.

Additionally, DOT does not support a study of the scope provided for in Sector 8 of the legislation. During the past few years the Federal agencies have undertaken two large-scale efforts to standardize and simplify administrative procedures. The first was the Federal Assistance Review (FAR) program. Under this three year program, several steps were taken by grantor agencies to reduce their administrative requirements and to standardize their procedures. Following the FAR program, an interagency task force worked under OMB guidance to develop and issue OMB Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments. This circular directs Federal agencies to use uniform administrative procedures in managing assistance programs with State and local Governments. It was fully coordinated with all parties involved with Federal assistance and while quite comprehensive in coverage, permits some flexibility in addressing unique program characteristics. The circular covers 15 areas of grant administration and represents a major effort to standardize assistance procedures. In fact, its coverage is so extensive that most of the DOT grantor agencies had to completely revise their guidelines in order to implement the A-102 standards. The bulk of these revisions have been completed within the past six months and, as we prepare for the new fiscal year, these rules will be broadly employed for the first time.

We do not believe that it is the right time to start another effort leading to major changes in grant administration. Both the Federal and

non-Federal sectors need time to adjust to these recent changes and time to analyze what the next step should be. The appropriate time to consider a feasibility study would be after we have gained experience with A-102 and are better able to examine its strong and weak points. We may well discover that the circular provides the optimum level of standardization and that little more is needed in the way of further uniformity.

In summary, we in DOT support the purpose and concept sought under S. 3514. We do not believe, however, that the distinctions proposed are comprehensive enough to solve all administrative problems identified by the agencies and therefore recommend that Congress defer action until completion of current executive branch action in this area under the Commission's Report.

Mr. Chairman, this completes my prepared statement, and I will be pleased to answer any questions you or the other Committee members may have.