

STATEMENT OF DR. ROBERT L. FAIRMAN,
DEPUTY ASSISTANT SECRETARY OF TRANSPORTATION
FOR ADMINISTRATION,
AT A JOINT HEARING BEFORE THE
HUMAN RESOURCES SUBCOMMITTEE
HOUSE POST OFFICE AND CIVIL SERVICE COMMITTEE
AND THE
CIVIL SERVICE AND GENERAL SERVICES SUBCOMMITTEE
SENATE GOVERNMENTAL AFFAIRS COMMITTEE

JULY 22, 1980

Mr. Chairmen and Members of the Subcommittees:

We appreciate the opportunity to appear again before you to discuss the Department of Transportation's use of consulting service arrangements. My name is Robert L. Fairman and I am the Deputy Assistant Secretary of Transportation for Administration. We understand that you wanted to pursue further a few areas which were not covered when I last testified on April 3 of this year. Joining me this morning is Dr. Stephen J. Greenberg of the Office of Installations and Logistics.

Since April 3, your staff, as you know, has reviewed contract files in several of our Department's procurement offices.

From those reviews, I understand that several questions arose with respect to our contract award procedures for consulting

services in the areas of conflicts of interest and single source procurements.

In this statement, I would like to address these issues.

In addition, I understand that you desire more information on the recently-initiated "DOT Communicates" campaign. I am prepared to answer questions on that subject also.

Conflicts of Interest - General Overview

The Department of Transportation has no written policy or procedure of its own in dealing with the type of organizational conflicts of interest included in your bills, S.2880 and H. R. 7674. However, contracting officers selectively insert a conflict of interest clause in the appropriate solicitation and contract, especially in cases where regulatory analysis or deregulation is involved. The procedure used in the Office of the Secretary is as follows:

The contracting officer will discuss the conflict of interest issue with the Contract Technical Representative. If a potential conflict of interest exists, then a Conflict of Interest clause will be included in the solicitation. The contractor's statement on conflict of interest is forwarded to the General Counsel's office for review and determination. Most of the Department's involvement in this area has been in making ad hoc determinations concerning what is commonly called the "revolving door" issue, or the reemployment of former employees in a consultative or other capacity.

When a contracting officer in the Department of Transportation becomes concerned about a possible violation of the Federal "revolving door" prohibitions, he or she refers the proposed award to the General Counsel's office for review. The legal standards used in making a determination are derived from

Title V of the Ethics in Government Act of 1978, as interpreted in regulations issued by the Office of Government Ethics.

Organizational Conflicts of Interest

The Department is preparing comments on both of your bills.

However, I believe it appropriate to discuss at this time

Section 205 of the bills, entitled "Organizational Conflict of Interest."

I can appreciate Congressional concern over contractors working on both sides of a given issue, and I can see the need for written policies and procedures. However, there is, I feel, an unfair general assumption underlying this section of the bill. It implies that any contractor who has both industry and government experience is in a conflict

of interest situation. Most contractors have developed highly specialized expertise in important issues because they have had such dual experience. It would be unfair to cast aspersions on these contractors by implying that they cannot produce an objective product for the organization which is paying them to perform that work. Firms are in business to make a profit. They cannot remain viable unless they produce acceptable end products -- at least if they expect repeat business in the future.

In using contracts to carry out our mission, valuable expertise has been developed in the private sector in many important fields. Discarding that base of competence does not appear to us to be in the best interests of the Department. Most contractors have developed expertise in both private and public sectors. If we were to force contractors to choose between one or the other, we feel that many would be lost as a resource to the public sector.

Protection against possible conflicts of interest does not end when a contract is awarded. A consultant is merely an authority to which the Department turns as part of its decision making process. A consultant does not make Departmental policy; only Federal officials make the policies. The role of a consultant is to inject fresh ideas into the process and to assemble and analyze data so that the ultimate Federal decision may be a stronger one. It is the Federal official who makes the final decision on whether a contractor's findings or recommendations are valid and serve the public interest.

We feel that we can deal objectively with conflict of interest issues in the Department, but we do not support a "guilty until proven innocent" approach.

Single Sources

We understand that your staff has discussed your concern about single source procurement. Although I discussed this in my earlier testimony, it may bear reiteration here.

The Department's regulations for the review and approval of single source procurements have been in effect for eight years. Approval of such procurements is always at a level above the contracting officer. Proposed awards over \$100,000 must be approved by the Head of an Operating Administration or his Deputy, and then only upon favorable review of a Sole Source Board comprised of senior-level members including an attorney and a procurement official. For awards of \$25,000 to \$100,000, approval is delegated to the appropriate Associate Administrator, without power of further redelegation. Even in situations where a sole source justification is not required, DOT regulations prohibit non-competitive procurement when competitive sources exist.

OMB Direction

As you are aware, the Office of Management and Budget (OMB) has asked us to provide, by August 1, a proposal detailing our proposed management control system and procurement practices, with particular attention paid to consulting service arrangements.

In other words, OMB wants to know how we will implement Circular A-120, "Guidelines for the Use of Consulting Services."

Our plan, which should be completed in a few days, includes the following:

1. Issuance of a new Departmental Order, "Criteria and Guidelines for the Use of Consulting Services." A draft of this Order is now being circulated for comment in the Department.
2. Revision of the Department of Transportation Procurement Regulations, Subpart 12-50.3, "Procurement of Expert or Consultant Services." Some minor changes are

3. Preparation and presentation of a briefing by in-house personnel for contracting officers detailing their responsibilities with respect to A-120 and our Departmental Order.

4. Preparation and presentation of a briefing by in-house personnel for program, procurement, and budget officials detailing their responsibilities under the Ethics in Government Act and other statutes and regulations dealing with conflicts of interest.

Since the April 3 hearings, Mr. Chairmen, we have examined further and reflected a great deal upon the Department of Transportation's practices in contracting for consulting services. We remain convinced that the Department does not use consulting service arrangements to circumvent employment

ceilings, nor do we procure unneeded services. We believe that we make proper, non-excessive use of consulting service contracts. Admittedly, there are very few instances which, in retrospect, might better have been handled differently.

I assure you again, Mr. Chairmen, that we at the Department of Transportation remain committed to eliminating any and all of these questionable uses.

This concludes the formal portion of my statement. I appreciate the opportunity to have appeared before you today, and I will be happy to answer any questions you may have.