

STATEMENT OF BARNETT M. ANCELEITZ, DIRECTOR OF
INSTALLATION OF LOGISTICS AND THE PROCUREMENT EXECUTIVE
DEPARTMENT OF TRANSPORTATION
BEFORE THE COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
APRIL 12, 1984

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

I AM BARNETT M. ANCELEITZ, DIRECTOR OF INSTALLATIONS AND LOGISTICS OF THE DEPARTMENT OF TRANSPORTATION. I AM ALSO THE DEPARTMENT'S PROCUREMENT EXECUTIVE.

I APPRECIATE THE OPPORTUNITY TO PRESENT DOT'S VIEWS ON S. 2434 AND S. 2489. S. 2434, A BILL TO AMEND SECTION 15 OF THE SMALL BUSINESS ACT, WOULD REQUIRE THE SMALL BUSINESS ADMINISTRATION TO ASSIGN ADDITIONAL PROCUREMENT CENTER REPRESENTATIVES (PCR) TO EACH MAJOR PROCUREMENT CENTER. IT WOULD ALSO REQUIRE AGENCIES WITH MAJOR PROCUREMENT CENTERS TO ASSIGN TECHNICAL ADVISORS AT THESE CENTERS TO ASSIST THE PCR WITH BREAKOUT ANALYSES. S. 2489, THE "SMALL BUSINESS COMPETITION ENHANCEMENT ACT OF 1984", WOULD AMEND SECTION 15 OF THE SMALL BUSINESS ACT TO ENCOURAGE THE DESIGN AND PRODUCTION OF MAJOR SYSTEMS USING COMPONENTS WHICH ARE ALREADY IN THE SUPPLY SYSTEM OR WHICH ARE AVAILABLE COMMERCIALY, AND THUS MAY BE LATER PURCHASED COMPETITIVELY. TO FURTHER AID SMALL BUSINESS, THE BILL WOULD REQUIRE AGENCIES TO TAKE ADDITIONAL STEPS TO JUSTIFY AND TO PUBLICIZE IT WHEN THEY INTEND TO USE QUALIFIED BIDDER OR PRODUCT LISTS, AND TO HELP SMALL

BUSINESSES TO QUALIFY FOR THOSE LISTS. OTHER MAJOR PROVISIONS OF THE BILL WOULD PROVIDE FOR EXPANSION OF THE SYNOPSIS PROGRAM, WOULD ADD NEW PROVISIONS IN MAJOR SYSTEMS CONTRACTS FOR THE GOVERNMENT TO ACQUIRE TECHNICAL DATA, AND WOULD REQUIRE SBA TO ASSIGN ADDITIONAL PROCUREMENT CENTER REPRESENTATIVES AT LARGE SUPPLY ACTIVITIES.

I WOULD LIKE TO MAKE SOME GENERAL COMMENTS ON EACH OF THESE BILLS. WITH RESPECT TO S. 2489, WE BELIEVE THAT MOST OF THE PROVISIONS OF THE BILL COULD BE HANDLED BY REGULATION RATHER THAN BY STATUTE, AND WE WOULD PREFER TO SEE THE CHANGES INCORPORATED IN THAT MANNER. SOME OF THE MAJOR ASPECTS OF THE BILL, AND OUR RESPONSE TO IT, ARE SET FORTH BELOW:

- o THE BILL ENCOURAGES COMPETING MAJOR CONTRACTORS TO INCLUDE IN THEIR BIDS SPECIFIC PROPOSALS TO MAKE THE COMPETITIVE PROCUREMENT OF FUTURE "SPARE PARTS" REQUIREMENTS POSSIBLE.

WE HAVE NO OBJECTION TO THE INTENT OF THIS PROVISION, AS IT PROVIDES ADEQUATE FLEXIBILITY FOR USE UNDER DIFFERENT ACQUISITION STRATEGIES. WE BELIEVE THAT IT WILL ENHANCE COMPETITION FOR SPARE PARTS CONTRACTS AND THAT IT WILL CREATE ADDITIONAL OPPORTUNITIES FOR SMALL BUSINESS.

- o THE BILL REQUIRES AGENCIES USING "PREQUALIFICATION" REQUIREMENTS -- A MAJOR BARRIER TO SMALL BUSINESS

COMPETITORS -- TO JUSTIFY THE NEED FOR PREQUALIFICATION; TO SPECIFY THE QUALIFICATION STANDARDS THAT MUST BE MET; AND TO PROVIDE ASSISTANCE TO SMALL BUSINESS CONCERNS SEEKING TO QUALIFY THEMSELVES OR THEIR PRODUCTS.

THE DEPARTMENT RARELY USES "QUALIFIED PRODUCTS LISTS". THEREFORE, THESE PROVISIONS OF THE BILL WOULD NOT HAVE A MAJOR IMPACT ON OUR OPERATIONS. HOWEVER, WE BELIEVE THAT THE FEDERAL ACQUISITION REGULATION CONTAINS ADEQUATE SAFEGUARDS AGAINST IMPROPER USE OF THE QUALIFIED PRODUCTS LIST, AND DO NOT SEE THE NEED FOR THIS COVERAGE IN STATUTE. THE REQUIREMENT THAT THE AGENCY MUST WAIVE TESTING, OR BEAR THE COST OF TESTING PRODUCTS SUBMITTED BY A SMALL BUSINESS WHEN LESS THAN FIVE FIRMS OR PRODUCTS ARE ON THE QPL WOULD PLACE A BURDEN ON THE AGENCIES. FOR THIS REASON, WE OPPOSE ADOPTION OF SUCH A REQUIREMENT.

- o THE BILL IMPOSES NEW AND EXPANDED SYNOPSIS PROVISIONS BY ADDING REQUIREMENTS FOR NEW DATA TO BE PLACED IN THE COMMERCE BUSINESS DAILY.

WE OPPOSE THE NEW SYNOPSIS PROVISION SET FORTH IN SECTION 4(b)(1), WHICH WOULD IMPOSE SUBSTANTIAL NEW SYNOPSIS REQUIREMENTS ON THE AGENCIES FOR MOST PURCHASES OVER \$10,000. BESIDES INCREASING THE LENGTH AND COMPLEXITY OF EVERY SYNOPSIS, AND SUBSTANTIALLY EXPANDING EACH ISSUE OF THE COMMERCE BUSINESS DAILY, WE QUESTION THE VALUE OF THIS

INFORMATION FOR MOST POTENTIAL OFFERORS WHO ARE IN THE BUSINESS.

- o THE BILL REQUIRES THAT IN CERTAIN CASES THE GOVERNMENT OBTAIN TECHNICAL DATA SUITABLE FOR THE COMPETITIVE PROCUREMENT OF FUTURE "SPARE PARTS" REQUIREMENTS NECESSARY TO MAINTAIN THE MAJOR SYSTEMS WHICH IT PURCHASES.

WE SUPPORT THE THRUST OF THIS PROVISION. HOWEVER, THE BILL WOULD PROVIDE VARYING RIGHTS IN THE DATA, DEPENDING ON WHETHER THE DATA WAS "DEVELOPED AT PRIVATE EXPENSE" AS DEFINED BY EACH AGENCY. THIS, WE FEEL, IS UNSUITABLE. TO LEAVE THE DEFINITION WITH EACH AGENCY WOULD SERVE TO CONFUSE THOSE CONTRACTORS THAT DEAL WITH MORE THAN ONE OF US, AND WOULD REQUIRE THOSE CONTRACTORS TO BE CERTAIN NOT ONLY TO APPLY THE PROPER DEFINITION, BUT ALSO TO APPLY THE PARTICULAR AGENCY'S INTERPRETATION OF ITS DEFINITION.

- o THE BILL SPECIFIES PROCEDURES TO BE UNDERTAKEN TO VALIDATE THE LEGITIMACY OF PROPRIETARY DATA CLAIMS ASSERTED BY CONTRACTORS AND PROVIDES FOR THE ESTABLISHMENT OF A SYSTEM OF FINANCIAL DISINCENTIVES TO DETER CONTRACTORS FROM ASSERTING UNWARRANTED CLAIMS FOR PROPRIETARY DATA.

WE SUPPORT THIS PROVISION. WHILE PREDETERMINATION OF RIGHTS CAN BE TIME CONSUMING AND DIFFICULT, A STATUTORY

PROVISION COVERING THE CHALLENGES TO THE STATUS OF DELIVERED DATA WOULD BE USEFUL.

- o THE BILL WOULD EXPAND THE SMALL BUSINESS ADMINISTRATION'S PILOT BREAKOUT PROCUREMENT CENTER REPRESENTATIVES PROGRAM AND WOULD SPECIFY THE REPRESENTATIVES' AUTHORITY AND RESPONSIBILITY AS ADVOCATES FOR COMPETITION.

WE HAVE NO OBJECTION TO SBA ASSIGNING BREAKOUT PROCUREMENT CENTER REPRESENTATIVES TO DOT'S CONTRACTING CENTERS. WE BELIEVE, HOWEVER, THAT THIS SHOULD BE DONE ADMINISTRATIVELY AND NOT LEGISLATIVELY. I UNDERSTAND THAT SBA HAS A PILOT BREAKOUT PROGRAM UNDERWAY. IN MY VIEW, THIS SBA PILOT PROGRAM SHOULD BE GIVEN A CHANCE TO WORK AND BE EVALUATED BEFORE CONGRESS CONSIDERS LEGISLATIVE ACTION. IN ADDITION, WE OBJECT TO THE REQUIREMENT THAT THE PRIMARY DUTIES OF THE DOT TECHNICAL ADVISORS ASSIGNED TO ASSIST THE BREAKOUT PCR BE TO ASSIST THE PCR. IT WOULD BE PREFERABLE TO ASSIGN THIS FUNCTION AS A COLLATERAL DUTY IN THE VAST MAJORITY OF CASES. SUCH A METHOD OF ASSISTANCE WOULD PROVIDE BETTER QUALITY ADVICE TO THE PCR, AND WOULD IMPOSE A SUBSTANTIALLY LESSER BURDEN UPON THE DEPARTMENT.

S. 2434 WOULD AMEND SECTION 15 OF THE SMALL BUSINESS ACT TO ACCOMPLISH THE SAME ENDS AS S. 2489. THEY ARE BOTH SUBSTANTIALLY SIMILAR. HOWEVER, S.2434 HAS THE ADDITIONAL FEATURE OF SPECIFYING THE DUTIES OF THE PCR'S IN MUCH GREATER

DETAIL. WE DO NOT AGREE THAT THIS IS PRUDENT, AND WE WOULD PREFER THAT THEIR DUTIES BE DEFINED IN ADMINISTRATIVE REGULATIONS. THEREFORE, WE OPPOSE THE ENACTMENT OF S. 2434 IN ITS PRESENT FORM.

WITH THE EXCEPTIONS NOTED, I BELIEVE THAT S. 2489 AND S. 2434 ADDRESS MANY PROBLEMS ASSOCIATED WITH PROCUREMENT. I WANT TO REITERATE MY BELIEF, HOWEVER, THAT MOST OF THE PROBLEMS THAT THESE BILLS ARE INTENDED TO ADDRESS CAN BE DEALT WITH ADMINISTRATIVELY.

MR. CHAIRMAN, THIS COMPLETES MY PREPARED STATEMENT. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.