

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



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STATEMENT OF
DONALD L. SCANTLEBURY
DIRECTOR
FINANCIAL AND GENERAL MANAGEMENT STUDIES DIVISION
BEFORE THE
SUBCOMMITTEE ON FISCAL AND GOVERNMENT AFFAIRS
COMMITTEE ON THE DISTRICT OF COLUMBIA
HOUSE OF REPRESENTATIVES
ON
PROPOSED ENHANCEMENT OF CONTRACTUAL AUTHORITY OF THE
TEMPORARY COMMISSION ON FINANCIAL OVERSIGHT
OF THE DISTRICT OF COLUMBIA

Mr. Chairman and Members of the Subcommittee:

We appreciate your invitation to be here today to present our views on H.R. 13548, a bill "To enhance the flexibility of contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia." If enacted, the bill would amend Public Law 94-399, approved September 4, 1976, entitled "An Act to provide for an independent audit of the financial condition of the government of the District of Columbia" to:

- (1) authorize the Commission to award cost-type contracts;
- (2) authorize the Commission to contract with the District government;
- (3) authorize the Commission to audit the books and records of its contractors and subcontractors;

- (4) authorize the Comptroller General to examine pertinent books, documents, papers, or records of the Commission's contractors and subcontractors;
- (5) authorize the Commission to provide funds to the District government to meet matching requirements for certain Federal grants; and
- (6) authorize the Commission to contract for annual audits of the financial operations of the District government through fiscal year 1982.

As you know, Mr. Chairman, some provisions of this bill were suggested in the Comptroller General's letter dated July 5, 1978, to the Chairman of the Committee. Although that letter addressed H.R. 12808, it contains our views on most of the provisions of H.R. 13548. For the sake of brevity, I will not repeat those views in my statement today. We will, however, be pleased to answer any questions that you may have concerning the letter. For your convenience, a copy of the letter is attached to my prepared statement.

In your letter inviting us here today, Mr. Chairman, you requested that we include three subjects in our testimony. The first subject was the monitoring procedures used by GAO to oversee the Commission's work. The monitoring procedures we are following can best be described in terms of our responsibilities under Public Law 94-399.

Section 2.(a) requires the Commission to consult the Comptroller General before selecting each contractor. Under procedures worked out with the Executive Director of the Commission,

the Executive Director informs us when he is going to award a contract and, after he receives and evaluates the proposals, informs us of the firm which he believes should receive the contract. We then evaluate the proposal and perform any other work necessary to determine that the firm under consideration is qualified to perform the work to be required under the contract. Upon completion of our evaluation, we provide the Executive Director with a letter stating whether or not we have an objection to the selection of the firm. We are pleased to report that to date we have not found it necessary to object to the selection of any firm which had been tentatively selected by the Executive Director.

Section 2.(e)(4) of Public Law 94-399 requires the Comptroller General to approve, disapprove, or modify each plan--in most cases a design of a financial management system--and submit it to the Congress within 60 days after it is submitted to him by a contractor. To properly fulfill this responsibility, we, with the cooperation of the Executive Director, have established several procedures.

One set of procedures is intended to insure that all plans submitted by the Commission's contractors will be approvable. These procedures include reviewing each Request for Proposal before it is issued to make certain that the requirements established by the Commission are not contrary to ours; providing our requirements to each contractor shortly after the contract is awarded; and meeting frequently with Commission, District

government, and contractor personnel to alert them to instances in which our requirements may not be met.

We have established another set of procedures which is intended to insure that we will be able to evaluate plans submitted by the contractors within the 60 days authorized by the Act. These procedures include the review of documentation as it is prepared by the contractors, informing the Commission staff and the contractors immediately if the documentation does not meet our requirements, and working with the Commission staff and the contractors to make necessary changes in the documentation.

We are hopeful that through these procedures every plan will be approvable and that each plan can be submitted to the Congress within 60 days.

Section 2.(g) of Public Law 94-399 requires the Comptroller General to monitor the implementation of the approved plans. Although no plans have been implemented, procedures for monitoring implementation have been prepared which will insure that each system will be implemented in accordance with the approved plan.

The second subject that you requested we include in our testimony was our opinion on the District government's use of Federal money to match Federal grants. This subject is made up of two issues. One issue is that the use of Federal grants would introduce some administrative problems in that the Commission would have to deal with the contractor performing the

work through the District government. In addition, the grantor agency can be expected to impose certain administrative and technical requirements on the project.

The second issue concerning the use of Federal grants is whether language should be included in the bill to specifically authorize the Commission to provide funds to the District government to meet matching requirements for Federal grants. In his July 5 letter to the Chairman of the Committee, the Comptroller General recommended that such language be included in the bill.

We recommend that the language be included because we have held that in the absence of specific statutory authority Federal funds may not be used to satisfy the local matching requirements of a Federal grant. Since it is proposed that Commission funds be used to satisfy the matching requirements, a question could be raised as to its consistency with our decision. Therefore, if you decide to authorize the Commission to provide funds to the District government to be used to meet the matching requirements for Federal grants, we recommend that specific authority be included in the bill.

The third subject that you requested we include in our testimony was the need for this legislation. No doubt the Commission could fulfill its responsibilities without the legislation, but it would be more difficult to do so because certain plans and decisions made by the Commission could not be carried out as effectively. Let me elaborate.

- Authorization to award cost-type contracts. In his July 5 letter, the Comptroller General recommended that the Congress grant the Commission this authority because it would provide the Commission with contracting flexibility. If necessary, however, the Commission could continue to award fixed-price contracts.
- Authorization to contract with the District government. The Commission would like to contract with the District government for the use of its ADP equipment and to contract with the University of the District of Columbia for preparing manuals for the new financial management systems and training District government employees. Without the authority proposed, the Commission would contract with others for such services.
- Authorization for the Commission and GAO to audit the records of the Commission's contractors and subcontractors. Although it is preferable for this authority to be grounded in law, it could be accomplished by inserting appropriate language in each contract awarded by the Commission and in each subcontract awarded by the Commission's contractors. In addition, there would be less need for this authority if the Commission is not authorized to award cost-type contracts.
- Authorization for the Commission to provide funds to the District government to meet matching requirements for Federal grants. Without this authority, the

Commission's work would have to continue to be financed as it is today.

-- Authorization for the Commission to contract for annual audits of the financial operations of the District government through fiscal year 1982. Public Law 94-399 authorized the Commission to pay for audits for fiscal years 1977, 1978, and 1979 and required the District government to pay for the audits beginning with fiscal year 1980. Without this legislation, the District government would continue to be required to pay for the audits for fiscal years 1980, 1981, and 1982.

That concludes my statement Mr. Chairman. We will be pleased to try to answer any questions that you and other Members of the Subcommittee may have.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-118638

JUL 5 1978

The Honorable Charles C. Diggs, Jr.
Chairman, Committee on the District
of Columbia
House of Representatives

Dear Mr. Chairman:

This is in response to your letter dated May 25, 1978, requesting our comments on H.R. 12808, 95th Cong., 2d Sess. (1978), a bill "To increase the contractual authority of the Temporary Commission on Financial Oversight of the District of Columbia with respect to financial planning services and auditing services." If enacted, the bill would amend the Act entitled "An Act to provide for an independent audit of the financial condition of the government of the District of Columbia" (Act), approved September 4, 1976, Pub. L. 94-399, 90 Stat. 1205, to authorize the Commission to award cost-type contracts and to award contracts to the District government.

The bill would delete the words "fixed price" from sections 2(c) and 3(c) of Public Law 94-399. These deletions would permit the Commission to award cost-type contracts in addition to fixed-price contracts, which are presently authorized. Cost-type contracts are contracts under which the contractor is reimbursed for the costs he incurs. Under such contracts, the contractor is usually paid a fixed-fee in addition to his costs.

While we believe that fixed-price contracts are normally preferable, the authority to award cost-type contracts could be beneficial to the Commission. The Commission has several more contracts to award for the design and implementation of financial management systems for the District government and one or more contracts to award for audits of the District government's financial statements by a certified public accountant. The scope of work required under some of these contracts will be difficult, if not impossible, to define accurately at the time the contracts are awarded.

The use of a fixed-price contract when the scope of the work cannot be adequately defined is usually unfair to either the contractor or the contracting agency. If the fixed price

is too low, the contractor will incur a loss on the contract. If the fixed price is too high, the contracting agency will pay more than necessary for the services received.

The receipt of authority to award cost-type contracts will give the Commission the flexibility it needs to award contracts that are fair to both the Commission and its contractors. Such contracts can be awarded competitively since the selection process can consider the relative merits of different vendors' proposals and the size of the fees proposed by the various vendors. Therefore, while we recommend that the Commission use fixed-price contracts whenever feasible, we believe this authority is needed and we recommend that it be granted by the Congress.

The bill would add a new subsection to section 2 of Public Law 94-399 which would authorize the Commission to award contracts to the District government. We understand that the Commission is requesting this authority for two reasons. First, to permit the Commission to procure computer time from the District government for use by its contractors. This would be advantageous because systems could be developed and tested on the computers on which they will ultimately be operational. Second, this authority is being requested to permit the Commission to reimburse the District government for contracts it (the District) awards for the design and implementation of financial management systems. We understand that the Commission intends to permit the District government to award such contracts when doing so would result in the receipt of a Federal grant for a portion of the contract cost.

Concerning the award of contracts to the District government, we have no objection to the granting of this authority to the Commission provided the contracts awarded by the District government (subcontracts) are subject to the same controls as contracts awarded by the Commission. This may require an amendment to Public Law 94-399 because it presently does not contain requirements regarding subcontracts. Thus, whereas section 2(a) requires the Commission to consult the Comptroller General prior to the selection of a contractor, there is no requirement for such consultation prior to the selection of a subcontractor. Similarly, whereas section 2(d)(1) gives the Comptroller General access to all documents produced under contracts, the Act does not address documents produced under subcontracts.

Furthermore, in order for this Office to perform its functions and duties under other provisions of law and to assist the Comptroller General in meeting the requirements imposed by section 2(e)(4) of the Act that he approve, disapprove or modify plans submitted to him under the Act and submit such plans as approved, disapproved or modified to the Congress together with his reasons for disapproval or modification within 60 days of the receipt of such plans by the Comptroller General, we recommend including the following language in the amendments proposed by the bill (perhaps as a new subsection 2(i)):

"(i)(1) The Commission is entitled, through an authorized representative, to inspect the facilities and audit the books and records of any contractor performing a contract under this Act, and any subcontractor performing any subcontract under a contract made by the Commission under this Act.

"(2) Each contract entered into under this Act shall provide that the Comptroller General and his representatives are entitled, until the expiration of three years after final payment, to examine any pertinent books, documents, papers, or records of the contractor or any of his subcontractors engaged in the performance of and involving transactions relating to such contract or subcontract."

However, as to authorizing the use of funds received or to be received by the District government under contracts with the Commission for matching purposes under Federal grants, this Office has consistently held that Federal funds are not available for matching purposes unless authorized by law. While we take no position as to the advisability of authorizing the use of funds appropriated (for Public Law 94-399 purposes) to the Commission and to the District government for matching purposes under Federal grants, if such is deemed advisable, then, in order to remove any doubt as to their availability for such purposes, we recommend the following language be included in the amendment proposed by section 2 of the bill:

"Payments (including the District's share) made by the Commission to the District of Columbia under contracts entered into pursuant to the authority of this Act shall be available for

