DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO
08H-617
3 August 1979

Elmer B. Staats
Chairman
Cost Accounting Standards Board
441 G. Street, N.W.
Washington, D.C. 20548

Dear Mr. Staats,

In the May 25, 1979, issue of the Federal Register, the Cost Accounting Standards Board published for comment a revised proposed standard to promote uniformity and consistency in the accumulation and allocation of independent research and development (IR&D) and bid and proposal (B&P) costs.

Last November 15, I commented on an earlier draft of this proposed standard, originally published in the Federal Register July 28, 1978 (a copy of my letter is attached). My letter discussed problems in the administration of the Defense Department's IR&D program and indicated the new standard should "...take into account some of the abuses observed in the past and be devised so as to minimize the chances for abuse in the future." I recommended that all IR&D costs be pooled at the home office level and then allocated in a consistent and uniform manner over the entire business. This policy would serve as a deterrent to contractors undertaking frivolous IR&D projects or projects of questionable military relevance in divisions where costs would otherwise be borne primarily by the Government. I also agreed with the Board that IR&D should be costed in the year incurred.

The above comments, as well as other comments in my letter, have not been incorporated into the proposed standard. In fact, the proposed standard as revised emphasizes the allocation of home office and segment IR&D expense to business units on a beneficial or causal relationship instead of requiring that all IR&D costs be pooled at the home office level and then allocated across the business as I recommended. This sets up a situation which would enable contractors to pick and choose among allocation bases to maximize the allocation of IR&D to Government contracts. Similarly, the proposed criteria applicable to the deferral of IR&D and B&P costs could be used to charge deferred costs in periods when allocation to Government contracts can be maximized.

I strongly recommend that the proposed standard be revised to incorporate the comments in my letter of November 15, 1978. With funding for many important defense programs reduced because of stringent budgets, it is imperative that Government contracts not be burdened with an inordinate share of contractors independent research costs.

I would appreciate being advised of the action being taken with regard to the above comments.

Sincerely,

H. G. Rickover

DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO
15 Nov. 1978

Elmer B. Staats
Chairman
Cost Accounting Standards Board
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Staats:

In the July 28, 1978 issue of the Federal Register, the Cost Accounting Standards Board published for public comment a proposed standard to promote uniformity and consistency in the accumulation and allocation of independent research and development and bid and proposal costs (IR&D and B&P).

Attached is my November 1, 1974, letter to you regarding problems in the administration of the Defense Department's IR&D program. Under this program, the Defense Department spends nearly $1 billion annually for contractor-initiated IR&D. Yet, the Defense Department exercises, in my opinion, no control or direction over how these funds are spent, even in cases where the Government finances virtually all the work. Moreover, the contractors retain exclusive rights to technical data and inventions developed under this program.

I have testified to Congress that the Defense Department should allow costs of IR&D projects only when such costs are specifically provided by contract and then only to the extent such work benefits the contract work itself. In cases where contractor proposed research and development projects have sufficient benefit to warrant the cost, the Defense Department should finance the work by direct contract, rather than through IR&D. Responsible Government officials would supervise the work, as they are supposed to for all work the Government undertakes. I still believe this recommended approach to research and development would best serve the interests of our Government, and that the present IR&D system should be abolished.

I recognize that the Cost Accounting Standards Board has stayed away from issuing opinions on whether IR&D or other costs are allowable. Instead, the Board promulgates standards for measuring and allocating costs. It is in this vein that the Board developed the proposed standard on IR&D and B&P. Since the Defense Department has shown no signs of abolishing the present IR&D program, and since the program is subject to abuse, it is important that

the standards promulgated by the Board take into account some of the abuses observed in the past and be devised so as to minimize the chances for abuse in the future. This can, in my opinion, be accomplished consistent with your objective of sound accounting. It is with this in mind that I offer the following comments on your proposed standard.

The proposed standard should distinguish between IR&D and B&P to permit separate and distinct allocation of IR&D costs from B&P costs. The Board historically has maintained a policy of accumulating costs within each business division (segment) and then allocating those costs downward across the total business activity of that particular division or any remaining lower level divisions. The proposed standard requires this longstanding treatment for B&P costs with which I agree. It is easy to distinguish the divisions which derive benefit from B&P costs. It is difficult to conceive that the work resulting from B&P costs of one division has a direct benefit to other divisions at the same level or higher within the business organization.

On the other hand, proponents of IR&D contend that all business divisions benefit from this effort. In the Defense Department IR&D program, the Defense Department concluded that research on commercial toasters had a potential military relevance. Since many contractors claim that the military benefits from their far flung IR&D projects, it follows that commercial divisions must similarly benefit from IR&D performed at divisions dedicated primarily to military work. Suppose a contractor chooses to overload with IR&D a division which, for the most part, is defense oriented and where the constraints of competition are either weak or do not exist. The Defense Department has no way of knowing whether the benefits derived by the contractor from the IR&D serve to enhance the contractor's defense business or the contractor's commercial business, yet the Defense Department ends up paying the major portion of the cost of such work.

Since many defense contractors also compete in commercial markets where competition is likely to be greater than it is in the defense industry, a requirement that IR&D costs incurred by divisions be pooled at the corporate headquarters and then allocated to all divisions, both defense and commercial, might serve as a deterrent to contractors undertaking frivolous IR&D projects in divisions where the entire costs would otherwise be borne primarily by the Government. Therefore, I recommend that the proposed standard be revised to require that all IR&D costs be pooled at the corporate headquarters and allocated in a consistent and uniform manner over the entire business.

The proposed standard should be expanded to include treatment of B&P costs for existing contracts as distinguished from B&P costs for potential contracts. There is a rationale for treating B&P costs for changes to existing contracts differently than B&P costs for new procurement. Navy shipbuilding contracts, for example, provide for an equitable increase in the price of

existing contracts to cover effort incurred by the contractor in preparing bids and proposals for changes requested by the Navy. The proposed standard should permit, as a direct change to the contract, B&P costs incurred as a result of amendments, modifications, or changes to existing contracts, provided this treatment is consistently applied to all contracts, both Government and commercial.

I agree with the Board that IR&D should be costed in the year incurred. If IR&D is considered to be a cost of doing business, it should be treated as such. This requirement that IR&D be costed in the year incurred provides a consistent basis for all contractors. If contractors are permitted to pick and choose among IR&D projects and set their own standards for when these costs are to be allocated, many will no doubt make these decisions on a basis which will result in maximum allocation to Government contracts. Further, the Financial Accounting Standards Board's Statement No. 2 dated October, 1974, made it clear that for financial accounting purposes that IR&D should be treated as an expense of the current year and not deferred. It is only proper that the Cost Accounting Standards Board treat IR&D as costs of the current year. Therefore, I recommend that the proposed standard <u>not</u> be changed to allow deferral of IR&D costs to later years.

The proposed standard should be revised to require the allocation of contractors' general and administrative (G&A) expenses to IR&D and B&P projects. When the Government or another contractor places a research and development contract directly, that contract is allocated its appropriate share of G&A expenses. G&A expenses incurred as a result of an IR&D or a B&P project are real costs, and should be identified as real costs of that project. The annual reports to Congress on total expenditures of IR&D and B&P costs for major defense contractors will reflect more realistic figures if these costs are allocated their fair share of G&A expenses.

I would appreciate being advised of what action you decide to take with regard to my comments.

Sincerely,

H. G. Rickover

UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

NOV 1 1974

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, D. C. 20548

Dear Mr. Staats:

In a letter dated September 27, 1974, Mr. R. W. Gutmann of your staff requested my comments on alternative approaches to the treatment by the Defense Department of contractor independent research and development costs (IR&D). The fourteen alternative approaches ranged from removal of all Defense Department controls over IR&D, to strict control of these costs through grants or contracts. I am responding directly to you because I believe IR&D is an important subject meriting your personal attention.

First, I want to comment on some of the underlying assumptions about IR&D and defense procurement that these approaches appear to make and with which I disagree. For example, there seems to be an assumption that without IR&D, weapons development will be adversely affected. Certainly, some technological developments in weaponry may have flowed from work funded under IR&D. But since World War II, the great majority of weapons technology has flowed from Government-directed defense work. During this period, most defense research and development has been funded directly by the Government through in-house laboratories and through contracts and grants to private industry and educational institutions. In over 50 years of naval experience, I have not found direct funding of research and development to be stifling to technological or scientific creativity. Thus, a change in the treatment of IR&D, in my opinion, would not hamper the development of weapons technology.

There also appears to be an inherent assumption that the Government has an obligation to subsidize contractors' independent research and development programs. For example, one disadvantage listed for a direct grant system of funding IR&D is that "contractors could be reluctant to use their own funds for research if they are not sure of getting grant funds for further work." (underlining mine). The question inevitably arises that if the research is not sufficiently attractive to be funded either by the contractor, or directly by the Government, why should the Government pay for it indirectly?

Much of the debate over IR&D within the defense community is being conducted with a basic misconception about defense procurement. There is a continuous search for the correct management formula or the ideal organizational structure under which defense procurement dollars automatically will be well

spent without having to resort to Government surveillance. Unfortunately, my experience has been that research and development and procurement do not lend themselves to simple, automatic policies. I find, for example, when dealing in these areas that research is not easily differentiated from development; some work can legitimately be classified in either category. Proper administration of research and development comes not from more precise definitions of these terms, but from better knowledge and closer technical control of the projects being undertaken.

Independent research and development and bid and proposal costs (B&P) are often interchangeable. Companies may treat certain costs as either IR&D or B&P for accounting purposes. This principle is even recognized in the Armed Services Procurement Regulation which permits companies to recover costs for B&P over the negotiated ceiling as long as the ceiling on IR&D costs is reduced by a like amount, and vice versa.

There is essentially no competition in most defense procurement. The only truly competitive procurements are formally advertised procurements, and they represent typically about eleven percent of prime contract dollars per year. On the other hand, over half of all defense procurement is placed under sole source or follow-on, non-competitive conditions. In this atmosphere, there is little real incentive for defense contractors to cut costs, and to manage closely such overhead programs as IR&D. On the contrary, current Defense Department profit policies reward high costs with high profits, and provide a positive incentive for inefficiency and lax management.

Finally, fixed price type contracts do not ensure low prices; nor do they protect the Government's interests sufficiently to make Defense Department controls over IR&D unnecessary. Fixed price contracts and subcontracts awarded under non-competitive conditions do limit to some extent the Government's exposure to cost overruns. But they give a contractor little incentive to submit the lowest reasonable bid price. Thus, fixed priced contracts are not a substitute for effective competition. In fact, as I am sure you are aware, there is no magical mix of contract types that can substitute for real competition or, in the absence of such competition, for Government surveillance of contractor operations.

What disturbs me the most is that the GAO proposals, like much of the current debate, tend to consider IR&D only from the contractors' point of view. Little if any attention is being given to IR&D as it affects the user--the Defense Department. Yet, these are important considerations, particularly in a period of budget stringency. For example:

The Navy is short of critically needed research and development funds. In fiscal year 1973, the last year for which figures are available, the Defense Department paid $441 million for contractor independent research and development work. In contrast, the total Navy exploratory development budget for fiscal year 1975 is under $300 million. Many important submarine research projects have had to be canceled, deferred, or cut back in such areas as advanced sonars, communications, weapons, navigation, and nuclear propulsion due to a lack of money. Yet contractors are able to pursue their own research and development projects because of the Defense Department's largesse with funds.

While hundreds of millions of defense dollars each year are spent for IR&D, the benefits accruing to the military from this work are uncertain. In my opinion, whatever benefits have accrued from this program in past years have not been worth the cost. Certainly this is true in the areas in which I have direct knowledge.

The Government has little control over IR&D programs. The Defense Department cannot actively supervise or even closely monitor the work; it cannot eliminate unnecessary duplication; and it cannot direct that certain projects be undertaken or performed.

The Government receives neither rights to technical data nor patent rights from work performed under IR&D. On the contrary, if a product or process developed under IR&D is patented by the contractor, the Government may have to pay a royalty for use of the patented item. I encountered one case where a contractor developed an automatic welding machine under an IR&D program, for which 99 percent of the costs were paid by the Defense Department. The welding machine was then marketed to defense suppliers who passed on the royalty costs to the Government in the price of their work In this case, the Government paid for developing the invention and continues to have to pay for the rights to use it.

In addition to these drawbacks to IR&D from the Government's point of view, the present IR&D system is actually anti-competitive. Companies doing defense business are able to develop inventions at Government expense which they may then use in their commercial work. This gives them a competitive advantage over non-defense firms which are not eligible for such a subsidy.

The present system of evaluating contractor independent research and development programs is ineffective. The law requires that the Defense Department make an affirmative determination that the work has a potential military relationship before IR&D costs can be accepted. But under these criteria, almost any research project, no matter how remote, could be shown to have a potential military relationship.

Finally, the reviews of contractor IR&D programs tend to be superficial. IR&D programs, for which the Government pays less than $2 million, are not reviewed technically; they are controlled only by a negotiated ceiling. Programs over $2 million receive technical reviews, but these are often conducted by people with little knowledge of the work. Even in the nuclear propulsion field, I am not routinely asked to evaluate contractor research programs, and as a consequence the Defense Department has funded IR&D projects which duplicated work I was doing, or which were directed toward commercial, not military application.

I believe that we need to recognize the Government's interests and abolish the practice of subsidizing contractor IR&D. I recommend that a system similar to that employed by the Atomic Energy Commission be adopted. Specifically:

1. Treat IR&D costs on a contract by contract basis. IR&D costs would be unallowable except where the contracting agency made an affirmative determination that an IR&D project provided sufficient benefits to the contract to warrant the cost.

2. Allow contractors to submit to the Defense Department any military-related research projects which they want the Government to finance completely. The Defense Department would then contract directly for whichever of these projects it desires to pursue. The funds would be provided as a separate line item in the RDT&E appropriation.

3. Allow B&P costs if the subject matter of the bids and proposals is applicable to defense work. B&P costs for non-defense work would be unallowable. Place a ceiling on the allowable B&P expenses such as one percent of the total direct material and direct labor costs of the contract work.

4. Reserve and protect Government rights to technical data and patents commensurate with the percentage of the research costs borne by the Government, regardless of whether funding of those costs is direct or indirect.

Contractors would undoubtedly dislike this system as it would greatly reduce the Government's funding of their own pet projects. But the question for the Congress must boil down to this: If the ordinary citizen were given up to 500 million dollars a year for research and development work, would he turn that money over to defense contractors to spend as they saw fit in the hope something useful would result? Or would he direct that money toward finding solutions to specific problems standing in the way of better weapons systems? There is no question in my mind but that the Department of Defense would get far more for its money if it were spent on specific defense projects

where responsible officials had to review, approve, justify and defend the expenditures. This system would also permit Congress to review and oversee these expenditures--a possibility which is currently precluded.

I know you take seriously your responsibility to look "to greater economy or efficiency in public expenditures." In my view, the present IR&D system does not provide either economy or efficiency. That is why I recommend greater control over research and development work accomplished with public funds.

I appreciate the opportunity to comment to you on this subject.

Sincerely,

H. G. Rickover

92-784 0 - 82 - 11

DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO
26 October 1979

Elmer B. Staats
Chairman
Cost Accounting Standards Board
441 G Street, NW
Washington, DC 20548

Dear Mr. Staats:

In the June 1, 1979, Federal Register the Cost Accounting Standards Board published for comment a proposed revision to its regulations to provide special treatment for firm fixed price contracts. The purpose of this letter is to recommend that the Board reject this proposal because it is contrary to the mandate of Public Law 91-379 and because the current requirements better protect the Government.

The current regulations provide for adjustment of contract prices in the event that, after contract award, a contractor initiates an accounting change, the Government requires an accounting change, or it is determined that the contractor failed to comply with cost accounting standards or his established accounting practices. The contract price adjustment may be upward or downward depending upon the nature of the change.

The current regulation fairly protects each party to the contract from injury caused by the unilateral action of the other. The regulation does not penalize contractors for accounting changes required by the Government. At the same time, it avoids penalizing the Government by precluding contractors from pricing Government contracts on one basis and accounting for the costs on another.

With its proposed change, the Board would stipulate that no price adjustments are to be required for firm fixed price contracts if the contractor certifies at the time of contract award that his price is based on applicable Cost Accounting Standards and current <u>or intended</u> accounting practices.

In forwarding the proposed change for comment, the Board does not explain why firm fixed price contracts should be exempted from the current regulation. I see no reason why they should be exempt.

The January, 1970 Comptroller General study of the need for cost accounting standards highlighted the problems involved when contractors shift from one accounting practice to another. Your study pointed out that

> "...a recurring problem in Government contracting is that, in reporting to the Government on both proposed and incurred costs, contractors may select from alternative accounting methods without specific criteria governing such selection."

The study concluded that the Government should have an agreement with the contractor regarding approved accounting practices and suggested that

> "...Appropriate changes in accounting practices needed because of significant changes in a contractor's operations could be recognized by a change in the agreement and appropriate adjustment in price if warranted."

The study supported its conclusions with more than a hundred examples of abuses, many of which involved contractors pricing contracts one way and accounting for them on a different basis. Recognizing these abuses, Public Law 91-379, which established the Cost Accounting Standards Board, stated that the Board's regulations shall require a price adjustment for

> "...any increased costs paid to a defense contractor by the United States because of the defense contractor's failure to comply with duly promulgated cost-accounting standards or to follow consistently his disclosed cost accounting practices in pricing contract proposals and in accumulating and reporting contract performance cost data."

In spite of the Comptroller General study and the admonition of Public Law 91-379, the Board now proposes to reopen the door to abuses the current regulations are intended to prevent. For example, under the Board's proposal, a contractor could sign the required certification that his price is based on current accounting practices and intended changes thereto. But if he did not make the accounting changes or he made them earlier or later

than anticipated, he would, in many cases, be able to realize a windfall profit--in effect, converting cost into unearned profit. Also under the proposed change, a contractor could contend that, on firm fixed price contracts, he no longer owes the Government a contract price reduction, in cases where he implements an accounting change that he did not contemplate at the outset. The Government could overcome these problems only by probing the minds and thoughts of corporate officialdom, a futile task.

To compensate for any advantage contractors would get from not having to reduce their contract prices for accounting changes they make, the Board proposes that prices not be increased for accounting changes the Government requires. In effect, the Board would establish a system of reciprocal inequities.

In summary, the proposed change, if implemented, would undermine basic concepts of the Cost Accounting Standards Board. It would result in resumption of the types of abuses the Board has worked to eliminate without adequate explanation as to why the Board is proposing to change its regulations. The current regulation covering price adjustments, on the other hand, is equitable to both the contractor and the Government. The principle embodied in the regulation is sound, regardless of the type of contract. Thus, there is no valid reason for revising it.

For the above reasons, I strongly recommend that the Board withdraw the proposed change to exempt firm fixed price contracts from present requirements relating to contract price adjustments.

Sincerely,

H. G. Rickover

DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO
12 March 1980

Elmer B. Staats
Chairman
Cost Accounting Standards Board
441 G Street, NW
Washington, D.C. 20548

Dear Mr. Staats:

My letter of October 26, 1979, commented on a proposed change to Cost Accounting Standards regulations to provide special treatment for firm fixed price contracts. I pointed out that the current regulation, with regard to firm fixed price contracts, is sound and there is no valid reason for revising it. In the latest proposed revision to its regulations, published in the February 8, 1980, Federal Register, the Board has wisely concluded that firm fixed price contracts "should continue to remain subject to the provisions of the CAS clause as currently contained in its regulations."

The latest proposed revision, however, creates new loopholes for avoiding compliance with Cost Accounting Standards. The proposed change would exempt from Cost Accounting Standards "any firm fixed price contract or subcontract awarded without submission of any cost data." The stated rationale for the revision is that it is unnecessary to be concerned with the contractor's cost accounting practices used for the contract when costs play no part in determining the price which the Government accepts.

The Board has overlooked an important difference between itself and the Department of Defense. The Board has been steadfast in its position that Public Law 91-379 should be equally applied to all contractors and so has granted almost no waivers to Cost Accounting Standards regulations. The Department of Defense, under pressure from essential contractors such as forging companies and computer manufacturers, routinely grants waivers to the requirement for submission of cost and pricing data under Public Law 87-653. By exempting from Cost Accounting Standards contracts awarded without submission of cost data, the Board would effectively transfer its statutory waiver authority to the Department of Defense. This can only weaken the Board's authority and enhance the rewards for contractors who refuse to provide cost data.

In addition, because of differences between the Department of Defense and Cost Accounting Standards Board definition of competition, defense contractors have been able to avoid submission of cost data in circumstances where the Board

intends Cost Accounting Standards to apply. Submission of cost data can also be avoided if a price is "based on" adequate price competition. Board regulations have no special exemption in this regard.

Defense contractors have devised many ways to avoid submission of cost data. The Board's proposed change provides contractors with additional incentive to circumvent the requirements for submission of cost data since they will then not have to comply with Cost Accounting Standards. The proposed change will weaken the safeguards (Cost Accounting Standards and Truth-in-Negotiations) which Congress established for negotiated procurement.

For the above reasons, I strongly recommend that the Board withdraw the proposed change to exempt firm fixed price contracts awarded without submission of cost data from Cost Accounting Standards regulations.

Sincerely,

H. G. Rickover

DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20362

IN REPLY REFER TO

May 30, 1980

The Honorable James T. McIntyre, Jr.
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. McIntyre:

In our telephone discussion of March 20, 1980, I emphasized the need for the Office of Management and Budget (OMB) to curb widespread abuses in award of consulting contracts by agencies of the Executive Branch. You agreed and sent your Associate Director for Management and Regulatory Policy, together with one of his assistants, to meet with me that same afternoon. The purpose of this letter is to advise you of events subsequent to our discussion. In my opinion, these events are indicative of more fundamental problems in the Government bureaucracy.

The two men you sent to discuss the consultant problem with me had been working on the problem for some time, apparently as a result of questions raised by President Carter shortly after his inauguration. They said they had gathered statistics from various agencies and were in the process of developing an OMB Circular to tighten existing rules. I pointed out to them some of the schemes I have seen employed to get around current restrictions on the hiring of consultants and emphasized the importance of strict controls. I understood the OMB representatives to say I would be given an opportunity to review and comment on the draft OMB Circular prior to issuance and that they would welcome input by my staff and me based on our experience.

The next I heard on this matter was a letter dated April 1, 1980, from the OMB Associate Director. He thanked me for the meeting and enclosed the March 27, 1980, testimony of the newly appointed Administrator of the Office of Federal Procurement Policy (OFPP). Her testimony outlined to Congress the Administration's proposed new rules regarding use of consultants, although the OMB Circular implementing the new rules apparently was still in draft stage.

Since the Administrator, OFPP had apparently become the Administration's spokesman on the consultant problem, I arranged a meeting with her and one of her assistants on April 15, 1980. At the meeting, I explained to her the need for more stringent safeguards

and made some specific recommendations. She expressed interest and I understood her to say she would have her staff get in touch with mine to work something out. Three weeks later the Administrator sent me the official and final OMB Circular on consultants. It was dated April 14, 1980 — the day prior to my meeting with her. It was then I first realized that the OMB and OFPP officials with whom I had recently met apparently had no intention of pursuing any of the issues I had raised.

A second issue raised with the OFPP Administrator at the April 15, 1980, meeting concerned the American Bar Association's (ABA) Public Contract Law Section and the influence claims lawyers in that Section exerted in the drafting of OFPP regulations implementing the Contract Disputes Act. The problem started several years ago when the ABA arranged to have members of Congress introduce legislation dealing with Boards of Contract Appeals and resolution of contract disputes. The ABA bill contained many loopholes which favored claims lawyers and their clients in lawsuits against the U.S. Government. When I pointed out these loopholes, Congress struck them from the bill and added strict sanctions against those who deliberately submit false claims against the Government.

The ABA's claims lawyers expressed dismay at this turn of events. Upon enactment of the revised statute, now known at the Contract Disputes Act, they assured their members that, in the implementing regulations to be issued by OFPP, they would attempt to overcome "these shortcomings." Specifically, in the January 1979 issue of the Public Contract Newsletter, the Chairman of the ABA's Public Contract Law Section stated:

> "On balance, I believe the gains achieved by this legislation outweigh what many in our Section perceive to be serious shortcomings ... Many of these shortcomings can be overcome or lessened by the implementing regulations, and in that large task our concerned committees are busily engaged."

The influence of the Public Contract Law Section was evident in the various draft regulations promulgated by OFPP.

The OFPP Administrator said that as a result of other comments received on the February 1980 draft, she had withdrawn the proposed regulations for further review and that she would have her staff contact mine to discuss this matter further. As in the case of the consultant issue, no one from OFPP contacted me or my staff to follow up on this matter and the Administrator issued the final OFPP regulations on April 29, 1980 — two weeks after our meeting. In final form, the OFPP regulations are more favorable to claims lawyers and their clients than the provisions of the Contract Disputes Act itself.

I do not assume that OMB and its satellite agency, OFPP, will adopt, or even agree with all my ideas and recommendations. That is not the point. What concerns me is the tendency for senior officials in the Executive Branch to deal with important issues in such a broad and general context that the ensuing policy directives have little, if any, impact on the problem. One reason is that the Government people with firsthand experience are often removed from those who write such directives. In contrast, a few determined people outside Government – claims lawyers in the case of the Contract Disputes Act – are often able to make direct contact on behalf of themselves or their clients and exert disproportionate influence over Government policies, perhaps even to participate in drafting the regulations themselves.

The problem is aggravated when those at the top fail to get into the details of a problem or to follow through to see that it is corrected. The Office of Management and Budget is the office to which one should be able to look for inspiration and assistance in efforts to introduce efficiency in Government. Yet, as in the case of the consultant problem, we often end up with policy directives which only create the impression of progress where little, if any, has been made. In the case of the Contract Disputes Act, we have ended up with a regulation which tends to weaken the Government's ability to preclude frivolous and unfounded claims.

I know that your time is taken up principally by budget matters. Nevertheless, I recommend that you remind your staff their responsibilities in OMB include management as well as budget. I further recommend that you emphasize to them the following:

a. OMB personnel cannot do a good job unless they personally get into the details.

b. They should recognize that "official" comments received from Government agencies on proposed OMB policies generally have been filtered through many levels. Rather than reflecting the collective experience and wisdom of the agency, such input may be nothing more than the views of the staff member highest in the chain of command.

c. OMB personnel should propose what is best for the U.S. Government and not simply seek the middle ground between various interest groups.

d. They must follow through on their commitments. Issuing policy directives is only the first step. Without follow through, policy directives are useless.

e. OMB personnel should take a long range view of their work — as if their present jobs were theirs for life and not just stepping stones in their careers.

I hope the above comments will assist you in your efforts to achieve economy in Government. If I can be of any further assistance to you, please let me know.

Sincerely,

H. G. Rickover