The One-Eyed Watchdog of Congress

by Richard F. Kaufman

On paper the organization of the government appears to make it difficult, if not impossible, for a defense contractor to overreach the public purse. There is the Renegotiation Board to recapture excess profits, there are statutory requirements for "truth" in negotiations, there is the Office of Management and Budget to scrutinize defense requests for funds, there is the Council of Economic Advisors to study government policies and expenditures, there is Congress itself with constitutional power over the purse strings, and finally there is the General Accounting Office to audit contractors and uncover illegal and inequitable practices.

The problem is that the organizational chart for defense spending and defense contracting has little bearing on reality. For the institutions established to restrain defense spending have instead accommodated themselves to flagrant contract abuses and extravagant defense expenditures. In some cases the adjustments have been obfuscation. In the case of the General Accounting Office, it amounts to an advanced case of bureaucratic sleeping sickness, complicated by the fact that the Congress has often not wanted a very energetic watchdog.

The General Accounting Office was created in 1921 by the same act that established the Bureau of the Budget. As an agency of the legislative branch, the GAO was intended to serve as an independent auditor of all branches and all agencies of government. The head of the GAO, the Comptroller General, is appointed by the President for a 15-year term. The term cannot be renewed and the Comptroller General can be removed from office only by Congress, not by the President, an arrangement that is supposed to assure the independence of the agency. However, while the Bureau of the Budget has played a key role in increasing the power of the President, the GAO has not had great success in either materially enlarging the influence of Congress or checking the growth of the executive, especially the military.

In the early years of the GAO its major concern was the auditing of vouchers. There were literally tens of

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thousands of vouchers including the travel vouchers of federal employees; and during World War II, when government expenditures skyrocketed, about 15,000 GAO employees were kept busy mostly by shuffling around tons of vouchers. Until 1951 its duties were routine. But in that year Congress, concerned over potential contractor abuses and profiteering during the Korean War build-up, modified the GAO's statutory authority to permit it to examine contractors' books and records. For the first time the GAO became an investigative arm for Congress, with the primary responsibility for auditing defense contractors.

As the GAO's competence and confidence grew, it probed deeper into military procurement, issuing reports of its investigations to Congress with increasing frequency. Its power to suspend and disallow illegal payments of public funds was extended to include illegal contracts. It exercised this power to a small extent, more often referring cases to the Justice Department for further investigation or recommending that the Pentagon attempt to collect voluntary reimbursements from contractors guilty of overcharging the government. Cumulatively, GAO's reports of the late 1950s and early 1960s were a devastating critique of military contracting. But it was ahead of its time. Only a few in Congress were impressed and disturbed over the revelations, notably Carl Vinson, the chairman of the House Armed Services Committee. The tide of opinion was in the opposite direction, and many began growing hostile to the GAO green-eyeshade military critics. Vinson retired in 1964, to be succeeded as chairman by L. Mendel Rivers (who was replaced after his recent death by F. Edward Hébert). In 1965 a subcommittee of the House Government Operations Committee, headed by Chet Holifield, began an investigation of—guess who?—the GAO.

The Government Operations Committee has jurisdiction over the GAO in that it considers the legislation and authorizes the funds for the agency. In opening the investigation Holifield expressed "the great concern that has been shown in industry circles, and recently in the Department of Defense, over the difficult and sometimes awkward situations created by the GAO audit reports," and he asked these questions:

> Is the GAO, as some Government and industry parties believe, enforcing its own standards of procurement on Government and industry without authority of law or without the benefit of the intimate technical and business experience which resides in the parties to the procurement process? Is there developing a clash of procurement philosophies between GAO and DOD?

This inviting tone was eagerly accepted by the Pentagon and its contractors, who queued up to testify.

Complaints of the Guilty

It was an inquisition, and before it was over Joseph Campbell, the Comptroller General, resigned, under a barrage of criticism from the military, industry, and Congress, for reasons of "health." The basic complaint was all those GAO reports on defense contracts. The lead-off witness was Paul R. Ignatius, Assistant Secretary of Defense, who stated the case for the prosecution: the GAO's reports on the Pentagon went up from 206 in 1962 to 544 in 1964. Ignatius did not believe that the increase in the number of reports indicated the number of deficiencies in procurement, and he further maintained that the GAO was in effect violating the integrity of the government's contracts by coercing contractors into voluntary refunds. The Pentagon, Ignatius said, did not intend to seek voluntary refunds in a number of cases where the GAO had recommended them. Assistant Secretary of the Air Force Robert H. Charles expanded these views. "The sanctity of contracts," he testified, "is the bedrock of our commercial system. You nibble away at this and you nibble away at something far bigger

than an occasional refund out of the millions of transactions in which we are involved." To which Holifield replied, "The Chair is in complete concurrence with your statement."

Ignatius also explained the reorganization of the Defense Department contract-audit function, formerly performed within each of the military services, into a centralized body called the Defense Contract Audit Agency (DCAA). What may have appeared at the time to be merely one of the endless changes in Pentagon organization charts, affecting the unexciting subject of accounts and audits, represented an important power grab by the Pentagon and a demotion for the GAO tacitly approved by Congress. Hereafter, most audits of defense contractors would be performed by the DCAA, and gradually it would push the GAO aside. The rationale was that as each of the executive agencies improved its ability to audit individual contracts and exercise surveillance over contractors, the need for the GAO to do so diminished. In reality the idea was to get the GAO out of the Pentagon's and the contractors' way. In good military bureaucratese, Ignatius said that the DCAA's responsibilities would "allow for continuation of the use of GAO reports as one of the audit management tools for evaluating the effectiveness of the contract audit function and for disclosing significant contract audit matters needing improvement or greater emphasis." In other words, the Pentagon considers the GAO a useful "tool" as long as it can control its use.

The contractors and their representatives, Boeing, Lockheed, United Aircraft, Honeywell, Grumman Aircraft, Aerospace Industries, Inc., the Western Electronic Manufacturers' Association, the National Security Industrial Association, and others identified the GAO's sins more specifically. The GAO, they charged, used colored and sensational language in the titles and the substance of its reports. Words like "overcharges, unnecessary costs, wasteful practices, improper charges, failure to protect the government's interest" encourage wide publicity in the news media and create the distorted impression that most military procurement is unsound. They may even create the impression that there is profiteering, asserted Karl G. Harr, president of Aerospace Industries, Inc. Titles of reports such as "Overstated Cost Estimates Included in Target Prices Negotiated for B-52G Airplanes Produced by the Boeing Co., Wichita Branch, Wichita, Kansas" and "Excessive Prices Negotiated for Installation and Test of Radar Systems Under a Negotiated Fixed-Price Contract with Avco Corp., Electronics Division, Cincinnati, Ohio" were inflammatory and unfairly singled out individual contractors for public censure.

Campbell, the Comptroller General, testifying for the first time on the day following the appearance of Secretary Ignatius, was immediately asked to comment on Ignatius' testimony, which amounted to asking the defendant to answer an indictment one day after it is read. Of course he could not, although he returned one week later with a prepared response, especially to Ignatius' assertion that the GAO was violating the integrity of the Pentagon's contracts. By this time, however, the committee was not interested in Campbell's reply, and they questioned him on other matters. Nevertheless, the statement, which was inserted into the record of the hearings (in extra-small type), does contain some interesting facts.

Take It or Leave It

For example, Ignatius had complained about the 1964 report on the *USS Bainbridge*, which the GAO concluded was a case of overpricing on the part of the contractor, the Bethlehem Steel Company, and recommended a refund of about $5 million. Ignatius testified that the Pentagon did not agree there was any overpricing and would not seek a refund because it would violate the integrity

of the contract entered into by the government. Campbell pointed out that Bethlehem began work on the ship under a letter contract providing for reimbursement of costs until final terms could be worked out. Negotiations to finalize the contract were fruitless for three years, until the Navy's Bureau of Ships gave in to Bethlehem's demands for a fixed price of $87 million. At the time of the agreement 75 per cent of the work on the ship had been completed. But the Navy's contract-approval authority refused to approve the contract on the grounds that the price was too high. The matter was then referred to the Assistant Secretary of the Navy, who approved Bethlehem's offer a year later.

The GAO found that it was improper to enter into a fixed-price contract at a time when relatively little work remained to be done on the ship. It was no trick to forecast that the remaining costs of the job would bring the total bill far below $87 million. Indeed, the Navy's own contract approval authority had recommended a price of $80.5 million, before the top brass began negotiating directly with the contractor. The GAO's analysis of the incurred and estimated costs submitted by Bethlehem to support its demands showed overcharges totaling $5 million. Despite Ignatius' assertion that the government would not seek a refund, Campbell showed that the Navy had once unsuccessfully tried to get a voluntary refund prior to the signing of the final contract, after the GAO pointed out that Bethlehem was improperly charging costs to the government for the *Bainbridge* that should have been charged either to Bethlehem's commercial work or to other government contracts.

On another case Ignatius stated no refund would be sought even though the contractor was wrong in adopting a take-it-or-leave-it attitude with the government. This case involved the purchase of Klystron tubes from Varian Associates, which developed and held a monopoly on Klystron. Varian refused to furnish cost data or even negotiate prices and established the price of its product unilaterally. The GAO's examination showed that the prices exceeded actual production costs by from 36 to 279 per cent. Varian claimed its costs were proprietary, yet as the sole-source supplier virtually all Klystron had been sold for military use.

Finally, Ignatius had complained that the GAO had violated the integrity of contracts in its criticism of the rent-free use by Pratt and Whitney of government-owned facilities for nine years—while using the facilities to produce 10,000 engines that it sold to commercial customers. The contract provided that if Pratt and Whitney benefited from the commercial use of the government-owned facilities, its prices to the government would be reduced. According to the GAO, there were no price reductions or other benefits received by the government. Here, too, Ignatius said that the government would not seek a refund.

Blinding the Watchdog

Following the testimony of the defense-industry spokesmen, the committee recessed for about a month, then resumed for one last day to hear from Campbell's acting replacement. As Campbell had been on two occasions, the acting Comptroller General was badgered by a hostile committee, and the hearings were ended. A year later the committee issued a report announcing a complete reorganization of the defense division of the GAO and a new audit approach to defense contracts. In the future, rather than pinpointing individual cases of weaknesses, reports would be "broadened" to cover "major subject matters." Instead of reporting on separate contracts, a series of related problems would be bunched together in a single report, and the names of the contractors would often be withheld.

The hearings had whacked the GAO in the head, and in some ways it

has still not recovered. Its reports, never considered permanent contributions to the world of literature, have been purged of most of the "colored" and "sensational" language that the contractors complained of. Now the reports bear titles like "Need for Improving Administration of the Cost of Pricing Data Requirements of Public Law 87-653 in the Award of Prime Contracts and Subcontracts." Nothing sensational about that, and further, one can read that particular report from cover to cover without finding a trace of a contractor's name. In a 1968 report the Holifield Committee, discussing the improvements that it had brought within the GAO, stated, "There has been, in fact, a definite shift of GAO personnel from direct contract auditing to other defense areas," and Comptroller General Elmer B. Staats testified that this was due primarily to the improved work that has been performed by the Defense Contract Audit Agency. Ironically, within a year many other voices in Congress began criticizing the GAO for not paying enough attention to defense contracts. ■

Editor's Note:

Some material has been unearthed recently which illustrates how the General Accounting Office works and shows that even Richard Kaufman may have underestimated the dormancy of the accounting office—that the GAO may have gone beyond mere benign neglect of defense contracts and adopted the role of protector of the Defense Department and defense contractors from congressional or public inquiry. This represents an exact reversal of the GAO's statutory mandate, which is to protect the people and the Congress from fiscal malpractice on the part of agencies and contractors. Having been sliced up by the Congress in 1965, the pitiful GAO now gets pushed around by large corporations and powerful government agencies.

The new material is a series of letters traded between members of the Senate and the GAO regarding the viability of the Lockheed Aircraft Corporation. Senator William Proxmire, vice-chairman (now chairman) of the Joint Economic Committee, wanted to obtain information from Lockheed's financial records in order to determine whether the company could possibly follow through on the controversial C-5A contract. In the spring of 1970 he asked the GAO for Lockheed's cash flow sheets.

The first response he received from Comptroller General Elmer Staats—in May, 1970— was hopeful. "We were told," wrote Staats, "that the Deputy Secretary of Defense, David Packard, and Daniel J. Haughton, chairman of the board, Lockheed Aircraft Corporation, currently were trying to develop a mutually satisfactory solution with respect to Lockheed's cash requirements as well as the detailed information that could be made available to you and to the Congress on this matter. We understand that this matter is being given their personal attention and that a decision should be made momentarily."

By September 14, a full four months later, nothing had happened. Proxmire had received no word about the decision that had been promised "momentarily." So, he wrote again to Staats, asking the GAO to do a complete study of the financial capability of Lockheed. Although the Defense Department did have the needed information about the contractor and by law must make it available to the GAO upon Staats' demand, Staats did not demand anything. He evidenced a curious timidity for a tenured emissary of the Pentagon's provider, Congress:

> We requested officials of the Department of Defense to make available for

our review any information the Department had relating to Lockheed's financial condition. We were informed that, although they did have certain financial data pertaining to Lockheed, they could not make it available to us since it had been furnished to the Department in confidence and on the basis that it would not be made public.

One might wonder how the GAO took this denial, since it is empowered by law to obtain such material, and since the refusal to provide it is a criminal offense. A clue to the underlying mood between the GAO and the Department that had just turned it down is provided in a letter, dated November 10. This letter was from the director of the Defense Division of the GAO, Charles M. Bailey, to the Secretary of Defense, Melvin Laird:

> The purpose of this letter is to confirm our understanding that we will not be able to review certain financial information furnished to the Department of Defense by the Lockheed Aircraft Corporation.
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> As an alternative, we asked whether or not it would be possible for us to examine the data at the Department and not remove it from your office. We would furnish the Senators only with our opinion as to whether Lockheed has the financial capability to complete and deliver C-5A aircraft.
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> We were advised that this could not be done because it would constitute a violation of the confidential relationship existing between the Department and the contractor concerning these data.

The GAO had bargained with the Defense Department for a private peek at the Lockheed file, provided, of course, that they wouldn't repeat what they saw, and would only tell the Senators their opinion. This was not exactly a proud role for a watchdog.

Senator Proxmire was incensed. He wrote again to Staats, on November 20, and said, "The denial of this information to GAO by the Department of Defense appears to me to be in direct violation of the law. . . .

"My question now is, what does the GAO intend to do about the Defense Department's flagrant violation of the law giving GAO access to its books and records? Will you forward this matter to the Justice Department for further action? What steps do you intend to take?"

Finally, the GAO compromised on the law and negotiated a settlement with the Pentagon. According to Staats' letter of December 4 to Senator Richard Schweiker, who, along with Proxmire, sought the Lockheed records, the GAO will be allowed to read the documents in the Defense Department—without taking them out or reproducing them. The GAO is then "hopeful" that it can make this information known to the Senators. Whether a result detrimental to Lockheed would stand a lesser chance of getting to the Senators than one favorable to it is unknown, but one may suspect that the GAO opinion on Lockheed's condition might undergo the same kind of uneven negotiation that led to the decision not to release the material itself.

The Proxmire-Staats exchange is a case study of the GAO under pressure. But what is also important is that the whole C-5A accounting mess would never have surfaced if insiders hadn't leaked it to the press. The GAO certainly didn't provide that information, and might not even have known about it, since the agency is no longer in the business of auditing specific contracts. Who knows how many C-5A-type debacles would have been brought to light if the GAO could and would do the job for which it was originally intended—how much company the C-5A would have now if the blind watchdog could be made to see the light.

Reports

With these two reports, The Washington Monthly *is initiating a new feature. From time to time, we will recommend and comment on other government reports of special interest or importance. We depend on our readers to help us identify materials that will make up this feature, as we do for the Memo of the Month.*

Security Agreements and Commitments Abroad
Report to the Committee on Foreign Relations, United States Senate, by the Subcommittee on Security Agreements and Commitments Abroad.

The Role and Effectiveness of Federal Advisory Committees
Forty-Third Report by the Committee on Government Operations, U.S. House of Representatives.

By publishing these two documents,* the Government Printing Office recently scored rare successes on at least three counts. The reports are brief—a combined total of 73 pages. They relieve the normal drone of governmental prose with some spritely comments. And, most importantly, both reports deal intelligently with little-known problems of major political importance.

"Security Agreements and Commitments Abroad" is the final report of Senator Stuart Symington's subcommittee on its two-year probe into American entanglements in foreign countries. The investigation involved extensive travel by the committee staff, often hostile negotiations with various agencies of a reticent executive branch—and 37 days of hearings, which produced 2,500 pages of testimony riddled with security deletions of controversial necessity. (The Taiwan hearings are the subject of James C. Thomson, Jr.'s "The Inscrutable Commitment," beginning on page 44 of this issue.)

The report begins with a country-by-country review of the shadowy operations uncovered, or at least partially uncovered, by the subcommittee. The only elements of this summary review which have been widely reported in the press are those involving secret U. S. "inducements" to Thailand, South Korea, and the Philippines for their support of the American effort in Vietnam. There are many other revelations, some of which evoke a kind of bittersweet absurdity. In the section on Japan, for example, the subcommittee found:

> Included in this military syndrome are four United States golf courses, a 450-acre ammunition dump which is used as a religious retreat and boy scout camp, and the Mito bombing range. At the latter facility, United States fighter-bombers engage in gunnery practice only 2.6 miles from the Japan Atomic Fuel Corporation laboratory and 2.2 miles from public beaches.
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> United States military officials, however, up to now have taken the position that these facilities will be returned to Japan when the Japanese provide alternate-equivalent facilities.

*"Security Agreements and Commitments Abroad" is available from the Committee on Foreign Relations, U. S. Senate, Washington, D. C. 20510, and "The Role and Effectiveness of Federal Advisory Committees" from the Special Studies Subcommittee, Rayburn Building, Washington, D. C. 20515.