Audit Report

OFFICE OF THE INSPECTOR GENERAL

DOD COMPLIANCE WITH LOBBYING RESTRICTIONS IMPOSED BY THE BYRD AMENDMENT

Report No. 94-027 December 30, 1993

Department of Defense

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Acronym

FAR	Federal Acquisition Regulation

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

December 30, 1993

MEMORANDUM FOR DIRECTOR OF DEFENSE PROCUREMENT
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT)
DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on DoD Compliance with Lobbying Restrictions Imposed by the Byrd Amendment (Report No. 94-027)

We are providing this report for your review and comment. The Byrd Amendment requires the Inspector General, DoD, to review and report annually on DoD compliance with the requirements of the Byrd Amendment. The report also discusses a DoD Hotline allegation that a company violated the Byrd Amendment by not disclosing certain lobbying activities.

DoD Directive 7650.3 requires that audit recommendations be resolved promptly. The Director of Defense Procurement comments were not responsive to Recommendation 1. Accordingly, we request additional comments from the Director of Defense Procurement on the final report by March 1, 1994. However, additional comments are not required if Congress passes a new Lobbying Disclosure Act that repeals the Byrd Amendment.

We appreciate the courtesies extended to the audit staff. If you have any questions on this report, please contact Mr. Garold E. Stephenson, Program Director, at (703) 692-3179 (DSN 222-3179) or Mr. Eugene E. Kissner, Project Manager, at (703) 692-3200 (DSN 222-3200). Appendix G lists the report distribution. The audit team members are listed inside the back cover.

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Deputy Assistant Inspector General
for Auditing

Report No. 94-027 **December 30, 1993**
(Project No. 3CH-0011)

DOD COMPLIANCE WITH LOBBYING RESTRICTIONS IMPOSED BY THE BYRD AMENDMENT

EXECUTIVE SUMMARY

Introduction. Public Law 101-121, section 319, commonly referred to as the Byrd Amendment, prohibits recipients of Federal contracts, grants, loans, and cooperative agreements from using appropriated funds for lobbying activities and requires the filing of a disclosure form if other funds are used for lobbying activities subject to the amendment. The Byrd Amendment also requires persons or companies that request or receive a contract, grant, loan, or cooperative agreement to certify that no prohibited payments were or will be made. DoD is required to report semiannually to Congress the number of lobbying activity disclosure forms received. For the 12-month period ending September 30, 1992, DoD contracting activities forwarded 12 lobbying activity disclosure forms to the Director of Defense Procurement for the semiannual reports to Congress.

Objectives. The primary audit objective was to evaluate DoD compliance with the requirements imposed by the Byrd Amendment. The audit also followed up on the recommendations in Inspector General, DoD, Report No. 91-122, "Final Report on the Review of Lobbying Activities," September 25, 1991, and evaluated a DoD Hotline allegation that a company violated the Byrd Amendment by not disclosing certain lobbying activities.

Audit Results. With regard to contracts, DoD can improve its compliance with the Byrd Amendment requirements. DoD contracting activities did not include the Federal Acquisition Regulation provision and clause implementing the Byrd Amendment in applicable contract solicitations and contracts for 11 of 60 contracts reviewed. With regard to prior audit recommendations, the Director of Defense Procurement had taken no action to inform senior DoD officials of Byrd Amendment restriction and disclosure requirements, to require senior DoD officials to report persons lobbying them for contracts and grants and any suspected violations of the Byrd Amendment, and to develop a training module on the requirements of the Byrd Amendment. The Director of Defense Procurement stated no action will be taken on the recommendations because of pending revisions to existing lobbying laws. A survey of senior DoD officials identified lobbying activities that may have been reportable under the Byrd Amendment that were not in disclosures filed with DoD contracting officers by consultants representing contractors. See the finding in Part II for details.

With regard to grants, DoD did an excellent job of implementing the Byrd Amendment requirements. Further, the DoD Hotline allegation that a company violated the Byrd Amendment by not disclosing certain lobbying activities was not substantiated. See Appendix A for details.

Internal Controls. The audit found no material internal control weaknesses. See Part I for a discussion of the internal controls reviewed.

Potential Benefits of Audit. We did not identify any potential monetary benefits during the audit; however, we did identify opportunities to improve compliance with laws and regulations. See Appendix E for a summary of the potential benefits resulting from the audit.

Summary of Recommendations. We recommended that the Director of Defense Procurement notify senior DoD officials of the Byrd Amendment restrictions and disclosure requirements and develop a training module for senior DoD officials on the Byrd Amendment and procedures to disclose lobbying activities. We also recommended that the Army and the Navy Acquisition Executives and the Director, Defense Information Systems Agency, inform contracting officers of the requirement to include the Federal Acquisition Regulation provision and clause implementing the Byrd Amendment in all applicable contract solicitations and contracts and require contracting officers to modify contracts from which the Federal Acquisition Regulation provision and clause were inadvertently omitted.

Management Comments. The Director of Defense Procurement did not agree with the recommendations to issue a DoD-wide notice informing senior officials of the Byrd Amendment restrictions and disclosure requirements, to develop a method for reporting lobbying activities and suspected violations of the Byrd Amendment, and to develop a training module on the Byrd Amendment. The Army, the Navy, and the Defense Information Systems Agency agreed to include the Federal Acquisition Regulation provision and clause in all applicable contract solicitations and contracts and to modify contracts from which the applicable Federal Acquisition Regulation provision and clause were omitted and for which the required certification was not received. A discussion of the responsiveness of management comments is in Part II. The complete text of management comments is in Part IV.

Audit Response. Based on the Director of Defense Procurement comments, we revised Recommendation 1.b. to clarify our intent that senior officials report only suspected violations of the Byrd Amendment. We continue to believe that implementation of the recommendation would improve contractor compliance with the Byrd Amendment and reduce undisclosed lobbying activities. We considered the Army, the Navy, and Defense Information Systems Agency comments to be responsive. The Director of Defense Procurement is requested to provide comments on the final report by March 1, 1994. Additional comments are not required, if Congress repeals the Byrd Amendment through passage of a new Lobbying Disclosure Act.

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This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD. Copies of the report can be obtained from the Secondary Reports Distribution Unit, Audit Planning and Technical Support Directorate (703) 614-6303 (DSN 224-6303).

Part I - Introduction

Background

On October 23, 1989, the President signed Public Law 101-121, "Department of Interior and Related Agencies Appropriations Act for FY 1990." Section 319 of the act amended title 31 of the United States Code by adding a new section 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions," commonly referred to as the Byrd Amendment. The prohibitions and requirements contained in the new section became effective December 23, 1989.

Byrd Amendment Certification and Disclosure Requirements. The Byrd Amendment prohibits the recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence any member or employee of Congress or an officer or employee of an executive branch agency. The Byrd Amendment requires that each person or company who requests or receives a Federal contract, grant, loan, or cooperative agreement certify that no prohibited payments were or will be made. This certification is required for each proposal for a contract, grant, loan, or cooperative agreement of $100,000 or more and any extension, continuation, amendment, or modification. Contractors are also required to disclose lobbying activities that are paid for with funds available from non-Government sources and are performed by other than a contractor's own employees. A prime contractor is responsible for disclosing lobbying activities by all tiers of subcontractors.

Byrd Amendment Violations. The Byrd Amendment requires Federal employees to report suspected violations to the official designated by agency procedures. The penalty for violations is a fine ranging from $10,000 to $100,000 for each prohibited expenditure or failure to file or amend a disclosure. The agency head or designee assesses the penalties.

Congressional Reporting Requirements. The Byrd Amendment requires the Director of Defense Procurement to report semiannually to Congress the number of lobbying activity disclosure forms received. The Byrd Amendment also requires that the Inspector General, DoD, submit annually to Congress an evaluation of DoD compliance with the requirements of the Byrd Amendment.

Objectives

The primary audit objective was to evaluate DoD compliance with the requirements of the Byrd Amendment. The audit also followed up on the recommendations made in Inspector General, DoD, Report No. 91-122, "Final

Report on the Review of Lobbying Activities," September 25, 1991, and evaluated a DoD Hotline allegation that a company violated the Byrd Amendment by not disclosing certain lobbying activities that occurred during the period 1989 through 1992.

See Appendix A for details of DoD's successful implementation of Byrd Amendment requirements for grants and disclosure reporting and for details of the unsubstantiated allegation.

Scope and Methodology

Universe and Sample. During FY 1992, DoD had 7,060 contractual actions and 1,302 grant actions with obligations of $100,000 or more. The total obligations reported on these contract and grant actions were $52.5 billion and $448.5 million, respectively. We judgmentally selected for review 12 DoD contracting activities and 5 contracts at each activity, and 16 grants at 3 other DoD contracting activities. The total FY 1992 obligations on the 60 contracts and 16 grants were $737.3 million and $83.6 million, respectively. Factors considered in selecting contracting activities, contracts, and grants were as follows: the dollar value and numbers of contract actions of $100,000 or more processed by the contracting activity during FY 1992, whether contracts and grants were reviewed at the activity during prior audits of compliance with the Byrd Amendment, whether compliance problems were identified at the activity during prior audits, and whether the activities received and forwarded disclosures of lobbying contacts. Appendix B lists the sample of contracts and grants reviewed.

Methodology. We reviewed files for contracts and grants and interviewed the cognizant contracting officials at the 15 DoD contracting activities regarding procedures for obtaining the certifications and disclosures required by the Byrd Amendment. We obtained copies of the lobbying disclosure forms received by the Office of the Director of Defense Procurement and discussed the status of the recommendations made in Inspector General, DoD, Report No. 91-122 with representatives of the Office of Director of Defense Procurement and of the Defense Contract Audit Agency. We sent memorandums to 58 senior DoD officials requesting them to identify contacts after October 1, 1991, that contractors and grantees should have disclosed under the Byrd Amendment. Regarding the DoD Hotline allegation, we obtained information from the DoD activities and officials identified in the allegation as well as data from the company on the lobbying efforts of its consultants from January 1, 1989, through 1992.

Audit Period, Locations, and Standards. We performed this program results audit from October 21, 1992, to October 6, 1993, in accordance with the

auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly, we included such tests of internal controls as were considered necessary. We relied on the computer-processed data from the DoD contract action reporting system and the DoD grant management information system to determine a universe of contracts and grants covered by the Byrd Amendment provisions. Although we did not perform a formal reliability assessment of the data bases, we determined that contract and grant numbers and the dates and dollar amounts on the contracts and grants reviewed generally agreed with the information in the reporting system data bases. We did not find errors that would preclude use of the computer-processed data to meet the objectives of the audit and the conclusions in this report. Appendix F lists the officials and organizations visited or contacted during the audit.

Internal Controls

At the 15 DoD contracting activities, we reviewed internal controls to verify that:

o contracting officers included a key Federal Acquisition Regulation (FAR) provision and FAR clause in applicable contract solicitations,

o contracting officers obtained certifications from recipients of contracts and grants, and

o designated contracting officials forwarded lobbying disclosure forms to the Office of the Director of Defense Procurement.

We did not identify any material internal control weaknesses. All contracting activities had automated contracting systems or checklists that identified FAR provisions and clauses to be included in applicable contracts, and all contracts and solicitations were subjected to supervisory and legal reviews. The Defense Information Systems Agency prepared an internal management control letter of assurance that did not discuss any internal control weaknesses directly related to the Byrd Amendment. During FY 1993, the Defense Information Systems Agency implemented the Air Force automated contract preparation system, which will enable the Defense Information Systems Agency to insert required FAR clauses automatically into contracts and should improve compliance with the Byrd Amendment.

Prior Audits and Other Reviews

Since enactment of Public Law 101-121 in 1989, the Inspector General, DoD, has issued three reports on DoD compliance with the requirements of the Byrd Amendment. The General Accounting Office also reviewed implementation of the Byrd Amendment at selected DoD activities and provided the results of its review in testimony before the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs. A summary of prior audits and other reviews is in Appendix D.

Other Matters of Interest

We referred for investigation to the Assistant Inspector General for Departmental Inquiries, DoD, six contractors involved in lobbying activities during 1992 that appear to be reportable under the Byrd Amendment. The Byrd Amendment states that failures to disclose reportable lobbying activities should be investigated and, where warranted, civil penalties should be imposed and collected under provisions of the Program Fraud Civil Remedies Act.

Part II - Finding and Recommendations

Compliance With Byrd Amendment Requirements

DoD contracting activities did not include in applicable contract solicitations and contracts the FAR provision and clause that implement the Byrd Amendment. Of 60 contracts reviewed at 12 activities, the provision or clause or both were omitted from 11 contract solicitations and contracts awarded by 6 activities. Also, the Director of Defense Procurement did not implement prior audit recommendations to improve DoD enforcement of contractor compliance with the Byrd Amendment requirements. We also identified suspected contractor noncompliance with the Byrd Amendment. Three of 58 senior DoD officials surveyed identified lobbying activities by 6 contractors that were not included in disclosures filed with contracting officers. The FAR provision and clause were omitted because contracting officers either overlooked or were not familiar with the FAR requirement. The Director of Defense Procurement did not implement the prior audit recommendations because revisions to the existing lobbying laws were pending. As a result of omitting the FAR provision and clause, DoD contracting officers did not obtain the certifications required by the Byrd Amendment on the contracts.

Background

FAR subpart 3.8, "Limitation on the Payment of Funds to Influence Federal Transactions," implemented the Byrd Amendment. FAR 3.808, "Solicitation Provision and Contract Clause," requires the provision at FAR 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions" (the FAR provision), to be included in all solicitations expected to exceed $100,000. FAR 3.808 also requires the clause at FAR 52.203.12, "Limitation on Payments to Influence Certain Transactions" (the FAR clause), to be included in all solicitations and contracts expected to exceed $100,000. The FAR provision and the FAR clause require the contractor to certify that no Federal appropriated funds have been or will be paid for lobbying activities and to file a disclosure if other than appropriated funds have been or will be paid for lobbying activities.

FAR Provision and Clause

The FAR provision or the FAR clause or both were not included in 11 of the 60 contract solicitations and contracts reviewed. Appendix C lists the contracts from which the FAR provision or clause or both were omitted.

Contracting personnel inadvertently omitted the FAR provision or the FAR clause or both from 11 contract solicitations and contracts (5 Army, 5 Navy, and 1 Defense Information Systems Agency). Four of the six contract solicitations from which only the FAR provision was omitted were for sole-source contracts. Two of the contracts were letter contracts, one contract was a Small Business Administration 8(a) program contract, and the other contract was for telecommunication services available from only one responsible source.

The contracting officers at the Naval Undersea Warfare Center who omitted the FAR clause from three contracts and both the FAR provision and the FAR clause from one contract stated they were unaware of the Byrd Amendment requirements to include the FAR provision and clause. The omissions occurred even though Naval Undersea Warfare Center procedures required contracting officers and contract negotiators to use a checklist that included the FAR provision and the FAR clause when preparing contract solicitations and contracts. The FAR provision was omitted from one contract awarded by the Defense Supply Service-Washington because the contracting officer believed the sole-source contractor would not need the services of lobbyists.

Omitting both the FAR provision and the FAR clause from contract solicitations and contracts allowed offerors to avoid the certification requirement. Omitting the FAR provision or the FAR clause from contract solicitations and contracts can also affect contractor compliance with the certification requirement. However, omitting either the provision or the clause is less serious because a certification is obtained either from the offerors responding to the contract solicitation or from the contractor upon acceptance of the contract. The Army and the Navy Acquisition Executives and the Director, Defense Information Systems Agency, should inform contracting officers of the requirement to include the FAR provision and the FAR clause in all applicable contract solicitations and contracts, and should require contracting officers to modify contracts from which the FAR provision and the FAR clause were inadvertently omitted.

Prior Audit Recommendations

Director of Defense Procurement Response. The Director of Defense Procurement did not agree with the recommendations in Inspector General, DoD, Report No. 91-122 to improve DoD enforcement of contractor compliance with the Byrd Amendment requirements. The recommendations were to inform senior DoD officials of the Byrd Amendment restrictions and to require the officials to report persons lobbying them for contracts and grants and to report suspected violations of the Byrd Amendment. The Director also did not agree to develop a training module to make senior DoD officials aware of the Byrd Amendment requirements. In response to the final report, the Director stated that no action would be taken on these audit recommendations because of Senator Carl Levin's intention to revise existing lobbying laws and the Office of Management and Budget intention to issue clarifying guidance. Proposed legislation to change the lobbying laws was introduced in the Senate and the House of Representatives, and the Senate passed its version of the "Lobbying Disclosure Act of 1993" on May 6, 1993. The House of Representatives has not voted on its version as of December 23, 1993. The DoD supports repeal of the Byrd Amendment.

Office of Management and Budget Guidance. The Office of Management and Budget published a proposed change to its Government-wide guidance on the Byrd Amendment on January 15, 1992, that narrowed the exemptions for nondisclosure of lobbying activities not related to a specific contracting action. However, the Office of Management and Budget did not finalize the guidance due to possible changes in the lobbying statutes. In September 1993, Office of Management and Budget officials stated that no additional guidance for the Byrd Amendment has been or will be issued until Congress passes a final version of the legislation.

Implementing Recommendations to Improve Compliance. We believe that the Director of Defense Procurement should implement the recommendations in Inspector General, DoD, Report No. 91-122 to assist in improving compliance with the Byrd Amendment disclosure requirement for contracts. The effective date in the proposed Senate and House versions of the Lobbying Act of 1993 is 1 year after enactment. Also, the proposed legislation revises, but does not eliminate, the requirement for disclosing lobbying activities. The revised disclosure requirement in the proposed legislation stipulates that each person who requests or receives a Federal contract, grant, loan, or cooperative agreement must submit a declaration to the contracting agency containing the name of any lobbyist registered under the Lobbying Disclosure Act of 1993 who has made lobbying contacts on behalf of the person with respect to that Federal contract, grant, loan, or cooperative agreement.

Unreported Lobbying

Survey of Senior DoD Officials. We requested 58 senior DoD officials to identify lobbying efforts by contractors and grantees during FY 1992 that should have been disclosed under the Byrd Amendment. We sent each of the 58 senior DoD officials the Byrd Amendment criteria to use as a guide. The senior DoD officials contacted are identified in Appendix F. Of the 58 senior DoD officials, 3 reported that they were contacted by consultants representing 6 contractors and that the contacts may have been reportable under the Byrd Amendment. None of the six contractors filed a lobbying disclosure form. The Byrd Amendment requires that a failure to file the disclosure form be investigated and, where warranted, civil penalties be imposed under the Program Fraud Civil Remedies Act. The information provided by the three senior DoD officials was referred for investigation.

Occurrence of Unreported Lobbying. The fact that only 5 percent (3 of 58) of the respondents stated that they were lobbied by contractors and that the lobbying appeared to be in a category reportable under the Byrd Amendment indicates that a requirement for senior DoD officials to report lobbying efforts they suspect are violations of the Byrd Amendment will not create an unmanageable workload for the officials designated to act on the reported information. The survey also confirmed that many senior DoD officials were not familiar with Byrd Amendment requirements.

Recommendations, Management Comments, and Audit Response

Change to Recommendation. Based on management comments, we revised Recommendation 1.b. to clarify our intent to have senior DoD officials report only suspected violations of the Byrd Amendment. Management's comments are summarized below.

1. We recommend that the Director of Defense Procurement:

a. Issue a DoD-wide notice to inform senior DoD officials of Byrd Amendment restriction and disclosure requirements.

b. Develop statements and forms for use by senior DoD officials to report to a designated official any lobbying efforts they suspect are violations of the Byrd Amendment.

c. Develop a training module for use by DoD Components to make senior DoD officials aware of the requirements of the Byrd Amendment.

Management Comments. The Director of Defense Procurement did not agree with the recommendations. The Director stated that additional notice to inform senior officials of the Byrd Amendment provisions is unnecessary because, in October 1991, she sent a memorandum reminding the Military Departments and Defense Agencies to submit disclosure forms. The Director also stated that there is no indication contractors are not complying with the Byrd Amendment, and that a system for senior officials to report suspected violations is both burdensome and unwarranted. For Recommendation 1.b., the Director stated that an elaborate, manpower-intensive bureaucracy would be needed to survey the thousands of senior DoD officials concerning the Byrd Amendment. The Director also stated that the recommendation is a contradiction to the National Performance Review, which emphasizes reducing reporting burdens and unnecessary regulation. For Recommendation 1.c., the Director stated that it would not be cost effective or administratively justifiable to develop a training module on the Byrd Amendment for senior DoD officials.

Audit Response. The Director's October 1991 memorandum addressed the requirement for contracting offices to forward to the Office of the Secretary of Defense the disclosure forms submitted by contractors who disclosed that they lobbied for a contract. Recommendation 1. is directed more toward making program officials who are most likely to be lobbied aware of the Byrd Amendment requirements rather than toward just reminding contracting personnel to forward all disclosure forms received. This audit and Inspector General, DoD, Report No. 91-122, "Final Report on the Review of Lobbying Activities," September 25, 1991, reported that many senior DoD officials are not familiar with the Byrd Amendment requirements. Additionally, three senior officials informed us that they were contacted by consultants representing six contractors and that the contacts may have been reportable under the Byrd Amendment.

Because the Byrd Amendment relies on self-reporting by contractors, we believe it is necessary for senior DoD officials to report suspected violations. Until senior officials are made aware of the Byrd Amendment requirements and are provided a method for reporting lobbying contacts that the contractors should disclose under the Byrd Amendment, there is no assurance that undisclosed lobbying has not occurred or will not occur in the future. The recommendation requires neither an elaborate system to survey all senior DoD officials nor a costly and administratively burdensome training program. The recommendation requires only that senior DoD officials be made aware (initially by notice; subsequently by training module) of the Byrd Amendment requirements and be provided with a method (form) for reporting suspected violations. We request

that the Director of Defense Procurement reconsider her position when responding to Recommendation 1. in the final report.

2. We recommend that the Army and the Navy Acquisition Executives and the Director, Defense Information Systems Agency:

a. Inform contracting officers of the requirement to include Federal Acquisition Regulation 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions," in all contract solicitations expected to exceed $100,000 and Federal Acquisition Regulation 52.203-12, "Limitation on Payments to Influence Certain Transactions," in all contract solicitations and contracts expected to exceed $100,000.

b. Require contracting officers to issue modifications to contracts from which Federal Acquisition Regulation provision 52.203-11 and Federal Acquisition Regulation clause 52.203-12 were inadvertently omitted from the solicitation and for which the required certification was not obtained.

Army and Defense Information Systems Agency Comments. The Army and the Defense Information Systems Agency concurred with the recommendation. The Army will publish guidance before January 31, 1994, that directs contracting officers to include the FAR provision and the FAR clause in applicable contract solicitations and contracts. In November 1993, the Defense Information Systems Agency Information Technology Procurement Organization sent a memorandum to all contracting officers and contracting officials reminding them to include FAR 52.203-11 and FAR 52.203-12 in applicable contract solicitations and contracts. The Defense Information Systems Agency also added the FAR provision and the FAR clause to the solicitation checklists used by contracting officials during contract pre-award reviews. The Army and the Defense Information Systems Agency also instructed contracting officers to modify the contracts identified in the audit report that did not contain the FAR provision and the FAR clause and to obtain the required certifications from the contractors. The Army and the Defense Information Systems Agency stated that action to obtain the certifications was completed.

Navy Comments. The Navy concurred with Recommendation 1.a. and partially concurred with Recommendation 1.b. In December 1993, the Deputy Assistant Secretary of the Navy for Acquisition Policy, Integrity, and Accountability sent a memorandum to the head contracting officials at cognizant Navy activities directing that the importance of including the FAR provision and the FAR clause in appropriate contract solicitations and contracts be reemphasized to all contracting officers. For Recommendation 1.b., the Deputy Assistant Secretary directed that in cases where the FAR provision and the FAR clause were omitted from contract solicitations and the FAR clause was omitted

from contracts, the chief of the contracting office determine whether amendments to the contract are appropriate, considering factors such as the stage of completion and the impact of reopening the contracts.

Audit Response. We consider the actions taken by the Army, the Navy, and the Defense Information Systems Agency responsive to the recommendation.

Response Requirements Per Recommendation

Response to the final report is required from the addressee shown for the items indicated with an "X" in the chart below.

		Response Should Cover		
Number	Addressee	Concur/ Nonconcur	Proposed Action	Completion Date
1.	DDP	X	X	X

Part III - Additional Information

Appendix A. Byrd Amendment Certification and Disclosure

Grant Certifications and Disclosure Reporting

The DoD contracting activities obtained the certifications required by the Byrd Amendment from the recipients of the grants reviewed. Also, the Director of Defense Procurement and DoD contracting activities were complying with the Byrd Amendment requirement for reporting disclosures of influencing activities to the Congress. The Director of Defense Procurement forwarded all disclosures received from DoD Components to the Secretary of the Senate and Clerk of the House of Representatives. The Director of Defense Procurement submitted six disclosure forms for each semiannual period ending March 31, 1992, and September 30, 1992. The 12 disclosure forms were submitted by 7 contractors to 6 contracting activities. No additional disclosure forms were located at the 15 contracting activities visited.

DoD Hotline Allegation

The DoD Hotline allegation was not substantiated that a company violated the Byrd Amendment by not reporting contacts between the company's consultants and DoD officials and members and employees of Congress. The company's contacts with Navy and Air Force officials were related to preparation, submission, and negotiation of contract proposals and performance under an existing contract for fuel cells for the H-3 helicopter. The Byrd Amendment excludes from disclosure discussions concerning proposal preparation and post-award performance. The company's other contacts with a former Assistant Secretary of the Navy, officials in the Office of the Secretary of Defense, and members and employees of Congress were lobbying efforts associated with a different amendment, Public Law 102-172, section 8005, commonly referred to as the Berry Amendment. The contacts were lobbying to change the Berry Amendment to allow the company, a foreign manufacturer of fuel cells, to compete in the U.S. fuel cell market. Because the discussions were not for the purpose of influencing the award of any specific contract, the discussions are not covered by the Byrd Amendment. The Comptroller General of the United States, in decision B-246304-8, concluded on a similar allegation that the company's lobbying efforts to have the Berry Amendment changed did not require disclosure under the Byrd Amendment.

Appendix B. Contracts and Grants Reviewed

Contracts Reviewed

Contracting Agency	Contract	Contractor	FY 1992 Obligations	Total Obligations
Army Aviation and Troop Command	DAAJ09-92-C-0247	Short Brothers, PLC	$ 20,975,000	$ 41,950,000
	DAAJ09-92-C-0470	Honeywell, Inc.	5,194,344	10,388,688
	DAAJ09-92-C-0502	Bell Helicopter Textron, Inc.	108,766,522	111,025,165
	DAAJ09-92-C-0905	Aviall of Texas, Inc.	4,557,500	4,557,500
	DAAJ09-92-D-0066	Composite Technology, Inc.	1,267,529	3,550,338
Army Missile Command	DAAH01-90-C-0471	Boeing Defense & Space Group	5,562,230	20,937,230
	DAAH01-92-C-0038	LTV Aerospace & Defense Co.	147,468,300	147,468,300
	DAAH01-92-C-0092	Cartwright Electronics, Inc.	1,138,042	1,138,042
	DAAH01-92-C-0218	Atlantic Research Corporation	2,288,950	2,288,950
	DAAH01-92-C-0251	Raytheon Company	62,149,999	62,149,999
Army Topographic Engineering Center	DACA76-90-D-0005	LNK Corporation	491,987	3,000,000
	DACA76-91-C-0006	Bolt, Beranek & Newman	1,660,924	9,243,155
	DACA76-91-C-0023	DBA Systems, Inc.	5,718,000	10,214,464
	DACA76-92-C-0004	Hughes Aircraft Company	2,210,835	2,211,478
	DACA76-92-C-0035	Martin Marietta, Inc.	1,467,984	10,000,000
Army Information Systems Selection and Acquisition Agency	DAHC94-90-C-0008	Federal Data Systems Corporation	289,344	6,448,822
	DAHC94-92-C-0004	Infonet Services Corporation	144,460	144,460
	DAHC94-92-C-0005	Unisys Government Systems, Inc.	5,507,100	5,507,100
	DAHC94-92-D-0008	Digital Equipment Corporation	3,312,256	20,000,000
	DAHC94-92-D-0015	MSTC	893,994	5,300,000
Naval Air Systems Command	N00019-90-C-0031	Comprehensive Technologies	1,003,960	2,838,350
	N00019-90-C-0159	Hughes Aircraft Company	19,500,000	48,000,000
	N00019-90-C-0185	Leland Electrosystems, Inc.	8,474,355	16,576,040
	N00019-91-C-0266	AAI Corporation	4,118,784	4,126,129
	N00019-92-C-0025	Teradyne, Inc.	4,668,965	4,668,965
Navy Regional Contracting Center-San Diego	N00123-92-C-5132	G.E. Government Services	173,405	173,405
	N00123-92-D-5085	American Management Systems	453,701	1,202,769
	N00123-92-D-5094	ARINC Research Corporation	562,948	1,018,587
	N00123-92-D-5196	Eldyne, Inc.	445,303	1,236,009
	N00123-92-D-5465	Raytheon Support Services	2,791,710	4,996,481

Contracts Reviewed (cont'd)

Contracting Agency	Contract	Contractor	FY 1992 Obligations	Total Obligations
Navy Regional Contracting Center Detachment, Long Beach	N00123-92-C-0047	Motorola, Inc.	$ 4,189,773	$ 6,750,000
	N00123-92-C-0525	Microcom Corporation	3,074,181	3,074,181
	N00123-92-D-0078	Vector Microwave Research, Inc.	3,388,610	16,123,350
	N00123-92-D-0253	PRC, Inc.	537,850	7,899,592
	N00123-92-D-0538	G.E. Government Services	595,199	5,811,015
Naval Undersea Warfare Center	N66604-91-D-0076	Structured Technology, Inc.	2,830,882	6,648,343
	N66604-91-D-4009	Librascope Corporation	207,979	875,165
	N66604-91-D-4290	McLaughlin Research, Inc.	3,107,505	13,614,359
	N66604-91-D-7441	Syscon Corporation	2,116,058	9,605,069
	N66604-92-C-B916	SAIC	12,726,821	12,726,821
Human Systems Center	F41624-91-C-1004	Southwest Research Institute	279,258	279,258
	F41624-91-C-1005	BDM International, Inc.	128,000	999,802
	F41624-91-C-1006	SAIC	7,782,900	15,600,404
	F41624-92-C-1001	Gentex Corporation	6,000,000	9,185,464
	F41624-92-D-5000	RJO Enterprises	2,534,160	2,534,160
Defense Supply Service-Washington	MDA903-90-C-0004	The RAND Corporation	25,789,927	39,457,805
	MDA903-90-C-0006	Logistics Management Institute	29,524,273	79,955,231
	MDA903-91-D-0099	Harris Corporation	9,110,771	11,585,761
	MDA903-92-D-0003	AT&T General Business Systems	43,665,144	68,900,000
	MDA903-92-D-0024	C&P Telephone of Virginia	23,110,000	79,000,000
Defense Information Systems Agency	DCA100-90-C-0033	Data Systems Analysts, Inc.	4,709,764	11,368,334
	DCA100-91-C-0015	Booz-Allen & Hamilton	9,394,207	20,183,940
	DCA100-91-C-0029	IBM	3,097,706	9,922,869
	DCA100-91-C-0112	PRC, Inc.	4,541,979	4,652,949
	DCA100-91-C-0148	Computer Sciences Corporation	9,303,965	13,395,242
Defense National Stockpile Center	DLA300-90-C-0032	Brush Wellman, Inc.	7,395,933	25,602,944
	DLA300-91-C-0023	National Door Service, Inc.	0	389,458
	DLA300-92-C-0027	Bulova Corporation	5,245,000	5,265,000
	DLA300-92-C-0064	Macalloy Corporation	45,954,131	45,954,131
	DLA300-92-C-0065	Elkem Metals Company	43,717,029	43,717,029
Contract Total			$737,317,436	$1,133,438,102

Grants Reviewed

Contracting Agency	Grant	Contractor	FY 1992 Obligations	Total Obligations
Army Research Office	DAAL03-92-G-0109	University of Michigan	$ 1,240,000	$ 3,720,000
	DAAL03-92-G-0112	University of Rochester	794,000	2,314,000
	DAAL03-92-G-0114	University of Delaware	720,000	2,092,000
	DAAL03-92-G-0115	Massachusetts Institute of Technology	1,622,000	4,866,000
	DAAL03-92-G-0380	Clark Atlanta University	12,800,000	12,800,000
Office of Naval Research	N00014-90-J-1778	American Society for Engineering Education	3,000,000	6,665,397
	N00014-90-J-4016	Leland Stanford Junior University	1,389,453	9,403,435
	N00014-92-J-1422	Woods Hole Oceanographic Institution	14,805,000	14,993,156
	N00014-92-J-1835	University of California, Berkeley	3,593,000	3,990,000
	N00014-92-J-1901	California Institute of Technology	1,085,000	3,215,000
Advanced Research Projects Agency	MDA972-90-J-1002	Focus: HOPE	18,600,000	34,532,036
	MDA972-92-J-1016	University of Pennsylvania	4,500,000	4,500,000
	MDA972-92-J-1018	Virginia Center of Excellence for Software Use and Technology Transfer	7,200,000	7,200,000
	MDA972-92-J-1027	Composites Automation Consortium, Inc.	3,000,000	3,000,000
	MDA972-92-J-1029	Corporation for National Research Initiatives	250,000	7,894,614
	MDA972-92-J-1032	Massachusetts Institute of Technology	9,000,000	9,000,000
Grant Total			$ 83,598,453	$ 130,185,638
Total			$820,915,889	$1,263,623,740

Appendix C. Omissions From Contracts

Contracting Activity	Contract	Condition Code
Army Aviation and Troop Command	DAAJ09-92-C-0470	1
	DAAJ09-92-C-0502	1
Army Topographic Engineering Center	DACA76-90-D-0005	1
Naval Air Systems Command	N00019-92-C-0025	1
Navy Undersea Warfare Center	N66604-91-D-0076	2
	N66604-91-D-4009	3
	N66604-91-D-7441	2
	N66604-92-C-B916	2
Defense Information Systems Agency	DCA100-91-C-0015	1
Defense Supply Service-Washington*	MDA903-91-D-0099	3
	MDA903-92-D-0003	1

Condition Code Explanation:

1. FAR provision omitted from contract solicitation.

2. FAR clause omitted from contract solicitation and contract.

3. FAR provision and FAR clause omitted from contract solicitation and contract and no certification obtained from contractor.

*Defense Supply Service-Washington is a field activity under the Administrative Assistant, Office of the Secretary of the Army.

Appendix D. Summary of Prior Audits and Other Reviews

General Accounting Office

GAO/T-GGD-91-70 (OSD Case No. 8605), Testimony before the Senate Subcommittee on Oversight of Government Management, Committee on Governmental Affairs, "Federal Lobbying-Lobbying the Executive Branch," September 25, 1991. The testimony covered implementation of the Byrd Amendment by 31 Federal agencies, including DoD. The General Accounting Office reported that required certifications and disclosures were not always made, and disclosure forms that were submitted often lacked information such as payments to lobbyists, names of persons lobbied, and dates of service. The testimony contained no recommendations for DoD.

Inspector General, DoD

Report No. 92-MAM-004, "Report on Evaluation of the Implementation of Restrictions on Lobbying Imposed by the Byrd Amendment," January 31, 1992. The report stated that DoD had complied with the Byrd Amendment requirements through December 31, 1991, but that added Office of Management Budget clarifying guidance on the Byrd Amendment's applicability and additional steps to ensure contractor compliance were needed. The report summarized the results of Inspector General, DoD, Report No. 91-122 and stated that, on October 2, 1991, the Director of Defense Procurement issued a memorandum requesting the Military Department Acquisition Executives and the Defense agencies to ensure lobbying disclosure forms were forwarded to her office.

Report No. 91-122, "Final Report on the Review of Lobbying Activities," September 25, 1991. The report was issued in response to a June 12, 1991, request from the Office of Management and Budget. The report stated that:

o contractor compliance with the requirements of the Byrd Amendment could not be conclusively determined because contractor records were not sufficiently detailed, and no controls in DoD ensured that all lobbying activities would be identified;

o in some cases, contractors and grantees submitted disclosure forms because the contractors and grantees were uncertain whether their activities were covered by the Byrd Amendment; and

o DoD contracting offices were obtaining contractor certifications and disclosures required under FAR subpart 3.8, but the disclosure forms were not always forwarded to the Director of Defense Procurement for submission to Congress.

The report recommended that the Office of Management and Budget issue clarifying guidance and that DoD issue additional guidance, develop training, and improve procedures. The Executive Associate Director of the Office of Management and Budget agreed to issue guidance clarifying the difference between program lobbying and lobbying for contracts and grants in the context of follow-on sole-source contracts and programs. On November 22, 1991, the Director of Defense Procurement stated that no additional action would be taken on the audit recommendations because of Senator Carl Levin's intention to revise existing lobbying laws and the Office of Management and Budget intention to issue clarifying guidance. The Assistant Director, Defense Contract Audit Agency, agreed to establish procedures to determine whether contractors disclosed unallowable lobbying activities.

Unnumbered Report, "Department of Defense Implementation of Section 319 of Public Law 101-121, Department of Interior and Related Agencies Appropriations Act for FY 1990," February 5, 1991. The report states the DoD took actions to comply with the Byrd Amendment provisions and concluded that DoD complied with the requirements of the Byrd Amendment. The report contained no recommendations.

Appendix E. Summary of Potential Benefits Resulting From Audit

Recommendation Reference	Description of Benefit	Amount and/or Type of Benefit
1., 2.	Program Results. Improves compliance with the Byrd Amendment.	Nonmonetary.

Appendix F. Officials and Organizations Visited or Contacted

Department of Defense

Under Secretary of Defense for Acquisition, Washington, DC
Director of Defense Procurement, Washington, DC*
Assistant Secretary of Defense (Legislative Affairs), Washington, DC*
General Counsel, Department of Defense, Washington, DC*
Deputy Director, Defense Research and Engineering, Washington, DC*
Deputy Director for Defense Systems Procurement Strategies, Office of the Under Secretary of Defense for Acquisition, Washington, DC*

Department of the Army

Assistant Secretary of the Army (Research, Development, and Acquisition) and Army Acquisition Executive, Washington, DC*
- Program Executive Officer, Armaments, Picatinny Arsenal, NJ*
- Program Executive Officer, Armored Systems Modernization, Warren, MI*
- Program Executive Officer, Aviation, St. Louis, MO*
- Program Executive Officer, Combat Support, Warren, MI*
- Program Executive Officer, Command and Control Systems, Fort Monmouth, NJ*
- Program Executive Officer, Communication Systems, Fort Monmouth, NJ*
- Program Executive Officer, Global Protection Against Limited Strikes, Arlington, VA*
- Program Executive Officer, Intelligence and Electronic Warfare, Warrenton, VA*
- Program Executive Officer, Standard Army Management Information Systems, Fort Belvoir, VA*
- Program Executive Officer, Tactical Missiles, Redstone Arsenal, AL*

Inspector General, Department of the Army, Washington, DC
Commanding General, Army Aviation and Troop Command, Army Material Command, St. Louis, MO*
Army Missile Command, Army Material Command, Redstone Arsenal, AL
Deputy Assistant Secretary of the Army (Procurement), Washington, DC*
Deputy Assistant Secretary of the Army (Systems Management), Washington, DC*
Director, Army Contracting Support Agency, Falls Church, VA*

See footnote at end of appendix.

Department of the Army (cont'd)

Competition Advocate General of the Army, Washington, DC*
Army Information Systems Selection and Acquisition Agency, Alexandria, VA
Army Research Office, Triangle Park, NC
Director, Defense Supply Service-Washington, Washington, DC*
Army Topographic Engineering Center, Fort Belvoir, VA
Chief of Staff, Army Space and Strategic Defense Command, Arlington, VA*

Department of the Navy

Assistant Secretary of the Navy (Financial Management), Washington, DC
Assistant Secretary of the Navy (Research, Development, and Acquisition), Washington, DC*
- Program Executive Officer, Air Anti-Submarine Warfare, Assault and Special Mission Programs, Washington, DC*
- Program Executive Officer, Cruise Missiles Project and Unmanned Aerial Vehicles Joint Project, Washington, DC*
- Program Executive Officer, Space, Communications, and Sensors, Washington, DC*
- Program Executive Officer, Submarines, Washington, DC*
- Program Executive Officer, Tactical Aircraft Programs, Washington, DC*
- Program Executive Officer, Undersea Warfare, Washington, DC*
- Program Manager, AEGIS, Washington, DC*
- Direct Reporting Program Manager, Advanced Amphibious Assault, Washington, DC*
- Direct Reporting Program Manager, AX Program, Washington, DC*

Deputy Assistant Secretary of the Navy for Acquisition Policy, Integrity, and Accountability/Navy Competition Advocate, Washington, DC*
Deputy Assistant Secretary of the Navy for International Policy, Washington, DC*
Special Assistant for Industrial Liaison, Washington, DC*
Director, Strategic Systems Programs, Washington, DC*
Director, Contract Policy, Office of the Assistant Secretary of the Navy (Research, Development, and Acquisition), Washington, DC*
Naval Air Systems Command, Arlington, VA
- Deputy Commander for Acquisition and Operations, Naval Air Systems Command, Arlington, VA*

Naval Sea Systems Command, Arlington, VA
- Deputy Commander for Contracts, Naval Sea Systems Command, Arlington, VA*

Chief of Naval Research, Arlington, VA

See footnote at end of appendix.

Department of the Navy (cont'd)

Navy Aviation Supply Office, Naval Supply Systems Command, Philadelphia, PA
Naval Regional Contracting Center, San Diego, CA
  Naval Regional Contracting Center Detachment, Long Beach, CA
Naval Undersea Warfare Center, Newport, RI
Commanding Officer, Naval Air Station, Jacksonville, FL*
Commander, Marine Corps Systems Command, Quantico, VA*
Deputy Chief of Staff for Aviation, U.S. Marine Corps, Arlington, VA*

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller), Washington, DC
Assistant Secretary of the Air Force (Acquisition), Washington, DC*
  Program Executive Officer, Bombers, Missiles, and Trainers, Washington, DC*
  Program Executive Officer for C^3 Programs, Washington, DC*
  Program Executive Officer for Information Systems, Washington, DC*
  Program Executive Officer for Space, Washington, DC*
  Program Executive Officer for Tactical and Airlift Programs, Washington, DC*
  Program Executive Officer for Tactical Strike, Washington, DC*
Principal Deputy Assistant Secretary of the Air Force (Acquisition), Washington, DC*
Deputy Assistant Secretary of the Air Force (Contracting), Washington, DC*
Competition Advocate General of the Air Force, Washington, DC*
Commander, Air Force Materiel Command, Wright-Patterson AFB, OH*
Human Systems Center, Air Force Materiel Command, Brooks Air Force Base, TX
Warner Robins Air Logistics Center, Air Force Materiel Command, Robins Air Force Base, GA

Defense Organizations

Advanced Research Projects Agency, Arlington, VA
Defense Contract Audit Agency, Alexandria, VA
Defense Information Systems Agency, Arlington, VA
Director, Defense Logistics Agency, Alexandria, VA*
  Deputy Director for Acquisition, Defense Logistics Agency, Alexandria, VA*
  Commander, Defense Fuel Supply Center, Alexandria, VA*
  Administrator, Defense National Stockpile Center, Arlington, VA*

See footnote at end of appendix.

Defense Organizations (cont'd)

Defense Contract Audit Agency Branch Offices:
- Akron, OH
- Alexandria, VA
- Anaheim, CA
- Boston, MA
- Cleveland, OH
- Cocoa Beach, FL
- Dallas, TX
- Landover, MD
- Marlton, NJ
- Philadelphia, PA

Defense Contract Audit Agency Resident Offices:
- Harris Corporation, Palm Bay, FL
- SAIC Corporation, San Diego, CA

Non-Defense Federal Organization

General Accounting Office, Washington, DC

Non-Government Organizations

ALS International, Incorporated, Washington, DC
Aries Consulting, Alexandria, VA
Kilcullen, Wilson, and Kilcullen, Attorneys at Law, Washington, DC
Sekur-Pirelli S.p.A., Rome, Italy

*One of the 58 senior DoD officials surveyed to identify lobbying efforts by contractors and grantees.

Appendix G. Report Distribution

Office of the Secretary of Defense

Principal Deputy Under Secretary of Defense (Acquisition and Technology)
Director of Defense Procurement
Assistant Secretary of Defense (Command, Control, Communications, and Intelligence)

Department of the Army

Secretary of the Army
Assistant Secretary of the Army (Research, Development, and Acquisition)
Commander, Army Aviation and Troop Command, Army Materiel Command
Commander, Army Missile Command, Army Materiel Command
Director, Army Information Systems Selection and Acquisition Agency
Director, Army Research Office
Director, Defense Supply Service-Washington
Director, Army Topographic Engineering Center
Auditor General, Department of the Army

Department of the Navy

Secretary of the Navy
Assistant Secretary of the Navy (Financial Management)
Chief of Naval Research
Commander, Naval Air Systems Command
Commanding Officer, Navy Aviation Supply Office, Naval Supply Systems Command
Commanding Officer, Naval Regional Contracting Center, San Diego
  Officer-in-Charge, Naval Regional Contracting Center Detachment, Long Beach
Commanding Officer, Naval Undersea Warfare Center, Newport
Auditor General, Naval Audit Service

Department of the Air Force

Secretary of the Air Force
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Commander, Human Systems Center, Air Force Materiel Command
Commander, Warner Robins Air Logistics Center, Air Force Materiel Command
Auditor General, Air Force Audit Agency

Defense Organizations

Director, Advanced Research Projects Agency
Director, Defense Contract Audit Agency
Director, Defense Information Systems Agency
Director, Defense Logistics Agency
Administrator, Defense National Stockpile Center

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
National Security and International Affairs Division, Technical Information Center, General Accounting Office

Chairman and Ranking Minority Member of Each of the Following Congressional Committees and Subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Operations
House Subcommittee on Legislation and National Security, Committee on Government Operations

Senator John Glenn, U.S. Senate
Congressman George Darden, U.S. House of Representatives
Congressman David L. Hobson, U.S. House of Representatives

Part IV - Management Comments

Director of Defense Procurement Comments

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND TECHNOLOGY

DEC 15 1993

DP/CPA

MEMORANDUM FOR DIRECTOR, CONTRACT MANAGEMENT DIRECTORATE, INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Draft Report on DoD Compliance with Lobbying Restrictions Imposed by the Byrd Amendment (project No. 3CH-0011)

This is in response to your memorandum of November 1, 1993, requesting comments on Recommendation 1 of the draft audit report. As indicated in our informal markup of an earlier version of the draft, we have many concerns with the draft report and do not concur with its recommendation concerning actions to be taken by my office.

The recommendation concerning senior DoD officials is virtually identical to one made in your Report No. 91-122. We remain in disagreement with the recommendation. It would add bureaucratic requirements, with no cost effective outcome, to an already clogged and overburdened system. In addition, it is directly counter to our efforts to streamline our regulations and eliminate overly bureaucratic and burdensome requirements. Specific DoD comments on the recommendation are provided in the attachment.

Thank you for the opportunity to comment on the draft report.

Eleanor Spector

Eleanor R. Spector
Director, Defense Procurement

Attachment

Final Report Reference

DOD IG DRAFT AUDIT REPORT ON DOD COMPLIANCE WITH LOBBYING RESTRICTIONS IMPOSED BY THE BYRD AMENDMENT
DATED NOVEMBER 1, 1993
PROJECT NO. 0011

DIRECTOR, DEFENSE PROCUREMENT COMMENTS

* * * * *

RECOMMENDATION 1: We recommend that the Director of Defense Procurement:

a. Issue a DoD-wide notice to inform senior DoD officials of Byrd Amendment restriction and disclosure requirements.

Revised

b. Develop statements and forms for use by senior DoD officials to report to a designated official persons lobbying them and any suspected violations of the Byrd Amendment.

c. Develop a training module for use by DoD components to make DoD officials aware of the requirements of the Byrd Amendment.

DDP POSITION:

a. Nonconcur. Additional DoD-wide notice to inform senior officials of the current Byrd Amendment provisions is unnecessary. On October 2, 1991, we released a memorandum (attached) to the Military Departments, OSD and Defense Agencies reminding them of their responsibility to submit disclosure statements to OSD. There is no indication contractors are not complying with OFPP directed implementation of the Byrd Amendment. We believe the establishment of a system for senior DoD officials to report suspected violations is both burdensome and unwarranted.

b. Nonconcur. There are thousands of individuals within DoD who would fall in the category of "senior DoD official" (senior political, SES, and general officers). While it may not be a burden to survey 58 of them, an elaborate and manpower intensive bureaucracy would have to be established to monitor a group this large. There is no reason or requirement to establish a system which essentially assumes all contractor contacts are suspect until proven otherwise and that each senior DoD official should be a Byrd Amendment policeman. This is in direct contradiction to the National Performance Review, which places great emphasis on reducing reporting burdens and unnecessary regulation. In light of the fact that no material internal control weaknesses were identified in the draft

report, the costly and burdensome corrective action recommended is unjustified.

c. Nonconcur. For the reasons stated in b. above it would not be cost effective or administratively justifiable to develop a training module on the Byrd Amendment for senior DoD officials. As part of their basic procurement education program, DoD contracting personnel receive training which includes coverage of Parts 3 and 52 of the Federal Acquisition Regulation. The Byrd Amendment and its certifications are contained in these parts.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

WASHINGTON, DC 20301-3000

ACQUISITION

OCT 0 2 1991

DP/CPA

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
ATTN: SERVICE ACQUISITION EXECUTIVES
ASSISTANT SECRETARIES OF DEFENSE
COMPTROLLER
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Reporting on Restrictions on Lobbying

During the past three lobbying disclosure reporting periods ending in March 1991, we received a total of ten lobbying activity disclosure statements (Standard Form LLL) which have been sent to Congress. A recent DoD Inspector General Report on Lobbying Activities indicated that five disclosure statements, which had been filed with contracting offices in a timely manner by contractors and grantees, had never been forwarded to OSD for submission to Congress. I request that you review your internal controls which govern the forwarding of these statements for contracts, grants, and cooperative agreements, and take steps to ensure that they are adequate.

Services, Defense Agencies and purchasing/grant offices within OSD are requested to update the listing of single points of contact within their organizations where disclosure forms are accumulated for forwarding to OSD. The next compilation of disclosure forms, covering the period ending September 30, 1991, is due at DP/CPA, Pentagon, Room 3C838, no later than November 1, 1991. Subsequent compilations are due in OSD not later than November 2 and May 2 after the close of each six month reporting period (September 30 and March 31).

My point of contact for all issues regarding this matter is Mr. Steve Slavsky, DP/CPA, 202-697-8335. Service/Agency points of contact are requested to call Mr. Slavsky with updates to their names, addresses, and phone numbers by October 25.

Eleanor Spector

Eleanor R. Spector
Director of Defense Procurement

Department of the Army Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
U.S. ARMY CONTRACTING SUPPORT AGENCY
5109 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041-3201

REPLY TO
ATTENTION OF

SFRD-KP

30 NOV 1993

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ATTN: CONTRACT MANAGEMENT, 400 ARMY NAVY DRIVE, ARLINGTON, VIRGINIA 22202-2884

SUBJECT: Draft Audit Report on DOD Compliance with Lobbying Restrictions Imposed by the Bryd Amendment (Project No. 3CH-0011)

Reference is made to your November 1, 1993, memorandum on the subject draft report, which requests comments on the recommendations directed to the Army Acquisition Executive.

Recommendation 2.a. This Agency will publish the guidance set forth in the enclosure to this memorandum in its next acquisition letter.

Recommendation 2.b. Contracting offices that are identified in the report will be instructed to amend, where necessary, the contracts that are identified in the report which do not contain the required clause. Also, the next acquisition letter will direct all contracting offices to review current solicitations to insure that the required provision and clause are included in its contracting actions.

Point of contact is Ray Kelly, (703) 756-7563.

J. Bruce King

J. Bruce King
Acting Director

Enclosure

Lobbying Restrictions Imposed by the Byrd Amendment

a. Public Law 101-121, section 319, the Byrd Amendment, prohibits recipients of Federal contracts, grants, loans, and cooperative agreements from using appropriated funds for lobbying activities and requires the filing of a disclosure form if other funds are used for lobbying activities subject to the amendment. In addition, persons or companies are required to certify that no prohibited payments were or will be made. The law is implemented at FAR 3.808. Contracting officer shall ensure that--

The provision at 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, is included in solicitations expected to exceed $100,000.

The clause at 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, is included in solicitations and contracts expected to exceed $100,000.

b. Contracting activities shall review current solicitations that meet the criteria for use of the provision and clause to verify that they are included therein.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
U.S. ARMY CONTRACTING SUPPORT AGENCY
5109 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041-3201

REPLY TO ATTENTION OF

03 DEC 1993

SFRD-KP

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, ATTN: CONTRACT MANAGEMENT, 400 ARMY NAVY DRIVE, ARLINGTON, VIRGINIA 22202-2884

SUBJECT: Draft Audit Report on DOD Compliance with Lobbying Restrictions Imposed by the Byrd Amendment (Project No. 3CH-0011)

Reference is made to your November 1, 1993, memorandum on the subject draft report, and this Agency's response dated November 30, 1993.

This Agency will publish the guidance set forth in the enclosure to its memorandum in an acquisition letter on or before January 31, 1994.

The contracting office that omitted the FAR clause from the contract has taken action to correct the deficiency (Appendix C of the report).

Point of contact is Ray Kelly, (703) 756-7563.

J. Bruce King
J. Bruce King
Acting Director

Enclosure

CF:
DSS-W

Department of the Navy Comments

THE ASSISTANT SECRETARY OF THE NAVY
(Research, Development and Acquisition)
WASHINGTON, D.C. 20350-1000

14 DEC 1993

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR GENERAL FOR AUDITING

Subj: DRAFT AUDIT REPORT ON DOD COMPLIANCE WITH LOBBYING RESTRICTIONS IMPOSED BY THE BYRD AMENDMENT (PROJECT NO. 3CH-0011) -- ACTION MEMORANDUM

Ref: (a) DoDIG memo of 1 NOV 93

Encl: (1) DON Response to Draft Audit Report

I am responding to the draft audit report forwarded by reference (a) concerning DoD compliance with lobbying restrictions imposed by § 319 of Public Law 101-121, commonly referred to as the Byrd Amendment.

The Department of the Navy response is included at enclosure (1).

NORA SLATKIN

Copy to:
NAVINSGEN
NAVCOMPT (NCB-53)

Department of the Navy Response
to
DoDIG Draft Audit Report of November 1, 1993
on
DoD Compliance with Lobbying Restrictions Imposed by the
Byrd Amendment

Finding

Contracting personnel inadvertently omitted the FAR provision or the FAR clause or both from 11 contracts solicitations and contracts (5 Army, 5 Navy, and 1 Defense Information Systems Agency).

Recommendation 2.

We recommend that the Army and Navy Acquisition Executives and the Director, Defense Information Systems Agency:

a. inform contracting officers of the requirement to include Federal Acquisition Regulation 52.203.11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions," in all contract solicitations expected to exceed $100,000 and Federal Acquisition Regulation 52.203-12, "Limitations on Payments to Influence Certain Transactions," in all contract solicitations and contracts expected to exceed 100,000.

b. Require contracting officers to issue modification to contracts from which Federal Acquisition Regulation provision 52.203-11 and Federal Acquisition Regulation clause 52.203-12 were inadvertently omitted from the solicitation and for which the required certification was not obtained.

DON Position

Concur with Recommendation 2.a and partially concur with Recommendation 2.b. The Deputy for Acquisition Policy, Integrity and Accountability has reemphasized the importance of complying with requirements of the Byrd amendment to Navy contracting officers and issued direction to review contracts where the FAR provision and FAR clause were omitted. In addition, the Chief of the Contracting Office will determine whether amendments to contracts are appropriate, taking into consideration factors such as the stage of completion, potential impact of reopening them, etc. (Attachment I).

Enclosure (1)

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(Research, Development and Acquisition)
WASHINGTON, D.C. 20350-1000

DEC 03 1993

MEMORANDUM FOR DISTRIBUTION

Subj: COMPLIANCE WITH LOBBYING RESTRICTIONS OF THE BYRD AMENDMENT

The Byrd Amendment (§ 323, Pub. L. 101-121) prohibits the recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person to influence or attempt to influence any member or employee of Congress or an officer or employee of the Executive Branch and requires the recipient of any Federal contract, grant, loan or cooperative agreement to certify that no prohibited payments were, or will be, made. The Byrd Amendment also requires annual reports to Congress on lobbying disclosures received and requires Inspector Generals to report on compliance with the requirements of the Byrd Amendment.

FAR subpart 3.8 implements the Byrd Amendment. FAR 3.808 requires the provision at FAR 52.203.11 to be included in all solicitations expected to exceed $100,000 and requires the clause at 52.203.12 to be in all solicitations and contracts expected to exceed $100,000. The provision and clause require the contractor to certify that no Federal appropriated funds have been or will be paid for lobbying activities and to file a disclosure of other than Federal appropriated funds have been or will be paid for lobbying activities. Omitting both the FAR provision and the FAR clause allows offerors to avoid the certification requirement of the Byrd Amendment.

The Department of Defense Inspector General, during its compliance audit for FY 92, identified several instances where the FAR provision or the FAR clause or both were not included in solicitations or contracts reviewed.

It is important to reemphasize to our contracting officers the importance of including the FAR provision and the FAR clause in appropriate solicitations and contracts estimated to exceed $100,000. In cases where the FAR provision and the FAR clause were omitted from solicitations or where the FAR clause was omitted from contracts, the Chief of the Contracting Office should review the contract to determine whether such contract should be amended to include the clause taking into consideration factors such as the stage of completion, potential impact of reopening the contracts, etc.

E. B. HARSHBARGER
RADM, SC, USN
Deputy for Acquisition Policy,
Integrity & Accountability

Distribution:
See Page 2

Distribution:

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Defense Information Systems Agency Comments

DEFENSE INFORMATION SYSTEMS AGENCY
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ARLINGTON, VA 22204-2199

IN REPLY REFER TO: AG

2 December 1993

MEMORANDUM FOR DEPARTMENT OF DEFENSE, INSPECTOR GENERAL
ATTN: Director, Contract Management Directorate

SUBJECT: Draft Audit Report on DoD Compliance with Lobbying Restrictions Imposed by the Byrd Amendment (Project No. 3CH-0011)

Reference: DoDIG Audit Report, subject as above, 1 Nov 93

As requested by the referenced document, the Defense Information Systems Agency (DISA) has reviewed the subject report. Our comments on the draft report are contained at the enclosure. If you have questions on our response, call Ms. Sandra Leicht on (703) 692-5326 for assistance.

FOR THE DIRECTOR:

1 Enclosure a/s

RICHARD T. RACE
Inspector General

369893

DODIG DRAFT AUDIT REPORT ON
DOD COMPLIANCE WITH LOBBYING RESTRICTIONS
IMPOSED BY THE BYRD AMENDMENT
(PROJECT NO. 3CH-0011)

1. **Recommendation 2.a.: CONCUR.** Inform contracting officers of the requirement to include Federal Acquisition Regulation 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transaction," in all contract solicitations expected to exceed $100,000 and Federal Acquisition Regulation 52.203-12, "Limitation on Payments to Influence Certain Transactions," in all contract solicitations and contracts expected to exceed $100,000.

Corrective Action Taken: By 30 November 1993, the DISA Information Technology Procurement Organization (DITPRO) informed all contracting officers and contracting officials by written memorandum to be cognizant of the aforementioned requirement. Also by 30 November, subject clauses were added to solicitation check lists as an item of interest during the contract pre-award review process to ensure compliance in accordance with the subject report. Since February 1992, DISA has been in compliance with the Byrd Amendment through the use of the Automated Contract Preparation System (ACPS). ACPS automatically inserts subject clauses into solicitations and contracts keyed by the greater than $100,000 criterion. Consequently, ACPS was not available to effect the subject contract (DCA100-91-C-0015) as it [ACPS] was awarded in 1991.

Estimated Completion Date: None given as corrective actions were taken by 30 November 1993.

2. **Recommendation 2.b.: CONCUR.** Require contracting officers to issue modifications to contracts from which Federal Acquisition Regulation provision 52.203-11 and Federal Acquisition Regulation clause 52.203-12 were inadvertently omitted from the solicitation and for which the required certification was not obtained.

Corrective Action: By 30 November 1993, DITPRO took the following corrective actions on this recommendation for contract number DCA100-91-C-0015:

a. Informed the contractor by phone of the finding.

b. Issued a memorandum to the contractor to rectify the inadvertent mistake.

c. Secured written certification from contractor to satisfy requirements outlined in Federal Acquisition Regulation 52.203-11 and 52.203-12.

Estimated Completion Date: None given as corrective actions were taken by 30 November 1993.

Enclosure

Audit Team Members

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