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"Buy American" memo, 1983

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MEMO

TO: DAN

FROM: MARK V.

RE: "BUY AMERICAN" LANGUAGE OF FY 83 HAC SUPPLEMENTAL

The hearings seem to have been set up so that the Dept. of Defense and Rep. Gibbons could voice their opposition to the provision of American manufacture of the replacement of the CT-39. Some dissent was present as to the desirability of leasing as opposed to buying, but there were no advocates of the particular clause calling for American planes.

Leasing, according to the Air Force representatives, would be cheaper since the maintenance of the planes would be cheaper for the manufacturer than for the Armed Forces. The period of lease would be 5 years, with 3 1-year renewal options and an option to buy at the end of either the 5-year period or any of the 1-year periods. This would be made possible since the planes have "high resale value" as business jets. Price on the planes if option to buy were utilized: "fair market price." "Cost analysis" showed that this option was cheaper than any other.

According to Rep. Gibbons, there is significant danger of upsetting our NATO allies, since we already have a \$3 billion dollar surplus in arms trade with them. He also noted that subsidization by foreign gov'ts shouldn't change the matter since "we already have countervailing trade laws."

Two concerns that Gen. Weiss responded to were that the cost would be higher if foreign firms competed--that seems counter-intuitive but he admitted that it would be possible, but that other savings out-weighed that cost. He also said that "he could not give any figures showing subsidization by other governments."

Two final points which were dropped in passing: 1) financing of the project is almost sure to be American even if the firm chosen were foreign, which means more U.S. money going abroad to spur foreign industry, and 2) Gen. Weiss said that "we have another procurement coming up which could well go to a European manufacturer." He declined to mention the project specifically, but said that it would be of smaller planes, possibly props. This might help soothe ruffled NATO feathers if we do pass the bill.

ion or funding ceilings for specialties as reported to the House or the law which the Army cited as its first place; consistency would dictate reduction of funding. Subsequently, the further Continuing Resolution that subsequent funding would be for completion of full flight tests as aware that the Congress had appropriated funds were to be provided and ratified that action by signing Public Law 97-377, 1982. Despite this, the Army has taken action which it had prematurely exercised because Public Law 97-377 does not finance its continuation of operations if no funds were appropriated, the action initiated by the Congress for other purposes now requesting supplemental appropriations whole, as well as providing

the Army's actions in obligation of action by the Congress. While the Army acted illegally, in the final analysis upon Constitutional prerogatives between the executive and legislative branches while the Army has not conducted operations within the flight envelope, and is several times over budget, the Committee is cognizant of the importance of continued support of the Army. The Committee therefore recommends that in the Pershing II, a reduction of operations be provided.

\$25,000,000 is an expression of concern with the way this matter has been drafted to accommodate "flexibility"; that "flexibility" be provided to meet the intentions of the Congress. It is clear that, because of the bill, it will be more restrictive to provide

PROVISIONS

DETAILS

A general provision which would be included in the Department of Defense Appropriation Act. The modification would allow for the procurement of specialty metals and chemical specialties when procurement is necessary to meet NATO standardization requirements. The Committee

The Committee recognizes that the production of specialty steel is vital to the national security of the United States. We are deeply concerned about the erosion of specialty steel production in the United States. This decline affects both jobs and our national security. The Committee has received testimony which indicates that a study conducted by the International Trade Commission has found that the industry has been injured by imports, and the Commission suggests the need for temporary relief measures which would provide the industry a breathing space for restructuring and recovery.

Given the fact that a general industry-wide remedy should soon be forthcoming, the Committee is willing to accept the Administration's request for an amendment with respect to the specialty steel procurement provision. However, it does so with the anticipation that the President will now propose suitable remedial action to assure that the specialty steel industry in this country will be faced with limited imports and is protected from continued predatory export practices of other countries. Should such action not be forthcoming on a prompt and adequate basis, the Committee would be forced to reappraise the need for specific legislation.

TERMINATION LIABILITIES FOR THE T-AKX AND T-5 PROGRAMS

The Comptroller General recently ruled that, in the absence of specific Congressional action, the Navy must obligate sufficient funding to cover the maximum potential termination liabilities for leasing of T-AKX and T-5 ships. As a result, the Navy has been required to post obligations of \$1.4 billion even though no appropriations are likely to ever be needed. The Committee believes that the prospect for completion of the T-AKX and T-5 programs is quite good. On an actuarial basis, the probability of the Navy ever incurring any costs due to program termination is quite low. Nevertheless, the Committee believes that the Navy should maintain a reserve of 10 percent of the possible total termination liabilities to cover the unlikely prospect that either a T-AKX or T-5 ship is terminated. A general provision clarifying this requirement is included in the bill.

CT-39 REPLACEMENT PROGRAM

The Air Force is currently planning to begin replacement of its CT-39 aircraft fleet later this year. Some concern has been expressed that non-U.S. firms will have a significant, perhaps dominating, advantage in the competition since they are government owned or subsidized and some would, if necessary, bid at a loss in order to obtain the contract.

The Committee fully supports open and fair competition from all sources. However, it is not equitable for non-subsidized U.S. firms to be placed at a competitive disadvantage when competing for U.S. contracts paid for with U.S. tax dollars. A general provision has therefore been included in the bill requiring that the CT-39 replacement aircraft be assembled in the U.S. and utilize an airframe manufactured in the U.S. For the purpose of this provision, an airframe manufactured in the United States means that the predominant value of the airframe, excluding engines, is manufactured in the United States. It is expected that all potential U.S. or foreign

1 ing defense requirements or where such procurement is nec-
2 essary in furtherance of the standardization and interoperabi-
3 lity of equipment requirements within NATO so long as such
4 agreements with foreign governments comply, where applica-
5 ble, with the requirements of section 36 of the Arms Export
6 Control Act and with section 814 of the Department of De-
7 fense Appropriation Authorization Act, 1976:".

8 Obligations incurred or to be incurred in connection with
9 the T-AKX and T-5 programs, for which the Navy has al-
10 ready entered into agreements to charter or charters (includ-
11 ing conversion or construction related to such agreements or
12 charters) shall, as long as the Government remains liable for
13 such termination liability, be considered as obligations on the
14 accounts of the Navy, for the purposes of title 31, United
15 States Code, in an amount equal to 10 per centum of the
16 outstanding termination liability.

17 Funds available to the Department of Defense during
18 the current fiscal year may not be obligated to acquire (by
19 lease or purchase) a replacement aircraft for the CT-39 air-
20 craft from other than a United States firm and such replace-
21 ment aircraft must be assembled in the United States and
22 utilize an airframe manufactured in the United States.

LIST OF WITNESSES TO APPEAR BEFORE
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
ON
BUY AMERICA RESTRICTION IN FY 1983 SUPPLEMENTAL APPROPRIATION
ON PROCUREMENT OF CERTAIN AIRCRAFT

MONDAY, JUNE 13, 1983 - BEGINNING AT 2:00 P.M.

ROOM 1100 LONGWORTH HOUSE OFFICE BUILDING

The Honorable Willard H. Mitchell, Principal Deputy Assistant
Secretary of the Air Force for Financial Management

Brigadier General Bernard L. Weiss, Director of Contracting and
Manufacturing Policy, Office of Deputy Chief of Staff for
Research, Development and Acquisition, Headquarters USAF

Colonel Ronald L. Carlberg, USAF, Director of International
Acquisition, U.S. Department of Defense

D E P A R T M E N T O F T H E A I R F O R C E

PRESENTATION TO THE HOUSE WAYS
AND MEANS SUBCOMMITTEE ON TRADE

13 JUNE 1983

SUBJECT: CT-39 REPLACEMENT PROGRAM BUY AMERICAN
LANGUAGE - FY 83 HAC SUPPLEMENTAL

STATEMENT OF: BRIGADIER GENERAL BERNARD L. WEISS
DIRECTOR OF CONTRACTING AND MANUFACTURING POLICY
DEPUTY CHIEF OF STAFF, RESEARCH,
DEVELOPMENT AND ACQUISITION,
UNITED STATES AIR FORCE

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United States Air Force

Secretary of the Air Force, Office of Public Affairs, Washington, D.C. 20330

BRIGADIER GENERAL BERNARD L. WEISS

Brigadier General Bernard L. Weiss is director of contracting and manufacturing policy, Office of the Deputy Chief of Staff for Research, Development and Acquisition, Headquarters U.S. Air Force, Washington, D.C. He is responsible for developing contracting and manufacturing policy relating to major weapon systems acquisitions, logistics support and base support for the Air Force.

General Weiss was born in the Bronx, N.Y., and later moved to Fairlawn, N.J., where he completed high school in 1951. He graduated from New York University in 1955 with a bachelor of science degree in government and education (cum laude) and received his commission as a distinguished military graduate through the Reserve Officers' Training Corps program. General Weiss earned his master of business administration degree (with honors) from Syracuse University in 1966 through the Air Force Institute of Technology. His service schools include Squadron Officer School by correspondence; the Industrial College of the Armed Forces, Fort Lesley J. McNair, Washington, D.C., in 1974; and the Advanced Management Program, University of Michigan, Ann Arbor, in 1978.



He entered the U.S. Air Force in May 1956 and served at the New York Air Procurement District, New York City, as administrative contracting officer. In December 1958 the general transferred to the 20th Tactical Fighter Wing, Royal Air Force Station Wethersfield, England, as base procurement officer. He served there until October 1960 when he was assigned to Headquarters Air Defense Command, Ent Air Force Base, Colo., as chief of the Systems Management Division. He was responsible for the procurement and administration of operations and maintenance contracts supporting the Distant Early Warning line, Ballistic Missile Early Warning System and Spacetrack stations. General Weiss worked closely with Canadian and Danish government officials in this mission support area.

After completing his master's degree in February 1966, General Weiss was assigned to the Defense Contract Administration Services Region, Los Angeles, as manufacturing officer and plant office chief at Garrett Air Research Corporation. He was later assigned as chief of the Contract Administration Directorate for the region headquarters.

From June 1969 to July 1971, General Weiss was assigned to Air Force headquarters as a logistics plans action officer, Office of the Deputy Chief of Staff, Systems and Logistics. He then became a procurement staff officer in the Directorate of Procurement Policy. The general was responsible for contract policy formation and implementation for major weapon systems, such as the A-10 and F-15. He also led a major command group to improve the reliability and maintainability of Air Force hardware in the field.

Following graduation from the Industrial College of the Armed Forces in June 1974, he transferred to the Armament Division at Eglin Air Force Base, Fla., as the deputy for contracting and manufacturing.

From July 1976 to June 1978, the general served as assistant for procurement management, Office of the Assistant Secretary of the Air Force for Research, Development and Logistics, Washington, D.C. He then moved to the Aeronautical Systems Division at Wright-Patterson Air Force Base, Ohio, as deputy for contracting and manufacturing of the largest contracting activity in the United States. While there General Weiss led a major study effort to review the quality assurances practices of countries around the world. The study called "Quality Horizons" was published in November 1979 and acted as an impetus for improving product quality in the United States.

Transferring to Air Force Systems Command headquarters at Andrews Air Force Base, Md., in February 1981, General Weiss served as deputy chief of staff for contracting and manufacturing. While there he was responsible for the acquisition of major weapon systems and contracting support for the command's laboratories, test centers and ranges. The general led major initiatives for enhancing the productivity of the aerospace industry through effective use of manufacturing technology seed money and the modernization of aerospace factory operations through the technical modernization program. He assumed his present duties in January 1983.

His military decorations and awards include the Legion of Merit with two oak leaf clusters, Meritorious Service Medal, Joint Service Commendation Medal, Air Force Commendation Medal with two oak leaf clusters and Army Commendation Medal.

He was promoted to brigadier general Oct. 1, 1981, with same date of rank.

General Weiss is married to the former Helene R. Brick of Paterson, N.J. They have three children: Steven, Michael and Melissa.

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

On behalf of the Secretary of the Air Force thank you for the opportunity to meet with you to discuss the CT-39 Replacement program with particular attention to foreign competition.

In my position as the Director of Contracting and Manufacturing Policy I am a primary focal point for Air Force acquisition policy. Accordingly, on behalf of the Secretary I have been specifically directed to speak for him with you here today in our discussion of Air Force policy regarding the CT-39 Replacement program.

As you are aware, the CT-39 Replacement program is an effort to replace our fuel-inefficient and aged fleet of CT-39 aircraft with a lease of new, commercial, off-the-shelf business aircraft. This program was initiated late last year and is currently in Source Selection with contract award anticipated within the next 90 days. Because the program is in the Source Selection phase, I am unable to provide the specifics regarding the proposals received. Such information is Source Selection Sensitive. However, I believe discussing the acquisition strategy may answer many of your questions.

The CT-39 Replacement program has been a competitive program from the start. We solicited both US domestic firms as well as foreign. This competitive program is in compliance with the Defense Acquisition Regulation (DAR) and statutes. This is also consistent with the various reciprocal procurement agreements we have with our NATO allies.

Since there has been some discussion on why foreign firms were competing for this requirement, I wish to note that we had no legal basis to exclude foreign firms from competing in this program. To the contrary, such a restriction would violate the principles of the NATO MOUs whose basic purpose is to open up competition within the alliance and achieve more effective expenditures of our collective defense budgets. However, we understood there was an intention to introduce legislation restricting competition in this program to U.S. firms only. Accordingly, as a precaution, we included a statement in the CT-39 Replacement solicitation putting competitors on notice in advance that if such a provision were enacted, "foreign competitors would be excluded." When no provision to restrict foreign participation was enacted, we had no legal basis other than to consider all qualified offerors.

While foreign competitors may compete in most of our acquisitions, they are generally subject to the application of the Buy American Act. The Act establishes a preference for US products by adding a price differential to the foreign product for evaluation purposes. The Act provides, however, an exemption to these restrictions in specific instances.

Pursuant to the sense of Congress as reflected in the Culver-Nunn Amendment to the 1977 Defense Authorization Act, the Defense Department exempted the application of the Buy American Act for the NATO reciprocal purchasing agreements. The Department of Defense entered into these reciprocal agreements to enhance defense readiness by fostering standardization and interoperability of defense equipment. These agreements are reciprocal and remove the various "Buy National" restrictions of participating countries.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer any questions you might have.