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IMPACT OF DEFENSE SPENDING  
ON LABOR-SURPLUS AREAS

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REPORT

OF THE

SUBCOMMITTEE ON RETAILING, DISTRIBUTION,  
AND MARKETING PRACTICES

TO THE

SELECT COMMITTEE ON SMALL BUSINESS  
UNITED STATES SENATE

ON

GOVERNMENT PROGRAMS AND POLICIES AS THEY  
RELATE TO THE USE OF PROCUREMENT IN  
REDEVELOPING DISTRESSED AREAS

AND

A COMPILATION OF POLICY DIRECTIVES, STATUTES,  
AND REGULATIONS RELATING TO PROCUREMENT  
IN DISTRESSED AREAS



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## PREFACE

A 10th of the Nation's productive facilities are employed in the maintenance of national security. Seventy percent of all men and facilities engaged in research and development in the United States are working on Government-financed projects. Thus, the defense effort obviously has a significant impact on the economy of the Nation. Some of this impact has been beneficial to the civilian economy: many innovations developed in defense work have been adapted for use in private industry and have stimulated progress in science and technology.

But, your subcommittee's hearings and report have shown that shifts in defense spending from one region of the country to another have created a significant number of our distressed areas. The cities that received large increases in defense contracting often experienced a resultant overload on their public facilities, housing, and labor supplies, while areas which lost defense contracts sometimes encountered exactly the opposite type of problems—labor surplus, housing surplus, and so on. For instance, one major community in southern California now has over 80 percent of its productive facilities devoted to defense and space work. Therefore, the loss of a small number of contracts has understandably created major unemployment problems in this community on several occasions. The difficulties which such an area would face in the event of overall defense cutbacks would be awesome.

In the early 1950's, missiles and electronics goods began to require an increasing share of defense moneys, while automotive and ordnance purchases declined. At that time, the creation of distressed areas through the changing pattern of defense spending and the consequent overconcentration of defense production in certain regions could have been foreseen. Yet, there was no Government agency or official charged with alerting the Nation to these impending problems. Had preventive action been taken at that time, economic dislocations which have sapped the strength of the Nation and impoverished many areas might have been largely avoided. If the recommendations of this report, which seek to encourage defense spending in distressed areas, had been enacted in the crucial period of the early 1950's, not only might there have been fewer new distressed areas created, but many of the older distressed areas might have received material assistance.

The shift in the geographic location of defense spending is only one of the forces changing the shape of our economy. Automation, for example, will have an even more profound and long-lasting impact on the economy. The American people and their Government must anticipate such trends and respond to them with positive action.

One of the recommendations of this report is an increase in the responsibilities of the Office of Emergency Planning. The Office of Emergency Planning would be empowered to make long-range studies of the changing structure of our economy and to offer consequent suggestions to industry, labor, and Government. Policies adopted through the cooperation of the private and public sector, could then lead to a more balanced and healthier pattern of economic growth.

HUBERT H. HUMPHREY.



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## IMPACT OF DEFENSE SPENDING ON LABOR-SURPLUS AREAS

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*Economists tell us that an unemployment rate of 6 percent is the danger signal. When a community passes that point it is officially regarded as an area of "substantial labor surplus." If it remains there it is entitled to special Government help through defense procurement and other programs.*

JOHN F. KENNEDY.

CHARLESTOWN, W. VA., September 19, 1960.

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### I. INTRODUCTION

On August 29, 1962, the Subcommittee on Retailing, Distribution, and Marketing Practices, of the Senate Select Committee on Small Business, held hearings on the impact of defense spending on labor surplus areas. Specifically, your subcommittee studied shifts in Government spending as both a cause of and a possible relief to distressed areas. Senator Hubert H. Humphrey, cochairman of the hearings, discussed the extent of the problem as follows:

According to most recent Department of Labor figures, there were 517 areas of substantial and persistent unemployment existing in May of this year. The 20 million people of these areas work and do business under extremely adverse conditions. Over 9 percent of their 8.9 million man-laboring force is unemployed, with little prospect of finding work in the extremely tight job markets. The economic growth and progress of these areas is hampered by lack of capital, and thus is considerably slower than that of the rest of the Nation. Businesses are discouraged from entering these areas because the tax base has been jeopardized. \* \* \*<sup>1</sup>

According to one witness, Seymour L. Wolfbein, Director, Office of Manpower, Automation, and Training, Department of Labor—

High rates of unemployment have persisted in some communities through periods of prosperity as well as recession, reflecting such factors as shifts in the pattern of consumer or business demand, changes in technology, depletion of natural resources, and migrations of the population.<sup>2</sup>

Areas of persistently high unemployment are more than geographically concentrated manifestations of national recessions; rather, these areas are afflicted with a disease as debilitating to their local economies as the depression of the 1930's was to the Nation.

The existence of labor surplus areas is a problem of major importance to the entire Nation. The 20 million Americans living in these areas experience the hardships of a major depression. Moreover, the Nation cannot call upon the unused productive resources of these areas in defense and other efforts. Their existence depresses the Nation's

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<sup>1</sup> Hearings, "Impact of Defense Spending on Labor Surplus Areas," Select Committee on Small Business, U.S. Senate, Aug. 29, 1962, 87th Cong., 2d sess., p. 8.

<sup>2</sup> Hearings, p. 43.

economy, because unemployment in distressed areas lessens buying power in the marketplace. As President John F. Kennedy pointed out in his economic report to Congress, in January 1962:

In the last decade, the Nation has lost an estimated \$175 billion of gross national product by operating the economy below potential.

Being situated in a labor surplus area is a handicap to any firm—particularly one which finds its market within the area. Senator John Sparkman, chairman of the Select Committee on Small Business, explained the serious effect that substantial and persistent labor surplus areas have on the many small businesses in these areas as follows:

The merchants and distributors in distressed areas must attempt to sell their goods to people whose incomes are well below the national average. The small manufacturer must hire from the sometimes less skilled laboring force which distressed areas afford and must sell to the depressed local markets. If a small manufacturer hopes to get part of the Government's defense business through a subcontract award, he finds that few prime contracts are going to any distressed region. He must therefore attempt to sell to a prime contractor situated hundreds or thousands of miles away, despite the tendency for prime contractors to let subcontracts to firms in their immediate vicinity.<sup>3</sup>

Government spending is now approximately one-sixth of the gross national product and the Defense budget is now approaching one-tenth of the gross national product. President Kennedy recognized that, with proper direction, these funds could be used as a tool to regenerate the depressed economies of labor surplus areas. As a presidential candidate in 1960, he said:

Economists tell us that an unemployment rate of 6 percent is the danger signal. When a community passes that point it is officially regarded as an area of "substantial labor surplus." If it remains there it is entitled to special Government help through defense procurement and other programs.<sup>4</sup>

Another witness, Ronald M. Linton, Director of Economic Utilization Policy, Department of Defense, estimated that every job created in a labor-surplus area through Government procurement would, in turn, cause the demand for three services jobs.<sup>5</sup> The consensus of opinion of the witnesses who appeared before your subcommittee was that the direction of Government spending in labor surplus areas, though not an answer in itself, could and should be used to alleviate conditions in these areas and initiate recovery. That view is summarized by Dr. Conley H. Dillon, professor of government and politics at the University of Maryland, and consultant to the Governor of West Virginia:

Such measures, by themselves, may be insufficient to eliminate completely the pockets of unemployment which exist in the United States. But they could accomplish a great deal. And since the machinery for implementing them is already in place, it would seem practical to throw the switch that will set it into operation.<sup>6</sup>

In the first months of the present administration, a national policy of encouraging the placement of contracts in areas of substantial and persistent labor surplus was established under defense manpower policy No. 4 (DMP No. 4).<sup>7</sup> Many of the witnesses expressed the opinion that the policies of DMP No. 4 were not being implemented

<sup>3</sup> Hearings, pp. 1-2.

<sup>4</sup> Speech, Charlestown, W. Va., Sept. 19, 1960, Senate Commerce Committee, S. Rept. 994, pt. 1, 87th Cong., 1st sess., Sept. 13, 1961, p. 1034.

<sup>5</sup> Hearings, p. 55.

<sup>6</sup> Hearings, p. 182.

<sup>7</sup> Hearings, app. I, p. 157.

to the extent they should be.<sup>8</sup> According to Harold W. Williams, Acting Administrator, Area Redevelopment Administration, U.S. Department of Commerce, redevelopment areas get only 3.7 percent of defense spending, though they contain 19 percent of the Nation's population and produce about 10 percent of the Nation's goods.<sup>9</sup> Less than one-third of these funds were placed in distressed areas through the partial set-aside program.<sup>10</sup>

The relative dearth of defense contracts in distressed areas can, in part, be explained by the nature of the firms in these areas. In addition to the handicap of often being located in resource- and skill-deprived areas, they usually do not have the funds to investigate and carry through the complicated procedures for taking full advantage of opportunities in Government contracting. Thus, distressed areas find themselves trapped in a vicious circle, where their economic degeneration blocks the road to recovery.

But, the nature of firms in areas of labor surplus is only partially the reason for the relatively small share of the defense dollar they receive. Statements made at the hearing indicate that procurement officers in various agencies have often demonstrated an only-half-hearted compliance with the policies of DMP No. 4. In the approximately 85 percent of defense contracts let by negotiation, it is probable that procurement officers have often found it more convenient to deal with old suppliers rather than investigate the possibility of finding new sources in distressed areas. Though it may be easier for a procurement officer to assess the capabilities of an old supplier in negotiating a contract rather than investigating the possibility of using a new source, such action puts expediency and departmental objectives above national policy.

The dearth of defense contracting in labor-surplus areas can further be explained by a congressional impediment to the implementation of DMP No. 4, section 523 of the Defense Appropriations Act, which expressly forbids a price differential to be paid in order to avoid economic dislocation. This has been interpreted by the Department of Defense and the Government Accounting Office to forbid 100-percent set-asides to labor-surplus areas. The following case, cited by Mr. Linton, clearly demonstrates the implications of section 523:

\* \* \* one of the first cases I ran into was where a contract was awarded to a low bidder, who was a low bidder by \$250,000. The result of the award was the second low bidder closed his plant and 1,200 people were put out of work. I did an exercise for the particular Secretary who made the decision showing that the \$250,000 the Department saved actually cost the Government \$950,000 because of those lost jobs. The reply of the legal department was "That is fine. We agree with you; we have looked at these things, but we can't figure these things into our costs because the Congress said we can't."<sup>11</sup>

Thus, the Department of Defense's saving of \$250,000 cost the American people \$700,000. This sort of procurement procedure clearly places departmental over national objectives.

The following sections of this report discuss the relation of the creation of some distressed areas to shifts in defense spending; a survey of action now being taken to encourage Government contracting in areas of labor surplus; and a series of recommendations which your subcommittee believes will improve the ability of firms in distressed

<sup>8</sup> Hearings, pp. 3, 38, 58, 181.

<sup>9</sup> Hearings, p. 2.

<sup>10</sup> Hearings, p. 85.

<sup>11</sup> Hearings, p. 56.

areas to fulfill Government contracts, maintain the mobilization base for national defense, improve communications between procurement officers and firms in distressed areas, and alter procurement procedures to bring them into compliance with the policy objectives set forth in DMP No. 4.

## II. FOUR SHIFTING FACTORS IN OUR ECONOMY

One of the major factors affecting the lack of Government spending in substantial and persistent labor-surplus areas can be set forth in terms of four shifts which are taking place in our economy. These are:

- (1) The shift of industry and employment from one geographical area to another.
- (2) The shift in our work force from several types of employment to engineering employment.
- (3) The shift in the type of goods being purchased by the Defense Department.
- (4) The shift in geographical areas in which defense contracts are being awarded.

In regard to the first shift, Mr. Wolfbein explained that one of the little-recognized factors in this whole problem is that industry in this country has become mobile and has acquired the capacity to move from one part of the country to another, economically and with reasonable speed. Mr. Wolfbein expressed the following opinion:

One of the things that impresses us, Mr. Chairman, is the fact that, as you read these returns, it becomes pretty clear that one of the major forces affecting this country, in terms of this, shall we say, employment-unemployment paradox, is what we call the changing geography of American industry.<sup>12</sup>

Mr. Wolfbein went on to explain that, since 1947, eight States had an employment growth rate which was double the national average.

Those States were Nevada, Utah, Arizona, Colorado, New Mexico, California, Texas, and Florida. Mr. Wolfbein stated:

\* \* \* One of the most dramatic indications of the changing geography of American industry is seen by this simple fact that one out of every six jobs in the United States is located in just three States—California, Texas, and Florida.<sup>13</sup>

Mr. Wolfbein contends that the result of this shift is that the Great Lakes area has suffered; in fact, States like Wisconsin, Michigan, Illinois, Indiana, and Ohio increased their employment less than the national average.

The second shift, namely, the type of employment, is commented upon in Manpower Report No. 1 of the U.S. Department of Labor. This report is entitled "The Growth of Engineering Employment in the United States—1950-60." It reveals that the number of men working as professional engineers in this country has increased by 64 percent since 1950. This was four times the growth of total employment and nine times the growth of male employment from 1950 to 1960. One important fact related to both the first and second shifts is illustrated by the following statement from Manpower Report No. 1:

As a result of these geographic shifts, California moved from second to first place in engineering employment, as the number of engineers in that State rose 2½ times (from 50,000 to 125,000). New York is second with 87,000 engineers, an increase from 61,000 in 1960.\* \* \*

<sup>12</sup> Hearings, p. 22.

<sup>13</sup> Hearings, p. 26.

Significant other State increases also took place in engineering employment; it tripled in Florida, rose by four-fifths in Maryland and by two-thirds in Texas.<sup>14</sup>

It is interesting to note that the Department of Labor recites the U.S. Government as one of the primary causes for this shift in employment. The reason given is increased spending for research and development and the great increase in spending for modern weapons systems. In fact, it was learned that 42 percent of all manufacturing in the Los Angeles area was defense connected.<sup>15</sup>

The third shift is a change in the type of goods being purchased by the Defense Department, as highlighted by the fact that in 1953 missile purchases accounted for only 0.5 percent of the hard goods delivered in that year, while in 1961 they had taken up 33.6 percent. There has also been a significant increase in the proportion of electronic equipment being purchased. Perhaps one of the most significant shifts in Government purchases is in the field of tank-automotive, weapons, ammunition, and production equipment, which has gone from 50.09 percent of the goods delivered in 1953 down to 12.4 percent of the goods delivered in 1961. Also highly significant is the increase in contracts for research, development, testing, and evaluation (R.D.T. & E.). In 1961 these contracts totaled \$6 billion and constituted about one-fourth of all prime contracts awarded in the United States. These facts make it clear that this shift in spending by the U.S. Government has caused the second shift relating to engineering employment.<sup>16</sup>

The fourth shift has to do with the location of Government awards of prime contracts. It is startling to learn that the Mountain and Pacific States during World War II received only 13.5 percent of the prime contract awards, but by 1961 this had increased to 32.6 percent. The geographical locations of R.D.T. & E. contracts were even more closely concentrated than the contracts for hard goods. California alone accounted for 41.3 percent of such contracts let by the Defense Department. A report issued by the Department of Labor, Office of Manpower, Automation, and Training, entitled Manpower Report No. 1, states that California in 1961 received a total of \$2.5 billion in R.D.T. & E. contracts from the U.S. Government, which constituted two-fifths of this budget. Some interesting comments in connection with these shifts are to be found in a document entitled "The Changing Patterns of Defense Procurement," issued by the Office of the Secretary of Defense, June 1962, concerning the geographical shift in contract awards. In that document, it is stated that—

Michigan, for example, obtained 10.5 percent of military prime contract awards during World War II and 9.5 percent during Korea; yet had only 2.7 percent of the smaller fiscal year 1961 contract total. The States of Illinois, Ohio, Indiana, and Wisconsin, combined, had 21.9 percent of the total in World War II, 17.8 percent during Korea, and only 9.1 percent in fiscal year 1961.

It is difficult to translate dollar prime contract awards into employment figures, because of variations in products, subcontracting, wage levels, and indirect labor ratios. Nevertheless, it is plainly evident that the drop in annual prime awards in the East North-Central area from \$8.7 billion during Korea to \$2.6 billion in fiscal year 1961 had a severe economic impact. *Under any system of translation, the loss of \$6.1 billion per year in defense contracts means hundreds of thousands of jobs. It is not surprising that many communities in these five States have encountered recurrent unemployment problems.* During World War II, and Korea, these

<sup>14</sup> Hearings, p. 31.

<sup>15</sup> Hearings, p. 8.

<sup>16</sup> Hearings, pp. 171-172.

States contributed heavily to the production of wheeled vehicles, weapons, ammunition, and equipment items which then bulked heavily in defense procurement, but which now form a relatively smaller share of requirements.<sup>17</sup> [Italic supplied.]

A significant fact to be noted here is that the Defense Department itself recognizes that its buying program may have caused recurrent unemployment problems.

In connection with the concentration of research and development contracts, the report states:

This is of major importance, because any company which has conducted or managed the research, design, development, and test work on a new weapon system or a major component and has assembled the engineering talent and experience for this purpose, is obviously in an exceptionally strong position to compete for the follow-on production contracts, and for new developmental contracts, as well. It is logical, then, that production contracts for the newer sophisticated items, which will figure heavily in future procurement, may tend to be placed in areas where R.D.T. & E. effort has been centered.

The point is reinforced by the fact that development and test work represents a much larger share of some types of procurement than of others. The value and percentage of total prime contract awards to business firms in fiscal year 1961 classified as R.D.T. & E. was as follows:

|                                     | R.D.T. & E.<br>share of pro-<br>gram (percent) | R.D.T. & E.<br>awards<br>(millions) |
|-------------------------------------|------------------------------------------------|-------------------------------------|
| Missiles.....                       | 57.9                                           | \$3,409                             |
| Electronics and communications..... | 24.9                                           | 786                                 |
| Miscellaneous and hardgoods.....    | 22.1                                           | 196                                 |
| Ships.....                          | 20.3                                           | 278                                 |
| Ammunition.....                     | 18.5                                           | 102                                 |
| Weapons.....                        | 16.0                                           | 23                                  |
| Aircraft.....                       | 10.1                                           | 500                                 |
| Tank-auto.....                      | 2.5                                            | 15                                  |

The ordnance items which characterize much of the contract defense production in the midwestern area have a relatively low R. & D. emphasis at this time. Obsolescence, and consequent replacement, is less likely to affect military items outside the mainstream of the research effort. It should be noted, of course, that considerable in-house R. & D. occurs in these categories.

A region that gains a long headstart in a new and expanding field of procurement is bound to enjoy an enduring advantage, especially when R. & D. is a primary element. Factors influencing the location of awards, strictly on merit, include availability of highly specialized scientific, engineering, and technical manpower, specialized facilities, labor skills, production experience and know-how, together with competence and determination in presentation of bid proposals. All these tend to be associated with R. & D. capability, and their presence fosters the climate in which long-scale R. & D. may flourish.

In summary, successful research and design, or development and testing effort, often leads to follow-on production contracts; and, in turn, engineering work on highly complex new weapon systems creates new R. & D. capability. The process is circular, and it regenerates itself.<sup>18</sup>

The need for study of the geographical location of these contract awards seems obvious. The Defense Department has as much as admitted that many contracts of the type that go to institutions of learning have not been distributed entirely on the basis of qualification. This startling admission may be inferred from the following statement contained in the above-cited document:

It must be recognized that the Midwest, with its great university resources, and with its heavy annual production of Ph. D.'s and other professionals, did not in fiscal year 1961 obtain a share of defense prime contract awards, either for

<sup>17</sup> Hearings, app. III, p. 169.

<sup>18</sup> Hearings, pp. 171-172.

production, for general R.D.T. & E., or for nonprofit research proportional to its share of the Nation's scientific and technical skills. Conversely, considerable R.D.T. & E. and some basic research, is being conducted in areas where local institutions of higher learning fall far short of producing a comparable flow of trained professional and scientific manpower.<sup>19</sup>

### III. DEFENSE MANPOWER POLICY

The sole effort of the Department of Defense to utilize defense contracts to alleviate unemployment in substantial and persistent labor surplus areas is found in defense manpower policy No. 4. This policy was adopted in 1951 and was issued by the Director of the Office of Civil Defense Mobilization under Executive Order 10480 and Executive Order 10773.

The latest revision of this document is dated July 6, 1960, and may be found in volume 25 of the Federal Register, page 5283. This remarkable document proclaims unequivocally:

It is the policy of the Federal Government to encourage the placing of contracts and facilities in areas of persistent or substantial labor surplus, with first preference being given to areas of persistent labor surplus, and to assist such areas in making the best use of their available resources in order to achieve the following objectives:

- (a) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;
- (b) To maintain productive facilities;
- (c) To improve utilization of the Nation's total manpower potential by making use of the manpower resources of each area;
- (d) To help assure timely delivery of required goods and services and to promote readiness for expanded effort by locating procurement where the needed manpower and facilities are fully available.<sup>20</sup>

This policy has been adopted because of the fact that the defense program depends upon efficient use of all our resources. It is further frankly recognized that:

The words "substantial labor-surplus areas" and "persistent labor-surplus areas" are used in both the defense manpower policy No. 4 and the Area Redevelopment Act, 75 Stat. 48, sec. 5(a). The Department of Labor classifies unemployment areas according to these two documents as either "substantial labor-surplus area" or "persistent labor-surplus area." The same criteria is used by the Department of Labor to make this classification under both documents so that if an area is a substantial and persistent area which would qualify as a distressed area in 5(a) of the Area Redevelopment Act, it would also qualify for set-asides of Government procurement contracts under defense manpower policy No. 4.

When large numbers of workers move to already tight areas, heavy burdens are placed on community facilities—schools, hospitals, housing, transportation, utilities, etc. On the other hand, when unemployment develops in certain areas, unemployment compensation costs increase and plants, tools, and workers' skills remain idle and unable to contribute to our defense program.<sup>21</sup>

In general, the policies of DMP No. 4 are implemented by directives to the Department of Labor, Government procurement agencies, the Department of Commerce, the Small Business Administration, the Surplus Manpower Committee of the Office of Civil and Defense Mobilization, regional directors of OCDM, and all Federal departments and agencies planning sites for Government facilities expansion. The three most important provisions of DMP No. 4 policy are ones that direct the procurement agencies to award negotiated procurement contracts to the contractors who will perform a substantial proportion

<sup>19</sup> Hearings, app. III, p. 173.

<sup>20</sup> Hearings, app. I, p. 157.

<sup>21</sup> Hearings, app. I, p. 157.

of the production within labor-surplus areas. It urges procurement agencies to set aside portions of procurements exclusively with firms which will perform a substantial proportion of the production within labor-surplus areas. The directive which seems to have been least implemented is the one which states that all Federal departments and agencies shall give consideration to labor-surplus areas, particularly to persistent labor-surplus areas, in the selection of sites for Government-financed facilities expansion, to the extent that such consideration is not inconsistent with essential economic and strategic factors that must also be taken into account.

The President himself, in a memorandum to the Cabinet and principal agencies, dated February 27, 1962, stated his personal concern for using the weight of the Federal Government to give preference to redevelopment areas in the awarding of contracts. In view of this, the question arises why so few contracts are placed in substantial and persistent labor-surplus areas. The answer lies partly in an amendment attached to the Defense Appropriations Act of 1957. This amendment has been placed in every appropriation act since 1953, and in the current act (sec. 523, Public Law 87-577) reads as follows:

*Provided further, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations.*

This amendment has turned out to be disastrous for a successful implementation of DMP No. 4, because of the interpretation placed upon it by the Office of the Comptroller General of the United States in opinion B-145136, dated March 3, 1961. In this opinion the Comptroller General stated:

On the record we must construe the limitation in question as precluding the expenditure by the Defense Establishment of appropriated funds under any contract awarded on the basis of a labor surplus area situation at a price in excess of the lowest obtainable on an unrestricted solicitation of bids or proposals.

Because of this opinion, a program has had to be devised which has been set forth in part 8 of the Armed Services Procurement Regulation (ASPR) and subpart 1-18 of the Federal Procurement Regulations (FPR) respectively.<sup>22</sup> Detailed explanation of these regulations may be found in the statement of James E. Welch, Deputy General Counsel, General Accounting Office.<sup>23</sup>

Explained briefly, the program works as follows:<sup>24</sup> Where a Government procurement is severable into two or more economic production runs, and where one or more labor-surplus-area concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price, such portion or portions may be reserved, i.e., set aside for exclusive award to labor-surplus-area concerns. Such set-asides enjoy preference over small business set-asides. Furthermore, in case of a tie bid, a firm located in a labor-surplus area is given preference, even through the procurement may not have been set aside for labor-surplus firms.

In awarding a contract for a procurement set aside for a labor-surplus area, negotiations are conducted only with responsible labor-surplus-area concerns (and small business concerns to the extent

<sup>22</sup> Hearings, p. 93.

<sup>23</sup> Hearings, pp. 93 and 94.

<sup>24</sup> Hearings, pp. 136 and 137.

indicated below) which had submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion, in the following order of priority and under the following conditions:

Group 1. Persistent labor-surplus-area concerns which are also small business concerns.

Group 2. Other persistent labor-surplus-area concerns.

Group 3. Substantial labor-surplus-area concerns which are also small business concerns.

Group 4. Other substantial labor-surplus-area concerns.

Group 5. Small Business concerns which are not labor-surplus-area concerns.

Within each of the above groups, negotiations with such concerns are conducted in the order of their bids or proposals on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside quantities are awarded at the highest unit price awarded for the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. The sole responsibility for implementing this program rests on the contracting officer, and the absolute ineffectiveness of this program is well explained by Mr. Linton, when he states:

The partial setaside which currently is used requires that the total quantity of goods to be bought must be divisible into two or more economic production runs. The variation in quantity requirements is such that the percentage *which can be divided will never be large enough to make this system a technique of major significance.* [Italic supplied.]<sup>25</sup>

Certainly something should be done to make this program work more effectively. In 1960, less than 1 percent of the defense contracts were set aside under this program. As clumsy as it is, however, it would seem that a better showing than 1 percent could be made.

#### IV. ADDITIONAL ACTIVITY

The hearings brought out the fact that many Government agencies are engaged in or contemplating programs which will more adequately utilize Government procurement to alleviate conditions in areas of substantial and persistent labor surplus. The following is a compilation of these activities, by Department:

##### DEPARTMENT OF DEFENSE

1. At the direction of the President, created the Office of Economic Utilization Policy. It is the function of this Office to advise the Defense Department of the economic impact of their proposed action. Under the Director of Economic Utilization Policy, there is an Advisor of Economic Utilization Policy in each of the services—Army, Navy, and Air Force—as well as the Defense Supply Agency. The functions of this Office are as follows:

(a) Maintains and disseminates to appropriate units of the organization current information on areas, industries, and specific facilities which are, or may become, economically distressed, and which have a significant potential to participate in defense procurement and logistics programs.

<sup>25</sup> Hearings, p. 70.

(b) Provides information in connection with specific major procurements and other logistics actions to those responsible for final decision, in order to assure that there is full awareness of underutilized economic resources and that this is taken into consideration in making such decision.

(c) Cooperates with State, regional, local, and industry leaders, upon request, in informing the appropriate Department of Defense officials of the capabilities of underutilized plants and other resources which can be employed in support of defense procurement and logistics programs.

(d) Continuously studies procurement policies and practices in order to recommend revisions in policies, and to identify opportunities for more effective implementation of the armed services procurement regulations relating to labor surplus.

(e) Assists contracting offices to assure full application of the Department's labor-surplus area policies by increasing the sources on bidders' lists, by reviewing potential procurements to increase the number of set-asides, and by working with prime contractors on their subcontracting planning.

(f) Works with the aerospace industry to form a committee which would voluntarily make an effort to subcontract with firms in labor-surplus areas.

2. Is experimenting with a new program which may provide a partial answer. This program, instead of dividing the requirement between two firms, would result in one firm either producing a certain percentage in a labor-surplus area or subcontracting a certain percentage to firms in labor-surplus areas.

Specifically, the program requires first that the procurement agencies select those items which lend themselves to subcontracting. The percentage of subcontracting is arbitrary at this time. It requires that the item to be procured lend itself to at least 50 percent subcontracting. When such a forthcoming contract is identified, the request for proposal (which is in the form of an invitation to bid) contains a clause requiring the low bidder either to perform 50 percent of the contract value in the labor-surplus area or to subcontract that amount in such an area. If the contractor fails to agree, then the next low bidder who is within 120 percent of that bid and qualifies as a small business in a labor surplus area will be given an opportunity to meet the price. If there is no such small business, then any business next in line which is within 120 percent of the low bid and is also willing to produce or subcontract 50 percent in a labor-surplus area will be given an opportunity to meet the low bid. If no contractor can be found to meet the qualifications of subcontracting or performance in a labor-surplus area, the original low bidder will receive the contract.

3. Is considering a further proposal with promise which arises from the fact that most of the capacity in distressed areas is in the form of small business. The proposal would utilize the small business set-aside through cooperation with the Small Business Administration. A study of labor-surplus areas shows that for the most part they do not contain large defense-oriented industries, but do contain substantial numbers of small businesses which could participate in the defense effort. Thus, the Small Business Administration would seek to have partial labor-surplus set-asides placed in contracts that are set aside 100 percent for small business.

## COMMERCE DEPARTMENT

1. Has created and provided a staff for a Cabinet-level board, headed by the Secretary of Commerce, for the purpose of advising the Secretary of Defense on the problems of the labor-surplus areas.

## DEPARTMENT OF LABOR

1. Is obtaining statistics in regard to the employment situation in labor market areas. From them recommendations may be made to the Secretary of Commerce for the designation of areas as "redevelopment areas." Such recommendations may also be made by the Secretary of Agriculture or the Secretary of the Interior.

2. Provides technical assistance in the development of an overall economic development program as a prerequisite to Federal aid.

3. Identifies training needs to be met through occupational training.

4. Selects and refers qualified trainees.

5. Provides for the payment of subsistence benefits to those in training. Since the end of 1961, when the ARA program got underway, 11,000 American workers have received, or are receiving, training designed to enable them to get jobs. By mid-August 1962, \$4 million had been paid out to individuals in training allowances and \$3.2 million for the cost of training.<sup>26</sup>

## AREA REDEVELOPMENT ADMINISTRATION

1. Is working on programs which will more readily make available to the Department of Defense production capabilities in substantial and persistent labor-surplus areas. This work is pursuant to the specific legislative responsibility placed upon the Area Redevelopment Administration to furnish lists of potential bidders to the Department of Defense.

2. Has made a grant to Wilkes College for the purpose of establishing a capability to do Government research in chemistry and electronics.<sup>27</sup>

3. Has a program under which contracting officers are reminded that they are charged with the responsibility to persuade prime contractors to subcontract with firms in distressed areas.

4. Is experimenting with a Federal procurement coordinator to help business bid more successfully for defense contracts in West Virginia.

5. Makes loans to potential bidders. (This is one of their primary functions under their legislative responsibility.)

6. Has a program for training assistance which is very helpful to facilities in distressed areas which contemplate doing defense contracting.

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

1. Has encouraged prime contractors to place subcontracts in labor-surplus areas. This is done in part by a clause in all NASA contracts requiring prime contractors to exert their best efforts.

<sup>26</sup> Hearings, p. 45.

<sup>27</sup> Hearings, p. 18.

2. Publishes in the Commerce Daily contract descriptions and companies invited to bid. This practice enables subcontractors to make proposals.

3. Requires that all procurement offices maintain a record of contracts in excess of \$25,000 placed in labor-surplus areas.

4. With permission of the Bureau of the Budget, is experimenting with a program, which requires prime contractors to give information to NASA on their first- and second-tier subcontracts. This allows the compilation of telling information on how many subcontracts are being placed with small business and firms in distressed areas.

#### SMALL BUSINESS ADMINISTRATION

Has stepped up all of their programs, including the production assistance program and the set-aside program, to help secure defense contracts for small businesses in substantial and persistent labor-surplus areas. In particular, it has issued two regulations under its section 502 program which—

(1) Reduces the maximum interest rate in these areas to 4 percent.

(2) Establishes a 25-percent differential in the size standards for firms in such areas.

In the course of 12 months following these regulations, 37 loans were made under this program in an aggregate amount of \$5.3 million.<sup>28</sup>

#### V. LEGISLATION RELATING TO PROCUREMENT IN LABOR-SURPLUS AREAS

There are a number of laws, with executive directives and regulations, already in existence which, if properly utilized, would be effective in carrying out national policy on labor-surplus areas. These laws and regulations seem to be incompletely realized in Government agencies at the policy, control, and operational levels. The recommendations in chapter VI, it is hoped, will facilitate a better use of these laws and effect a fuller implementation of the national policy toward procurement in labor-surplus areas. Appendix B contains a limited compilation of relevant passages from those statutes which relate to distressed areas and Government spending.

These laws and regulations are briefly summarized as follows:

Defense Manpower Policy No. 4 (revised), as issued under Executive Orders 10480 and 10773, proclaims a policy of encouraging the placement of contracts and facilities in areas of persistent or substantial unemployment.

The Armed Services Procurement Act of 1947, as amended and codified in 10 U.S.C. 2301 et seq., sets forth 17 exceptions under which a contract may be negotiated. Relevant exceptions are purchases (1) under a declared national emergency, (5) from educational institutions, and (16) for maintenance of the mobilization base.

The Defense Production Act of 1950, as amended and codified in 50 U.S.C. 2061 et seq., sets forth the following national policy:

In the construction of any Government-owned industrial facilities and in the procurement of goods and services, under this or any other act, each department and agency of the executive branch shall apply, under the coordination of the Offices of Defense Mobilization, when practicable and consistent with existing

<sup>28</sup> Hearings, p. 136.

law and the desirability for maintaining a sound economy, the principle of the geographical dispersal of such facilities in the interest of national defense.

Loan guarantees and direct loans may be made through title III of this act.

Department of Defense Directive 3005.3 of December 7, 1954, implements a policy of maintaining the mobilization base and orders that all contract awards be reviewed with such factors as geographic dispersal, preservation of a skilled labor force, and maximum subcontracting in mind. The directive asks that exceptions 1 and 16 of the Armed Services Procurement Act be used to negotiate in order to carry out the national policy.

The National Industrial Reserves Act of 1948, as amended and codified in 50 U.S.C. 451 et seq., sets forth policy under which the Secretary of Defense finds equipment to be surplus and disposes of it. Particularly, 50 U.S.C. 456 authorizes the lending of equipment to nonprofit educational institutions.

Section 502(f) of Public Law 84-805 (amended), as codified in 46 U.S.C. 1152(f), amends the Merchant Marine Act of 1936 such that at least once a year the Secretary of Commerce shall conduct a survey of privately owned shipyards and that "upon a basis of a finding that the award of the proposed construction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconditioning, or remodeling to such yards in such manner as it may be determined to be fair, just and reasonable to all sections of the country, subject to the provisions of this subsection." The section continues to state that any resulting price differential will be paid as part of the cost of national defense.

Armed Services Procurement Regulations I-800 set forth the policies to be followed for armed services procurements in labor surplus areas.

Armed Services Procurement Regulations I-900 sets forth the policies to be followed in determining which parts of contracts should be subcontracted.

The Area Redevelopment Act of 1961, of May 1, 1961, as codified in 42 U.S.C. 2501 et seq., states the national policy regarding substantial and persistent unemployment and underemployment.

The Manpower and Training Act of 1962, as codified in 42 U.S.C. 2571 et seq., complements and supplements the Area Redevelopment Act of 1961 in providing training to accomplish the objectives of technological progress, while avoiding or minimizing individual hardship and widespread unemployment.

The Contract Adjustment Act of 1958, Public Law 85-804, 72 Stat. 972, as implemented by Executive Order 10789 of November 14, 1958 (23 F.R. 8897) empowers the President to authorize departments and agencies exercising functions in connection with the national defense, to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action

would facilitate the national defense. The Executive order authorizes the Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, under regulations prescribed or approved by the Secretary of Defense, to exercise this authority.

## VI. RECOMMENDATIONS

### NATIONAL POLICY CONSIDERATIONS AND EMPHASIS

1. *Direct more forcibly Government agencies to carry out the Nation's avowed policy of encouraging the placement of contracts in labor-surplus areas*

It is quite clear from the President's statements of February 2, 1961, and February 27, 1962, the continuance in effect of the policy set forth in the Defense Production Act of 1950 (50 U.S.C. app. 2062), the issuance of an amended Defense Manpower Policy No. 4 on July 6, 1960, the enacting of the Area Redevelopment Act of 1961 (Public Law 87-27 of May 1, 1961), the Manpower and Training Act of 1962 (Public Law 87-415 of Mar. 15, 1962), these hearings and acknowledgments of legislative and executive action on the part of agency heads, that there is a national policy (inclusive of Defense policy, Commerce policy, Labor policy, Office of Emergency Planning policy, and other agencies).

This national policy is to encourage the placement of contracts and facilities in areas of persistent and substantial labor surplus, and to assist such areas in making the best use of their available resources to achieve the objectives of—

- (a) Preserving management and employee skills necessary to the fulfillment of Government contracts;
- (b) Maintaining productive facilities;
- (c) Improving utilization of the Nation's total manpower potential by making use of the manpower resources of each area;
- (d) Assuring timely delivery of required goods and services and promoting readiness for expanded effort by locating procurement where the needed manpower and facilities are fully available.

Much remains to be done in the implementation of this policy to overcome what appears to be negative and halfhearted compliance on the part of the Government agencies and departments. It is the recommendation of this subcommittee that emphasis and reemphasis be given to this national policy by immediate and affirmative action on the part of all Government departments and agencies to implement this policy. This will require clear enunciation of departmental policy, objectives, organization, goals, and reports of activities in the conduct of the overall national policy to enable retention and conservation of our Nation's manpower, productive capacity, and resources.

### LEGISLATIVE ACTION

2. *Section 523 of the Defense Appropriations Act should be amended by altering parts which hinder the Department of Defense in implementing DMP No. 4*

The subcommittee was told all too often of the negative aspects of legislative provisions in the application of the national policy. These negative provisions seem to be the basis for grounding of departmental

policy against rather than in consonance with the national policy. The subcommittee is not unmindful of the provisions in the Defense Appropriations Act, section 523 of Public Law 87-577, precluding a price differential to relieve economic dislocation, but believes that this provision has been utilized far too often to forbid actions entirely appropriate under exceptions to the Armed Services Procurement Act of 1947, as amended, and other authorities.

The subcommittee recommends removal of this provision or, in the alternative, such clarification through appropriate hearings and reports that "economic dislocation," as utilized in this or similar actions, does not relate to actions within the policy, purposes, and scope of defense manpower policy No. 4. The recommendation for removal, if carried out by the Congress, will make the Defense Appropriations Act consistent with that of other agencies of the Government, such as NASA, AEC, Commerce, GSA, and like agencies whose appropriations do not contain such provisions.

On the affirmative side, the subcommittee recommends enactment of a provision authorizing total set-asides of a procurement for labor surplus areas where it is determined by the agency head or his designee that such total set-asides would be in the interest of maintaining and mobilizing the Nation's full manpower and other resources and productive capacity or in the interests of national defense programs in assuring a national (all States and territories) industrial and mobilization base.

#### EXECUTIVE ACTION—POLICY FORMULATION

#### *3. Revise defense manpower policy No. 4 so that it will reflect new laws and recently created agencies*

The subcommittee further recommends that defense manpower policy No. 4 be rejuvenated and updated to better reflect the national policy in all regards. The Surplus Manpower Committee provided for therein is outmoded. The national policy set forth in defense manpower policy No. 4 should clearly set forth the requirement that departmental policy shall not be initiated or interpreted to overrule national policy objectives. Defense manpower policy No. 4 should, and the subcommittee recommends that it be, updated to give recognition to the purposes and objectives of the Area Redevelopment Act of 1961, the Manpower and Training Act of 1962, the Merchant Marine Act of 1936, as amended by the addition of section 502(f) of Public Law 84-805, the Defense Production Act of 1950, and like legislation. The emergence of NASA and other agencies such as GSA, whose activities have an impact on the national policy, should also be considered in such updating.

#### *4. Revise part 8 of section I of the armed services procurement regulations to reflect more clearly the national policy*

Part 8 of section I of the armed services procurement regulations sets forth the procurement procedures in relation to labor surplus areas. Part 8 should be revised to spell out more clearly the national policy and the duties of procurement officers in carrying it out.

## EXECUTIVE ACTION—INTERAGENCY RELATIONSHIPS

*5. Abolish the Surplus Manpower Committee and create an Economic Utilization Board with representatives from interested departments*

The subcommittee was made fully aware of the interrelationships required in the conduct of the national policy between Defense, Commerce, Labor, OEP, NASA, GSA, and other agencies of the Government. An interagency counsel representative of the major agencies and departments should be established, whose function it would be to coordinate the interagency relationships, including those covering the presently inactive and obsolete Surplus Manpower Committee (DMP No. 4, par. 4(e)). It is suggested that in this regard it would be more appropriate to designate a committee of this type as an economic utilization committee or board with representation from all agencies having major procurement and other policy activities. The character of the representation should be changed from one that is procurement-oriented to one that is oriented to the national policy implications and considerations.

## EXECUTIVE ACTION—ORGANIZATION AND PERSONNEL

- 6. Create an office of Economic Utilization policy with responsibility to improve agency performance in all appropriate agencies*
- 7. Place the directors of offices of Economic Utilization Policy at the level of Assistant Secretary. Such offices must be staffed adequately so that they are able to make appropriate studies, work with potential bidders, State Governments and local units*

The implementation of a successful labor surplus area national policy requires departmental organization and personnel sufficiently geared and oriented to carry out the national policy requirements. Every agency with major procurement responsibilities should establish offices of economic utilization policy with responsibility to improve agency performance. Exceptionally well-qualified men of supergrade capability should direct these offices. They should be placed high in the organization of the departments, first, to indicate the importance placed upon the program, and, secondly, to cut across existing organizational lines and departments. In an agency such as the Department of Defense, where areas of policy control and operations cut across subagency units such as the research and development, the production end of procurement, the operation and maintenance, the construction and foreign assistance programs, and involve the Defense Supply Agency, Army, Navy, and Air Force activities, this is essential. The director of the office could well be an Assistant Secretary of Defense. NASA, GSA, FAA, and like agencies should have directors reporting to the agency head.

The offices of economic utilization policy should be adequately staffed with competent personnel at all necessary levels of action, so that the national policy can be carried out at all major procurement locations. The committee particularly feels that attention should be given and studies made on the effects of critical unemployment in any given area, with reports being given to a legislative branch of the Government as well as to the executive.

Offices of Economic Utilization Policy should be equipped and maintained with all of the necessary data to assist various agencies

of the Government as well as the State and local community groups which are calling on the Government for assistance. Personnel should be trained to present the procurement opportunities, programs, and procedures of their department in all aspects such as facilities assistance, financing, interpretation of regulations, relief under extraordinary circumstances, and like activities.

8. *Offices of economic utilization policy should continuously encourage prime contractors to establish new facilities in distressed areas*

Offices of Economic Utilization Policy and ARA should systematically encourage firms to establish new facilities in distressed areas by pointing out the Government procurement and other advantages of these areas.

EXECUTIVE ACTION—CONTRACTING AND SUBCONTRACTING PROCEDURE

9. *Devise and adopt programs which would create a wider geographical distribution of R. & D. contracts*

Agencies, with particular emphasis on the Department of Defense, should be more concerned with the development, maintenance, and retention of the industrial, scientific, and mobilization base in their awarding of research and development and like contracts. There should be a national spread and a planting of the seed corn of R. & D. which will lead to production contracts in all sections of the country. The excellent institutions of learning in all States have research capabilities which could and should fulfill basic and applied research contract and grant needs. Each area of the country has R. & D. capabilities within its scientific and industrial groupings which could and should be given the opportunity to take on development and design activities. It is not enough to say that concentration in certain areas of the country, on the basis of Nobel Prize winners, is the only answer in the achievement of national policy objectives in R. & D. and supply procurement programs.

10. *Adopt the program now being experimented with which requires 25 percent of selected contracts to be produced in distressed areas and devise a more liberal and exact interpretation of labor surplus area set-aside policy. Contracting officers from all agencies, on procurements over a certain size, should report on why a set-aside under DMP No. 4 was not utilized*

The set-aside programs of the DOD should be stepped up with recognition given to other types in addition to those set forth in ASPR 1-800. There should be set forth liberal interpretation of "economic production run or reasonable lot" to assist procurement and contracting personnel. The program now successfully underway in the Defense Department, which requests a specific percentage of selected contracts lending themselves to subcontracting to be produced or subcontracted in a labor surplus area, should be encouraged and utilized in other Government agencies. The percentage factors to be utilized in such contract actions should be flexible to enable contract placement under varying situations to as many prime contractors as possible.

11. *Adopt new programs under which more subcontracts are awarded in labor surplus areas*
12. *Institute a reporting system by which prime contractors with awards above \$100,000 must report subcontracts*

Greater emphasis must be given to the problem of subcontracting by prime contractors to firms in labor surplus areas. This will require missionary work in the conduct of the national policy with such contractors and it is for this reason that personnel at all levels of procurement should be entirely familiar with the national policy requirements. The "best efforts" clause (ASPR 1-805.3) and its meaning and purpose should be stressed in contract negotiations and coupled in interest with the requirements of ASPR 3-501 on preparation of requests for proposals and quotations. The subcommittee recognizes that many of the labor surplus areas lack large defense-oriented industrial complexes to qualify as prime contractors and that much of the capacity in such areas falls within the small business categories. These small businesses must be assisted in obtaining small Government contracts, as well as subcontracts. The use of breakout would assist such small contractors. The make-or-buy section of contract proposals should be carefully reviewed by procurement personnel to be sure that the national policy is being carried out. Pertinent statistics and other data should be available to all procurement personnel to assist them and prime contractors in the placement of contracts in labor surplus areas. An award program giving recognition to good work on the part of procurement personnel and contractors should be established.

13. *Government procurement contracts should provide for purchase at point of origin so that firms located in distressed areas will be competitive with firms that are located near points of delivery*

There seems to be no reason why production should be encouraged near points of delivery, yet freight costs are lower for firms adjacent to points of delivery and thus they are more competitive. Firms in distressed areas should be entitled to produce for the U.S. Government, regardless of their location. Competition may be so keen that for many of the common products purchased by the Nation, the difference in freight charges alone may be the prime factor in keeping firms in distressed areas from securing Government contracts.

14. *ARA and the Office of Economic Utilization policy should study the feasibility of having a factor covering public costs occasioned by economic dislocation included in the determination of costs in placing contracts*

One of the functions of the Government contract under the national policy set forth in DMP No. 4 is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. Where unemployment develops in certain areas, unemployment compensation costs increase, and plants, tools, and worker skills remain idle, and are unable to contribute to our defense program.

Therefore, the subcommittee recommends that a study be made of including in the determination of costs for purposes of evaluation in the placement of contracts a factor covering other public costs which

would be occasioned by the pullout of contracts in a persistent and substantial labor surplus area and the impact (money and otherwise) on other Government agencies.

*15. Prevent further concentration of defense industry by permitting negotiation of contracts under 10 U.S.C. 2304*

The subcommittee believes that among the tools available to the Department of Defense which would facilitate the national defense in its retention of the industrial base and manpower resources, and which could be utilized in labor surplus areas, are the provisions set forth in 10 U.S.C. 2304, providing for exceptions under which contracts could be negotiated. These exceptions could and should be utilized to preclude undue concentration, allow dispersal, utilization of investments in facilities, authorize research and development activities, and like contract actions in labor surplus areas.

*16. Allow modifications of contracts under authority of Public Law 85-804 and Executive Order 10789 in cases where such action would maintain productive facilities for national defense*

Another avenue for action would be to utilize the powers set forth in the Contract Adjustment Act of 1958 (Public Law 85-804, and contained in 72 Stat. 972), and Executive Order 10789 of November 14, 1958 (23 F.R. 8897), which would authorize amendments and modifications to contracts under certain situations, including hardship relief, and which actions would facilitate the national defense in the retention of skills, capabilities, protection of Government investment, protection of Government facilities, and like activities in surplus labor area cases.

EXECUTIVE ACTION—ESTABLISHMENT OF FACILITIES

*17. Place new Government facilities wherever possible in labor-surplus areas by requiring clearance for the placement of such facilities outside of labor-surplus areas*

The testimony dealt mostly with procurement and the impact of Federal contracts made with private firms. The Defense Manpower Policy No. 4 requirement concerning the location of Federal and defense facilities, while not discussed in detail, is important. Each year Federal officials plan and propose numerous projects from temporary buildings to multistory permanent ones. Typically, these facilities have been concentrated in a few localities, some where the unemployment is relatively low. Agencies in the Federal Government which contemplate establishment of facilities in the amount of an excess of \$50,000 should be required to clear such facility action and to explain placement of such facility in other than a distressed or labor surplus area, or to point out the reasons why this mandate in Defense Manpower Policy No. 4 has not been complied with.

EXECUTIVE ACTION—ASSISTANCE TO SOURCES

*18. Implement the policy of maintaining the mobilization base*

The subcommittee is aware of the fact that all Government agencies want responsive and responsible contractor sources. The subcommittee further recognizes that the source finding, selection, and maintenance of source data are integral parts of the procurement

activity. The sum total of these sources is the industrial, scientific, and mobilization base of the Nation and all areas of the country should be an active part of this base. The retention of this entire industrial, scientific, and mobilization base is a national defense objective and should be so recognized.

The subcommittee recommends that the Department of Defense exercise the use of the exceptions set forth in 10 U.S.C. 2304 and the policy dictates of the Defense Production Act of 1950, as implemented in its Directive 3005.3 to maintain an all-State and territory industrial and mobilization base. Economic impact situation reports covering active sources where immediate help is needed should be prepared at the economic utilization headquarters in the agencies and sent out to all procurement activities to the end that immediate steps could be taken to retain and conserve the resources.

*19. Make more readily available federally owned production equipment for the use of firms in labor-surplus areas.*

One of the major areas to be harnessed for utilization in labor surplus areas is in the form of facilities assistance. The experience of the United States in the oversea mutual defense assistance programs, which included facility assistance, bespeaks this fact. The provisions set forth in ASPR XIII covering acquisition and utilization of tooling and other forms of facilities should be liberalized to recognize and authorize labor surplus area contract acquisition and utilization. Procedures should be devised to permit prompt execution of arrangements with contractors, allowing use of Government facilities on commercial as well as defense work where there are community impact situations involving closing down by reason of stretchout, cutback, or termination of Government business. If high-level approval of actions is to be acquired, then immediate steps should be developed to process such cases in an expedient way. The Department of Defense, OEP, and other agencies working on policy and other aspects should develop better procedures for this purpose. The DOD should immediately undertake studies with respect to its authorities to utilize Public Law 883, 80th Congress, and 50 U.S.C. 451, in training activities. Its industrial reserve should be made available to labor surplus contractors under liberal terms to assist them in getting contracts and to enable them to better perform a variety of prime and sub contracts. Programs should be initiated to indicate the "how and where" such facilities might be acquired and utilized in the conduct of defense and other agency contracts.

*20. Render financial assistance to firms where it tends to encourage dispersal of defense industry*

Another possible avenue for utilization which affords guidance to the DOD is contained in the Defense Production Act of 1950, as amended (50 U.S.C., app. sec. 2062, et seq.). The policy section of this statute, which is still in effect, calls upon the agencies of the Government, including the Department of Defense, to insure productive capacity by encouragement of geographical dispersal of industrial facilities and by the discouragement of concentration of such productive facilities within limited geographical areas. This policy also requires, where practicable and consistent with existing law, to render financial assistance for construction, expansion and improve-

ment of industrial facilities, and in the procurement of goods and services.

*21. Lend, lease, transfer, or sell machine equipment to nonprofit institutions who will use it in programs which will materially contribute to national defense*

Another provision in law, the National Industrial Reserve Act of 1948 (50 U.S.C., sec. 451), declares it to be the intent of Congress to provide for the future safety and defense of the United States by assuring an essential nucleus of Government and industrial plants, and a national reserve of machine tooling and industrial manufacturing equipment. Under the National Industrial Reserve Act of 1948, there is within the power of the Secretary of Defense authority, when he deems such action to be in the interest of national security, to establish policies respecting such property, to direct transfers, to direct leasing, to authorize dispositions by sale or otherwise, and to authorize and regulate lending to nonprofit educational institutions or training schools upon determinations that the programs of such schools for the use of property will contribute materially to national defense.

Under foregoing authorities, the subcommittee believes and recommends actions by the DOD which would more effectively correlate its procurement, construction, and other activities with the national policies respecting labor surplus areas. The subcommittee recommends studies by the DOD that will enable the foregoing authorities to be utilized in this regard.

*22. Render technical assistance directly to contractors and subcontractors in labor surplus areas and indirectly to subcontractors through prime contractors*

The subcommittee further recommends that the DOD determine the feasibility of providing to contractors in labor surplus areas technical assistance both to primes and to their subcontractors where conditions are such as to warrant such action. It is recognized that while administratively it is not the responsibility of the DOD to perform a contractor's contract for him, the fact does remain that interpretation and assistance in understanding the design disclosure package data of a contract and other forms of technical aid can be given such prime and subcontractors and will enable their performance of the contract in a more satisfactory way.

A study should also be initiated with respect to determining the feasibility of assistance by prime contractors to their subcontractors in this same regard.

EXECUTIVE ACTION—SOURCE SELECTION AND DISSEMINATION OF REQUIREMENTS

*23. Facilitate source finding through the use of electronic data processing methods*

Many sources, particularly those in labor-surplus areas, are untapped, unrecognized, and thus not utilized. They are, in most cases, ready, willing, and able to participate in furnishing national manpower and facility resources which should be utilized. To better use these sources, the subcommittee believes and recommends augmented activities by Defense and other agencies in the development of elec-

tronic and other capabilities for source finding, determination of capability, and utilization to meet national policies and objectives. The Area Redevelopment Administration's program for the development of source data should be clearly understood in all departments and utilized. Much missionary work with respect to source development and utilization will be done without expense to the Government departments by State and local development commissions, by labor unions, chambers of commerce, and like civic groups.

*24. Make requirements of proposed procurements more readily available*

The subcommittee recommends that agencies such as the DOD, NASA, AEC, and GSA take immediate steps to better develop and utilize all labor surplus sources. This may require, in cases, additional time for procurements, better publicity, more utilization of the daily synopses prepared by the Department of Commerce and like media, educational meetings, and like activities. Methods and procedures for source selection, dissemination of requirements, preparation of requests for proposals, determinations and findings, and like procurement matters should be made available to industry associations (AIA, NSIA, EIA, AOA, and others) and to the aforementioned groups, as well as to requesting contractors. The evaluation techniques utilized in source selection should be carefully spelled out.

EXECUTIVE ACTION—TRAINING ACTIVITIES

*25. Organize task forces to meet with officials of educational institutions, scientific, and industrial groups in all States to help them participate in R. & D. contracts*

Defense, NASA, AEC, and like task forces should be organized to visit and meet with officials of educational institutions, scientific, and industry groups within each of the States to help them establish relationships with the U.S. Government in those regards. The Department of Defense should establish programs for this purpose.

*26. Increase the efforts to educate potential bidders as to bidding procedures and criteria used in bid evaluation*

The subcommittee is aware of and commends the DOD in its activities covering discussions of procurement regulations, technical meetings, and like training activities to afford science and industry knowledge as to the ways and means whereby Government contracts are programed, funded, executed, and performed. The subcommittee believes and recommends that much more can be done in this regard. It is our understanding that many of the industrial associations have agreed to and would work with the DOD in the conduct of meetings and in activities which would bring into effect the national policy considerations in labor surplus areas. In the same regard, the State and local governments have asked for such meetings. It is believed that they should be arranged in all labor surplus areas of the country. Such conferences could be sponsored by the DOD, NASA, GSA, and other agencies and should solicit the participation of prime contractors, subcontractors, and other interested elements of the community. As a part of such conferences, field trips should be undertaken through distressed areas, so that procurement representatives could meet on the spot with firms and civic leaders interested in Defense activities.

27. *Indoctrinate procurement officers as to the President's national policy and its implications of assisting distressed areas through Government contracts*

There appears, also, to be a need for definite indoctrination of Defense, NASA, GSA, and other personnel engaged in procurement activities bringing to their attention the national policy implications and considerations, and affording them sufficient guidance as to the relationship of procurement to such policies. This, in turn, will require educational activities by the agencies with their own personnel.

EXECUTIVE ACTION—RESEARCH AND STUDIES

28. *Investigate the relationship between the letting of R. & D. contracts and the placement of pursuant prime contracts*

Such a study should include a case-by-case study to determine the frequency with which R. & D. contractors received follow-on prime contract awards. It would also be useful to determine to what extent procurement officers investigate the possibility of placing prime contracts with firms who have not done the R. & D. work.

29. *Publish statistics relative to productive potential in labor surplus areas useful to firms considering placing new facilities in labor surplus areas*

The Commerce Department should find and publish statistics on each area as to such factors as work force, numbers and capability, resource advantages and such economic factors as average number of days lost due to sickness, labor problems, and average rates of production.

30. *Issue complete reports on agencies' implementation of DMP No. 4*

NASA and GSA should issue a quarterly report similar to the reports that are now issued by the Department of Defense, entitled, "Military Prime Contract Awards Placed in Areas of Substantial Unemployment." This report should include a complete breakdown of contracts awarded in substantial and persistent labor surplus areas as well as the number of contracts which are set aside under DMP No. 4. In this connection, the report issued semiannually by the Department of Defense should include all these statistics.

31. *Expand the responsibility of the Office of Emergency Planning to include preparation of studies and suggestions to improve the Long-range health of the economy*

A thorough consideration should be given to expanding the function of the Office of Emergency Planning to include making studies and recommendations to increase the economic strength of our Nation. DMP No. 4 recognizes the tremendous necessity of maintaining a healthy and growing economy as seen in its opening statement:

Success of the defense program depends upon efficient use of all our resources, including manpower and facilities, which are preserved through practice of the skills of both management and workers.

No persuasion should be necessary to convince the Congress that an expanding unemployment rate makes us as vulnerable to ultimate defeat as if we were to fall behind the Communist bloc in military technology.

One of the most significant findings of these hearings is that a lack of coordination and planning may be responsible for some of the Na-

tion's worst economic problems, including the existence of persistent and substantial labor surplus areas. It may well be that by anticipating shifts in defense spending and other factors in our economy and acting accordingly, industry and government, working cooperatively, could have prevented distressed areas. Such a study should include the possibility of expanding the Office of Emergency Planning to perform the following functions:

(a) Collecting suggestions and projections of future U.S. Government activity affecting the economy.

(b) Making a survey of all leading industries and other productive areas of the economy to determine their long-range plans and potential problems.

This information, properly formulated, could be used cooperatively by Government and industry in making long-range economic plans and projections.

#### EXECUTIVE ACTION—ASSISTANCE TO SMALL BUSINESSES

#### *32. Continue active and increasing effective implementation of governmental policy regarding small business participation in Government procurement*

The subcommittee has consistently supported a strong governmental policy to assure small concerns a fair opportunity to compete for Government contracts. Because of the interest of this and other congressional committees, an active and effective program of assistance to small concerns exists within the various procurement activities. In addition, Congress has authorized a program of procurement set asides for small business. This subcommittee has supported this program and continues to do so. It hopes that the scope of the set-aside program will be broadened to make an even greater percentage of Government procurement available to small concerns in those cases where sufficient competition among small bidders can assure competitive prices.

The small and independent American businessman is the first to suffer in depressed areas. Accordingly, this subcommittee strongly urges that existing programs and those recommended in this report to assist depressed areas be pursued vigorously along with all other established programs of assistance to small concerns. Such an effective governmental program fully supported at all levels will serve to strengthen the American small business community and the entire national economy.

SUPPLEMENTAL VIEWS OF SENATOR HARRISON A.  
WILLIAMS, JR., OF NEW JERSEY

I wish to say, in signing this report, that I am in full accord with the general principle of directing additional Federal resources, including defense spending, into areas of substantial unemployment. This report is a valuable assessment of what can and should be done to implement our national policy in this respect.

However, I am very much concerned about the adequacy of the criteria presently used to identify and designate areas of substantial and persistent unemployment.

Unless greater attention is devoted to this basic question, I fear we may end up building an imposing edifice of governmental programs and policies on the wrong foundation.

In addition to the recommendations contained in this report concerning defense spending in labor surplus areas, two other major programs—the Area Redevelopment Act and the accelerated public works program—are also tied to the same concept of labor surplus areas.

In my judgment, however, the designation of labor surplus areas suffers from two serious inadequacies.

First, the geographical boundaries of the area for which employment statistics are compiled to determine whether the area suffers substantial and persistent unemployment are based on the availability of jobs within commuting distance, which completely ignores other causes of hard-core unemployment.

Second, the eligibility of an area for additional Federal assistance is based on the percentage of unemployment rather than on the number of people unemployed. It seems to me that we ought to be talking about people and not percentages.

As a result of these inadequacies, we find many larger cities like Newark, N.J., which find themselves beyond the pale of any special governmental consideration. Yet these larger cities, set in the middle of a generally prosperous region, have undeniably acute problems of hard-core unemployment and a critical need for the infusion of outside capital to compensate for the city's shrinking tax base and swelling welfare costs.

Surely there is something the matter with our present system when the Newark labor market area—with more than 48,000 men and women unemployed, many of whom present special hard-core employment problems—receives no special consideration while areas with only a fraction of that number unemployed are given top priority attention by a number of Federal programs simply because the percentage of unemployment happens to be somewhat higher. I cannot help but feel that we are taking first things last.

I earnestly hope, therefore, that the subcommittee will schedule additional hearings in the near future to explore the adequacy of our present methods of selecting areas for special governmental attention and aids.

HARRISON A. WILLIAMS, Jr.

#### STATEMENT OF SENATOR FRANK E. MOSS

The pressure of business prevented my attending the hearings on the impact of defense spending on labor surplus areas on which this report is based. Therefore, I wish to disassociate myself from this report. I neither approve nor disapprove the subcommittee's findings on this subject.

FRANK E. MOSS.

## APPENDIX A

### STATISTICS ON DEFENSE SPENDING IN LABOR-SURPLUS AREAS

(This table serves to update the statistics on defense spending in labor-surplus areas as reported in the hearings. Perhaps the most significant figure is the decreased percentage of defense contracts placed through the labor-surplus set-aside program.)

|                                                                   | Areas of per-<br>sistent and<br>substantial<br>labor surplus | Areas of sub-<br>stantial labor<br>surplus |
|-------------------------------------------------------------------|--------------------------------------------------------------|--------------------------------------------|
| Number of areas.....                                              | 499                                                          | 633                                        |
| Population of areas.....                                          | 22, 500, 000                                                 | 51, 800, 000                               |
| <i>Percent of Nation's population.....</i>                        | <i>12.5</i>                                                  | <i>29</i>                                  |
| Labor force in areas.....                                         | 8, 800, 000                                                  | 20, 200, 000                               |
| Number of unemployed in areas.....                                | 966, 000                                                     | 1, 803, 000                                |
| <i>Unemployment rate.....</i>                                     | <i>11.0</i>                                                  | <i>8.9</i>                                 |
| Prime contracts in areas.....                                     | 1, 014, 000, 000                                             | 7, 400, 000, 000                           |
| <i>Percent of total prime contracts in areas.....</i>             | <i>4</i>                                                     | <i>29.5</i>                                |
| Set-asides in areas.....                                          | 60, 100, 000                                                 | 106, 000, 000                              |
| <i>Percent of prime contract in areas through set-asides.....</i> | <i>0.24</i>                                                  | <i>0.42</i>                                |

NOTE.—Population figures are for May 1962 and Defense spending figures are for fiscal 1962.

Source: Office of Economic Utilization Policy, Department of Defense.

## APPENDIX B

### A COMPILATION OF POLICY DIRECTIVES, STATUTES, AND REGULATIONS RELATING TO PROCUREMENT IN DISTRESSED AREAS

#### CONTENTS

- I. Policy directives.
  - 1. Defense manpower policy No. 4.
  - 2. Department of Defense directive 3005.3.
- II. Statutes:
  - 1. Full Employment Act of 1946.
  - 2. Defense Production Act of 1950.
  - 3. Merchant Marine Act of 1936, as amended.
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- III. Regulations:
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  - 4. Title 41, Code of Federal Regulations ("Public Contracts").

#### I. POLICY DIRECTIVES

##### *Defense Manpower Policy No. 4*

#### DMP 4—PLACEMENT OF PROCUREMENT AND FACILITIES IN AREAS OF PERSISTENT OR SUBSTANTIAL LABOR SURPLUS

##### REVISION

1. *Introduction.* Success of the defense program depends upon efficient use of all our resources, including manpower and facilities, which are preserved through practice of the skills of both management and workers.

A primary aim of Federal manpower policy is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. When large numbers of workers move to already tight areas, heavy burdens are placed on community facilities—schools, hospitals, housing, transportation, utilities, etc. On the other hand, when unemployment develops in certain areas, unemployment compensation costs increase and plants, tools, and workers' skills remain idle and unable to contribute to our defense program.

2. *Purpose.* It is the purpose of this Defense Manpower Policy No. 4 to direct attention to the potentialities of areas of persistent or substantial labor surplus, hereafter referred to as labor surplus areas, for the placement of procurement contracts or the location of new plants or facilities, and to assign responsibilities to specified departments and agencies of the Government to carry out the policy stated below.

3. *Policy.* It is the policy of the Federal Government to encourage the placing of contracts and facilities in areas of persistent or substantial labor

surplus, with first preference being given in areas of persistent labor surplus, and to assist such areas in making the best use of their available resources in order to achieve the following objectives:

- (a) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;
- (b) To maintain productive facilities;
- (c) To improve utilization of the Nation's total manpower potential by making use of the manpower resources of each area;
- (d) To help assure timely delivery of required goods and services and to promote readiness for expanded effort by locating procurement where the needed manpower and facilities are fully available.

4. *Implementation.* By virtue of the authority vested in me by Executive Order 10480 and Executive Order 10773, as amended, and to carry out the purpose and policy objectives set forth above, the following assignments of responsibilities are made to the specified departments and agencies of the Government:

(a) The Department of Labor shall:

(1) Classify areas having a persistent or substantial surplus of labor, under standards to be established by the Secretary of Labor.

(2) In cooperation with the States and labor surplus areas, provide labor market data and related economic information in efforts to assist in the initiation of industrial expansion programs in these areas.

(3) Identify skills which are in surplus supply within such areas and make this information available to firms requiring such skills and interested in establishing new plants and facilities.

(4) Identify occupations and skills for which labor will be needed by new or expanding industries; and, in collaboration with other governmental agencies, make assistance available to area institutions and manpower users in developing on-the-job apprentice or other training programs for developing skills of the workforce.

(b) All procurement agencies shall:

(1) Use their best efforts to award negotiated procurement contracts to contractors who will perform a substantial proportion of the production on those contracts within labor surplus areas, giving first preference to contractors performing in persistent labor surplus areas, to the extent that procurement objectives will permit: *Provided*, That in no case will price differentials be paid for the purpose of carrying out this policy.

(2) Where deemed appropriate, set-aside portions of procurements for negotiation at prices no higher than those paid on the balance of these procurements exclusively with firms which will perform or cause to be performed a substantial proportion of the production on these contracts within labor surplus areas, giving first preference to firms in persistent labor surplus areas: *Provided further* that firms which will perform in areas not meeting the minimum size qualifications for classification by the U.S. Department of Labor shall be eligible for participation in set-asides, if these firms submit a certificate issued by the U.S. Department of Labor that a persistent or substantial labor surplus exists in the area in accordance with standards and procedures prescribed by the U.S. Department of Labor.

(3) Assure that firms in labor surplus areas which are on appropriate bidders' lists will be given the opportunity to submit bids or proposals on all procurements for which they are qualified. Whenever the number of firms on a bidders' list is excessive, there will be included a representative number of firms from labor surplus areas.

(4) In the event of tie bids or offers on any procurement, award the contract to the firm which will perform in a labor surplus area, other things being equal, giving first preference to firms in persistent labor surplus areas.

(5) Encourage prime contractors to award subcontracts to firms which will perform a substantial proportion of the production on those subcontracts in labor surplus areas, particularly in areas of persistent labor surplus.

(6) The preferential actions described in this policy shall be in addition to other such actions to which firms may be entitled because of performance in substantial labor surplus areas, such as additional preference under the "Buy American Act."

(7) Cooperate with the other agencies listed herein in achieving the objectives of this policy.

## (c) The Department of Commerce shall:

(1) In cooperation with State development agencies, the Department of Defense, the General Services Administration, and the Small Business Administration, assist manufacturers in areas of persistent labor surplus in obtaining Government procurement business by (a) providing such firms with timely information on proposed Government procurements; (b) maintaining current information on the manufacturing capabilities of labor surplus area firms with respect to Government procurement and disseminating such information to Federal procurement agencies.

(2) Urge firms planning new production facilities (where Federal assistance or interests are involved) to consider the industrial location advantages of labor surplus areas.

(3) Provide technical advice and counsel to groups and organizations in labor surplus areas on planned industrial parks, industrial development organizations, expanding tourist business, and available Federal aids.

(d) The Small Business Administration shall make available to small business concerns in labor surplus areas all of its services, endeavor to insure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(e) There is hereby created within the Office of Civil and Defense Mobilization a Surplus Manpower Committee:

(1) This Committee shall be chaired by the Deputy Assistant Director for Manpower of the Office of Civil and Defense Mobilization and shall include representation from the Department of Defense (including the three military departments), Department of Commerce, Department of Labor, General Services Administration, and Small Business Administration.

(2) The Committee shall advise the Director of the Office of Civil and Defense Mobilization and its member agencies on policies, procedures, and activities in existence or needed to carry out the purpose of this policy.

(3) When an entire industry, which sells a significant proportion of its production to the Government, is generally depressed or has a significant proportion of its production units located in areas of persistent or substantial labor surplus, the Committee may make appropriate recommendations relative to that industry in lieu of recommendations relative to specific geographical areas. In such cases, after notice to and hearing of interested parties, the Director of the Office of Civil and Defense Mobilization will give consideration to appropriate measures applicable to the entire industry.

(f) The Regional Directors of OCDM shall, with the advice and assistance of the Regional Civil and Defense Mobilization Boards, recommend actions considered desirable to carry out the purposes of this policy to the Chairman of the Office of Civil and Defense Mobilization Surplus Manpower Committee.

(g) All Federal departments and agencies shall give consideration to labor surplus areas, particularly to persistent labor surplus areas, in the selection of sites for Government-financed facilities expansion, to the extent that such consideration is not inconsistent with essential economic and strategic factors that must also be taken into account.

(h) All agencies assigned responsibilities under this policy shall submit such reports on their activities as may be requested in connection therewith to the Office of Civil and Defense Mobilization, and shall submit such additional information as may be necessary.

(i) All existing notifications of labor surplus areas issued by the U.S. Department of Labor pursuant to Defense Manpower Policy No. 4, dated November 4, 1953, as amended July 29, 1955, continue in force. Notifications Nos. 38, 39, 53, 57, and 58, dealing with the placement of procurement with the textile, shoe, apparel, shipbuilding, and petroleum and petroleum products industries, are continued in effect to the extent that they are not inconsistent with this revised policy.

*Effective date.* This revised policy shall take effect on July 6, 1960.

LEO A. HOEGH, *Director.*

*Department of Defense Directive No. 3005.3, December 7, 1954*

Subject: Maintenance of the mobilization base.

Reference: Office of Defense Mobilization Order DMO VII-7, as amended.

### I. PURPOSE

The purpose of this directive is to integrate Department of Defense procurement policy with industrial mobilization plans in order to maintain a sound mobilization base.

### II. POLICY

The referenced document prescribes the Government policy for maintaining the mobilization base. With respect to current procurement particular attention is invited to paragraph 3A which provides in part:

"1. Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible extent with the objective of supporting the mobilization base within authorities and funds available.

"2. Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government. Suppliers that are deemed to be part of the mobilization base normally will be invited to participate in appropriate current procurement."

### III. ACTION

In furtherance of this policy and to integrate current procurement with military mobilization plans, the military departments are requested to review proposed procurement of items contained in the Department of Defense Preferential Planning List. Responsibility for such review should be maintained at the level of the Procurement Secretaries or their authorized designees. Such review should take into consideration the following:

- a. Maintaining multiple sources of supply;
- b. Geographic dispersal;
- c. Avoidance of undue concentration of contracts in a few leading suppliers;
- d. Multiple awards;
- e. Preservation of essential skilled labor forces;
- f. Utilization of existing open industrial capacity;
- g. Preservation of essential management organization and "know-how";
- h. Maximum subcontracting; and
- i. Any other factors relevant to maintaining a sound mobilization base.

In carrying out this program it is expected that the authority contained in Sections 2(c) 1 and 16 of the Armed Services Procurement Act will be utilized. In this connection comparative price experience shall be utilized to negotiate the best possible price for the Government.

### IV. IMPLEMENTATION

Each military department will proceed with the revision of regulations, procedures and instructions as necessary to implement the provisions hereof and will submit such revised regulations, procedures and instructions in duplicate to the Assistant Secretary of Defense (Supply and Logistics) within 30 days after the date of this directive.

### V. REPORTS

Each military department will report actions taken pursuant to this directive to the Assistant Secretary of Defense (Supply and Logistics). Such reports shall be submitted at least every 90 days.

## II. STATUTES

*Full Employment Act of 1946, Public Law 79-340, 60 Stat. 33*

AN ACT To declare a national policy on employment, production, and purchasing power, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## SHORT TITLE

SECTION 1. This Act may be cited as the "Employment Act of 1946".

## DECLARATION OF POLICY

SEC. 2. The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy, with the assistance and cooperation of industry, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power.

## ECONOMIC REPORT OF THE PRESIDENT

SEC. 3. (a) The President shall transmit to the Congress within sixty days after the beginning of each regular session (commencing with the year 1947) an economic report (hereinafter called the "Economic Report") setting forth (1) the levels of employment, production, and purchasing power obtaining in the United States and such levels needed to carry out the policy declared in section 2; (2) current and foreseeable trends in the levels of employment, production, and purchasing power; (3) a review of the economic program of the Federal Government and a review of economic conditions affecting employment in the United States or any considerable portion thereof during the preceding year and of their effect upon employment, production, and purchasing power; and (4) a program for carrying out the policy declared in section 2, together with such recommendations for legislation as he may deem necessary or desirable.

(b) The President may transmit from time to time to the Congress reports supplementary to the Economic Report, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 2.

(c) The Economic Report, and all supplementary reports transmitted under subsection (b), shall, when transmitted to Congress, be referred to the joint committee created by section 5.

## COUNCIL OF ECONOMIC ADVISERS TO THE PRESIDENT

SEC. 4. (a) There is hereby created in the Executive Office of the President a Council of Economic Advisers (hereinafter called the "Council"). The Council shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, and each of whom shall be a person who, as a result of his training, experience, and attainments, is exceptionally qualified to analyze and interpret economic developments, to appraise programs and activities of the Government in the light of the policy declared in section 2, and to formulate and recommend national economic policy to promote employment, production, and purchasing power under free competitive enterprise. Each member of the Council shall receive compensation at the rate of \$15,000 per annum. The President shall designate one of the members of the Council as chairman and one as vice chairman, who shall act as chairman in the absence of the chairman.

(b) The Council is authorized to employ, and fix the compensation of, such specialists and other experts as may be necessary for the carrying out of its functions under this Act, without regard to the civil-service laws and the Classification Act of 1923, as amended, and is authorized, subject to the civil-service laws, to employ such other officers and employees as may be necessary for carrying out its functions under this Act, and fix their compensation in accordance with the Classification Act of 1923, as amended.

(c) It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Economic Report;

(2) to gather timely and authoritative information concerning economic developments and economic trends, both current and prospective, to analyze and interpret such information in the light of the policy declared in section 2 for the purpose of determining whether such developments and trends are interfering, or are likely to interfere, with the achievement of such policy, and to compile and submit to the President studies relating to such developments and trends;

(3) to appraise the various programs and activities of the Federal Government in the light of the policy declared in section 2 for the purpose of determining the extent to which such programs and activities are contributing, and the extent to which they are not contributing, to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national economic policies to foster and promote free competitive enterprise, to avoid economic fluctuations or to diminish the effects thereof, and to maintain employment, production, and purchasing power;

(5) to make and furnish such studies, reports thereon, and recommendations with respect to matters of Federal economic policy and legislation as the President may request.

(d) The Council shall make an annual report to the President in December of each year.

(e) In exercising its powers, functions and duties under this Act—

(1) the Council may constitute such advisory committees and may consult with such representatives of industry, agriculture, labor, consumers, State and local governments, and other groups, as it deems advisable;

(2) the Council shall, to the fullest extent possible, utilize the services, facilities, and information (including statistical information) of other Government agencies as well as of private research agencies, in order that duplication of effort and expense may be avoided.

(f) To enable the Council to exercise its powers, functions, and duties under this Act, there are authorized to be appropriated (except for the salaries of the members and the salaries of officers and employees of the Council) such sums as may be necessary. For the salaries of the members and the salaries of officers and employees of the Council, there is authorized to be appropriated not exceeding \$345,000 in the aggregate for each fiscal year.

\* \* \* \* \*

*Defense Production Act of 1950, Public Law 81-774, 64 Stat. 798, 50 App. U.S.C. § 2061 et seq.*

**§ 2062. Declaration of policy**

In view of the present international situation and in order to provide for the national defense and national security, our mobilization effort continues to require some diversion of certain materials and facilities from civilian use to military and related purposes. It also requires the development of preparedness programs and the expansion of productive capacity and supply beyond the levels needed to meet the civilian demand, in order to reduce the time required for full mobilization in the event of an attack on the United States.

In order to insure productive capacity in the event of such an attack on the United States, it is the policy of the Congress to encourage the geographical dispersal of the industrial facilities of the United States in the interest of the national defense, and to discourage the concentration of such productive facilities within limited geographical areas which are vulnerable to attack by an enemy of the United States. In the construction of any Government-owned industrial facilities, in the rendition of any Government financial assistance for the construction, expansion, or improvement of any industrial facilities, and in the procurement of goods and services, under this or any other Act, each department and agency of the Executive Branch shall apply, under the coordination of the Office of Defense Mobilization, when practicable and consistent with existing law and the desirability for maintaining a sound economy, the principle of the geographical dispersal of such facilities in the interest of national defense. Nothing contained in this paragraph shall preclude the use of existing industrial facilities.

## TITLE III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

**§ 2091. Loan guarantees—Purpose of loans; guaranteeing agencies**

(a) In order to expedite production and deliveries or services under Government contracts, the President may authorize, subject to such regulations as he may prescribe, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Commerce, and such other agencies of the United States engaged in procurement for the national defense as he may designate (hereinafter referred to as "guaranteeing agencies"), without regard to provisions of law relating to the making, performance, amendment, or modification of contracts, to guarantee in whole or in part any public or private financing institution (including any Federal Reserve bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan, discount, or advance, or on any commitment in connection therewith, which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense; but no small-business concern (as defined in section 714(a)(1) of this Act) shall be held ineligible for the issuance of such a guaranty by reason of alternative sources of supply.

**§ 2092. Loans to private business enterprises**

To expedite production and deliveries or services to aid in carrying out Government contracts for the procurement of materials or the performance of services for the national defense, the President may make provision for loans (including participations in, or guarantees of, loans) to private business enterprises (including research corporations not organized for profit) for the expansion of capacity, the development of technological processes, or the production of essential materials, including the exploration, development, and mining of strategic and critical metals and minerals, and manufacture of newsprint. Such loans may be made without regard to the limitations of existing law and on such terms and conditions as the President deems necessary, except that financial assistance may be extended only to the extent that it is not otherwise available on reasonable terms.

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*Merchant Marine Act of 1936, as Amended; Public Law 74-835,  
46 U.S.C. 1152(f), 49 Stat. 1996*

**SURVEY OF SHIPBUILDING CAPABILITY; CORRECTION OF INADEQUACIES**

(f) The Secretary of Commerce, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this chapter, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Commerce, in connection with ship construction, reconstruction, reconditioning, or remodeling under sections 1191-1204 and section 1159 of this title, and the Federal Maritime Board, in connection with ship construction, reconstruction, or reconditioning under sections 1151-1161 of this title (except section 1159 of this title), upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as it may be determined to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Board or Secretary may, after first obtaining competitive bids for

such work in compliance with the provisions of this chapter, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Board or Secretary to be fair and reasonable. Any contract entered into by the Board or Secretary under the provisions of this subsection shall be subject to all of the terms and conditions of this chapter, excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Board or Secretary as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

*Defense Procurement Act of 1947, 10 U.S.C. 2304. Source (Statutes at Large) Feb. 19, 1948, chapter 65, §§ 2(b) (less first sentence), (c), (e), 7(d), 8, 62 Stat. 21, 22, 24, amended*

**§ 2304. Purchases and contracts: formal advertising; exceptions**

(a) Purchases of and contracts for property or services covered by this chapter shall be made by formal advertising. However, the head of an agency may negotiate such a purchase or contract, if—

(1) it is determined that such action is necessary in the public interest during a national emergency declared by Congress or the President;

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(5) the purchase or contract is for any service by a university, college, or other educational institution;

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(11) the purchase or contract is for property or services that he determines to be for experimental, developmental, or research work, or for making or furnishing property for experiment, test, development, or research;

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(13) the purchase or contract is for equipment that he determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;

(14) the purchase or contract is for technical or special property that he determines to require a substantial initial investment or an extended period of preparation for manufacture, and for which he determines that formal advertising and competitive bidding might require duplication of investment or preparation already made or would unduly delay the procurement of that property; or

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(16) he determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved; or

(17) negotiation of the purchase or contract is otherwise authorized by law.

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*1962 Amendment to 10 U.S.C. 2304; Public Law 87-653, § 1 (a)-(c), 76 Stat. 528*

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(g) In all negotiated procurements in excess of \$2,500 in which rates or prices are not fixed by law or regulation and in which time of delivery will permit, proposals shall be solicited from the maximum number of qualified sources

consistent with the nature and requirements of the supplies or services to be procured, and written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, price, and other factors considered: *Provided, however*, That the requirements of this subsection with respect to written or oral discussions need not be applied to procurements in implementation of authorized set-aside programs or to procurements where it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product, that acceptance of an initial proposal without discussion would result in fair and reasonable prices and where the request for proposals notifies all offerors of the possibility that award may be made without discussion.

*Department of Defense Appropriation Act, 1963, Public Law 87-577;  
76 Stat. 318, 332*

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SEC. 523. No part of any appropriation contained in this Act shall be available for the procurement of any article of food, clothing, cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles) not grown, reprocessed, reused, or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that a satisfactory quality and sufficient quantity of any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, or wool grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations, procurements by vessels in foreign waters and emergency procurements or procurements of perishable foods by establishments located outside the United States for the personnel attached thereto: *Provided*, That nothing herein shall preclude the procurement of foods manufactured or processed in the United States or its possessions: *Provided further*, That no funds herein appropriated shall be used for the payment of a price differential on contracts hereafter made for the purpose of relieving economic dislocations: *Provided further*, That none of the funds appropriated in this Act shall be used except that, so far as practicable, all contracts shall be awarded on a formally advertised competitive bid basis to the lowest responsible bidder.

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*Contract Adjustment Act of 1958, Public Law 85-804, 72 Stat. 972,  
50 U.S.C. §§ 1431-1435*

AN ACT To authorize the making, amendment, and modification of contracts to facilitate the national defense

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of \$50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein.

SEC. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

- (a) the use of the cost-plus-a-percentage-of-cost system of contracting;
- (b) any contract in violation of existing law relating to limitation of profits;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15), title 10, United States Code, or under section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

SEC. 3. (a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

SEC. 4. (a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential costs to the United States in excess of \$50,000, the report shall—

- (1) name the contractor;
- (2) state the actual cost or estimated potential cost involved;
- (3) describe the property or services involved; and
- (4) state further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

SEC. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

### *Area Redevelopment Act, Public Law 87-27, 75 Stat. 47, 42 U.S.C. 2501 et seq.*

AN ACT To establish an effective program to alleviate conditions of substantial and persistent unemployment and underemployment in certain economically distressed areas.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Area Redevelopment Act".*

#### DECLARATION OF PURPOSE

SEC. 2. The Congress declares that the maintenance of the national economy at a high level is vital to the best interests of the United States, but that some of our communities are suffering substantial and persistent unemployment and underemployment; that such unemployment and underemployment cause hardship to many individuals and their families and detract from the national welfare by wasting vital human resources; that to overcome this problem the Federal Government, in cooperation with the States, should help areas of substantial and persistent unemployment and underemployment to take effective steps in planning and financing their economic redevelopment; that Federal assistance to communities, industries, enterprises, and individuals in areas needing redevelopment should enable such areas to achieve lasting improvement and enhance the domestic prosperity by the establishment of stable and diversified local economies and improved local living conditions; and that under the provisions of this Act

new employment opportunities should be created by developing and expanding new and existing facilities and resources rather than by merely transferring jobs from one area of the United States to another.

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#### REDEVELOPMENT AREAS

SEC. 5. (a) The Secretary shall designate as "redevelopment areas" those areas within the United States in which he determines, upon the basis of standards generally comparable with those set forth in paragraphs (1) and (2), that there has existed substantial and persistent unemployment for an extended period of time. There shall be included among the areas so designated any area—

(1) where the Secretary of Labor finds that the rate of unemployment, excluding unemployment due primarily to temporary or seasonal factors, is currently 6 per centum or more and has averaged at least 6 per centum for the qualifying time periods specified in paragraph (2); and

(2) where the Secretary of Labor finds that the annual average rate of unemployment has been at least—

(A) 50 per centum above the national average for three of the preceding four calendar years, or

(B) 75 per centum above the national average for two of the preceding three calendar years, or

(C) 100 per centum above the national average for one of the preceding two calendar years.

The Secretary of Labor shall find the facts and provide the data to be used by the Secretary in making the determinations required by this subsection.

(b) The Secretary shall also designate as "redevelopment areas" those areas (including Indian reservations) within the United States which do not meet the requirements set forth in subsection (a) but which he determines are among the highest in numbers and percentages of low-income families, and in which there exists a condition of substantial and persistent unemployment or underemployment. In making the designations under this subsection and before extending any financial assistance as the result of designations under this subsection, the Secretary shall, by regulation, prescribe detailed standards upon which the designations under this subsection shall be based. In the formulation of such standards the Secretary shall consider, among other relevant factors, the number of low-income farm families in the various rural areas of the United States, the proportion that such low-income families are of the total farm families of each of such areas, the relationship of the income levels of the families in each such area to the general levels of income in the United States, the extent to which "rural development" projects have previously been located in any such area under programs administered by the Department of Agriculture, the current and prospective employment opportunities in each such area, the availability of manpower in each such area for supplemental employment, the extent of migration out of the area, and the proportion of the population of each such area which has been receiving public assistance from the Federal Government or from the State or States in which such area is located or from any municipality therein. In making the designations under this subsection, the Secretary shall endeavor to distribute the projects widely among the several States, so far as is feasible and proper, in order that actual experience with this program may be had in as many States and in as many areas and under as many different circumstances as possible. In making these determinations the Secretary shall be guided, but not conclusively governed, by pertinent studies made, and information and data collected, or compiled, by (1) departments, agencies, and instrumentalities of the Federal Government, (2) State and local governments, (3) universities and land-grant colleges, and (4) private organizations.

(c) Upon the request of the Secretary, the Secretary of Labor, the Secretary of Agriculture, the Secretary of the Interior, and such other heads of agencies as may be appropriate are authorized to conduct such special studies, obtain such information, and compile and furnish to the Secretary such data as the Secretary may deem necessary or proper to enable him to make the determinations provided for in subsection (b) of this section. The Secretary shall reimburse when appropriate, out of any funds appropriated to carry out the purposes of this Act, the foregoing officers for any expenditures incurred by them under this section.

(d) As used in this Act, the term "redevelopment area" refers to any area within the United States which has been designated by the Secretary as a redevelopment area.

## LOANS AND PARTICIPATIONS

Sec. 6. (a) The Secretary is authorized to purchase evidences of indebtedness and to make loans (which for purposes of this section shall include participations in loans) to aid in financing any project within a redevelopment area for the purchase or development of land and facilities (including, in cases of demonstrated need, machinery and equipment) for industrial or commercial usage, including the construction of new buildings, the rehabilitation of abandoned or unoccupied buildings, and the alteration, conversion, or enlargement of existing buildings. Such financial assistance shall not be extended (1) for working capital, or (2) to assist establishments relocating from one area to another. The limitation set forth in clause (2) shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

(b) Financial assistance under this section shall be on such terms and conditions as the Secretary determines, subject, however, to the following restrictions and limitations:

(1) The total amount of loans (including purchased evidences of indebtedness) outstanding at any one time under this section (A) with respect to projects in redevelopment areas designated under section 5(a) shall not exceed \$100,000,000 and (B) with respect to projects in redevelopment areas designated under section 5(b) shall not exceed \$100,000,000.

(2) Such assistance shall be extended only to applicants, both private and public (including Indian tribes), which have been approved for such assistance by an agency or instrumentality of the State or political subdivision thereof in which the project to be financed is located, and which agency or instrumentality is directly concerned with problems of economic development in such State or subdivision.

(3) The project for which financial assistance is sought must be reasonably calculated to provide more than a temporary alleviation of unemployment or underemployment within the redevelopment area wherein it is, or will be, located.

(4) No such assistance shall be extended hereunder unless the financial assistance applied for is not otherwise available from private lenders or other Federal agencies on reasonable terms.

(5) The Secretary shall not make any loan without a participation unless he determines that the loan cannot be made on a participation basis.

(6) No evidences of indebtedness shall be purchased and no loans shall be made unless it is determined that there is a reasonable assurance of repayment.

(7) Subject to section 12(5) of this Act, no loan, including renewals or extension thereof, may be made hereunder for a period exceeding twenty-five years and no evidences of indebtedness maturing more than twenty-five years from date of purchase may be purchased hereunder: *Provided*, That the foregoing restrictions on maturities shall not apply to securities or obligations received by the Secretary as a claimant in bankruptcy or equitable reorganization or as a creditor in other proceedings attendant upon insolvency of the obligor.

(8) Loans made and evidences of indebtedness purchased under this section shall bear interest at a rate equal to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury as provided in section 9(a) of this Act, plus one-half of 1 per centum per annum to cover administrative expenses and to provide for losses on loans made and evidences of indebtedness purchased under this section.

(9) Such assistance shall not exceed 65 per centum of the aggregate cost to the applicant (excluding all other Federal aid in connection with the undertaking) of acquiring or developing land and facilities (including, in cases of demonstrated need, machinery and equipment), and of constructing, altering, converting, rehabilitating, or enlarging the building or buildings of the particular project, and shall, among others, be on the condition that—

(A) other funds are available in an amount which, together with the assistance provided hereunder, shall be sufficient to pay such aggregate cost;

(B) not less than 10 per centum of such aggregate cost be supplied by the State or any agency, instrumentality, or political subdivision thereof, or by an Indian tribe or a community or area organization which is non-governmental in character, as equity capital or as a loan repayable only after the Federal financial assistance extended under this section has been repaid in full according to the terms thereof and, if such a loan is secured, its security shall be subordinate and inferior to the lien or liens securing such Federal financial assistance;

(C) in extending financial assistance under this section with respect to a redevelopment area, the Secretary shall require that not less than 5 per centum of the aggregate cost of the project for which such assistance is extended shall be supplied by nongovernmental sources as equity capital or as a loan repayable only after the Federal financial assistance extended under this section has been repaid in full according to the terms thereof and, if such a loan is secured, its security shall be subordinate and inferior to the lien or liens securing such Federal financial assistance; and

(D) to the extent the Secretary finds such action necessary to encourage financial participation in a particular project by other lenders and investors, and except as otherwise provided in subparagraphs (B) and (C), any Federal financial assistance extended under this section may be repayable only after other loans made in connection with such project have been repaid in full, and the security, if any, for such Federal financial assistance may be subordinate and inferior to the lien or liens securing other loans made in connection with the same project.

(10) No such assistance shall be extended unless there shall be submitted to and approved by the Secretary an overall program for the economic development of the area and a finding by the State, or any agency, instrumentality, or local political subdivision thereof, that the project for which financial assistance is sought is consistent with such program: *Provided*, That nothing in this Act shall authorize financial assistance for any project prohibited by laws of the State or local political subdivision in which the project would be located.

#### LOANS FOR PUBLIC FACILITIES

Sec. 7. (a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area or part thereof, the Secretary is authorized to make loans to assist in financing the purchase or development of land for public facility usage, and the construction, rehabilitation, alteration, expansion, or improvement of public facilities, within a redevelopment area, if he finds that—

(1) the project for which financial assistance is sought will tend to improve the opportunities, in the redevelopment area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities which will provide more than a temporary alleviation of unemployment or underemployment in such area;

(2) the funds requested for such project are not otherwise available on reasonable terms;

(3) the amount of the loan plus the amount of other available funds for such project are adequate to insure the completion thereof;

(4) there is a reasonable expectation of repayment; and

(5) such area has an approved economic development program as provided in section 6(b)(10) and the project for which financial assistance is sought is consistent with such program.

(b) Subject to section 12(5), the maturity date of any such loan shall be not later than forty years after the date such loan is made. Any such loan shall bear interest at a rate equal to the rate of interest paid by the Secretary on funds obtained from the Secretary of the Treasury as provided in section 9(a) of this Act, plus one-quarter of 1 per centum per annum.

(c) The total amount of loans outstanding at any one time under this section shall not exceed \$100,000,000.

(d) No financial assistance shall be extended under this section with respect to any public facility which would compete with an existing privately owned public utility rendering a service to the public at rates or charges subject to regulation by a State regulatory body, unless the State regulatory body determines that in the area to be served by the public facility for which the financial assistance is to be extended there is a need for an increase in such service (taking into consideration reasonably foreseeable future needs) which the existing public utility is not able to meet through its existing facilities or through an expansion which it agrees to undertake.

## GRANTS FOR PUBLIC FACILITIES

SEC. 8. (a) Upon the application of any State, or political subdivision thereof, Indian tribe, or private or public nonprofit organization or association representing any redevelopment area or part thereof, the Secretary is authorized to make grants for land acquisition or development for public facility usage, and the construction, rehabilitation, alteration, expansion, or improvement of public facilities, within a redevelopment area, if he finds that—

(1) the project for which financial assistance is sought will tend to improve the opportunities, in the redevelopment area where such project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities which will provide more than a temporary alleviation of unemployment or underemployment in such area;

(2) the entity requesting the grant proposes to contribute to the cost of the project for which such grant is requested in proportion to its ability so to contribute;

(3) the project for which a grant is requested will fulfill a pressing need of the area, or part thereof, in which it is, or will be, located, and there is little probability that such project can be undertaken without the assistance of a grant under this section; and

(4) the area for which a project is to be undertaken has an approved economic development program as provided in section 6(b)(10) and such project is consistent with such program.

The amount of any grant under this section for any such project shall not exceed the difference between the funds which can be practicably obtained from other sources (including a loan under section 7 of this Act) for such project, and the amount which is necessary to insure the completion thereof.

(b) The Secretary shall by regulation provide for the supervision of projects with respect to which grants are made under this section so as to insure that Federal funds are not wasted or dissipated.

(c) No financial assistance shall be extended under this section with respect to any public facility which would compete with an existing privately owned public utility rendering a service to the public at rates or charges subject to regulation by a State regulatory body, unless the State regulatory body determines that in the area to be served by the public facility for which the financial assistance is to be extended there is a need for an increase in such service (taking into consideration reasonably foreseeable future needs) which the existing public utility is not able to meet through its existing facilities or through an expansion which it agrees to undertake.

(d) There is hereby authorized to be appropriated not to exceed \$75,000,000 for the purpose of making grants under this section.

## AREA REDEVELOPMENT FUND

SEC. 9. (a) To obtain funds for the purpose of extending financial assistance under sections 6 and 7, the Secretary may, with the approval of the President, issue and have outstanding at any one time notes and obligations for purchase by the Secretary of the Treasury in an amount not to exceed \$300,000,000. Such notes or other obligations shall be in such forms and denominations, have such maturities, and be subject to such terms and conditions as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Any such notes or other obligations which are issued by the Secretary to raise funds for financial assistance under section 6 shall bear interest at a rate determined by the Secretary of the Treasury, but such rate shall not be greater than the current average yields on outstanding marketable obligations of the United States of comparable maturities as of the last day of the month preceding the issuance of such notes or other obligations. Any such notes or other obligations which are issued by the Secretary to raise funds for financial assistance under section 7 shall bear interest at a rate determined by the Secretary of the Treasury which shall be not more than the higher of (1)  $2\frac{1}{2}$  per centum per annum, or (2) the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the issuance by the Secretary and adjusted to the nearest one-eighth of 1 per centum. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued under this section and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act are extended to include any purchase of

such notes and other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated in every respect as public debt transactions of the United States.

(b) Funds obtained by the Secretary under subsection (a) shall be deposited in an area redevelopment fund (hereinafter referred to as the "fund"), which is hereby established in the Treasury of the United States, and which shall be available to the Secretary for the purpose of extending financial assistance under sections 6 and 7 and for the payment of all obligations and expenditures arising therefrom. Receipts arising from the programs of assistance under sections 6 and 7 shall be credited to the fund. Any moneys in the fund determined by the Secretary to be in excess of current needs shall be paid into the Treasury as miscellaneous receipts.

(c) The fund shall contribute to the civil service retirement and disability fund a sum as provided by section 4(a) of the Civil Service Retirement Act (5 U.S.C. 2254(a)), except that such sum shall be determined by applying to the total basic salaries (as defined in that Act) paid to employees performing activities authorized under sections 6 and 7 of this Act and covered by that Act the per centum rate determined annually by the Civil Service Commission to be the excess of the total normal cost per centum rate of the civil service retirement system over the employee deduction rate specified in such section 4(a). The fund shall also pay into the Treasury as miscellaneous receipts that portion of the cost of administration of the civil service retirement and disability fund attributable to employees performing activities authorized under sections 6 and 7 of this Act, as determined by the Civil Service Commission.

(d) In the performance of and with respect to the functions, powers, and duties vested in him by sections 6 and 7 of this Act, the Secretary shall—

(1) prepare annually and submit a budget program in accordance with the provisions of sections 102, 103, and 104 of the Government Corporation Control Act, as amended; and

(2) determine the character of and the necessity for obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations.

#### INFORMATION

SEC. 10. The Secretary shall aid redevelopment areas and other areas by furnishing to interested individuals, communities, industries, and enterprises within such areas any assistance, technical information, market research, or other forms of assistance, information, or advice which are obtainable from the various departments, agencies, and instrumentalities of the Federal Government and which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment within such areas. The Secretary shall furnish the procurement divisions of the various departments, agencies, and other instrumentalities of the Federal Government with a list containing the names and addresses of business firms which are located in redevelopment areas and which are desirous of obtaining Government contracts for the furnishing of supplies or services, and designating the supplies and services such firms are engaged in providing.

#### TECHNICAL ASSISTANCE

SEC. 11. In carrying out his duties under this Act the Secretary is authorized to provide technical assistance which would be useful in alleviating or preventing conditions of excessive unemployment or underemployment (1) to areas which he has designated as redevelopment areas under this Act, and (2) to other areas which he finds have substantial need for such assistance. Such assistance shall include studies evaluating the needs of, and developing potentialities for, economic growth of such areas. Such assistance may be provided by the Secretary through members of his staff or through the employment of private individuals, partnerships, firms, corporations, or suitable institutions, under contracts entered into for such purposes. Appropriations are hereby authorized for the purposes of this section in an amount not to exceed \$4,500,000 annually.

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## TERMINATION OF ELIGIBILITY FOR FURTHER ASSISTANCE

SEC. 13. Whenever the Secretary shall determine that employment conditions within any area previously designated by him as a redevelopment area have changed to such an extent that such area is no longer eligible for such designation under section 5 of this Act, no further assistance shall be granted under this Act with respect to such area and, for the purposes of this Act, such area shall not be considered a redevelopment area: *Provided*, That nothing contained herein shall (1) prevent any such area from again being designated a redevelopment area under section 5 of this Act if the Secretary determines it to be eligible under such section, or (2) affect the validity of any contracts or undertakings with respect to such area which were entered into pursuant to this Act prior to a determination by the Secretary that such area no longer qualifies as a redevelopment area. The Secretary shall keep the departments and agencies of the Federal Government, and interested State or local agencies, advised at all times of any changes made hereunder with respect to the designation of any area.

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## OCCUPATIONAL TRAINING

SEC. 16. (a) The Secretary of Labor is authorized, upon request and whenever he determines such studies are needed, to undertake, or to provide assistance to others for, studies of the size, characteristics, skills, adaptability, occupational potentialities, and related aspects of the labor force of any redevelopment area.

(b) When a redevelopment area has an approved economic development program as provided in section 6(b)(10), the Secretary of Labor, in consultation with the Secretary and the Secretary of Agriculture, shall determine the occupational training or retraining needs of unemployed and underemployed individuals residing in the redevelopment area. The Secretary of Labor shall notify the Secretary of Health, Education, and Welfare of the occupational training or retraining requirements of the area, and shall provide for the orderly selection and referral of those unemployed or underemployed individuals residing in the area who can reasonably be expected to obtain employment as a result of the skill they will acquire in the training which is to be made available. The Secretary of Labor shall cooperate with the Secretary of Health, Education, and Welfare and with existing State and local agencies and officials in charge of existing programs relating to vocational training and retraining for the purpose of assuring that the facilities and services of such agencies are made fully available to such individuals.

(c) Whenever the Secretary of Labor finds that additional facilities or services are needed in the area to meet the occupational training or retraining needs of such individuals, he shall so advise the Secretary of Health, Education, and Welfare. The Secretary of Health, Education, and Welfare shall provide assistance including financial assistance when necessary, to the appropriate State vocational educational agency in the provision of such additional facilities or services. If the Secretary of Health, Education, and Welfare finds that the State vocational educational agency is unable to provide the facilities and services needed, he may, after consultation with such agency, provide for the same by agreement or contract with public or private educational institutions.

(d) The Secretary of Labor shall arrange to provide any necessary assistance for setting up apprenticeships, and to promote journeyman and other on-the-job training.

(e) There are hereby authorized to be appropriated such sums, not in excess of \$4,500,000 annually, as may be necessary to carry out the provisions of this section.

(f) In providing assistance under this section with respect to unemployed and underemployed individuals residing in redevelopment areas, the Secretary of Labor and the Secretary of Health, Education, and Welfare shall give consideration to the special needs of individuals who are agricultural workers or are engaged in other seasonal occupations and who require occupational training in order to qualify them to engage in supplementary employment during the off season and during other periods of reduced activity in the field of their regular or primary occupations.

## RETRAINING SUBSISTENCE PAYMENTS

SEC. 17. (a) The Secretary of Labor in consultation with the Secretary and the Secretary of Agriculture may, on behalf of the United States, enter into agreements with States in which redevelopment areas are located, under which the Secretary of Labor shall make payments to such States either in advance or

by way of reimbursement for the purpose of enabling such States, as agents of the United States, to make weekly retraining payments to unemployed or underemployed individuals residing within such redevelopment areas who are certified by the Secretary of Labor to be undergoing occupational training or retraining under section 16 of this Act. Such payments shall be made only for the period the individual is receiving occupational training or retraining under section 16 of this Act, but not in any event to exceed sixteen weeks, and the amount of any such payment for any week shall be equal to the amount of the average weekly unemployment compensation payment (including allowances for dependents when appropriate) payable for a week of total unemployment in the State making such payments.

(b) No weekly retraining payment shall be made to any person otherwise eligible who, with respect to the week for which such payment would be made, has received or is seeking unemployment compensation under title XV of the Social Security Act or any other Federal or any State unemployment compensation law, but if the appropriate State or Federal agency finally determines that a person denied benefits for any week because of this subsection was not entitled to unemployment compensation under title XV of the Social Security Act or such Federal or State law with respect to such week, this subsection shall not apply with respect to such week.

(c) Any agreement under this section may contain provisions (including, so far as may be appropriate, provisions authorized or made applicable with respect to agreements concluded by the Secretary of Labor pursuant to title XV of the Social Security Act) as will promote effective administration, protect the United States against loss, and insure the proper application of payments made to the State under such agreement. Except as may be provided in such agreements, or in the rules and regulations prescribed pursuant to subsection (d) of this section, determinations by any duly designated officer or agency as to the eligibility of individuals for weekly retraining payments under this section shall be final and conclusive for any purposes and not subject to review by any court or any other officer.

(d) The Secretary of Labor and the Secretary shall jointly prescribe such rules and regulations as they may deem necessary to carry out the provisions of this section.

(e) There are hereby authorized to be appropriated such sums, not in excess of \$10,000,000 annually, as may be necessary to carry out the provisions of this section.

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#### PREVAILING RATE OF WAGE AND FORTY-HOUR WEEK

SEC. 21. All laborers and mechanics employed by contractors or subcontractors on projects assisted by the Secretary under this Act and undertaken by public applicants shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of eight hours in any workday or forty hours in the workweek, as the case may be. The Secretary shall not extend any financial assistance under section 6, 7, or 8 for such a project without first obtaining adequate assurance that these labor standard will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 \* \* \*.

#### ANNUAL REPORT

SEC. 22. The Secretary shall make a comprehensive and detailed annual report to the Congress of his operations under this Act for each fiscal year beginning with the fiscal year ending June 30, 1962. Such report shall be printed and shall be transmitted to the Congress not later than January 3 of the year following the fiscal year with respect to which such report is made. Such report shall show, among other things, (1) the number and size of Government contracts for the furnishing of supplies and services placed with business enterprises located in redevelopment areas, and (2) the amount and duration of employment resulting from such contracts. Upon the request of the Secretary, the various

departments and agencies of the Government engaged in the procurement of supplies and services shall furnish to the Secretary such information as may be necessary for the purposes of this section.

\* \* \* \* \*

RESEARCH

SEC. 27. To assist in the long-range accomplishment of the purposes of this Act, the Secretary, in cooperation with other agencies having similar functions, shall establish and conduct a continuing program of study and research designed to assist in determining the causes of unemployment, underemployment, underdevelopment, and chronic depression in the various areas of the Nation and in the formulation and implementation of national, State, and local programs which will raise income levels and otherwise produce solutions of the problems resulting from these conditions. The Secretary shall include in his annual report under section 22 a detailed statement concerning the study and research conducted under this section together with his findings resulting therefrom and his recommendations for legislative and other action.

\* \* \* \* \*

TERMINATION OF AUTHORITY

SEC. 29. (a) This Act and all authority conferred thereunder shall terminate at the close of June 30, 1965.

(b) Notwithstanding the foregoing, effective on July 1, 1965, those assets, funds, contracts, loans, liabilities, commitments, authorizations, allocations, and records of the Secretary under this Act which the Director of the Bureau of the Budget shall determine are necessary to the liquidation of the affairs and functions conducted under this Act, are transferred to the Secretary of the Treasury for purposes of liquidation.

(c) The termination of this Act shall not affect the disbursement of funds under, or the carrying out of, any contract, commitment, or other obligation entered into pursuant to this Act prior to the date of such termination, or the taking of any action necessary to preserve or protect the interests of the United States in any amounts advanced or paid out in carrying on operations under this Act.

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*Manpower Development and Training Act of 1962; Public Law 87-415; 76 Stat. 23; 42 U.S.C. § 2571 et seq.*

AN ACT Relating to manpower requirements, resources, development, and utilization, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Manpower Development and Training Act of 1962".*

TITLE I—MANPOWER REQUIREMENTS, DEVELOPMENT, AND UTILIZATION

STATEMENT OF FINDINGS AND PURPOSE

SEC. 101. The Congress finds that there is critical need for more and better trained personnel in many vital occupational categories, including professional, scientific, technical, and apprenticeable categories; that even in periods of high unemployment, many employment opportunities remain unfilled because of the shortages of qualified personnel; and that it is in the national interest that current and prospective manpower shortages be identified and that persons who can be qualified for these positions through education and training be sought out and trained, in order that the Nation may meet the staffing requirements of the struggle for freedom. The Congress further finds that the skills of many persons have been rendered obsolete by dislocations in the economy arising from automation or other technological developments, foreign competition, relocation of industry, shifts in market demands, and other changes in the structure of the economy; that Government leadership is necessary to insure that the benefits of automation do not become burdens of widespread unemployment; that the problem of assuring sufficient employment opportunities will be compounded by the extraordinarily

rapid growth of the labor force in the next decade, particularly by the entrance of young people into the labor force, that improved planning and expanded efforts will be required to assure that men, women, and young people will be trained and available to meet shifting employment needs; that many persons now unemployed or underemployed, in order to become qualified for reemployment or full employment must be assisted in providing themselves with skills which are or will be in demand in the labor market; that the skills of many persons now employed are inadequate to enable them to make their maximum contribution to the Nation's economy; and that it is in the national interest that the opportunity to acquire new skills be afforded to these people in order to alleviate the hardships of unemployment, reduce the costs of unemployment compensation and public assistance, and to increase the Nation's productivity and its capacity to meet the requirements of the space age. It is therefore the purpose of this Act to require the Federal Government to appraise the manpower requirements and resources of the Nation, and to develop and apply the information and methods needed to deal with the problems of unemployment resulting from automation and technological changes and other types of persistent unemployment.

#### EVALUATION, INFORMATION, AND RESEARCH

SEC. 102. To assist the Nation in accomplishing the objectives of technological progress while avoiding or minimizing individual hardship and widespread unemployment, the Secretary of Labor shall—

(1) evaluate the impact of, and benefits and problems created by automation, technological progress, and other changes in the structure of production and demand on the use of the Nation's human resources; establish techniques and methods for detecting in advance the potential impact of such developments; develop solutions to these problems, and publish findings pertaining thereto;

(2) establish a program of factual studies of practices of employers and unions which tend to impede the mobility of workers or which facilitate mobility, including but not limited to early retirement and vesting provisions and practices under private compensation plans; the extension of health, welfare, and insurance benefits to laid-off workers; the operation of severance pay plans; and the use of extended leave plans for education and training purposes. A report on these studies shall be included as a part of the Secretary's report required under section 104;

(3) appraise the adequacy of the Nation's manpower development efforts to meet foreseeable manpower needs and recommend needed adjustments, including methods for promoting the most effective occupational utilization of and providing useful work experience and training opportunities for untrained and inexperienced youth;

(4) promote, encourage, or directly engage in programs of information and communication concerning manpower requirements, development, and utilization, including prevention and amelioration of undesirable manpower effects from automation and other technological developments and improvement of the mobility of workers; and

(5) arrange for the conduct of such research and investigations as give promise of furthering the objectives of this Act.

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#### MANPOWER REPORT

SEC. 104. The Secretary of Labor shall make such reports and recommendations to the President as he deems appropriate pertaining to manpower requirements, resources, use, and training; and the President shall transmit to the Congress within sixty days after the beginning of each regular session (commencing with the year 1963) a report pertaining to manpower requirements, resources, utilization, and training.

### TITLE II—TRAINING AND SKILL DEVELOPMENT PROGRAMS

#### PART A—DUTIES OF THE SECRETARY OF LABOR

##### GENERAL RESPONSIBILITY

SEC. 201. In carrying out the purposes of this Act, the Secretary of Labor shall determine the skill requirements of the economy, develop policies for the adequate occupational development and maximum utilization of the skills of the

Nation's workers promote and encourage the development of broad and diversified training programs, including on-the-job training, designed to qualify for employment the many persons who cannot reasonably be expected to secure full-time employment without such training, and to equip the Nation's workers with the new and improved skills that are or will be required.

#### SELECTION OF TRAINEES

Sec. 202. (a) The Secretary of Labor shall provide a program for testing, counseling, and selecting for occupational training under this Act those unemployed or underemployed persons who cannot reasonably be expected to secure appropriate full-time employment without training. Whenever appropriate the Secretary shall provide a special program for the testing, counseling, and selection of youths, sixteen years of age or older, for occupational training and further schooling. Workers in farm families with less than \$1,200 annual net family income shall be considered unemployed for the purpose of this Act.

(b) Although priority in referral for training shall be extended to unemployed persons, the Secretary of Labor shall, to the maximum extent possible, also refer other persons qualified for training programs which will enable them to acquire needed skills. Priority in referral for training shall also be extended to persons to be trained for skills needed within, first, the labor market area in which they reside and, second, within the State of their residence.

(c) The Secretary of Labor shall determine the occupational training needs of referred persons, provide for their orderly selection and referral for training under this Act, and provide counseling and placement services to persons who have completed their training, as well as follow-up studies to determine whether the programs provided meet the occupational training needs of the persons referred.

(d) Before selecting a person for training, the Secretary shall determine that there is a reasonable expectation of employment in the occupation for which the person is to be trained. If such employment is not available in the area in which the person resides, the Secretary shall obtain reasonable assurance of such person's willingness to accept employment outside his area of residence.

(e) The Secretary shall not refer persons for training in an occupation which requires less than two weeks training, unless there are immediate employment opportunities in such occupation.

(f) The duration of any training program to which a person is referred shall be reasonable and consistent with the occupation for which the person is being trained.

(g) Upon certification by the responsible training agency that a person who has been referred for training does not have a satisfactory attendance record or is not making satisfactory progress in such training absent good cause, the Secretary shall forthwith terminate his training and subsistence allowances, and his transportation allowances except such as may be necessary to enable him to return to his regular place of residence after termination of training, and withdraw his referral. Such person shall not be eligible for such allowances for one year thereafter.

#### TRAINING ALLOWANCES

Sec. 203. (a) The Secretary of Labor may, on behalf of the United States, enter into agreements with States under which the Secretary of Labor shall make payments to such States either in advance or by way of reimbursement for the purpose of enabling such States, as agents for the United States, to make payment of weekly training allowances to unemployed persons selected for training pursuant to the provisions of section 202 and undergoing such training in a program operated pursuant to the provisions of this Act. Such payments shall be made for a period of not exceeding fifty-two weeks, and the amount of any such payment in any week for persons undergoing training, including uncompensated employer-provided training, shall not exceed the amount of the average weekly unemployment compensation payment (including allowances for dependents) for a week of total unemployment in the State making such payments during the most recent quarter for which such data are available: *Provided however*, That in any week an individual who, but for his training, would be entitled to unemployment compensation in excess of such allowance, shall receive an allowance increased by the amount of such excess. With respect to Guam and the Virgin Islands the Secretary shall by regulation determine the amount of the training allowance to be paid any eligible person taking training under this Act.

With respect to any week for which a person receives unemployment compensation under title XV of the Social Security Act or any other Federal or State unemployment compensation law which is less than the average weekly unemployment compensation payment (including allowances for dependents) for a week of total unemployment in the State making such payment during the most recent quarter for which such data are available, a supplemental training allowance may be paid to a person eligible for a training allowance under this Act. This supplemental training allowance shall not exceed the difference between his unemployment compensation and the average weekly unemployment compensation payment referred to above.

For persons undergoing on-the-job training, the amount of any payment which would otherwise be made by the Secretary of Labor under this section shall be reduced by an amount which bears the same ratio to that payment as the number of compensated hours per week bears to forty hours.

(b) The Secretary of Labor is authorized to pay to any person engaged in training under this title, including compensated full-time on-the-job training, such sums as he may determine to be necessary to defray transportation and subsistence expenses for separate maintenance of such persons when such training is provided in facilities which are not within commuting distance of their regular place of residence: *Provided*, That the Secretary in defraying such subsistence expenses shall not afford any individual an allowance exceeding \$35 per week, at the rate of \$5 per day; nor shall the Secretary authorize any transportation expenditure exceeding the rate of 10 cents per mile.

(c) The Secretary of Labor shall pay training allowances only to unemployed persons who have had not less than three years of experience in gainful employment and are either heads of families, or heads of households as defined in the Internal Revenue Code of 1954, except that he may pay training allowances at a rate not exceeding \$20 a week to youths over nineteen but under twenty-two years of age where such allowances are necessary to provide them occupational training, but not more than 5 per centum of the estimated total training allowances paid annually under this section may be paid to such youths.

(d) After June 30, 1964, any amount paid to a State for training allowances under this section, or as reimbursement for unemployment compensation under subsection (h), shall be paid on condition that such State shall bear 50 per centum of the amount of such payments.

(e) No training allowance shall be made to any person otherwise eligible who, with respect to the week for which such payment would be made, has received or is seeking unemployment compensation under title XV of the Social Security Act or any other Federal or State unemployment compensation law, but if the appropriate State or Federal agency finally determines that a person denied training allowances for any week because of this subsection was not entitled to unemployment compensation under title XV of the Social Security Act or such Federal or State law with respect to such week, this subsection shall not apply with respect to such week.

(f) A person who refuses, without good cause, to accept training under this Act shall not, for one year thereafter, be entitled to training allowances.

(g) Any agreement under this section may contain such provisions (including, as far as may be appropriate, provisions authorized or made applicable with respect to agreements concluded by the Secretary of Labor pursuant to title XV of the Social Security Act) as will promote effective administration, protect the United States against loss and insure the proper application of payments made to the State under such agreement. Except as may be provided in such agreements, or in regulations hereinafter authorized, determinations by any duly designated officer or agency as to the eligibility of persons for weekly training allowances under this section shall be final and conclusive for any purposes and not subject to review by any court or any other officer.

(h) If State unemployment compensation payments are paid to a person taking training under this Act and eligible for a training allowance, the State making such payments shall be reimbursed from funds herein appropriated. The amount of such reimbursement shall be determined by the Secretary of Labor on the basis of reports furnished to him by the States and such amount shall then be placed in the State's unemployment trust fund account.

(i) A person who, in connection with an occupational training program, has received a training allowance or whose unemployment compensation payments were reimbursed under the provisions of this Act or any other Federal Act shall not be entitled to training allowances under this Act for one year after the completion or other termination (for other than good cause) of the training with respect to which such allowance or payment was made.

(j) No training allowance shall be paid to any person who is receiving training for an occupation which requires a training period of less than six days.

ON-THE-JOB TRAINING

SEC. 204. (a) The Secretary of Labor shall encourage, develop, and secure the adoption of programs for on-the-job training needed to equip persons selected for training with the appropriate skills. The Secretary shall, to the maximum extent possible, secure the adoption by the States and by private and public agencies, employers, trade associations, labor organizations and other industrial and community groups which he determines are qualified to conduct effective training programs under this title of such programs as he approves, and for this purpose he is authorized to enter into appropriate agreements with them.

(b) In adopting or approving any training program under this part, and as a condition to the expenditure of funds for any such program, the Secretary shall make such arrangements as he deems necessary to insure adherence to appropriate training standards, including assurances—

(1) that the training content of the program is adequate, involves reasonable progression, and will result in the qualification of trainees for suitable employment;

(2) that the training period is reasonable and consistent with periods customarily required for comparable training;

(3) that adequate and safe facilities, and adequate personnel and records of attendance and progress are provided; and

(4) that the trainees are compensated by the employer at such rates, including periodic increases, as may be deemed reasonable under regulations hereinafter authorized, considering such factors as industry, geographical region, and trainee proficiency.

(c) Where on-the-job training programs under this part require supplementary classroom instruction, appropriate arrangements for such instruction shall be agreed to by the Secretary of Health, Education, and Welfare and the Secretary of Labor.

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STATE AGREEMENTS

SEC. 206. (a) The Secretary of Labor is authorized to enter into an agreement with each State, or with the appropriate agency of each State, pursuant to which the Secretary of Labor may, for the purpose of carrying out his functions and duties under this title, utilize the services of the appropriate State agency and, notwithstanding any other provision of law, may make payments to such State or appropriate agency for expenses incurred for such purposes.

(b) Any agreement under this section may contain such provisions as will promote effective administration, protect the United States against loss and insure that the functions and duties to be carried out by the appropriate State agency are performed in a manner satisfactory to the Secretary.

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PART B—DUTIES OF THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE

GENERAL RESPONSIBILITY

SEC. 231. The Secretary of Health, Education, and Welfare shall, pursuant to the provisions of this title, enter into agreements with States under which the appropriate State vocational education agencies will undertake to provide training needed to equip persons referred to the Secretary of Health, Education, and Welfare by the Secretary of Labor pursuant to section 202, for the occupations specified in the referrals. Such State agencies shall provide for such training through public education agencies or institutions or, if facilities or services of such agencies or institutions are not adequate for the purpose, through arrangements with private educational or training institutions. The State agency shall be paid 50 per centum of the cost to the State of carrying out the agreement, except that for the period ending June 30, 1964, the State agency shall be paid 100 per centum of the cost to the State of carrying out the agreement with respect to unemployed persons. Such agreements shall contain such other provisions as will promote effective administration (including provision (1) for reports on the attendance and performance of trainees, (2) for immediate certification to the Secretary of Labor by the responsible training agency with respect to each person referred for training who does not have a satisfactory attendance record

or is not making satisfactory progress in such training absent good cause, and (3) for continuous supervision of the training programs conducted under the agreement to insure the quality and adequacy of the training provided), protect the United States against loss, and assure that the functions and duties to be carried out by such State agency are performed in such fashion as will carry out the purposes of this title. In the case of any State which does not enter into an agreement under this section, and in the case of any training which the State agency does not provide under such an agreement, the Secretary of Health, Education, and Welfare may provide the needed training by agreement or contract with public or private educational or training institutions.

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### TITLE III—MISCELLANEOUS

#### APPORTIONMENT OF BENEFITS

SEC. 301. For the purpose of effecting an equitable apportionment of Federal expenditures among the States in carrying out the programs authorized under title II of this Act, the Secretary of Labor and the Secretary of Health, Education, and Welfare shall make such apportionment in accordance with uniform standards and in arriving at such standards shall consider only the following factors: (1) the proportion which the labor force of a State bears to the total labor force of the United States, (2) the proportion which the unemployed in a State during the preceding calendar year bears to the total number of unemployed in the United States in the preceding calendar year, (3) the lack of appropriate full-time employment in the State, (4) the proportion which the insured unemployed within a State bears to the total number of insured employed within such State, and (5) the average weekly unemployment compensation benefits paid by the State. The Secretary of Labor and the Secretary of Health, Education, and Welfare are authorized to make reapportionments from time to time where the total amounts apportioned under this section have not been fully obligated in a particular State, or where the State or appropriate agencies in the State have not entered into the necessary agreements, and the Secretaries find that any other State is in need of additional funds to carry out the programs authorized by this Act.

#### MAINTENANCE OF STATE EFFORT

SEC. 302. No training program which is financed in whole or in part by the Federal Government under this Act shall be approved unless the Secretary of Labor, if the program is authorized under part A of title II, or the Secretary of Health, Education, and Welfare, if the program is authorized under part B of title II, satisfies himself that neither the State nor the locality in which the training is carried out has reduced or is reducing its own level of expenditures for vocational education and training, including program operation under provisions of the Smith-Hughes Vocational Education Act and titles I, II, and III of the Vocational Education Act of 1946, except for reductions unrelated to the provisions or purposes of this Act.

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#### APPROPRIATIONS AUTHORIZED

SEC. 304. (a) There are hereby authorized to be appropriated \$2,000,000 for the fiscal year ending June 30, 1963, \$3,000,000 for the fiscal year ending June 30, 1964, and a like amount for the fiscal year ending June 30, 1965, for the purpose of carrying out title I.

(b) There are hereby authorized to be appropriated \$97,000,000 for the fiscal year ending June 30, 1963, \$161,000,000 for the fiscal year ending June 30, 1964, and a like amount for the fiscal year ending June 30, 1965, for the purpose of carrying out title II.

(c) There are hereby authorized to be appropriated \$1,000,000 for the fiscal year ending June 30, 1963, \$1,000,000 for the fiscal year ending June 30, 1964, and a like amount for the fiscal year ending June 30, 1965, for the purpose of carrying out title III.

(d) There are hereby authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1962, for planning and starting programs under this Act.

## LIMITATIONS ON USE OF APPROPRIATED FUNDS

SEC. 305. (a) Funds appropriated under the authorization of this Act may be transferred, with the approval of the Director of the Bureau of the Budget, between departments and agencies of the Government, if such funds are used for the purposes for which they are specifically authorized and appropriated.

(b) Any equipment and teaching aids purchased by a State or local vocational education agency with funds appropriated to carry out the provisions of part B shall become the property of the State.

(c) No portion of the funds to be used under part B of this Act shall be appropriated directly or indirectly to the purchase, erection, or repair of any building except for minor remodeling of a public building necessary to make it suitable for use in training under part B.

(d) Funds appropriated under this Act shall remain available for one fiscal year beyond that in which appropriated.

## AUTHORITY TO CONTRACT

SEC. 306. (a) The Secretary of Labor and the Secretary of Health, Education, and Welfare may make such contracts or agreements, establish such procedures, and make such payments, either in advance or by way of reimbursement, or otherwise allocate or expend funds made available under this Act, as they deem necessary to carry out the provisions of this Act.

(b) The Secretary of Labor and the Secretary of Health, Education, and Welfare shall not use any authority conferred by this Act to assist in relocating establishments from one area to another. Such limitation shall not prohibit assistance to a business entity in the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary of Labor finds that assistance will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations, unless he has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

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## DEFINITION

SEC. 308. For the purposes of this Act, the term "State" includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

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## TERMINATION OF AUTHORITY

SEC. 310. (a) All authority conferred under title II of this Act shall terminate at the close of June 30, 1965.

(b) Notwithstanding the foregoing, the termination of title II shall not affect the disbursement of funds under, or the carrying out of, any contract, commitment or other obligation entered into prior to the date of such termination: *Provided*, That no disbursement of funds shall be made pursuant to the authority conferred under title II of this Act after December 30, 1965.

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*Public Works Acceleration Act, Public Law 87-658, 76 Stat. 541, 42 U.S.C. § 2641 et seq.*

AN ACT To provide authority to accelerate public works programs by the Federal Government and State and local bodies

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Works Acceleration Act".*

SEC. 2. (a) The Congress finds that (1) certain communities and areas in the Nation are presently burdened by substantial unemployment and underemployment and have failed to share fully in the economic gains of the recovery from the recession of 1960-1961 and (2) action by the Federal Government is necessary, both to provide immediate useful work for the unemployed and underemployed in these communities and to help these communities, through improvement of

their facilities, to become more conducive to industrial development and better places in which to live and work. The Nation has a backlog of needed public projects, and an acceleration of these projects now will not only increase employment at a time when jobs are urgently required but will also meet longstanding public needs, improve community services, and enhance the health and welfare of citizens of the Nation.

(b) The Congress further finds that Federal assistance to stimulate public works investment in order to increase employment opportunities is most urgently needed in those areas, both urban and rural, which qualify as redevelopment areas because they suffer from persistent and chronic unemployment and economic underdevelopment, as well as in other areas which have suffered from substantial unemployment for a period of at least twelve months.

SEC. 3. (a) For the purposes of this section the term "eligible area" means—

(1) those areas which the Secretary of Labor designates each month as having been areas of substantial unemployment for at least nine or the preceding twelve months; and

(2) those areas which are designated by the Secretary of Commerce under subsections (a) and (b) of section 5 of the Area Redevelopment Act as "redevelopment areas".

(b) The President is authorized to initiate and accelerate in eligible areas those Federal public works projects which have been authorized by Congress, and those public works projects of States and local governments for which Federal financial assistance is authorized under provisions of law other than this Act, by allocating funds appropriated to carry out this section—

(1) to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the construction of Federal public works projects, and

(2) to the heads of the departments, agencies, and instrumentalities of the Federal Government responsible for the administration of laws authorizing Federal financial assistance to public works projects of States and local governments.

(c) All grants-in-aid made from allocations made by the President under this section shall be made by the head of the department, agency, or instrumentality of the Federal Government administering the law authorizing such grants, and, except as otherwise provided in this subsection, shall be made in accordance with all of the provisions of such law except (1) provisions requiring allocation of funds among the States, and (2) limitations upon the total amount of such grants for any period. Notwithstanding any provision of such law requiring the Federal contribution to the State or local government involved to be less than a fixed portion of the cost of a project, grants-in-aid may be made under authority of this section which bring the total of all Federal contributions to such project up to 50 per centum of the cost of such project, or up to 75 per centum of the cost of such project if the State or local government does not have economic and financial capacity to assume all of the additional financial obligations required.

(d) There is hereby authorized to be appropriated not to exceed \$900,000,000 to be allocated by the President in accordance with subsection (b) of this section, except that not less than \$300,000,000 shall be allocated for public works projects in areas designated by the Secretary of Commerce as redevelopment areas under subsection (b) of section 5 of the Area Redevelopment Act.

(e) The President shall prescribe rules, regulations, and procedures to carry out this section which will assure that adequate consideration is given to the relative needs of eligible areas. In prescribing such rules, regulations, and procedures the President shall consider among other relevant factors (1) the severity of the rates of unemployment in the eligible areas and the duration of such unemployment, and (2) the income levels of families and the extent of underemployment in eligible areas.

(f) Funds allocated by the President under this section shall be available only for projects—

(1) which can be initiated or accelerated within a reasonably short period of time;

(2) which will meet an essential public need;

(3) a substantial portion of which can be completed within twelve months after initiation or acceleration;

(4) which will contribute significantly to the reduction of local unemployment;

(5) which are not inconsistent with locally approved comprehensive plans for the jurisdiction affected, wherever such plans exist.

(g) Not more than 10 per centum of all amounts allocated by the President under this section shall be made available for public works projects within any one State.

(h) The criteria to be used by the Secretary of Labor in determining areas of substantial unemployment for the purposes of paragraph (1) of subsection (a) of this section shall be the criteria established in section 6.3 of title 29 of the Code of Federal Regulations as in effect May 1, 1962.

SEC. 4. (a) No part of any allocation made by the President under this Act shall be made available during any fiscal year to any State or local government for any public works project, unless the proposed or planned total expenditure (exclusive of Federal funds) of such State or local government during such fiscal year for all its capital improvement projects is increased by an amount approximately equal to the non-Federal funds required to be made available for such public works project.

(b) No part of any allocation made by the President under this Act shall be made available for any planning or construction, directly or indirectly, of any school or other educational facility.

SEC. 5. (a) Paragraph (4) of subsection (b) of section 202 of the Housing Amendments of 1955 is amended by adding at the end thereof the following new sentence: "This paragraph shall not apply to any financial assistance to be extended under subsection (a) of this section for the purpose of financing any project for public works or facilities to be initiated or accelerated as the result of a grant-in-aid from an allocation made by the President under section 9 of the Public Works Acceleration Act."

(b) Section 202 of the Housing Amendments of 1955 is amended by adding at the end thereof the following new subsection:

"(e) The Administrator is authorized to make a grant-in-aid from any allocation made for such purpose by the President under section 9 of the Public Works Acceleration Act to any public entity described in clause (1) of subsection (a) of this section of not to exceed 50 per centum of the cost of construction of any project for public works or facilities, if such project would be eligible (without regard to the restrictions and limitations of subsections (b) and (c) of this section) for financial assistance under clause (1) of subsection (a) of this section in accordance with the rules and regulations of the Administrator (as in effect on the date of enactment of this subsection) relating to the types of public works and facilities to which such assistance may be extended."

SEC. 6. Section 702 of the Housing Act of 1954 is amended by adding at the end thereof the following new subsection:

"(g) Notwithstanding any other provision of this section, no advance made under this section for the planning of any public works project shall be required to be repaid if construction of such project is initiated as a result of a grant-in-aid made from an allocation made by the President under the Public Works Acceleration Act."

### *National Industrial Reserve Act of 1948, Public Law 80-833, 62 Stat. 1225, 50 U.S.C. §§ 451-462*

AN ACT To promote the common defense by providing for the retention and maintenance of a national reserve of industrial productive capacity, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act may be cited as the "National Industrial Reserve Act of 1948".

#### DECLARATION OF POLICY

SEC. 2. In enacting this Act, it is the intent of Congress to provide a comprehensive and continuous program for the future safety and for the defense of the United States by providing adequate measures whereby an essential nucleus of Government-owned industrial plants and a national reserve of machine tools and industrial manufacturing equipment may be assured for immediate use to supply the needs of the armed forces in time of national emergency or in anticipation thereof; it is further the intent of the Congress that such Government-owned plants and such reserve shall not exceed in number or kind the minimum requirements for immediate use in time of national emergency, and that any such items which shall become surplus to such requirements shall be disposed of as expeditiously as possible.

\* \* \* \* \*

SEC. 4. To effectuate the policy set forth in section 2 of this Act the Secretary of Defense is hereby authorized and directed to—

- (1) determine which excess industrial properties should become a part of the national industrial reserve under the provisions of this Act;
- (2) formulate a national security clause, as defined in section 3 (c) hereof and vary or modify the same from time to time in such manner as best to attain the objectives of this Act, having due regard to securing advantageous terms to the Government in the disposal of excess industrial property;
- (3) consent to the relinquishment or waiver of all or any part of any national security clause in specific cases when necessary to permit the disposition of particular excess industrial property when it is determined that the retention of the productive capacity of any such excess industrial property is no longer essential to the national security or that the retention of a lesser interest than that originally required will adequately fulfill the purposes of this Act: *Provided*, That nothing in this subsection (3) shall require the modification or waiver of any part of any such national security clause when such clause is deemed necessary by the Secretary of Defense to effectuate the purposes of this Act; and
- (4) designate what excess industrial property shall be disposed of subject to the provisions of the national security clause.

\* \* \* \* \*

SEC. 7. The Secretary of Defense, with respect to property in the national industrial reserve, is authorized when he deems such action to be in the interest of national security—

- (1) to establish general policies for the care, maintenance, utilization, recording, and security of such property transferred to the Federal Works Agency pursuant to section 5 hereof; and
- (2) to direct the transfer without reimbursement by the Federal Works Agency of any of such property to other Government agencies with the consent of such agencies; and
- (3) to direct the leasing by the Federal Works Agency of any of such property to designated lessees; and
- (4) to authorize the disposition by the Federal Works Agency of any of such property by sale or otherwise when in the opinion of the Secretary of Defense such property may be disposed of subject to or free of the national security clause provided for in section 5 hereof; and
- (5) to authorize and regulate the lending of any such property by the Federal Works Agency to any nonprofit educational institution or training school when (a) the Secretary shall determine that the program proposed by such institution or school for the use of such property will contribute materially to national defense, and (b) such institution or school shall by agreement make such provision as the Secretary shall deem satisfactory for the proper maintenance of such property and for its return to the Federal Works Agency without expense to the Government.

SEC. 8. As and when directed or authorized by the Secretary of Defense pursuant to the provisions of section 7 hereof, the Federal Works Agency shall after the date upon which transfer is directed pursuant to section 5 hereof provide for the transportation, handling, care, storage, protection, maintenance, utilization, repair, restoration, renovation, leasing, and disposition of excess industrial property.

\* \* \* \* \*

SEC. 11. It shall be the duty of the Committee appointed under section 10 hereof to review not less often than once each year the justification for the retention of property in the national industrial reserve established hereunder and (i) to recommend to the Secretary of Defense the disposition of any such property which in the opinion of the Committee would no longer be of sufficient strategic value to warrant its further retention for the production of war material in the event of a national emergency; (ii) to recommend to the Secretary of Defense standards of maintenance for the property held in the national industrial reserve; (iii) to review and recommend to the Secretary of Defense the disposal of that property which in the opinion of the Committee could and should be devoted to commercial use in the civilian economy; and (iv) to advise the Secretary of Defense with respect to such activities under this Act as he may request.

SEC. 12. The Secretary of Defense shall submit to the Congress on April 1 of each year a report detailing the action taken by it hereunder and containing such other pertinent information on the status of the national industrial reserve as will

enable the Congress to evaluate its administration and the need for amendments and related legislation.

Sec. 13. Section 5 of the Act approved August 5, 1947 (ch. 493, 61 Stat. 774), is hereby repealed.

Sec. 14. There are hereby authorized to be appropriated to the Office of the Secretary of Defense and to the Federal Works Administration, out of any moneys in the Treasury not otherwise appropriated, such sums as the Congress may, from time to time, determine to be necessary to enable the Secretary of Defense and the Federal Works Agency to carry out their respective functions under the Act.

### *Defense Public Works and Housing, Title 42, United States Code*

#### **§ 1531. Declaration of policy; definition of "public work."**

It is declared to be the policy of this subchapter to provide means by which public works may be acquired, maintained, and operated in the areas described in section 1532 of this title. As used in this subchapter, the term "public work" means any facility necessary for carrying on community life substantially expanded by the national-defense program, but the activities authorized under this subchapter shall be devoted primarily to schools, waterworks, sewers, sewage, garbage and refuse disposal facilities, public sanitary facilities, works for the treatment and purification of water, hospitals and other places for the care of the sick, recreational facilities, and streets and access roads.

#### **SUBCHAPTER III.—DEFENSE PUBLIC WORKS**

#### **§ 1532. Housing and Home Finance Administrator's powers respecting defense public works; definition of "private agency".**

Whenever the President finds that in any area or locality an acute shortage of public works or equipment for public works necessary to the health, safety, or welfare of persons engaged in national-defense activities exists or impends which would impede national-defense activities, and that such public works or equipment cannot otherwise be provided when needed, or could not be provided without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the taxing or borrowing authority in which such shortage exists, the Housing and Home Finance Administrator is authorized, with the approval of the President, in order to relieve such shortage—

(a) To acquire, prior to the approval of title by the Attorney General if necessary (without regard to section 1339 of Title 10, and section 5 of Title 41), improved or unimproved lands or interests in lands by purchase, donation, exchange, lease (without regard to sections 34 and 278a of Title 40, or any time limit on the availability of funds for the payment of rent), or condemnation (including proceedings under sections 257, 258, 361–386 and 258a–258e of Title 40), for such public works.

(b) By contract or otherwise (without regard to section 1339 of Title 10, section 5 of Title 41, section 278a of Title 40, or any Federal, State, or municipal laws, ordinances, rules, or regulations relating to plans and specifications or forms of contract, the approval thereof or the submission of estimates therefor), prior to the approval of title by the Attorney General if necessary, to plan, design, construct, remodel, extend, repair, or lease public works, and to demolish structures, buildings, and improvements, on lands or interests in lands acquired under the provisions of subsection (a) of this section or on other lands of the United States which may be available (transfers of which for this purpose by the Federal agency having jurisdiction thereof are authorized notwithstanding any other provisions of law) provide proper approaches thereto, utilities, and transportation facilities, and procure necessary materials, supplies, articles, equipment and machinery, and do all things in connection therewith to carry out the purposes of this subchapter.

(c) To make loans or grants, or both, to public and private agencies for public works and equipment therefor, and to make contributions to public or private agencies for the maintenance and operation of public works, upon such terms and in such amounts as the Administrator may consider to be in the public interest. As used in this paragraph, the term "private agency" means any private agency no part of the net earnings of which inures to the benefit of any private shareholder or individual.

## SUBCHAPTER VIII.—CRITICAL DEFENSE HOUSING AREAS

**§ 1591. Determination of critical areas by President; requisite conditions.**

(a) Notwithstanding any other provisions of this Act, the authority contained in titles II or III of this Act shall not be exercised in any area unless the President shall have determined that such area is a critical defense housing area.

(b) No area shall be determined to be a critical defense housing area pursuant to this section unless the President finds that in such area all the following conditions exist:

(1) a new defense plant or installation has been or is to be provided, or an existing defense plant or installation has been or is to be reactivated or its operation substantially expanded;

(2) substantial in-migration of defense workers or military personnel is required to carry out activities at such plant or installation; and

(3) a substantial shortage of housing required for such defense workers or military personnel exists or impends which impedes or threatens to impede activities at such defense plant or installation, or that community facilities or services required for such defense workers or military personnel are not available or are insufficient, or both, as the case may be.

**§ 1591a. Construction by private enterprise.**

In order to assure that private enterprise shall be afforded full opportunity to provide the defense housing needed wherever possible, in any area which the President, pursuant to the authority contained in section 1591 of this title, has declared to be a critical defense housing area—

## PUBLICATION OF NUMBER OF UNITS NEEDED

(a) first, the number of permanent dwelling units (including information as to types, rentals, and general locations) needed for defense workers and military personnel in such critical defense housing area shall be publicly announced and printed in the Federal Register by the Housing and Home Finance Administrator;

## SUSPENSION OF CREDIT RESTRICTIONS

(b) second, residential credit restrictions under the Defense Production Act of 1950, as amended, (1) as to housing to be sold at \$12,000 or less per unit or to be rented at \$85 or less per unit per month, shall be suspended with respect to the number and types of housing units at the sales prices or rentals which the President determines to be needed in such area for defense workers or military personnel, and (2) as to all other housing, shall be relaxed in such manner and to such extent as the President determines to be necessary and appropriate to obtain the production of such housing needed in such area for defense workers or military personnel;

## MORTGAGE INSURANCE

(c) third, the mortgage insurance aids provided under sections 371, 1430, 1702, 1715c, 1715f and 1716, and subchapter X of chapter 13 of Title 12 shall be made available to obtain the production of housing needed in such area for defense workers or military personnel; and

## CONSTRUCTION BY GOVERNMENT AS CONDITIONAL

(d) fourth, no permanent housing shall be constructed by the Federal Government under the provisions of subchapter IX of this chapter except to the extent that private builders or eligible mortgagees have not, within a period of not less than ninety days (as the Housing and Home Finance Administrator shall specify) following public announcement of the availability of such mortgage insurance aids under sections 371, 1430, 1702, 1715c, 1715f and 1716, and subchapter X of chapter 13 of Title 12, indicated through bona fide applications (which meet the requirements as to types, rentals or sales prices, and general locations) for exceptions from such residential credit restrictions or for mortgage insurance or guaranty that they will provide the housing determined to be needed in such area for defense workers and military personnel and publicly announced as provided by subsection (a) of this section.

**§ 1591b. Community facilities or services by local agencies.**

In order to assure that community facilities or services required in connection with national defense activities shall, wherever possible, be provided by the ap-

propriate local agencies with local funds, in any area which the President, pursuant to the authority contained in section 1591 of this title, has declared to be a critical defense housing area—

(a) no loan shall be made pursuant to subchapter IX of this chapter for the provision of community facilities or equipment therefor required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Housing and Home Finance Administrator finds, that such facilities or equipment could not otherwise be provided when needed;

(b) no grant or other payment shall be made pursuant to subchapter IX of this chapter for the provision, or for the operation and maintenance, of community facilities or equipment therefor, or for the provision of community services, required in connection with national defense activities in such area unless the chief executive officer of the appropriate political subdivision certifies, and the Housing and Home Finance Administrator finds, that such community facilities or services cannot otherwise be provided when needed, or operated and maintained, as the case may be, without the imposition of an increased excessive tax burden or an unusual or excessive increase in the debt limit of the appropriate local agency; and

(c) no community facilities or services shall be provided, and no community facilities shall be maintained and operated, by the United States directly except where the appropriate local agency is demonstrably unable to provide such facilities and services, or to maintain or operate such community facilities and services adequately with its own personnel, with loans, grants, or payments authorized to be made pursuant to subchapter IX of this chapter.

For the purposes of this section, the term "chief executive officer of the appropriate political subdivision" shall mean appropriate principal executive officer or governing body having primary responsibility with respect to the community facility or service involved, but shall not, in any case, mean any public housing authority, or its governing body, or any of its officers, acting in such capacity.

#### SUBCHAPTER IX—DEFENSE HOUSING AND COMMUNITY FACILITIES AND SERVICES

\* \* \* \* \*

##### § 1592. Authority of Administrator.

Subject to the provisions and limitations of sections 1591–1591c of this title, and of this subchapter, the Housing and Home Finance Administrator (hereinafter referred to as the "Administrator") is authorized to provide housing in any areas (subject to the provisions of section 1591 of this title) needed for defense workers or military personnel or to extend assistance for the provision of, or to provide, community facilities or services required in connection with national defense activities in any area which the President, pursuant to the authority contained in said section, has determined to be a critical defense housing area.

##### § 1592c. Loans or grants for community facilities or services; conditions; maximum amounts; annual adjustments.

In furtherance of the purposes of this subchapter and subject to the provisions hereof, the Administrator may make loans or grants, or other payments, to public and nonprofit agencies for the provision, or for the operation and maintenance, of community facilities and equipment therefor, or for the provision of community services, upon such terms and in such amounts as the Administrator may consider to be in the public interest: \* \* \* *Provided further*, That grants or payments for the provision, or for the maintenance and operation, of community facilities or services under this section shall not exceed the portion of the cost of the provision, or the maintenance and operation, of such facilities or services which the Administrator estimates to be attributable to the national defense activities in the area and not to be recovered by the public or nonprofit agency from other sources, including payments by the United States under any other provisions of this Act or any other law: \* \* \*

*Trade Expansion Act of 1962; Public Law 87-794, 76 Stat. 872, generally, 19 U.S.C. §§ 1802-1806, 1901-1902, 1911 et seq.*

### TITLE III—TARIFF ADJUSTMENT AND OTHER ADJUSTMENT ASSISTANCE

#### CHAPTER 1—ELIGIBILITY FOR ASSISTANCE

##### § 302. Presidential action after Tariff Commission determination.

(a) After receiving a report from the Tariff Commission containing an affirmative finding under section 301(b) with respect to any industry, the President may—

(1) provide tariff adjustment for such industry pursuant to section 351 or 352,

(2) provide, with respect to such industry, that its firms may request the Secretary of Commerce for certifications of eligibility to apply for adjustment assistance, under chapter 2,

(3) provide, with respect to such industry, that its workers may request the Secretary of Labor for certifications of eligibility to apply for adjustment assistance under chapter 3, or

(4) take any combination of such actions.

(b)(1) The Secretary of Commerce shall certify, as eligible to apply for adjustment assistance under chapter 2, any firm in an industry with respect to which the President has acted under subsection (a)(2), upon a showing by such firm to the satisfaction of the Secretary of Commerce that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused serious injury or threat thereof to such firm.

(2) The Secretary of Labor shall certify, as eligible to apply for adjustment assistance under chapter 3, any group of workers in an industry with respect to which the President has acted under subsection (a)(3), upon a showing by such group of workers to the satisfaction of the Secretary of Labor that the increased imports (which the Tariff Commission has determined to result from concessions granted under trade agreements) have caused or threatened to cause unemployment or underemployment of a significant number or proportion of workers of such workers' firm or subdivision thereof.

(c) After receiving a report from the Tariff Commission containing an affirmative finding under section 301(c) with respect to any firm or group of workers, the President may certify that such firm or group of workers is eligible to apply for adjustment assistance.

(d) Any certification under subsection (b) or (c) that a group of workers is eligible to apply for adjustment assistance shall specify the date on which the unemployment or underemployment began or threatens to begin.

(e) Whenever the President determines, with respect to any certification of the eligibility of a group of workers, that separations from the firm or subdivision thereof are no longer attributable to the conditions specified in section 301(c)(2) or in subsection (b)(2) of this section, he shall terminate the effect of such certification. Such termination shall apply only with respect to separations occurring after the termination date specified by the President.

#### CHAPTER 2—ASSISTANCE TO FIRMS

##### § 311. Certification of adjustment proposals.

(a) A firm certified under section 302 as eligible to apply for adjustment assistance may, at any time within 2 years after the date of such certification, file an application with the Secretary of Commerce for adjustment assistance under this chapter. Within a reasonable time after filing its application, the firm shall present a proposal for its economic adjustment.

(b) Adjustment assistance under this chapter consists of technical assistance, financial assistance, and tax assistance, which may be furnished singly or in combination. Except as provided in subsection (c), no adjustment assistance shall be provided to a firm under this chapter until its adjustment proposal shall have been certified by the Secretary of Commerce—

(1) to be reasonably calculated materially to contribute to the economic adjustment of the firm,

(2) to give adequate consideration to the interests of the workers of such firm adversely affected by actions taken in carrying out trade agreements, and

(3) to demonstrate that the firm will make all reasonable efforts to use its own resources for economic development.

(c) In order to assist a firm which has applied for adjustment assistance under this chapter in preparing a sound adjustment proposal, the Secretary of Commerce may furnish technical assistance to such firm prior to certification of its adjustment proposal.

(d) Any certification made pursuant to this section shall remain in force only for such period as the Secretary of Commerce may prescribe.

#### **§ 312. Use of existing agencies.**

(a) The Secretary of Commerce shall refer each certified adjustment proposal to such agency or agencies as he determines to be appropriate to furnish the technical and financial assistance necessary to carry out such proposal.

(b) Upon receipt of a certified adjustment proposal, each agency concerned shall promptly—

(1) examine the aspects of the proposal relevant to its functions, and

(2) notify the Secretary of Commerce of its determination as to the technical and financial assistance it is prepared to furnish to carry out the proposal.

(c) Whenever and to the extent that any agency to which an adjustment proposal has been referred notifies the Secretary of Commerce of its determination not to furnish technical or financial assistance, and if the Secretary of Commerce determines that such assistance is necessary to carry out the adjustment proposal, he may furnish adjustment assistance under sections 313 and 314 to the firm concerned.

(d) There are hereby authorized to be appropriated to the Secretary of Commerce such sums as may be necessary from time to time to carry out his functions under this chapter in connection with furnishing adjustment assistance to firms, which sums are authorized to be appropriated to remain available until expended.

#### **§ 313. Technical assistance.**

(a) Upon compliance with section 312(c), the Secretary of Commerce may provide to a firm, on such terms and conditions as he determines to be appropriate, such technical assistance as in his judgment will materially contribute to the economic adjustment of the firm.

(b) To the maximum extent practicable, the Secretary of Commerce shall furnish technical assistance under this section and section 311(c) through existing agencies, and otherwise through private individuals, firms, or institutions.

(c) The Secretary of Commerce shall require a firm receiving technical assistance under this section or section 311(c) to share the cost thereof to the extent he determines to be appropriate.

#### **§ 314. Financial assistance.**

(a) Upon compliance with section 312(c), the Secretary of Commerce may provide to a firm, on such terms and conditions as he determines to be appropriate, such financial assistance in the form of guarantees of loans, agreements for deferred participations in loans, or loans, as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Guarantees, agreements for deferred participations, or loans shall be made under this section only for the purpose of making funds available to the firm—

(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

(2) in cases determined by the Secretary of Commerce to be exceptional, to supply working capital.

(c) To the maximum extent practicable, the Secretary of Commerce shall furnish financial assistance under this section through agencies furnishing financial assistance under other law.

#### **§ 315. Conditions for financial assistance.**

(a) No loan shall be guaranteed and no agreement for deferred participation in a loan shall be made by the Secretary of Commerce in an amount which exceeds 90 percent of that portion of the loan made for purposes specified in section 314(b).

(b)(1) Any loan made or deferred participation taken up by the Secretary of Commerce shall bear interest at a rate not less than the greater of—

(A) 4 percent per annum, or

(B) a rate determined by the Secretary of the Treasury for the year in which the loan is made or the agreement for such deferred participation is entered into.

(2) The Secretary of the Treasury shall determine annually the rate referred to in paragraph (1)(B), taking into consideration the current average market yields on outstanding interest-bearing marketable public debt obligations of the United States of maturities comparable to those of the loans outstanding under section 314.

(c) Guarantees or agreements for deferred participation shall be made by the Secretary of Commerce only with respect to loans bearing interest at a rate which he determines to be reasonable. In no event shall the guaranteed portion of any loan, or the portion covered by an agreement for deferred participation, bear interest at a rate more than 1 percent per annum above the rate prescribed by subsection (b) (determined when the guarantee is made or the agreement is entered into), unless the Secretary of Commerce shall determine that special circumstances justify a higher rate, in which case such portion of the loan shall bear interest at a rate not more than 2 percent per annum above such prescribed rate.

(d) The Secretary of Commerce shall make no loan or guarantee having a maturity in excess of 25 years, including renewals and extensions, and shall make no agreement for deferred participation in a loan which has a maturity in excess of 25 years, including renewals and extensions. Such limitation on maturities shall not, however, apply to—

(1) securities or obligations received by the Secretary of Commerce as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) an extension or renewal for an additional period not exceeding 10 years, if the Secretary of Commerce determines that such extension or renewal is reasonably necessary for the orderly liquidation of the loan.

(e) No financial assistance shall be provided under section 314 unless the Secretary of Commerce determines that such assistance is not otherwise available to the firm, from sources other than the United States, on reasonable terms, and that there is reasonable assurance of repayment by the borrower.

(f) The Secretary of Commerce shall maintain operating reserves with respect to anticipated claims under guarantees and under agreements for deferred participation made under section 314. Such reserves shall be considered to constitute obligations for purposes of section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C., sec. 200).

#### **§ 316. Administration of financial assistance.**

(a) In making and administering guarantees, agreements for deferred participation, and loans under section 314, the Secretary of Commerce may—

(1) require security for any such guarantee, agreement, or loan, and enforce, waive, or subordinate such security;

(2) assign or sell at public or private sale, or otherwise dispose of, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with such guarantees, agreements, or loans, and collect, compromise, and obtain deficiency judgments with respect to all obligations assigned to or held by him in connection with such guarantees, agreements, or loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) renovate, improve, modernize, complete, insure, rent, sell, or otherwise deal with, upon such terms and conditions and for such consideration as he shall determine to be reasonable, any real or personal property conveyed to or otherwise acquired by him in connection with such guarantees, agreements, or loans;

(4) acquire, hold, transfer, release, or convey any real or personal property or any interest therein whenever deemed necessary or appropriate, and execute all legal documents for such purposes; and

(5) exercise all such other powers and take all such other acts as may be necessary or incidental to the carrying out of functions pursuant to section 314.

(b) Any mortgage acquired as security under subsection (a) shall be recorded under applicable State law.

#### **§ 317. Tax assistance.**

(a) If—

(1) to carry out an adjustment proposal of a firm certified pursuant to section 311, such firm applies for tax assistance under this section within 24 months after the close of a taxable year and alleges in such application that it has sustained a net operating loss for such taxable year,

(2) the Secretary of Commerce determines that any such alleged loss for such taxable year arose predominantly out of the carrying on of a trade or business which was seriously injured, during such year, by the increased imports which the Tariff Commission has determined to result from concessions granted under trade agreements, and

(3) the Secretary of Commerce determines that tax assistance under this section will materially contribute to the economic adjustment of the firm, then the Secretary of Commerce shall certify such determinations with respect to such firm for such taxable year. No determination or certification under this subsection shall constitute a determination of the existence or amount of any net operating loss for purposes of section 172 of the Internal Revenue Code of 1954.

(b) Effective with respect to net operating losses for taxable years ending after December 31, 1955, subsection (b) of section 172 of the Internal Revenue Code of 1954 (relating to net operating loss carrybacks and carryovers) is amended to read as follows:

“(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

“(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

“(A)(i) Except as provided in clause (ii), a net operating loss for any taxable year ending after December 31, 1957, shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss.

“(ii) In the case of a taxpayer with respect to a taxable year ending on or after December 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962, a net operating loss for such taxable year shall be a net operating loss carryback to each of the 5 taxable years preceding the taxable year of such loss.

“(B) Except as provided in subparagraph (C), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

“(C) In the case of a taxpayer which is a regulated transportation corporation (as defined in subsection (j)(1)), a net operating loss for any taxable year ending after December 31, 1955, shall (except as provided in subsection (j)) be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss.

“(2) AMOUNT OF CARRYBACKS AND CARRYOVERS.—Except as provided in subsections (i) and (j), the entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the ‘loss year’) shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

“(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (6) thereof; and

“(B) by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss year or for any taxable year thereafter,

and the taxable income so computed shall not be considered to be less than zero.

“(3) SPECIAL RULES.—

“(A) Paragraph (1)(A)(ii) shall apply only if—

“(i) there has been filed, at such time and in such manner as may be prescribed by the Secretary or his delegate, a notice of filing of the application under section 317 of the Trade Expansion Act of 1962 for tax assistance, and, after its issuance, a copy of the certification under such section, and

“(ii) the taxpayer consents in writing to the assessment, within such period as may be agreed upon with the Secretary or his delegate, of any deficiency for any year to the extent attributable to the disallowance of a deduction previously allowed with respect to such net operating loss, even though at the time of filing such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

"(B) In the case of—

- "(i) a partnership and its partners, or
  - "(ii) an electing small business corporation under subchapter S and its shareholders,
- paragraph (1)(A)(ii) shall apply as determined under regulations prescribed by the Secretary or his delegate. Such paragraph shall apply to a net operating loss of a partner or such a shareholder only if it arose predominantly from losses in respect of which certifications under section 317 of the Trade Expansion Act of 1962 were filed under this section."

(c) Subsection (h) of section 6501 of the Internal Revenue Code of 1954 (relating to limitations on assessment and collection in the case of net operating loss carrybacks) is amended by inserting before the period: ", or within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification (with respect to such taxable year) issued under section 317 of the Trade Expansion Act of 1962, whichever is later".

(d) Section 6511(d)(2)(A) of the Internal Revenue Code of 1954 (relating to special period of limitation on credit or refund with respect to net operating loss carrybacks) is amended to read as follows:

"(A) PERIOD OF LIMITATION.—If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of the taxable year of the net operating loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that—

"(i) with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962, the period shall not expire before the expiration of the sixth month following the month in which such certification is issued to the taxpayer, and

"(ii) with respect to an overpayment attributable to the creation of, or an increase in, a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before September 1, 1959, or the expiration of the twelfth month following the month in which the agreement or order for the elimination of such excessive profits becomes final, whichever is the later.

In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable, to the extent of the amount of the overpayment attributable to such carryback."

\* \* \* \* \*

#### CHAPTER 3—ASSISTANCE TO WORKERS

##### § 321. Authority.

The Secretary of Labor shall determine whether applicants are entitled to receive assistance under this chapter and shall pay or provide such assistance to applicants who are so entitled.

#### SUBCHAPTER A—TRADE READJUSTMENT ALLOWANCES

##### § 322. Qualifying requirements.

(a) Payment of a trade readjustment allowance shall be made to an adversely affected worker who applies for such allowance for any week of unemployment which begins after the 30th day after the date of the enactment of this Act and after the date determined under section 302(d), subject to the requirements of subsections (b) and (c).

(b) Total or partial separation shall have occurred—

(1) after the date of the enactment of this Act, and after the date determined under section 302(d), and

(2) before the expiration of the 2-year period beginning on the day on which the most recent determination under section 302(d) was made, and before the termination date (if any) specified under section 302(e).

(c) Such worker shall have had—

(1) in the 156 weeks immediately preceding such total or partial separation, at least 78 weeks of employment at wages of \$15 or more a week, and

(2) in the 52 weeks immediately preceding such total or partial separation, at least 26 weeks of employment at wages of \$15 or more a week in a firm or firms with respect to which a determination of unemployment or underemployment under section 302 has been made, or if data with respect to weeks of employment are not available, equivalent amounts of employment computed under regulations prescribed by the Secretary of Labor.

**§ 323. Weekly amounts.**

(a) Subject to the other provisions of this section, the trade readjustment allowance payable to an adversely affected worker for a week of unemployment shall be an amount equal to 65 percent of his average weekly wage or to 65 percent of the average weekly manufacturing wage, whichever is less, reduced by 50 percent of the amount of his remuneration for services performed during such week.

(b) Any adversely affected worker who is entitled to trade readjustment allowances and who is undergoing training approved for the Secretary of Labor, including on-the-job training, shall receive for each week in which he is undergoing any such training, a trade readjustment allowance in an amount (computed for such week) equal to the amount computed under subsection (a) or (if greater) the amount of any weekly allowance for such training to which he would be entitled under any other Federal law for the training of workers, if he applied for such allowance. Such trade readjustment allowance shall be paid in lieu of any training allowance to which the worker would be entitled under such other Federal law.

(c) The amount of trade readjustment allowance payable to an adversely affected worker under subsection (a) or (b) for any week shall be reduced by any amount of unemployment insurance which he has received or is seeking with respect to such week; but, if the appropriate State or Federal agency finally determines that the worker was not entitled to unemployment insurance with respect to such week, the reduction shall not apply with respect to such week.

(d) If unemployment insurance, or a training allowance under the Manpower Development and Training Act of 1962 or the Area Redevelopment Act, is paid to an adversely affected worker for any week of unemployment with respect to which he would be entitled (determined without regard to subsection (c) or (e) or to any disqualification under section 327) to a trade readjustment allowance if he applied for such allowance, each such week shall be deducted from the total number of weeks of trade readjustment allowance otherwise payable to him under section 324(a) when he applies for a trade readjustment allowance and is determined to be entitled to such allowance. If the unemployment insurance or the training allowance paid to such worker for any week of unemployment is less than the amount of the trade readjustment allowance to which he would be entitled if he applied for such allowance, he shall receive, when he applies for a trade readjustment allowance and is determined to be entitled to such allowance, a trade readjustment allowance for such week equal to such difference.

(e) Whenever, with respect to any week of unemployment, the total amount payable to an adversely affected worker as remuneration for services performed during such week, as unemployment insurance, as a training allowance referred to in subsection (d), and as a trade readjustment allowance would exceed 75 percent of his average weekly wage, his trade readjustment allowance for such week shall be reduced by the amount of such excess.

(f) The amount of any weekly payment to be made under this section which is not a whole dollar amount shall be rounded upward to the next higher whole dollar amount.

(g)(1) If unemployment insurance is paid under a State law to an adversely affected worker for a week for which—

(A) he receives a trade readjustment allowance, or

(B) he makes application for a trade readjustment allowance and would be entitled (determined without regard to subsection (c) or (e)) to receive such allowance,

the State agency making such payment shall, unless it has been reimbursed for such payment under other Federal law, be reimbursed from funds appropriated pursuant to section 337, to the extent such payment does not exceed the amount of the trade readjustment allowance which such worker would have received, or would have been entitled to receive, as the case may be, if he had not received the State payment. The amount of such reimbursement shall be determined by the Secretary of Labor on the basis of reports furnished to him by the State agency.

(2) In any case in which a State agency is reimbursed under paragraph (1) for payments of unemployment insurance made to an adversely affected worker, such payments, and the period of unemployment of such worker for which such payments were made, may be disregarded under the State law (and for purposes of applying section 3303 of the Internal Revenue Code of 1954) in determining whether or not an employer is entitled to a reduced rate of contributions permitted by the State law.

**§ 324. Time limitations on trade readjustment allowances.**

(a) Payment of trade readjustment allowances shall not be made to an adversely affected worker for more than 52 weeks, except that, in accordance with regulations prescribed by the Secretary of Labor—

(1) such payments may be made for not more than 26 additional weeks to an adversely affected worker to assist him to complete training approved by the Secretary of Labor, or

(2) such payments shall be made for not more than 13 additional weeks to an adversely affected worker who had reached his 60th birthday on or before the date of total or partial separation.

(b) Except for a payment made for an additional week specified in subsection (a), a trade readjustment allowance shall not be paid for a week of unemployment beginning more than 2 years after the beginning of the appropriate week. A trade readjustment allowance shall not be paid for any additional week specified in subsection (a) if such week begins more than 3 years after the beginning of the appropriate week. The appropriate week for a totally separated worker is the week of his most recent total separation. The appropriate week for a partially separated worker is the week in respect of which he first receives a trade readjustment allowance following his most recent partial separation.

**§ 325. Application of State laws.**

Except where inconsistent with the provisions of this chapter and subject to such regulations as the Secretary of Labor may prescribe, the availability and disqualification provisions of the State law—

(1) under which an adversely affected worker is entitled to unemployment insurance (whether or not he has filed a claim for such insurance), or

(2) if he is not so entitled to unemployment insurance, of the State in which he was totally or partially separated, shall apply to any such worker who files a claim for trade readjustment allowances. The State law so determined with respect to a separation of a worker shall remain applicable, for purposes of the preceding sentence, with respect to such separation until such worker becomes entitled to unemployment insurance under another State law (whether or not he has filed a claim for such insurance).

**SUBCHAPTER B—TRAINING**

**§ 326. In general.**

(a) To assure that the readjustment of adversely affected workers shall occur as quickly and effectively as possible, with minimum reliance upon trade readjustment allowances under this chapter, every effort shall be made to prepare each such worker for full employment in accordance with his capabilities and prospective employment opportunities. To this end, and subject to this chapter, adversely affected workers shall be afforded, where appropriate, the testing, counseling, training, and placement services provided for under any Federal law. Such workers may also be afforded supplemental assistance necessary to defray transportation and subsistence expenses for separate maintenance when such training is provided in facilities which are not within commuting distance of their regular place of residence. The Secretary of Labor in defraying such subsistence expenses shall not afford any individual an allowance exceeding \$5 a day; nor shall the Secretary authorize any transportation expense exceeding the rate of 10 cents per mile.

(b) To the extent practicable, before adversely affected workers are referred to training, the Secretary of Labor shall consult with such workers' firm and their certified or recognized union or other duly authorized representative and develop a worker retraining plan which provides for training such workers to meet the manpower needs of such firm, in order to preserve or restore the employment relationship between the workers and the firm.

**§ 327. Disqualification for refusal of training, etc.**

Any adversely affected worker who, without good cause, refuses to accept or continue, or fails to make satisfactory progress in, suitable training to which he

has been referred by the Secretary of Labor shall not thereafter be entitled to trade readjustment allowances until he enters or resumes training to which he has been so referred.

#### SUBCHAPTER C—RELOCATION ALLOWANCES

##### § 328. Relocation allowances afforded.

Any adversely affected worker who is the head of a family as defined in regulations prescribed by the Secretary of Labor and who has been totally separated may file an application for a relocation allowance, subject to the terms and conditions of this subchapter.

##### § 329. Qualifying requirements.

(a) A relocation allowance may be granted only to assist an adversely affected worker in relocating within the United States and only if the Secretary of Labor determines that such worker cannot reasonably be expected to secure suitable employment in the commuting area in which he resides and that such worker—

(1) has obtained suitable employment affording a reasonable expectation of long-term duration in the area in which he wishes to relocate, or

(2) has obtained a bonafide offer of such employment.

(b) A relocation allowance shall not be granted to such worker unless—

(1) for the week in which the application for such allowance is filed, he is entitled (determined without regard to section 323 (c) and (e)) to a trade readjustment allowance or would be so entitled (determined without regard to whether he filed application therefor) but for the fact that he has obtained the employment referred to in subsection (a)(1), and

(2) such relocation occurs within a reasonable period after the filing of such application or (in the case of a worker who has been referred to training by the Secretary of Labor) within a reasonable period after the conclusion of such training.

##### § 330. Relocation allowance defined.

For purposes of this subchapter, the term "relocation allowance" means—

(1) the reasonable and necessary expenses, as specified in regulations prescribed by the Secretary of Labor, incurred in transporting a worker and his family and their household effects, and

(2) a lump sum equivalent to two and one-half times the average weekly manufacturing wage.

#### SUBCHAPTER D—GENERAL PROVISIONS

##### § 331. Agreements with States.

(a) The Secretary of Labor is authorized on behalf of the United States to enter into an agreement with any State, or with any State agency. Under such an agreement, the State agency (1) as agent of the United States, will receive applications for, and will provide, assistance on the basis provided in this chapter, (2) where appropriate, will afford adversely affected workers who apply for assistance under this chapter testing, counseling, referral to training, and placement services, and (3) will otherwise cooperate with the Secretary of Labor and with other State and Federal agencies in providing assistance under this chapter.

(b) Each agreement under this subchapter shall provide the terms and conditions upon which the agreement may be amended, suspended, or terminated.

(c) Each agreement under this subchapter shall provide that unemployment insurance otherwise payable to any adversely affected worker will not be denied or reduced for any week by reason of any right to allowances under this chapter.

##### § 332. Payments to States.

(a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has entered into an agreement under section 331(1) the sums necessary to enable such State as agent of the United States to make payments of allowances provided for by this chapter, and (2) the sums reimbursable to a State pursuant to section 323(g). The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment to the State in accordance with such certification, from the funds for carrying out the purposes of this chapter. Sums reimbursable to a State pursuant to section 323(g) shall be credited to the account of such State in the Unemployment Trust Fund and shall be used only for the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) All money paid a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned, at the time specified in the agreement under this subchapter, to the Treasury and credited to current applicable appropriations, funds, or accounts from which payments to States under this section may be made.

(c) Any agreement under this subchapter may require any officer or employee of the State certifying payments or disbursing funds under the agreement, or otherwise participating in the performance of the agreement, to give a surety bond to the United States in such amount as the Secretary of Labor may deem necessary, and may provide for the payment of the cost of such bond from funds for carrying out the purposes of this chapter.

### § 333. Liabilities of certifying and disbursing officers.

(a) No person designated by the Secretary of Labor, or designated pursuant to an agreement under this subchapter, as a certifying officer, shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any allowance certified by him under this chapter.

(b) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him, under this chapter if it was based upon a voucher signed by a certifying officer designated as provided in subsection (a).

\* \* \* \* \*

## III. REGULATIONS

### *Armed Services Procurement Regulations Concerning Procurement Policies and Procedures for Aiding Labor Surplus Areas*

#### SECTION I

#### PART 8—LABOR SURPLUS AREA CONCERNS

**1-800 Scope of Part.** This Part sets forth Department of Defense procurement policy and procedures with respect to aiding areas of persistent or substantial labor surplus, hereinafter referred to as labor surplus areas, in the United States, its possessions, and Puerto Rico. This Part implements Defense Manpower Policy No. 4 (Revised) 6 June 1960 (32-A C.F.R. Chapter 1.)

#### **1-801 Definitions.**

##### **1-801.1 Labor surplus area concern includes—**

(i) persistent labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial and Persistent Labor Surplus"; and

(ii) substantial labor surplus area concerns which will perform or cause to be performed any contracts awarded to them as labor surplus area concerns substantially in "Areas of Substantial Labor Surplus."

A concern shall be deemed to perform a contract substantially in "Areas of Substantial and Persistent Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its subcontractors) in such areas amount to more than 50 percent of the contract price. A concern shall be deemed to perform a contract substantially in "Areas of Substantial Labor Surplus" if the costs that it incurs on account of manufacturing or production (by itself or its subcontractors) in such areas or in "Areas of Substantial or Persistent Labor Surplus" amount to more than 50 percent of the contract price.

*Example A.* ABC Company, manufacturing in a full employment area, bids on a contract at \$1,000. ABC Company will incur the following costs:

|                                                                                                   |       |
|---------------------------------------------------------------------------------------------------|-------|
| Direct labor .....                                                                                | \$200 |
| Overhead .....                                                                                    | 200   |
| Purchase of materials from XYZ, which manufactures the materials<br>in a labor surplus area ..... | 510   |

ABC Company qualifies as a labor surplus area concern.

*Example B.* DEF Company, manufacturing in a labor surplus area, bids on a contract at \$1,000. DEF Company will incur the following costs:

|                                                                                                                                                                                                         |       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Direct labor-----                                                                                                                                                                                       | \$200 |
| Overhead-----                                                                                                                                                                                           | 200   |
| Purchase of materials from UVW, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier)----- | 550   |

DEF Company does not qualify as a labor surplus area concern regardless of whether UVW's supplier manufactures in a labor surplus area.

*Example C.* GHI Company, manufacturing in a labor surplus area, bids on a contract at \$1,000. GHI Company will incur the following costs:

|                                                                                                 |       |
|-------------------------------------------------------------------------------------------------|-------|
| Direct labor-----                                                                               | \$230 |
| Overhead-----                                                                                   | 275   |
| Purchase of materials from RST, which manufactures the materials in a full employment area----- | 425   |

GHI Company qualifies as a labor surplus area concern.

**1-801.2** *Labor surplus area* means a geographical area which at the time of award is—

(i) classified by the Department of Labor as an "Area of Substantial Labor Surplus" or as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") (herein referred to as an area of persistent labor surplus) and listed as such by that Department in conjunction with its publication "Area Labor Market Trends"; or

(ii) not classified as in (i) above, but which is individually certified as an area of persistent or substantial labor surplus by the Department of Labor at the request of any prospective contractor.

**1-801.3** *Small business concern* is defined in 1-701.

**1-802 General Policy.** Except as provided in 1-806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns, and by encouraging prime contractors to place subcontracts with concerns which will perform substantially in labor surplus areas. In carrying out this policy, to accommodate the small business policies of Section I, Part 7, preference shall be given in the following order of priority to (i) persistent labor surplus area concerns which are also small business concerns, (ii) other persistent labor surplus area concerns, (iii) substantial labor surplus area concerns which are also small business concerns, (iv) other substantial labor surplus area concerns and (v) small business concerns which are not labor surplus area concerns. But in no case will price differentials be paid for the purpose of carrying out this policy.

**1-803 Application of Policy.**

(a) Within the policy set forth in 1-802, the following shall be applied to procurements which are estimated to exceed \$10,000 and may, if deemed practicable by the contracting officer, be applied to procurements between \$2,500 and \$10,000:

(i) negotiated procurements shall, where procurement objectives permit, be awarded to labor surplus area concerns; *provided*, that in no case shall price differentials be paid for the purpose of carrying out this policy;

(ii) where appropriate, procurements shall be made from labor surplus area concerns by partial set-aside procedures, in accordance with 1-804, and such set-asides shall be given preference over any small business set-aside (but no total set-aside shall be made for labor surplus area concerns);

(iii) each Department shall assure that information identifying labor surplus areas is disseminated promptly to procurement personnel;

(iv) Department of Labor certification (see 1-801.2(ii)) shall be considered conclusive with respect to the particular procurement concerned;

(v) even though less than a complete bidders' list is to be used pursuant to 2-205.4, all prospective contractors in labor surplus areas shall be solicited, except that only a pro rata number of prospective labor surplus area concerns may be solicited when the bidders' list is composed predominantly of labor surplus area concerns and the estimated award is not expected to be more than \$25,000;

(vi) subcontracting with concerns in labor surplus areas shall be encouraged in accordance with 1-805.

(b) Records of the total value of all contracts in excess of \$10,000 placed with labor surplus area concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in 1-110 and Section XVI, Part 9. Accordingly, each Department, in soliciting bids and proposals for any procurement estimated to exceed \$10,000 shall request from any bidder or offeror, or other source, any information needed to determine whether the bidder or offeror is a labor surplus area concern. Contract files shall be documented to indicate the extent to which labor surplus area concerns were considered and the action taken with respect thereto.

#### **1-804 Partial Set-Asides for Labor Surplus Area Concerns.**

##### **1-804.1 General.**

(a)(1) In accordance with the policy set forth in 1-802 and 1-803, a portion of each procurement shall be set aside for labor surplus area concerns if:

- (i) the procurement is severable into two or more economic production runs or reasonable lots; and
- (ii) one or more labor surplus area concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

(2) In furtherance of the policy to assure that a fair proportion of procurements is placed with small business concerns, each labor surplus area set-aside shall provide that, in addition to labor surplus area concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to labor surplus area concerns. (In this respect, see applicable provisions of 1-804.2 (b) and (c) for notices to bidders or offerors, and 1-804.2(d) for conduct of set-aside negotiations.)

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

- (i) a large part of previous procurements of the item in question has been placed with labor surplus area concerns;
  - (ii) the item to be purchased is on an established planning list under the Industrial Readiness Planning Program;
  - (iii) the item to be purchased is on a Qualified Products List;
  - (iv) a period of less than thirty days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of bids or proposals;
  - (v) the procurement is classified; or
  - (vi) labor surplus area concerns are receiving a fair proportion of contracts.
- (c) Procurement of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.—Canadian Defense Development Sharing Program shall not be set aside for labor surplus areas. Identification of the supplies covered by the Program will be in accordance with Departmental procedures.

##### **1-804.2 Set-Aside Procedures.**

(a) Where a portion of a procurement is to be set aside pursuant to 1-804.1, the procurement shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(b) In advertised procurements involving set-asides pursuant to this Part, each invitation for bids shall contain either substantially the following notice or the notice set forth in (c) below. In negotiated procurements, whichever notice is used will be appropriately modified for use with requests for proposals. The appropriate notice shall be made a part of each contract under the set-aside portion of the procurement.

## NOTICE OF LABOR SURPLUS AREA SET-ASIDE (OCT. 1962)

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

- Group 1. Persistent labor surplus area concerns which are also small business concerns.
- Group 2. Other persistent labor surplus area concerns.
- Group 3. Substantial labor surplus area concerns which are also small business concerns.
- Group 4. Other substantial labor surplus area concerns.
- Group 5. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(b) *Definitions.*

(1) The term "*labor surplus area*" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(i) "*Persistent labor surplus area*" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "*Substantial labor surplus area*" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(2) The term "*labor surplus area concern*" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "*Persistent labor surplus area concern*" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "*Substantial labor surplus area concern*" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that concern will incur on account of manufacturing or production performed in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(3) A "*small business concern*" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is independently owned and operated, is not dominant in its field of operation and, with its affiliates, employs not more than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States its possessions, or Puerto Rico, by small business concerns; *provided*, that this additional requirement does not apply in connection with construction or service contracts.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform, *provided*, that he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that, if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and that if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

Where the definition of a small business concern for a given industry, as prescribed by the Small Business Administration and promulgated within the Department of Defense, differs from that set forth in the notice above, the notice shall be appropriately modified to reflect such definition.

(e) Where it is anticipated that bids may be received which appear designed to take unfair advantage of bona fide bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of that in (b) above.

\* \* \* \* \*

NOTE.—The longer form of the notice has been deleted.

(d)(1) [After] the award [price] for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those bidders or offerors who have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made or to be made on the non-set-aside portion and who are determined to be responsible prospective contractors for the set-aside portion of the procurement. Negotiations shall be conducted in the order of priority indicated in the foregoing notices; provided that, where equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of 2-407.6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded at the highest unit price awarded or to be awarded for the non-set-aside portion. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see 3-201.2(b)(i) as to negotiation).

(2) When the award price for a non-set-aside portion has been determined and where an award will be made to a labor surplus area concern and the same labor surplus area concern is entitled to receive a set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement. The supplemental agreement shall include the Examination of Records clause, applicable to the set-aside portion only. For purposes of 16-901.2, the non-set-aside and set-aside portions shall be reported separately.

**1-804.3 Withdrawal of Set-Asides.** If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

**1-804.4 Contract Authority.** Contracts for set-aside made under this Part 8 shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see 3-201.2(b)(i) for contracts awarded to labor surplus area concerns and 3-201.2(b)(ii) for contracts awarded to small business concerns which are not labor surplus area concerns.

### **1-805 Subcontracting With Labor Surplus Area Concerns.**

**1-805.1 General Policy.** It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus, in the order to priority described in 1-802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

**1-805.2 Labor Surplus Area Subcontracting Program.** The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. In contracts which range from \$5,000 to \$500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 1-805.3 (a). In contracts which may exceed \$500,000, the contractor is required, pursuant to the clause set forth in 1-805.3(b) to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

### **1-805.3 Required Clauses.**

(a) The "Utilization of Concerns in Labor Surplus Areas" clause set forth below shall be inserted in all contracts in amounts which may exceed \$5,000, except—

(1) contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico;

(2) contracts for services which are personal in nature; and

(3) contracts for construction.

## UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS (FEB. 1962)

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (i) persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

(b) The "Labor Surplus Area Subcontracting Program" clause below shall be included in all contracts which may exceed \$500,000, but which contain the clause required by (a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed \$500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the following clause:

## LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (FEB. 1962)

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

- (1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the "Utilization of Concerns in Labor Surplus Areas" clause, and (iii) administer the Contractor's Labor Surplus Area Subcontracting Program;
  - (2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;
  - (3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;
  - (4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and
  - (5) Include the "Utilization of Concerns in Labor Surplus Areas" clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.
- (b) A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it in "Areas of Substantial and Persistent Labor Surplus" or in "Areas of Substantial Labor Surplus," as designated by the Department of Labor. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production (by itself or its first-tier subcontractors) in such areas amount to more than 50 percent of the price of such contract.
- (c) The Contractor further agrees, with respect to any subcontract hereunder which is in excess of \$500,000 and which contains the clause entitled "Utilization of Concerns in Labor Surplus Areas," that he will insert provisions in the subcontract which will conform substantially to the language of this clause, including this paragraph (c), and that he will furnish the names of such subcontractors to the Contracting Officer.

**1-805.4 Responsibility for Reviewing Subcontracting Program.** Only one Department shall be responsible for reviewing a contractor's Labor Surplus Area Subcontracting Program. Departmental responsibility shall be assigned and carried out in accordance with 1-707.4.

## *Armed Services Procurement Regulations Concerning Policies and Procedures on "Make-or-Buy" Programs*

## SECTION III

## PART 9—SUBCONTRACTING POLICIES AND PROCEDURES

**3-900 Scope of Part.** This Part sets forth policies and procedures for the evaluation, review, and approval of contractors' "make-or-buy" programs, purchasing systems, and proposed subcontracts.

**3-901 General.**

(a) Information as to the contractor's "make-or-buy" program, purchasing system, and proposed subcontracts may be important to (i) negotiation of reasonable contract prices (see 3-807.10 and 3-808.2(h)), (ii) assurance of satisfactory contract performance, or (iii) carrying out Government policies regarding small business (1-707.1), labor surplus areas (1-805.1), acquisition and use of Government facilities, maintenance of mobilization base, or other policies which may be appropriate to the particular procurement. Therefore, Government surveillance of contractors' "make-or-buy" programs and proposed subcontracts is required as set forth in this Part. Where "make-or-buy" decisions and subcontracting will have a substantial impact on any of the above mentioned factors, the contractor's "make-or-buy" program and subcontracting should, to the extent practicable, be evaluated and agreed on during negotiations.

(b) The subcontracting policies and procedures in this Part should generally be applied to procurement where (i) the item, system, or work is complex, the dollar value is substantial, or competition is restricted, and (ii) either (A) cost-reimbursement, price redetermination, or incentive-type contracts are to be used, or (B) make-or-buy decisions are expected to have a substantial impact on negotiations leading to a firm fixed-price contract.

\* \* \* \* \*

**3-904 Additional Contract Clauses.** Additional contract clauses with respect to subcontracting with Small Business and Labor Surplus Area concerns are set forth in Section VII.

### *Armed Services Procurement Regulations Concerning Advantages Given to Labor Surplus Area Concerns in Competition with Foreign Firms*

#### SECTION VI

##### PART I—BUY AMERICAN ACT—SUPPLY AND SERVICE CONTRACTS

**6-100 Scope of Part.** This Part implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply and service contracts.

**6-101 Definitions.** As used in this Part, the following terms have the meanings set forth below.

(a) *End products* means articles, materials, and supplies, which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery.

(b) *Components* means those articles, materials, and supplies which are directly incorporated in end products.

(c) *United States* means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, Guam, and any areas subject to the complete sovereignty of the United States.

(d) *Domestic source end product* means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Act.

(e) *Canadian end product* means an unmanufactured end product mined or produced in Canada, or an end product manufactured in Canada if the cost of its components which are mined, produced, or manufactured in Canada or the United States exceeds 50 percent of the cost of all its components.

(f) *Foreign end product* means an end product other than a domestic source end product.

(g) *Domestic bid* means a bid or offered price for a domestic source end product, including transportation to destination.

(h) *Foreign bid* means a bid or offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

**6-102 Statutory Requirements.** Except as provided in 6-103, the Buy American Act requires that in the procurement of supplies and services, only domestic source end products shall be acquired for public use. In determining whether an end product is a domestic source end product, only the end product and its components shall be considered.

##### **6-103 Exceptions.**

**6-103.1 Use Outside the United States.** The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States.

**6-103.2 Nonavailability in the United States.** The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. See 6-105.

**6-103.3 Unreasonable Cost or Inconsistency With the Public Interest.** The restrictions of the Buy American Act do not apply when it is determined by the Secretary concerned that the cost of a domestic source end product would be unreasonable or that its acquisition would be inconsistent with the public interest. Such determination shall be made in accordance with 6-104.4.

**6-103.4 Scrap.** Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

**6-103.5 Canadian Supplies.**

(a) *Listed.* The secretaries of the Departments have determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act with respect to certain supplies, which have been determined to be of a military character or involved in programs of mutual interest to the United States and Canada, where such supplies are mined, produced, or manufactured in Canada and either (i) are Canadian end products or (ii) are incorporated in end products manufactured in the United States. Each Department maintains a list of these supplies, which is approved by the Secretary concerned. (The Departmental lists provide that parts and equipment for listed supplies are considered to be included in the lists, even though not separately listed, when they are procured under a contract that also calls for listed supplies.)

(b) *Not Listed.* The secretaries of the Departments have also determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (i) to the acquisition of any *unlisted* Canadian end product that is offered by a bid or proposal which is the lowest acceptable bid or proposal after any applicable duty (whether or not a duty-free entry certificate may be issued) is included for evaluation purposes, and (ii) with respect to any supplies mined, produced, or manufactured in Canada that are incorporated in end products manufactured in the United States.

(c) *Application of Canadian Exception.* The effect of (a) and (b) above may be summarized as follows.

(1) As to any end product that is manufactured in the United States, all Canadian components are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(2) Listed Canadian end products are treated as domestic source end products and neither duty nor the evaluation factors prescribed by 6-104.4 shall be used for evaluation.

(3) Unlisted Canadian end products are evaluated by including any applicable duty, whether or not a duty-free entry certificate may be issued.

(d) *Limitations.* The above exceptions from the provisions of the Buy American Act which are applicable solely with respect to Canadian supplies, and the special procedures relating thereto which are set forth in this Part, do not apply to, or affect determinations made with respect to, (i) items contained in the list set forth in 6-105, (ii) the purchase of supplies for civil works acquired with funds appropriated for Civil Functions, Department of the Army, or (iii) food items.

**6-103.6 Panamanian Supplies for use in the Canal Zone.** In accordance with the Memorandum of Understandings ancillary to the Treaty with the Republic of Panama signed 25 January 1955, the Secretaries have determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act to articles, materials, or supplies that are mined, produced, or manufactured in Panama and are purchased for use in the Canal Zone.

**6-104 Procedures.**

**6-104.1 Applicability.** The following procedures apply to all contracts involving the procurement of supplies except contracts exclusively for articles, materials, or supplies, for use outside the United States, (but see 6-103.5(a)).

**6-104.2 Solicitation of Bids and Proposals.** Invitations for Bids and Requests for Proposals shall state that specific information as to articles, materials, and supplies excepted from the Buy American Act (see 6-105) is available to prospective contractors upon request.

**6-104.3 Certificate.** Invitations for Bids and Requests for Proposals shall require that each bid or proposal include a certificate substantially as follows:

## BUY AMERICAN CERTIFICATE (OCT. 1959)

The bidder or offeror hereby certifies that each end product, except the end products excluded below, is a domestic source end product (as defined in the contract clause entitled Buy American Act); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

## EXCLUDED ITEMS:-----

**6-104.4 Evaluation of Bids and Proposals.**

(a) In accordance with the Buy American Act, the Secretaries of the Departments have determined that where the following procedures result in the acquisition of foreign end products, the acquisition of domestic source end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest (see 6-103.3 and 6-103.5).

(b) Except as provided in (d) below, bids and proposals shall be evaluated so as to give preference to domestic bids. For the purpose of evaluation, a factor of 6 percent of each foreign bid (which does not offer a Canadian end product) shall be added to that foreign bid, except that where the firm submitting the low acceptable domestic bid is a small business concern, or a labor surplus area concern, or both—

(i) the proposed award shall be submitted to the Secretary if required pursuant to (c) below, or

(ii) if not required to be submitted under (c) below, then a factor of 12 percent (in lieu of the 6 percent factor) of each such foreign bid shall be added to that foreign bid, except that where small purchase procedures (see Section III, Part 6) are used, the 6 percent factor shall apply.

Except for those cases forwarded to the Secretary pursuant to (c) below, award shall be made to the low acceptable bidder. When more than one line item is offered in response to an invitation for bids or request for proposals, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the invitation for bids or request for proposals specifically provides that award may be made on a particular group of items.

(c) (1) Notwithstanding that the low acceptable bid or proposal as to any item or group of items under (b) above may be a foreign bid, proposed awards shall be submitted, in accordance with Departmental procedures, to the Secretary concerned for decision where all acceptable domestic bids exceed the low acceptable foreign bid plus 6 percent (determined in accordance with (b) above) and the sum of any low acceptable domestic bid from any single (i) small business concern or (ii) labor surplus area concern, exceeds \$100,000; *provided*, that this subparagraph (c) (1) shall not apply where the low foreign bid offers a Canadian end product.

(2) Proposed awards shall be submitted, in accordance with Departmental procedures, to the Secretary concerned for decision where:

(i) rejection of an acceptable low foreign bid is considered necessary to protect essential national security interests, such as maintenance of a mobilization base; or

(ii) rejection of any bid or proposal for other reasons of the national interest is considered necessary.

Prior to final action, cases within this subparagraph (2) shall be referred by the Secretary concerned to the Assistant Secretary of Defense (Installations and Logistics).

(d) (1) Bids offering Canadian end products on the lists described in 6-103.5(a) shall be evaluated on a parity with domestic bids, *i.e.*, neither a price differential nor duty shall be added.

*Title 41—Code of Federal Regulations (Public Contracts)*

## CHAPTER 1—REGULATIONS IMPLEMENTING D.M.P. No. 4

NOTE.—This title establishes the Federal Procurement Regulations System applicable to all Federal agencies to the extent specified in the Federal Property and Administrative Services Act of 1949; Public Law 81-152; ch. 288, 63 Stat. 377, 393; generally, 41 U.S.C. § 251 et seq.

## SUBPART 1-1.8—LABOR SURPLUS AREA CONCERNS

SOURCE: §§ 1-1.800 to 1-1.807 appear at 26 F.R. 6715, July 27, 1961; 26 F.R. 8595, Sept. 14, 1961, except as otherwise noted.

**§ 1-1.800 Scope of subpart.**

This subpart sets forth policies and procedures with respect to the placement of contracts in order to aid persistent or substantial labor surplus areas in the United States, its possessions, and Puerto Rico. This subpart implements Defense Manpower Policy No. 4 (Revised), June 6, 1960 (32A CFR Ch. I; 25 F.R. 5283).

**§ 1-1.801 Definitions.****§ 1-1.801-1 Labor surplus area concern.**

The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(a) "Persistent labor surplus area concern" means a concern which will perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(b) "Substantial labor surplus area concern" means a concern which will perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

**§ 1-1.801-2 Labor surplus area.**

The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(a) "Persistent labor surplus area" means an area which (1) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (2) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(b) "Substantial labor surplus area" means an area which (1) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (2) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

**§ 1-1.801-3 Small business concern.**

For definition of small business concern, see Subpart 1-1.7.

**§ 1-1.802 Labor surplus area policies.****§ 1-1.802-1 General policy.**

It is the policy of the Government to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns, and by encouraging prime contractors to place subcontracts with concerns which will perform a substantial proportion of the production in labor surplus areas.

**§ 1-1.802-2 Specific policies.**

To further the general policy, the following specific policies shall be applied:

(a) Best efforts shall be used to award negotiated contracts to labor surplus area concerns. However, in no case may price differentials be paid for the purpose of carrying out this policy.

(b) Procurements shall be set aside for award to labor surplus area concerns in accordance with § 1-1.804.

(1) Where either a partial labor surplus area set-aside or a partial small business set-aside can be appropriately made for any given procurement, the set-aside shall be made for labor surplus area concerns.

(2) In order to accommodate both labor surplus area and small business policies, labor surplus area set-aside awards shall be made in accordance with the following order of priority: (i) Persistent labor surplus area concerns which

are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

(c) Procurement agencies shall disseminate promptly to appropriate procurement personnel available publications and other information identifying labor surplus areas and production capabilities therein.

(d) The classification and certification of labor surplus areas by the Department of Labor shall be considered conclusive with respect to the particular procurement concerned.

(e) Concerns located in labor surplus areas, which are on appropriate bidders lists, shall be given the opportunity to submit bids or proposals on all procurements for which they are qualified, except where the procurement has been set aside in its entirety for a specific class of firms, such as small business concerns. Where less than a complete bidders list is to be used, pursuant to § 1-2.205-4, all prospective contractors in labor surplus areas shall be solicited, except that only a pro rata number of prospective labor surplus area concerns need be solicited when the bidders list is composed predominantly of labor surplus area concerns and the estimated award is not expected to be more than \$25,000.

(f) Subcontracting with concerns in labor surplus areas shall be encouraged in accordance with § 1-1.805.

(g) In the event of equal low bids, preference shall be given to labor surplus area concerns in accordance with § 1-2.407-6.

(h) Depressed industries shall be assisted in accordance with § 1-1.806.

(i) Procurement agencies shall cooperate with the Departments of Labor and Commerce, the Small Business Administration, and the Office of Civil and Defense Mobilization to achieve the objectives of this subpart.

(j) Procurement placed in labor surplus areas as a result of preference procedures shall be reported in accordance with § 1-1.807.

#### **§ 1-1.802-3 Buy American Act.**

Any preference under the "Buy American Act" due to performance in labor surplus areas (see section 3(c) of Executive Order No. 10582 of December 17, 1954, which prescribes uniform procedures for certain determinations under the Buy American Act) shall be in addition to the assistance accorded pursuant to this subpart.

#### **§ 1-1.804 Partial set-asides for labor surplus area concerns.**

##### **§ 1-1.804-1 General.**

(a) In accordance with the policies set forth in § 1-1.802, a portion (total set-asides shall not be made) of each procurement which is estimated to exceed \$10,000 shall be set aside by the contracting officer for labor surplus area concerns if:

(1) The procurement is severable into two or more economic production runs or reasonable lots; and

(2) One or more labor surplus area concerns, having the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price, is expected to submit bids or offers.

(b) If deemed practicable by the contracting officer, procurements between \$2,500 and \$10,000 may be partially set aside for labor surplus area concerns.

(c) In furtherance of the policy to assure that a fair proportion of the total purchases and contracts are placed with small business concerns, each labor surplus area set-aside shall provide that, in addition to labor surplus area concerns, small business concerns not performing in such areas are also eligible for award of any set-aside quantities not awarded to labor surplus area concerns (see § 1-1.804-2).

(d) None of the following is, in itself, sufficient cause for not making a labor surplus area set-aside.

(1) A large part of previous procurements of the item in question has been placed with labor surplus area concerns;

(2) The item to be purchased is on an established planning list under the Industrial Readiness Planning Program;

(3) The item to be purchased is on a Qualified Products List;

(4) A period of less than thirty days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of bids or proposals; or

(5) The procurement is classified.

(e) Where it is determined that a portion of a procurement is to be set aside for labor surplus areas, the procurement shall be divided into a non-set-aside por-

tion and a set-aside portion. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

**§ 1-1.804-2 Notice to bidders or offerors.**

(a) Invitations for bids or requests for proposals, involving set-asides pursuant to this subpart, shall contain a notice substantially as set forth in either paragraph (b) or (c) below. Where the definition of a small business concern for a given industry differs from that set forth in the prescribed notices, the notice used shall be appropriately modified to reflect such definition. The notice used shall be made a part of each contract under the set-aside portion of the procurement.

**(b) Short-form notice.**

**NOTICE OF LABOR SURPLUS AREA SET-ASIDE**

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) which have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

- Group 1. Persistent labor surplus area concerns which are also small business concerns.
- Group 2. Other persistent labor surplus area concerns.
- Group 3. Substantial labor surplus area concerns which are also small business concerns.
- Group 4. Other substantial labor surplus area concerns.
- Group 5. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

**(b) Definitions.**

(1) The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(i) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(2) The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern that (i) is certified as a small business concern by the Small Business Administration, or (ii) is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and, with its affiliates, employs not more than 500 employees. In addition to meeting these criteria, a manufacturer or regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform, *provided* that he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that, if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and that if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

[End of Notice]

(c) *Long-form notice.* Where it is anticipated that bids may be received which appear designed to take unfair advantage of other bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of the short-form notice in paragraph (b) above.

\* \* \* \* \*

NOTE.—The longer form of the notice has been omitted.

### § 1-1.804-3 Award procedures.

(a) *Awarding the non-set-aside portion.* Awards on the non-set-aside portion shall be made in accordance with normal procurement procedures.

(b) *Awarding the set-aside portion.*

(1) After all awards have been made on the non-set-aside portion, an award of the set-aside portion shall be effected by negotiation with eligible concerns as provided in the applicable Notice used. To determine whether a concern is eligible for preferential consideration as a labor surplus area concern the area classification of the Department of Labor in effect at the time of the award shall be used. Contracts for the set-aside portion shall specify the preferential status of the bidder or offeror on which the award was based.

(2) If equal low bids were received on the non-set-aside portion from concerns which are eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 1-2.407-6) shall have the first priority with respect to negotiations for the set-aside portion.

(c) *Non-awarded set-aside portion.* If any part of the set-aside quantity cannot be awarded by the method described in this § 1-1.804, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations. A record of the reasons for failure to award the set-aside portion to labor surplus area concerns shall be included in the contract file.

### § 1-1.804-4 Withdrawal of set-asides.

If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation, as appropriate, in accordance with existing regulations. A record of the reasons for the withdrawal of any set-aside shall be made and included in the contract file.

### § 1-1.804-5 Contract authority.

Contracts for set-asides made under this subpart shall cite as legal authority for negotiation section 302(c)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)), the revised Armed Services Procurement Act of 1947 (10 U.S.C. 2304(a)(1)), or other applicable proper authority (see § 1-3.201).

### § 1-1.805 Subcontracting with labor surplus area concerns.

[27 F.R. 625, Jan. 20, 1962]

#### § 1-1.805-1 General.

(a) In furtherance of the general policy stated in § 1-1.802, procuring agencies shall encourage certain prime contractors to place subcontracts with concerns which will perform a substantial proportion of the production in areas of labor surplus, where this can be done consistent with efficient performance of contracts and at prices no higher than are obtainable elsewhere. (See § 1-1.710 for subcontracting policies with respect to small business concerns.)

(b) As used in this Subpart 1-1.8, the term subcontractor includes a supplier and applies at any level of performance of the contract; and the term subcontract includes a purchase order.

[27 F.R. 625, Jan. 20, 1962]

#### § 1-1.805-2 Labor surplus area subcontracting program.

The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. In contracts which range from \$5,000 to \$500,000, the contractor undertakes the obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in areas of labor surplus, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in § 1-1.805-3(a). In contracts which may exceed \$500,000, the con-

tractor is required, pursuant to the clause set forth in § 1-1.805-3(b), to undertake a number of specific responsibilities designed to assure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors. (The liaison officer required by the latter clause may also serve as liaison officer for small business matters.)

[27 F.R. 625, Jan. 20, 1962]

**§ 1-1.805-3 Required clauses.**

(a) The Utilization of Concerns in Labor Surplus Areas clause, set forth below, shall be inserted in all contracts in amounts which may exceed \$5,000, except—

(1) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico;

(2) Contracts for services which are personal in nature; and

(3) Contracts for construction.

**UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS**

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (a) persistent labor surplus area concerns which are also small business concerns; (b) other persistent labor surplus area concerns; (c) substantial labor surplus area concerns which are also small business concerns; (d) other substantial labor surplus area concerns; and (e) small business concerns which are not labor surplus area concerns.

[End of Clause]

(b) The Labor Surplus Area Subcontracting Program clause, set forth below, shall be included in all contracts which may exceed \$500,000, which contain the clause required by § 1-1.805-3(a) and which, in the opinion of the procuring activity, offer substantial subcontracting possibilities. Furthermore, prime contractors who are to be awarded contracts which may not exceed \$500,000 but which, in the opinion of the procuring activity, offer substantial subcontracting possibilities, shall be urged to accept this clause.

**LABOR SURPLUS AREA SUBCONTRACTING PROGRAM**

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the Utilization of Concerns in Labor Surplus Areas clause, and (iii) administer the Contractor's "Labor Surplus Area Subcontracting Program";

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the Utilization of Concerns in Labor Surplus Areas clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it in "Areas of Substantial Labor Surplus" (also called "Areas of Substantial Unemployment"), as designated by the Department of Labor. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production performed in persistent or substantial labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the price of such contract.

(c) The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000 and which contains the Utilization of Concerns in Labor Surplus Areas clause, provisions which shall conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of such subcontractors.

[End of Clause]

[27 F.R. 625, Jan. 20, 1962]

NOTE.—The following sections of Title 41 of the Code of Federal Regulations require the clause set forth in § 1-1.805-3 above to be included in procurement contracts:

(a) § 7-7.101-21—mandatory in contracts of the agency for International Development in the Department of State.

(b) § 9-7.5005-9, 14 and 16—which states that such clause is not mandatory but should be used in Atomic Energy Commission contracts.

(c) § 18-7.104-14, 20—requiring such clause in N.A.S.A. fixed-price supply contracts.

§ 18-7.203-9, 26—requiring such clause in N.A.S.A. cost-reimbursement type contracts.

§ 18-7.302.8 and 26—requiring such clause in N.A.S.A. fixed-price research and development contracts.

§ 18-7.402-9, 27—requiring such clause in N.A.S.A. cost-reimbursement research and development contracts.

#### § 1-1.805-4 Review of subcontracting program.

The adequacy of the contractor's "Labor Surplus Area Subcontracting Program" shall be reviewed by the procuring agency concerned, and any deficiencies shall be brought to the attention of the contractor's liaison officer with a request for corrective action.

[27 F.R. 625, Jan. 20, 1962]

#### § 1-1.806 Depressed industries.

##### § 1-1.806-1 General.

When an entire industry is depressed, the Director of Civil and Defense Mobilization may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by Office of Civil and Defense Mobilization Notifications, and such industries will be given special treatment as specified therein. Sections 1-1.806-2 through 1-1.806-5 reflect pertinent requirements of such Notifications with respect to the industries indicated. No price differentials will be paid to carry out policies of these Notifications. Executive agencies shall report on procurement from these industries in accordance with § 1-1.807.

##### § 1-1.806-2 Apparel industry (Notification No. 53).

(a) Notification No. 53, concerning the apparel industry, was issued July 19, 1952 (17 F.R. 6675). As used in this section, the term "apparel industry" means all of the industry identified in the "Standard Industrial Classification Manual," 1957 edition, issued by the Bureau of the Budget, under Major Group 23, except Group No. 239.

(b) There shall be no labor surplus area set-asides in this industry. Where feasible, under the same invitation, bids should be requested for jackets or coats and trousers as separate items so that bidders may bid in combinations of units, and if requirements warrant, at least an equal quantity of trousers should be included.

##### § 1-1.806-3 Petroleum and petroleum products industry (Notification No. 58).

Notification No. 58, concerning placement of procurement contracts with the petroleum and petroleum products industry, was issued October 10, 1952 (17 F.R. 9053), and exempts the petroleum and petroleum products industry from the application of Defense Manpower Policy No. 4. Accordingly, there shall be no labor surplus area set-asides in this industry.

##### § 1-1.806-4 Shipbuilding industry (Notification No. 57).

(a) Notification No. 57, concerning placement of procurement contracts with the shipbuilding industry, was issued August 28, 1952 (17 F.R. 7868) in the interest of preserving the skills and maintaining the productive facilities of the shipbuilding industry. As used in this paragraph, the "shipbuilding industry" includes establishments primarily engaged in building all types of ships, barges, canal boats and lighters of five gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabricating structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included.

(b) There shall be no labor surplus area set-asides in this industry. In placing shipbuilding contracts, preference shall be given, where practicable, to contractors which can perform the contracts without substantial use of overtime labor and without constructing new facilities. Also, to spread work among a larger number of private yards, bids or proposals shall be invited, and contracts awarded, on a small-lot basis rather than on a large-lot basis, to the extent practicable.

##### § 1-1.806-5 Textile industry (Notification No. 38).

(a) Notification No. 38, concerning placement of procurement contracts with the textile industry, was issued June 4, 1952 (17 F.R. 4993). As used in this section, the term "textile industry" means all of the industry identified in the "Standard Industrial Classification Manual" under Major Group 22 (Textile Mill Products) and Industry Nos. 2391 and 2392 (curtains and draperies, and house-furnishings), except that it does not include industry No. 2298 (cordage and twine).

(b) No preference shall be given to any area or city in placing contracts in this industry. For the purpose of maintaining the effective functioning of the textile industry as a whole, procuring activities shall try to place contracts with manufacturers whose weaving operations (in the case of weaving or integrated

mills) or whose spinning operations (in the case of spinning mills) during the period of performance of such contracts will not exceed 80 hours per week (not including other supporting activities).

(c) In all procurements from the textile industry which are estimated to exceed \$10,000, partial set-asides exclusively for textile industry concerns whose "weaving" or "spinning" operations (as described in paragraph (b) above) will not exceed 80 hours per week shall be made substantially in accordance with the procedures set forth in § 1-1.804, except that all "textile industry concerns whose weaving or spinning operations will not exceed 80 hours per week" will be treated as "labor surplus area concerns." The notice set forth in § 1-1.804-2 shall be designated "NOTICE OF 80-HOUR WEEK SET-ASIDE" and appropriately modified for use in accordance with this paragraph.

#### § 1-1.807 Report on preference procurement in labor surplus areas.

(a) *Agencies required to report.* Each agency which places contracts to be performed in surplus labor areas under this Subpart 1-1.8 and § 1-2.407-6 shall report such procurement in accordance with this section. When procurement is performed by one agency for, and at the request of, another agency, the agency doing the procurement shall report.

(b) *Frequency and due date.* Reports shall be prepared quarterly and submitted, in triplicate, to the General Services Administration, Office of Finance and Administration, General Services Building, Washington 25, D.C., within 45 work days after the close of each calendar quarter. Agencies having no reportable procurement during any report period shall submit negative reports.

(c) *Preparation of report.*

(1) *Procurement to be reported.* Reports shall state the total dollar amount of procurement awards placed in labor surplus areas as a result of preference procedures under this Subpart 1-1.8 and § 1-2.407-6. Amendments and modifications shall be included to reflect the total value of such actions. Agencies entering into indefinite quantity contracts to be performed in labor surplus areas as a result of preference procedures shall estimate, in accordance with agency procedures, the total dollar amount of orders which will be placed thereunder and include such data in the report.

(2) *Report format.* No standard report form is prescribed. However, the data reported should be arranged in columns as follows:

Column 1: An alphabetical listing of the States (include for this purpose Puerto Rico and possessions) containing persistent or substantial labor surplus areas in which contracts awarded during the report period as the result of set-aside, tie-bid, or other preference procedure will be performed.

Column 2: An alphabetical listing, within each State, of persistent or substantial labor surplus areas in which such contracts will be performed. Underline the names of persistent labor surplus areas.

Column 3: For each area, the total dollar amount of such contract awards.

Total: Enter subtotal of all figures for persistent labor surplus areas and a grand total of Column 3.

(3) *Procurement from textile industry (Notification No. 38).* In addition to the requirements of subparagraph (2) above, any preference awards placed with the textile industry during the report period under the provisions of § 1-1.806-5, shall be reported as an addendum, and include the following information:

(i) Dollar amount of such awards placed with concerns which will perform in persistent or substantial labor surplus areas.

(ii) Dollar amount of such awards placed with concerns which will not perform in persistent or substantial labor surplus areas.

[26 F.R. 6715, July 27, 1961, as amended at 27 F.R. 6929, July 21, 1962]

### CHAPTER 1, PART 1-2—PROCUREMENT BY FORMAL ADVERTISING

#### § 1-2.407-6 Equal low bids.

(a) In furtherance of the small business and labor surplus area policies set forth in Subparts 1-1.7 and 1-1.8, award shall be made in accordance with the following order of priority when two or more low bids are equal in all respects (taking into consideration cost of transportation, cash discounts, and any other factors properly to be considered):

(1) Persistent labor surplus area concerns (as defined in section 1-1.801-1(a)) that are also small business concerns (as defined in Subpart 1-1.7).

(2) Other persistent labor surplus area concerns.

(3) Substantial labor surplus area concerns (as defined in section 1-1.801-1(b)) that are also small business concerns.

(4) Other substantial labor surplus area concerns.

(5) Small business concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a persistent labor surplus area at which the end items are either produced or available from stocks on hand.

(6) Other concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a persistent labor surplus area at which the end items are either produced or available from stocks on hand.

(7) Small business concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a substantial labor surplus area at which the end items are either produced or available from stocks on hand.

(8) Other concerns which do not qualify for any of the foregoing priorities but which will deliver the required end items to the Government from a plant, warehouse, or other establishment in a substantial labor surplus area at which the end items are either produced or available from stocks on hand.

(9) Other small business concerns.

(10) Any other concern.

(b) If the application of (a) of this § 1-2.407-6 results in two or more bidders being eligible for award, the award shall be made to the bidder who will make the most extensive use of small business subcontractors. If two or more bidders still remain eligible for award, award shall be made by a drawing by lot limited to such bidders. If time permits, the bidders involved shall be given an opportunity to be present at the drawing by lot. Such drawing shall be witnessed by at least three persons and the contract file shall contain the names and addresses of those witnesses.

(c) In each award where preference is to be given under this section, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority.

[26 F.R. 6720, July 1961, as amended at 27 F.R. 625, Jan. 20, 1962]

## CHAPTER 2—FEDERAL AVIATION AGENCY

### SUBPART 2—AGENCY PROCUREMENT REGULATIONS SYSTEM

#### SUBPART 2-1.7—SMALL BUSINESS CONCERNS

SOURCE: §§ 2-1.710 to 2-1.710-4 appear at 26 F.R. 9675, Oct. 13, 1961.

#### § 2-1.710 Subcontracting with small business concerns and labor surplus area concerns.

##### § 2-1.710-1 General.

(a) When the contractor is required to establish and conduct a "Small Business and Labor Surplus Area Subcontracting Program", the invitation for bids (IFB) or the request for proposals (RFP) will require that the name of the prospective contractor's designated liaison officer be furnished with the bid or proposal. Immediately after award of contract, the representative of the Small Business Administration serving the area should be given the name of the contractor's liaison officer for small business matters.

(b) The IFB or RFP should also advise prospective contractors that labor surplus areas are listed in the publication "Area Labor Market Trends", copies of which may be secured from the Bureau of Employment Security, Department of Labor, Washington 25, D.C.

##### § 2-1.710-4 Responsibility for reviewing subcontracting program.

The contracting officer shall be responsible for the review required by § 1-1.710-4 of this title. A review shall be made as soon as possible after the award of a contract, and periodically thereafter. Written reports of all such reviews shall be included in the contract file.

#### SUBPART 2-1.8—LABOR SURPLUS AREA CONCERNS

##### § 2-1.801 Definitions.

##### § 2-1.801-2 Labor surplus area.

To assist Agency procurement offices in identifying labor surplus areas, arrangements have been made for each office to receive, directly from the Department of

Labor, their publications, "Directory of Important Labor Market Areas" and "Area Labor Market Trends". Failure to receive these publications, or requirements for additional copies should be called to the attention of the Materiel Policy Division, Office of Management Services.

**§ 2-1.802 Labor surplus area policies.**

(a) The Agency policy on assistance to labor surplus areas is expressed in Agency Order 65. In essence this order stipulates that FAA will do everything possible, consistent with efficiency and within the framework of existing law and regulation to assist labor surplus areas. This policy shall be applied in the implementation of the regulations set forth in Subpart 1-1.8 and in § 1-1.710 of this title.

SOURCE: §§ 2-1.801 to 2-1.807 appear at 26 F.R. 9675, Oct. 13, 1961.

(b) Pursuant to the Buy American Act (41 U.S.C. 10a-10d) and section 3(c) of Executive Order 10582 of December 17, 1954, the bid or offered price of materials of domestic origin shall not be considered unreasonable for purposes of establishing Buy American Act preference, if substantially all the domestic material will be manufactured in a labor surplus area and the price does not exceed the price of like material of foreign origin by more than 12 percent. In such situations, award shall be made to the labor surplus area concern unless the price differential thus established exceeds \$10,000. Where the price differential exceeds \$10,000, the matter shall be referred to the Deputy Administrator for Administration for determination. Any such referral shall be accompanied by a summary of the public interest and other relevant factors involved, and by a recommendation of the course of action to be taken.

**§ 2-1.807 Report on preference procurement on labor surplus areas.**

Reports required pursuant to § 1-1.807 of this title shall be prepared by each procurement office and submitted in quadruplicate through channels to the Materiel Policy Division, Office of Management Services, within 30 days after the close of each calendar quarter.

NOTE.—Similar statements of policy may be found at 41 C.F.R. § 9-1.802 which states that cost-type contractors with the Atomic Energy Commission should be encouraged to adopt policies and procedures similar to those set forth at 41 C.F.R. § 1-1.8 above.

