1. Under a liberal interpretation of the ruling of the Counsel for the Civil Service Commission is not the A-76 Program seriously threatened?

2. What do you estimate is a relative extent of the government participation in "service activities" like Force Account compared to "product activities"?

3. I have noted that the GAO has made a number of studies which have questioned service type contracts but has the GAO made any studies questioning the government's conduct of service type activities like Force Account? If so, please supply a list of such studies.

Sincerely,

THOMAS B. CURTIS.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., January 26, 1968.

Hon. WILLIAM E. PROXMIRE,
Chairman, Joint Economic Committee,
Congress of the United States.

DEAR MR. CHAIRMAN: This is in response to a letter from your Executive Director dated December 28, 1967, requesting our comments on three questions raised by the Honorable Thomas B. Curtis concerning Bureau of the Budget Circular No. A-76 in his letter to your Subcommittee on Economy in Government, dated December 14, 1967.

Question 1. Under a liberal interpretation of the ruling of the Counsel for the Civil Service Commission is not the A-76 Program seriously threatened?

We believe that the October 1967 opinion of the General Counsel of the Civil Service Commission relates to contracts in which the relationship between the Government and the contractors' employees is tantamount to an employer-employee relationship. The opinion relates, in general, to contracts which provide for the performance of a Government function in Government facilities and under detailed supervision by Government employees. The elements and criteria applied in the General Counsel's opinion are to be used in determining whether a contract by its terms, or in its performance, constitutes the procurement of personal services proscribed by the Government personnel laws.

The provisions of Circular No. A-76 manifest the executive branch philosophy of relying upon the private sector to satisfy the Government's "commercial or industrial" needs. It is our view that the services which might be involved in the opinion generally are not "commercial or industrial" in nature. The conversion of any commercial or industrial service now being performed by a contractor as an "independent contractor" to in-house operation must still be justified under the rules prescribed in Circular No. A-76.

There are a wide range of services of an industrial and commercial nature which agencies lawfully undertake in conformity with the existing policy directive set forth in that circular and which continue to be proper. It is significant, however, that the circular specifically states that it will not be "used to justify departure from any law or regulation, including regulations of the Civil Service Commission or other appropriate authority, nor will it be used for the purpose of avoiding established salary or personnel limitations."

In our opinion, the ruling of the Counsel for the Commission does not seriously threaten the policies enunciated in Circular No. A-76. However, it does perhaps point up a need for clarification of that circular so as to more clearly establish a distinction between products and services that are commercial and industrial in character, and thus clearly in the realm of the private sector, and the type of services involved in the opinion in question. We brought this matter to the attention of the Director of the Bureau of the Budget by letter dated August 3, 1967.

Question 2. What do you estimate is a relative extent of the Government participation in "service activities" like Force Account compared to "product activities"?

We do not believe that there is any readily available information on which a broad estimate could be made. Although Bureau of the Budget Circular No. A-76 calls for an inventory of commercial or industrial activities of more than a nominal size, we understand that this inventory has not been completed. However, the Department of Defense has furnished us with certain data for fiscal