

So the bill was passed.
The result of the vote was announced as above recorded.
A motion to reconsider was laid on the table.

PERSONAL STATEMENT

Mr. OAKAR. Mr. Speaker, I rise in support of the INJD appropriation bill. This bill provides housing for our people and further provides funding for NASA including Lewis Research Center. We are still insisting that Lewis get the lead for the electrical power of the space station. This vote is supportive of that purpose.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1985

The SPEAKER. Pursuant to House Resolution 484 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 5167.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 5167) to authorize appropriations for fiscal year 1985 for the Armed Forces for procurement, for research, development, test, and evaluation, for operation and maintenance, and for working capital funds, to prescribe personnel strengths for such fiscal year for the Armed Forces and for civilian employees of the Department of Defense, and for other purposes, with Mr. ROSENKOWSKI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Thursday, May 24, 1984, titles IV, V, VI, VII, VIII, and IX were open to amendment at any point.

Are there further amendments to these titles?

Mrs. SCHROEDER. Mr. Chairman, I move to strike the last word.

Mr. SCHROEDER asked and was given permission to revise and extend his remarks.

Mrs. SCHROEDER. Mr. Chairman, I wish to engage in a colloquy with the gentleman from Wisconsin (Mr. ASPIN), the distinguished chairman of the Subcommittee on Military Personnel and Compensation, and with the gentleman from Virginia (Mr. WHITEHURST) regarding the health care privileges for former spouses of military officers.

Mr. ASPIN. I will be happy to participate.

Mrs. SCHROEDER. As the gentleman from Wisconsin is aware, he and I have discussed the need for further legislation authorizing health care, as well as commissary and exchange privileges, for the long-term former spouses who contributed to our country alongside their military husbands. I think we both recognize that the Uniformed Services Former Spouses' Protection Act was a critical first step,

but that it does not cover all the deserving spouses.

Mr. ASPIN. If the gentlewoman will yield, Mr. Chairman, the gentlewoman is correct that the Former Spouses' Protection Act authorized medical, exchange, and commissary privileges for a limited number of long-term former spouses. There are, however, many other former spouses of long-term military marriages who do not meet the present criteria spelled out in that law.

Mrs. SCHROEDER. During full committee consideration of the 1985 Defense authorization bill, you stated that you would hold hearings on the health care issue, including discussion of H.R. 2715, introduced by the gentleman from Virginia (Mr. WHITEHURST). You added that you did not want to put off this issue until next year's authorization—that it needs to be addressed now.

Mr. ASPIN. Yes, I agree. I consider this an important issue, but there also are a number of questions that should be addressed, particularly the cost. I would hope that we could hold early hearings. As the gentlewoman can appreciate, the actual timing of hearings will depend on the progress of the Defense authorization bill, which we are considering today, and on our schedule for conference with the Senate. It is my intention, however, to address the former spouse medical issue expeditiously and, if it proves to be noncontroversial, to attempt to bring it before the House under suspension of the rules as the gentlewoman has requested.

Mrs. SCHROEDER. I thank the gentleman. I appreciate your concern for this issue and will be happy to help in any way to expedite this matter. Also, I wish to compliment the distinguished gentleman from Virginia (Mr. WHITEHURST) who has worked so hard on behalf of the military spouses.

Mr. WHITEHURST. Mr. Chairman, if the gentlewoman will yield, I commend my colleagues from Wisconsin and Colorado for their concern for the needs of former spouses. This is a very deserving group. I hope we can move rapidly on this issue, preferably before the Senate completes action on the Defense authorization bill. It is my understanding that expanded medical, commissary, and exchange benefits for former spouses may be considered as a part of Senate deliberations on the authorization bill. Early action in the House would be helpful in facilitating an agreement between the House and Senate on this legislation. My bill now has 82 cosponsors, and I appreciate the high priority the distinguished chairman is attaching to this issue.

Mr. ASPIN. Let me assure the gentleman from Virginia that I plan to move rapidly on this matter, and I appreciate his leadership on this issue.

□ 1700

AMENDMENT OFFERED BY MR. NICHOLS

Mr. NICHOLS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. NICHOLS: Page 131, after line 2, insert the following new title (and redesignate the succeeding titles and sections accordingly):

TITLE VIII—PROCUREMENT REFORM

SHORT TITLE

Sec. 801. This title may be cited as the "Defense Spare Parts Procurement Reform Act".

CONGRESSIONAL FINDINGS AND POLICY DIRECTION

Sec. 802. The Congress finds that recent disclosures of excessive payments by the Department of Defense for replenishment parts have undermined confidence by the public and Congress in the defense procurement system. The Secretary of Defense should make every effort to reform procurement practices relating to replenishment parts. Such efforts should, among other matters, be directed to elimination of excessive pricing or replenishment spare parts and the recovery of unjustified payments. Specifically, the Secretary should—

(1) direct that officials in the Department of Defense refuse to enter into contracts unless the proposed prices are fair and reasonable;

(2) continue and accelerate ongoing efforts to improve defense contracting procedures in order to encourage effective competition and assure fair and reasonable prices;

(3) direct that replenishment parts be required in economic order quantities and on a multiyear basis whenever feasible, practicable, and cost effective;

(4) direct that standard or commercial parts be used whenever such use is technically acceptable and cost effective; and

(5) vigorously continue reexamination of policies relating to acquisition, pricing, and management of replenishment parts and of technical data related to such parts.

PERSONNEL EVALUATIONS TO INCLUDE EMPHASIS ON COMPETITION AND COST SAVINGS

Sec. 803. (a) Chapter 137 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2317. Encouragement of competition and cost savings

"The Secretary of Defense shall establish procedures to ensure that personnel appraisal systems of the Department of Defense give appropriate recognition to efforts to increase competition and achieve cost savings in areas relating to contracts covered by this chapter."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2317. Encouragement of competition and cost savings."

IDENTIFICATION OF SOURCES OF SUPPLIES

Sec. 804. (a) Section 2354 of title 10, United States Code, is amended to read as follows:

"§ 2354. Supplier identification of supplier and sources

"(a) The Secretary of Defense shall require that the contractor under a contract with the Department of Defense for the furnishing of supplies to the United States shall mark or otherwise identify supplies furnished under the contract with the identity of the contractor, the national stock number for the supplies furnished, and the

contractor's identification number for the supplies.

"(b) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, each contract for supplies require that the contractor identify—

"(1) the name of the actual manufacturer or producer of the item or of all sources of supply of the contractor for that item;

"(2) the national stock number of the item or, if there is no such number, the identification number of the actual manufacturer or producer or of each source; and

"(3) the source of any technical data delivered under the contract.

"(c) Identification of supplies and technical data under this section shall be made in the manner and with respect to the supplies prescribed by the Secretary of Defense."

(b) The item relating to such section in the table of sections at the beginning of chapter 141 of such title is amended to read as follows:

"2384. Supplies: identification of supplier and sources."

PROHIBITION OF LIMITING DIRECT SALES BY SUBCONTRACTORS TO THE UNITED STATES

Sec. 805. (a) Chapter 141 of title 10, United States Code, is amended by adding at the end thereof the following new section:

"§ 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

"(a) Except as provided in subsection (b), each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

"(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) like those made, or services like those furnished, by the subcontractor under the contract (or any follow-on production contract); or

"(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

"(b) This section does not prohibit a contractor from asserting rights it otherwise has under law."

(b) The table of sections at the beginning of such chapter is amended by adding at the end thereof the following new item:

"2402. Prohibition of contractors limiting subcontractor sales directly to the United States."

DEFINITIONS

Sec. 806. Section 2302 of title 10, United States Code, is amended by adding at the end thereof the following new paragraphs:

"(4) 'Technical data' means recorded information (regardless of the form or method of the recording) of a scientific or technical nature. It does not include computer software.

"(5) 'Unlimited rights' means, with respect to technical data required to be delivered to the United States under a contract, legal authority of the United States to use, duplicate, and disclose the technical data for any purpose and the legal authority to have or permit others to do so.

"(6) 'Developed at private expense' means, with respect to an item (or technical data relating to an item) delivered to the United States under a contract, developed without direct payment by the United States under a provision of the contract which requires the performance of the development effort."

PLANNING FOR PROCUREMENT OF SUPPLIES

Sec. 807. Section 2304 of title 10, United States Code, is amended by adding at the end thereof the following new subsections:

"(j) The Secretary of Defense shall ensure that before a contract for the delivery of supplies to the Department of Defense is entered into—

"(1) when the appropriate officials of the Department are making an assessment of the most advantageous procedure for acquisition of the supplies (considering quality, price, delivery, and other factors), there is a review of the availability and cost of each item of supply—

"(A) through the supply system of the Department of Defense; and

"(B) under standard Government supply contracts, if the item is in a category of supplies defined under regulations of the Secretary of Defense as being potentially available under a standard Government supply contract; and

"(2) there is a review of both the procurement history of the item and a description of the item, including, when necessary for an adequate description of the item, a picture, drawing, diagram, or other graphic representation of the item.

"(k)(1) The Secretary of Defense shall prescribe regulations requiring that, whenever practicable, an offeror submitting a proposal for a contract shall furnish information in the proposal identifying—

"(A) with respect to all items that will be delivered to the United States under the contract (other than items to which paragraph (2) applies), those items for which technical data will not be provided to the United States; and

"(B) with respect to technical data that will be delivered to the United States under the contract, any of such technical data that will not be provided with unlimited rights.

"(2) With respect to items that will be delivered to the United States under a contract described in paragraph (1) with respect to which it would be impracticable to ascertain, at the time the contract is entered into, the information required to be furnished under that paragraph, the contract shall require that the contractor provide identifying information similar to that required to be furnished under that paragraph at a time to be specified in the contract.

"(3) The Secretary of Defense shall ensure that information furnished under paragraph (1) is considered in selecting the contracting for the contract."

RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE

Sec. 808. (a)(1) Chapter 141 of title 10, United States Code, is amended by inserting after section 2386 the following new section:

"§ 2386a. Rights in technical data and computer software

"(a) A contract for supplies entered into by the Department of Defense which provides for delivery of technical data or computer software to the United States shall provide that the United States shall have unlimited rights in—

"(1) technical data and computer software resulting directly from performance of experimental, developmental, or research work which was specified as an element of performance in a Government contract or subcontract;

"(2) computer software required to be originated or developed under a Government contract or generated as a necessary part of performing a contract;

"(3) computer data bases prepared under a Government contract consisting of informa-

tion supplied by the Government, information in which the Government has unlimited rights, or information which is in the public domain;

"(4) technical data necessary to enable manufacture of end-items, components, and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under a Government contract or subcontract in which experimental, developmental, or research work is or was specified as an element of contract performance, except technical data pertaining to items, components, processes, or computer software developed at private expense;

"(5) technical data and computer software prepared or required to be delivered under a Government contract or subcontract and constituting corrections or changes to Government-furnished data or computer software;

"(6) technical data pertaining to end-items, components, or processes prepared or required to be delivered under a Government contract or subcontract for the purpose of identifying sources, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements;

"(7) manuals or instructional materials prepared or required to be delivered under the contract or any subcontract of the contract for installation, operation, maintenance, or training purposes;

"(8) technical data or computer software which is in the public domain or which has been or is normally released or disclosed by the contractor or subcontractor without restriction on further disclosure; and

"(9) technical data or computer software for which unlimited rights in such data or software are otherwise provided for under the contract.

"(b)(1) Each contract for the acquisition of supplies which includes a requirement for the contractor to furnish technical data or computer software to the United States shall provide—

"(A) that the contractor agrees to have a data management system approved by the Department of Defense in operation before the United States accepts delivery of any data required to be delivered to the United States under the contract; and

"(B) that the United States may ignore, correct, or cancel any restriction on the release of technical data or computer software that is not authorized by the contract if the contractor fails to substantiate, within 60 days after receiving a written request from the United States for such substantiation, the propriety of the restriction.

"(2) Each contract described in paragraph (1) shall provide that if—

"(A) the contractor asserts that the United States is not entitled to unlimited rights in technical data relating to an item, component, or process; and

"(B) the assertion is not sustained and it is determined that the assertion was not substantially justified,

the contractor shall be required to pay to the United States the costs to the United States of contesting the assertion.

"(3) Rights of the United States under paragraphs (1)(B) and (2) may not be asserted after the end of the three year period beginning on the date of final payment by the United States under the contract, unless the contract provides for a different period of time.

"(4) Notwithstanding the inspection and acceptance by the United States of technical data furnished under a contract and notwithstanding any provision of the contract concerning the conclusiveness of such in-

spection and acceptance, the contractor shall warrant in the contract that all technical data delivered under the contract will at the time of delivery to the United States conform with the specifications and all other requirements of the contract or the contractor will correct the technical data to so conform. The period of such a warranty shall be as provided for in the contract.

"(c) The Secretary of Defense shall prescribe by regulation standards for determining whether a contract entered into by the Department of Defense shall provide that, after a time to be specified in the contract, the United States shall have the right to use (or have used) for any purpose of the United States all technical data (including technical data of subcontractors at any tier) required to be delivered to the United States under the contract. The time specified in a contract with respect to such a right of the United States in any such data may not exceed seven years from the date the data was required to be delivered to the United States or the date an item to which such data relates was required to be delivered to the United States, whichever is earlier.

"(d) Nothing in this section shall be construed as affecting rights of the United States or of any contractor or subcontractor with respect to patents, copyrights, or any other law establishing particular rights in technical data.

"(e) In this section, 'technical data', 'unlimited rights', and 'developed at private expense' have the meaning given those terms in section 2502 of this title."

"(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2386 the following new item:

"2386a. Rights in technical data and computer software."

"(b)(1) Not later than one year after the date of the enactment of this Act, the Secretary of Defense shall develop a plan for a system for the acquisition and management of technical data appropriate for the acquisition of supplies under the jurisdiction of that department. The plan shall address the possibility of a uniform system that would allow exchange of information among the military departments and the Defense Logistics Agency. The plan shall also address the possibility of a centralized system to specify the repository location of technical data relating to any item and the types of data on file in that repository.

"(2) The Secretary of Defense shall ensure that the plan developed under paragraph (1) is implemented no later than five years after the date of the enactment of this Act.

COMPETITION ADVOCATES

Sec. 865. Chapter 137 of title 10, United States Code, is amended by inserting after section 2306 the following new section:

"2306a. Competition advocates

"(a) The head of each agency shall designate a person within that agency to be the competition advocate for the agency and shall designate a competition advocate for each procuring activity of the agency. The competition advocates shall promote the use of competitive methods of procurement.

"(b) The head of each agency shall prescribe by regulation the functions of competition advocates. Such regulations shall provide that each competition advocate shall—

"(1) advocate changes to policies and procedures to encourage maximum consideration of opportunities for competition during the acquisition process (including the supply process); and

"(2) challenge practices and procedures that inhibit competition, including unnecessarily restrictive statements of agency

needs, unnecessarily detailed or restrictive specifications, use of procurement method codes, and other actions that could result in an inappropriate noncompetitive procurement.

"(c) The head of each agency shall ensure that—

"(1) programs designed to increase competitive procurement of supplies are maintained and periodically reassessed;

"(2) there is a system within the agency for review of noncompetitive acquisitions; and

"(3) each competition advocate within the agency has access to personnel within the agency who can advise the competition advocate in specialized areas relating to competition, including persons who are specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small and disadvantaged business concerns.

"(d) This section does not apply to the Coast Guard or the National Aeronautics and Space Administration."

"(b) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2306 the following new item:

"2306a. Competition advocates."

ANNUAL REPORT

Sec. 810. Chapter 137 of title 10, United States Code, is amended by adding after section 2317 (as added by section 803) the following new section:

"2318. Annual report on competition for supplies.

"(a) The Secretary of Defense shall submit to Congress, not later than December 15 of each year, a report on the management by that department of the acquisition of supplies during the preceding fiscal year.

"(b) Each report under this section shall include—

"(1) a report on the activities of the competition advocates of the Department of Defense during the preceding fiscal year; and

"(2) the rate of competition for contracts for supplies entered into by the Department during the preceding fiscal year, shown (A) by the number of contracts awarded competitively as a percentage of the total number of contracts awarded, and (B) by the dollar value of contracts awarded competitively as a percentage of the total dollar value of contracts awarded.

"(c) All information in reports under this section shall be shown for the Department as a whole and for each of the military departments and the Defense Logistics Agency."

"(b) The table of sections at the beginning of such chapter is amended by adding after the item relating to section 2317 (as added by section 803) the following new item:

"2318. Annual report on competition for supplies."

PUBLICATION OF PROPOSED REGULATIONS

Sec. 811. Section 2303 of title 10, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) A regulation prescribed under this chapter by the Secretary of Defense or the Secretary of a military department that would have an effect beyond the internal operating procedures of the Department of Defense or that would have a cost or administrative impact on contractors may not take effect until 30 days after such regulation has been published in the Federal Register for public comment."

EFFECTIVE DATE

Sec. 812. (a) Except as provided in subsection (b), this title and the amendments

made by this title shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act and shall apply with respect to contracts for which bids or proposals are solicited after the end of such period.

"(b)(1) Sections 802 and 809(d) and the amendments made by sections 810 and 811 shall take effect on the date of the enactment of this Act.

"(2) The amendments made by sections 803 and 809 shall take effect at the end of the 90-day period beginning on the date of the enactment of this Act.

Mr. NICHOLS (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the Record.

The CHAIRMAN pro tempore (Mr. DURBIN). Is there objection to the request of the gentleman from Alabama?

There was no objection.

Mr. FAZIO. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from California.

(Mr. FAZIO asked and was given permission to revise and extend his remarks.)

Mr. FAZIO. I thank the gentleman for yielding to me.

Mr. Chairman, I wish to commend my distinguished colleague from Wisconsin, Mr. ASPIN, and Mr. HILLIS, the ranking Republican member, on the action that they and the members of the Armed Services Committee have taken to remedy the problems created by artificially imposed civilian manpower ceilings within the Department of Defense.

As you know, the Appropriations Committee in the fiscal year 1983 Defense appropriations bill lifted this ceiling for industrially funded activities. At that time, it was recommended that the authorizing committee review this experiment after 1 year to determine if such a policy should be continued and possibly expanded to cover all civilian employees.

After 1 year it was shown that managers did not engage in unwarranted hiring—the fear of which had led to the initial imposition of the ceilings a number of years ago. In fact, the results of the 1-year test were so positive that the Armed Services Committee has now approved an across-the-board waiver on personnel ceilings for fiscal year 1985.

Thus, managers can now hire according to need as long as they are within their budgetary limits. This will eliminate the wasteful practice of dropping temporary workers from the rolls for a short period of time in order to meet end-of-year ceilings. An estimated \$7 million will be saved this way. Greater management flexibility and a more efficient accomplishment of workload will undoubtedly result.

As the Representative of California's Fourth Congressional District, home of the Sacramento Air Logistics Center at McClellan Air Force Base, I

am very aware of the adverse effects that result from artificially imposed ceilings. I have over the past 2 years worked with the members of the Defense Subcommittee of Appropriations and the Personnel Subcommittee of the Armed Services Committee to implement this waiver.

I, along with my colleague Mr. Gonzalez of Texas whose district is equally sensitive to this issue, again commend our good friend for his efforts to eliminate the outdated policy of manpower ceilings.

Mr. NICHOLS. Mr. Chairman, the amendment that I offer contains the text of H.R. 5054, the spare parts procurement reform bill. Let me say that a little over a year ago, the Investigations Subcommittee began an examination on the whole issue of spare parts procurement by the Department of Defense. We held eight hearings during the course of the year, and I want to thank my colleagues who were so diligent to attend these hearings which turned out to be a very complex issue.

We found that the principal reason the Department of Defense was paying excessive prices was the lack of competition in spare parts procurement. Thus, the thrust of my amendment is to expand competition. The amendment encourages competition first, by requiring Government procurement personnel be evaluated on their efforts to increase competition to achieve cost savings.

We found that in the past the Government buyers were graded primarily on the number of their procurements, and on the speed with which they were executed, rather than on their efficiency and exercise of initiative. As a result, buyers tended to take the easy route of sole-source procurement. Of going back to the earlier supplier without any effort to determine whether a better price might be obtained from another supplier.

The amendment will encourage procurement personnel to seek suppliers who will provide the Government with better values and will insure that they are recognized for such efficiency in their personnel evaluation and, of course, ultimately, in their pay.

Mr. Chairman, the amendment also broadens competition by prohibiting prime contractors from unreasonably restricting their subcontractors in direct sales of their products to the Government. It would require the identification of the actual manufacturer of the item by name and by address supplied to the Government. It would require the national stock number to be on this item, and any technical data related to it. This identifying information would, of course, make it easier to procure the item competitively.

Agency heads would be required, before contracting, to purchase an item to identify every other possible source of supply. Such as the supply system of the Department of Defense

and General Services Administration, and to review the procurement history of the item. When the Government wishes to have the ability to reprocur an item then it can require the supplier to state whether technical data will be furnished.

The amendment identifies some nine categories in which the United States shall have unlimited rights in technical data. It requires contractors to maintain a data management system approved by the Department of Defense. It also provides a framework for the Government to challenge a contractor's restriction on the release of technical data.

The amendment would also direct the Secretary of Defense to prescribe, by regulation, standards for determining whether a contract shall include a time limit not to exceed 7 years on the duration of any restriction on the Government's use of technical data. This provision is considered necessary to insure that the Government's data rights are not abused, and to insure that the Government will be able to buy replenishment parts at fair and reasonable prices during the lifetime of its major systems.

In addition, the Government should not be locked into using only one source for its procurement or repair or replenishment items where the technology is not the state of the art. Mr. Chairman, the amendment recognizes that commercial licensing practice often serve to increase the number of available suppliers and enhances the quality of products available. It is not the intent of this amendment that license agreements should be discouraged or rendered unenforceable or otherwise affected by any regulations or contract provision imposing a time limit on restriction of the Government's ability to disclose data.

By allowing the Secretary of Defense certain latitudes to determine by regulation which contracts should include the time limit, and what that time limit might be, as long as it does not exceed 7 years, the provision allows considerable flexibility.

The CHAIRMAN pro tempore. The time of the gentleman from Alabama (Mr. Nichols) has expired.

(By unanimous consent, Mr. Nichols was allowed to proceed for 3 additional minutes.)

Mr. NICHOLS. The Secretary may provide for procedures to waive the time limit if a contractor can show that he has a valid trade secret which should not be disclosed to his competitors, or if the cost to the Government to acquire technical data is inordinate. With the flexibility inherent in this provision, I believe the Secretary of Defense will be able to strike the appropriate balance between a contractor's right to maintain his competitive position of his trade secrets and the Government's need to be able to buy spare parts competitively.

□ 1710

Mr. PRICE. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I would be glad to yield to my distinguished chairman, the gentleman from Illinois.

Mr. PRICE. I thank the gentleman for yielding.

Mr. Chairman, this language appears to be very similar to the language we have previously considered in the committee and which met with the approval of most members of the committee. The committee will accept the amendment.

Mr. NICHOLS. I thank the gentleman.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to my distinguished colleague, the gentleman from Alabama.

Mr. DICKINSON. I thank the gentleman for yielding.

Mr. Chairman, let me say that during the course of the consideration of this bill, I can think of no subject that has created more heat and perhaps generated less light than the subject of the procurement of spare parts.

I want to commend the gentleman for his diligence in pursuing this in subcommittee. This is an area that absolutely must be addressed. The American public demands it. I think that the House feels very strongly that this should be addressed, and the amendment offered by the gentleman from Alabama is the best solution that the committee has come up with. Certainly we would support it on this side.

Mr. NICHOLS. I thank the gentleman from Alabama.

Mr. HOPKINS. I yield to my ranking minority member, the gentleman from Kentucky (Mr. Hopkins).

(Mr. HOPKINS asked and was given permission to revise and extend his remarks.)

Mr. HOPKINS. I thank the gentleman for yielding.

Mr. Chairman, I want to recognize the efforts of the leadership of our chairman of the Subcommittee on Investigations, the gentleman from Alabama, who started these hearings in April of last year who has certainly shown great tenacity and patience with all of the different organizations and companies that have come before our subcommittee. It was because of his leadership, and the assistance of the gentleman from Ohio (Mr. Kasich), who has thrown his capable intelligence and thoughtfulness behind this legislation that has brought us this far.

Mr. Chairman, I rise in support of the amendment offered by Mr. Nichols.

The Investigations Subcommittee of the Armed Services Committee began a series of hearings on April 19 and 20, 1983, and continuing through this past month. During this time we heard testimony from numerous Air Force, Navy, DLA, and DOD representatives

responsible for contracting and acquisition policy, and several auditors, as well as a competition advocate and breakout procurement center representative.

In each case we heard testimony about extraordinary prices charged by a contractor or enormous price increases from 1 year to the next. For example, in a recent audit by the Department of Defense Inspector General, of 15,000 aircraft engine parts reviewed, 4,000 had increased in price more than 500 percent and some by more than 1,000 percent. We heard from Navy and DOD auditors that the Government paid \$100 to \$110 for parts which were in the DOD supply system for \$0.04 and \$0.05.

Why did these increases or extraordinary payments occur? Were they isolated incidents? We heard numerous reasons from the DOD including lack of personnel to fill out the forms to requisition parts through the supply system; lack of technical data to complete acquisitions; inability to compete because the item was proprietary; and quality control problems if the Government buys a part from other than the known supplier. Ordering of parts and negotiating prices after the order is placed is justified because they do not have time to negotiate prices and still submit the order in time to account for the usual 18- to 24-month leadtime. But the problems uncovered and responses I just read are only the tip of the iceberg. The problem of spare part price increases, inventory management, and long leadtimes is a 20-year-old problem that resurfaces every few years. However, in that time there has never been an adequate solution proposed. I believe that has not occurred in part because this is a management problem which cannot be resolved by simply issuing new regulations or enacting legislation. The statutes and regulations which would prohibit many of the practices which led to these abuses are already in existence—they were simply not followed. The only way we will resolve these issues and insure that the taxpayers' money is not wasted is to focus attention to the problem. I think that has occurred as a result of the various hearings in both the House and the Senate, as well as the abundance of publicity which has been generated. However, the Armed Services Committee wants to insure that the attention and resources dedicated to resolving these issues in the Department of Defense do not wane once the publicity stops.

This amendment will accomplish that objective by imposing a management discipline on the system and by making it clear that Congress will not tolerate excessive spare parts prices. The committee worked long and hard to insure that this bill would attack the root causes and not just the symptoms of the problem. For these reasons I commend this amendment to

my fellow colleagues and urge your support.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. Nichols) has expired.

(On request of Mr. KASICH and by unanimous consent, Mr. NICHOLS was allowed to proceed for 4 additional minutes.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to my colleague on the committee, the gentleman from Ohio.

Mr. KASICH. I appreciate the gentleman yielding.

Mr. Chairman, let me say to the House that I could not agree more with the statements of the gentleman from Kentucky (Mr. Hopkins). The House of Representatives, and I do not think it would be an overstatement to say that also the taxpayers of this country, owe a great debt of service to the chairman of the Subcommittee on Investigations. The chairman, under what was at many times intense pressure, called hearings time and time again to bring forward those people who, at the Government level, are in charge of procurement, a very complicated issue that took great deal of time to understand.

The chairman also saw fit to bring contractors before the subcommittee in an attempt to receive their side of the story and then put together a piece of spare parts legislation that was balanced.

Let us get to basics. The basics are that there were spare parts that were being sold by contractors to the Government for prices that were 200, 300, 400, even 500 percent in excess of what the Government should have paid for them. The public is frustrated. In fact, I even think that the majority party in this House has a commercial on television right now where we see a man hold up a wrench and say, "That is what we should be paying for this."

Everyone knows what we are talking about when we talk about the problems of inflated prices on spare parts. This legislation, the Nichols bill, which has been intensely studied and put together over a period in excess of 1 year, is going to go farther than any legislation in this Congress toward solving this problem.

I will give my colleagues a couple examples. The chairman has in his legislation the establishment of competition advocates. Those are people who will work in the services, and whose sole job will be to spur an increase in competition. We have already seen competition advocates successfully increase competition within the Navy. We are going to see it happen in other areas of the Armed Forces because of the language in this bill.

Another important item requires contractors to identify the manufacturers of items. What had been happening is that contractors were stamping their names on parts that had been manufactured by subcontractors,

and dramatically increasing the price that was being charged to the Government. The Nichols bill requires manufacturers to identify who actually made the part, and to eliminate all interference in the selling of those spare parts by the firm that manufactured it. If we go directly to the manufacturers, and bypass the prime contractor, we are going to get it for a much cheaper price.

The bill requires the Department of Defense to check its own system supply inventory when ordering spare parts. In our investigation, the chairman found examples of the Government buying parts at excessive rates, even though those same parts were available through the Government's own inventory. We literally threw money away on parts that were sitting on our own shelves.

It also goes far in the data rights section. Let me say this: The data rights section is a vital part of this bill.

The chairman was good enough to accept an amendment from a freshman Republican that would provide a 7-year limit on proprietary rights. Under the current law, if a company receives proprietary rights on a product, that means for the next 200 years that company has the exclusive or monopoly right to sell that part to the Government. As the Air Force itself says, when you do not have competition in the procurement of spare parts, the cost of those items will increase dramatically.

This bill provides for significant reform in the data rights area. It states that the Government will receive all data needed to procure the part. It states that when Government funds are used to research and develop an item, it will not be proprietary. And it provides a 7-year cutoff period, stating that after a period of 7 years or less, a company shall not have exclusive or monopoly rights to sell the part to the Government.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. Nichols) has again expired.

(By unanimous consent, Mr. NICHOLS was allowed to proceed for 3 additional minutes.)

Mr. KASICH. If the gentleman will yield further, what it essentially will do is to permit the Government to bring more contractors into the process of bidding on spare parts. As we get more contractors, and as we have more competition, we are going to see a solution to this problem.

I want to compliment the gentleman from Alabama (Mr. Nichols) for standing up in what were very difficult times, coming forward with a bill that I think will go a long way toward solving the spare parts problem. It is not going to be totally solved under this, but we go a long way toward, that end, and I want to compliment the chairman for his leadership in the subcommittee.

Mr. NICHOLS. I thank the gentleman from Ohio.

Mr. COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Texas, a member of the committee.

(Mr. COLEMAN of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLEMAN of Texas. I thank the gentleman for yielding.

Mr. Chairman, I rise to express my strong support for the amendment offered today by Mr. NICHOLS, chairman of the House Armed Services Subcommittee on Investigations, to the Department of Defense authorization bill in the area of spare parts. I commend him and the members of his subcommittee for their hard work and leadership in this reform movement.

I am proud to be a cosponsor of the legislation, H.R. 5064, which is the basis of this amendment, as reported by the House Armed Services Committee. It represents a year of careful examination by the Investigations Subcommittee in response to the much publicized spare parts procurement process by the Defense Department. The amendment provides for more cost effective and efficient purchases of spare parts.

A great number of my constituents have contacted me to express their deep concern over the matter of excessive prices for spare parts by the military. This amendment helps alleviate some of those concerns. It directs that the Department of Defense should refuse to pay prices that are not fair and reasonable, should make purchases in quantities that offer the best price for the number of units needed, and use standard or commercial parts whenever technically acceptable or cost effective.

In addition, the amendment encourages competition by requiring that Government personnel evaluation systems recognize efforts to increase competition and other cost savings and mandates review of noncompetitive acquisitions. It requires contractors to identify manufacturers and producers of items so as to avoid the "middleman", where practical. The amendment also requires planning in the Department of Defense acquisitions to insure that the Department check its inventory and records before ordering from a contractor.

With respect to concerns about technical data, the amendment defines categories in which the Government shall have unlimited rights in technical data and requires contractors to warrant that data they provide be in conformance with the contract. It also mandates the Department to develop a plan for improving its data management system to allow for easier access to technical data which the Government possesses, and restricts certain limitations on the Government's use of technical data.

I think the amendment includes well-reasoned moves in the direction of much needed reform. I urge my colleagues to support it.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from California.

Mr. HUNTER. I appreciate the gentleman yielding.

Mr. Chairman, I simply want to say in the area of proprietary rights, data rights, in my experience with the Navy and with contractors that is one of the biggest problems we have and the biggest generator of cost overruns, where you have a company which makes an original part and thereafter for the next several hundred years has the right to repair that part, and there are other companies who could repair the part if they had the proprietary rights. If they had the data or the blueprints essentially that were available. They could it for maybe half the price but they cannot because the company that originally manufactured the part has the rights to that data.

I commend the committee for putting that very important element into this package. I think that this bill, in fact, will operate to greatly reduce the cost of defense to the American taxpayers.

Mr. NICHOLS. I thank the gentleman from California.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Maryland, the distinguished chairman of the Small Business Committee.

D 1720

Mr. MITCHELL. I thank the gentleman for yielding. I want to commend him for his effort.

But I have a series of serious concerns about the nature of this amendment. I am appreciative of the fact that we are going to encourage agency personnel to do things through an evaluation system, the identification of items and so forth, encourage the establishment of data management systems. But you have to lay that against the background of what this Congress has been trying to do since 1969.

Since 1969, various committees of the Congress have looked at this issue and have suggested certain things that ought to be done. But they were never really done.

Essentially it got to be a jawboning process with DOD, and which was blithely ignored. The record will show that when the dialog first got started 50 percent of the spare parts were sole source, noncompetitive in DOD. Despite 1969 and the ensuing years, that figure has risen to 77 percent.

I guess what I am saying, though, is I commend the gentleman for all of the work he has done, and particularly my colleague for his very good amendment. It comes almost down to, except

in the case of your amendment, it comes down to jawboning again.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent Mr. NICHOLS was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. That is my only concern. I would like to see an amendment that was a little bit tougher. Yours is all right, no question about that.

But the rest of it, it certainly seems to me to encourage, to encourage to identify, to encourage the agency to identify every other source, that is what we have been telling them since 1969, and that is what they have ignored.

Mr. NICHOLS. Let me respond to the gentleman, my friend from Maryland, and tell him he is exactly correct. This has been an ongoing problem ever since I have been in Congress, ever since you have been in Congress.

But let me remind the gentleman we have never put this into the law. We have always done it by regulations, and the Secretary of Defense, and admirals and generals, they come and they go. For that reason, that is why we are putting it into the law. We feel like it has sufficient teeth in it to do the job.

Mr. MITCHELL. I thank the gentleman for his explanation.

I am not yet satisfied, but I do commend you for these first forward steps you have taken.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the distinguished gentleman from Alabama for yielding. I endorse his amendment.

I support the very careful work which the gentleman has done. I commend him for the leadership which he has brought to the House, and I urge my colleagues to adopt his amendment.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Illinois.

(Mr. DURBIN asked and was given permission to extend remarks.)

Mr. DURBIN. Mr. Chairman, I would like to commend Mr. NICHOLS for preparing this legislation which shows that Members of Congress are truly concerned about eliminating waste, correcting system failures, and improving management deficiencies in the Government.

The Democratic freshmen have been concentrating their efforts on identifying ways to control the high Federal deficits. When the President's Private Sector Survey on Cost Control, the Grace Commission, published its findings earlier this year, we were naturally interested in applying those recom-

*Brooks opposes tech data
OK this
of Nichols*

mendations that had been adequately investigated and reviewed.

Nearly 2,500 recommendations were submitted, with claims that substantial savings could be achieved over a 3-year period. The logistics of fully evaluating each recommendation, and each cost estimate necessarily takes more effort than a few months would allow. However, CEO and GAO pulled through with a joint analysis of the Grace Commission's recommendations in February, and identified areas where \$58 billion could be saved over 3 years.

Many Members of Congress have expressed their concern about the use of appropriated funds by the Department of Defense. Often times, DOD seems to function like a black hole: Its gravitational force pulls in funds which disappear in a fashion which is nearly impossible to trace. So, it does not seem at all surprising that the primary recommendations made by the Grace Commission for the DOD and each branch of our military services are to improve the weapons systems acquisition process and update inventory control. The trick is to translate these proposals into actions which are workable and effective.

On this account, I would like to thank Mr. NICHOLS and the efforts of his subcommittee in fully investigating the procurement of spare parts, and, in cooperation with our military services, pulling together measures which would be most cost effective. The Grace Commission did its job of comparing and evaluating general alternatives for improving the acquisition process, and the Armed Services Committee turned some of these suggestions into workable solutions. This measure not only incorporates the objectives of the Grace Commission, it goes beyond the generalized recommendations of that report to identify specific and applicable forms.

The armed services measure takes several direct steps to increase competition in the procurement of spare parts. It reflects the committee's findings that one of the major causes of absurdly high prices charged for spare parts is the lack of effective competition in the procurement process.

Some of the steps incorporated in this amendment to increase competition seem almost like commonsense to someone not familiar with the procurement process. For example, in the area of acquisition planning, the amendment requires that the Department of Defense check its own supply system inventory to see if the part it seeks is available, and at what price, before ordering it from a contractor. It also requires buyers to look at the record to see what prices were paid previously for the same item and to look at a picture and description of the part so they know what they are buying. While it does seem that DOD buyers would already be taking these steps, I think it is also easy to understand how they could be left aside, es-

pecially in the rush to get things done, or after many years of doing the same thing. Mr. NICHOLS' amendment recognizes this in incorporating these steps into law and in establishing competition advocates at each step in the procurement process to make sure they are enforced.

Mr. NICHOLS' amendment makes several other effective changes in the procurement process, reflecting his subcommittee's careful review of the problems involved with DOD's procurement of spare parts. I have heard countless expressions of outrage from my constituents about their tax dollars paying \$1,118.26 for a plastic stool cap that they could have brought in their local hardware store for pennies. I share their outrage, and I believe that Mr. NICHOLS' amendment changes that process so that many abuses will be eliminated.

Once again, I commend Mr. NICHOLS and his subcommittee for preparing this amendment, and I urge my colleagues to support it as an effective step toward eliminating waste in the procurement practices of the Department of Defense.

Mr. SKELTON. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Missouri (Mr. SKELTON).

Mr. SKELTON. I wish to join in support of this very, very important amendment. You have done your Nation a great service.

People, the taxpaying public, are very concerned about this issue. I think you are on track.

I think not just this year but in years to come this will pay dividends for the American taxpayer, and I compliment you and wish you well on it.

Mr. BROOKS. Mr. Chairman, I move to strike the requisite number of words.

I rise in support of the amendment offered by the gentleman from Alabama (Mr. NICHOLS). The Government Operations Committee, in hearings held over a year ago, uncovered widespread abuses in DOD's spare parts procurement program. While numerous factors contributed to this problem, we found that the primary causes were a failure to use competition and the absence of incentives to reduce costs. Unless these basic management problems are resolved, we can expect to see DOD buy more claw hammers and other items at exorbitant prices.

In my view, the amendment addresses the primary factors that are found plaguing DOD's spare parts procurements. While critics may say that it goes too far or that it does not go far enough, I believe it strikes a fair balance between competing interests. Granted, this amendment does not solve all of DOD's procurement problems, but it is a good first step toward resolving the spare parts abuses.

Notwithstanding, I want to take this opportunity to express my concerns regarding the inclusion of computer software and related items in this

amendment. The question of technical data rights, particularly in the high technology area, is a complex issue and I am not convinced that it should be included in legislation dealing primarily with spare parts. Another major concern is whether enough protection is provided in this amendment to avoid the Government's infringement on the proprietary data rights developed solely at private expense. While I support the overall amendment, I also want to make it clear that the Government Operations Committee will be looking very closely at DOD's implementation of this provision.

Finally, while this amendment is specifically directed at the procurement of spare parts, other broader reform measures are now pending before Congress. In this regard, H.R. 5184, the Competition in Contracting Act of 1984, recently passed out of our committee, requires the use of competition on a government-wide basis. I firmly believe that H.R. 5184, coupled with this amendment, will go a long way in cleaning up the Government's procurement process—once and for all.

I urge all Members to support this amendment.

AMENDMENT OFFERED BY MR. BEDELL TO THE AMENDMENT OFFERED BY MR. NICHOLS

Mr. BEDELL. Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. BEDELL to the amendment offered by Mr. NICHOLS: After section 811 of the title proposed to be inserted by the amendment, insert the following new section:

COMPETITION AND COST SAVINGS FOR SPARE PARTS

SEC. 812. (a) Chapter 137 of title 10, United States Code, is amended by adding at the end thereof the following new sections:

"§ 2319. Competition for spare parts

"(a) A person may not be denied the opportunity to submit and have considered an offer for a contract to be made by the Department of Defense solely because the person—

"(1) is not on a list of qualified bidders prescribed or maintained by the Department of Defense; or

"(2) in the case of a contract for the purchase of a product, does not have its product or products on a list of qualified products prescribed or maintained by the Department of Defense.

"(b)(1) The head of an agency may not solicit an offer from only one source, or negotiate with only one source, for the purchase of spare or replacement parts unless the head of the activity of that agency that made the contract certifies, for each such purchase, that—

"(A) the parts are available from only one source and no other source is capable of producing the same or like parts which are consistent with the legitimate needs of the agency;

"(B) the agency's need for the parts is of such urgency that the mission of the agency would be seriously injured if it did not solicit from or negotiate with only one source;

"(C) the disclosure of the agency's needs to more than one source would compromise the national security;

"(D) the source to be used has a legitimate proprietary interest (as specified in regulations prescribed under subsection (c)(1)) in the parts or their manufacture and the agency would be legally liable to such source if it purchased the same or like parts from another source; or

"(E) a statute requires or authorizes that the parts be purchased through another agency or from a specific source.

"(2) Paragraph (1) does not apply to a contract for less than \$25,000.

"(3) For the purposes of paragraph (1), the head of an activity is the senior commissioned officer or civilian official of the Department of Defense who is assigned to, or employed by, that activity, whose duty station is at or near the same site as the duty station of the officer or official who has authority to enter into the contract on behalf of the United States, and who is a supervisor of that officer or official with respect to the performance of procurement functions.

"(c)(1) Within 180 days after the date of the enactment of this section, the Secretary of Defense shall prescribe by regulations what constitutes a legitimate proprietary interest of contractors in technical or other data. Such regulations shall be prescribed as a part of the single system of Government-wide procurement regulations prescribed under subsections (a) and (b) of section 6 of the Office of Federal Procurement Policy Act (commonly referred to as the 'Federal Acquisition Regulations') (41 U.S.C. 405). In prescribing such regulations, the Secretary of Defense shall give consideration to the following:—

"(A) The statement of congressional policy and objectives in section 200 of title 35, the statement of purposes in section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97-219; 15 U.S.C. 638 note), and the statement of the policy of Business Act (15 U.S.C. 637).

"(B) The interest of the United States in increasing competition and lowering costs by developing and locating alternative sources of supply and manufacture.

"(C) The rights of the United States to any technical or other data which is developed in whole or in part with Federal funds.

"(D) The placement of a time limit on rights of a business concern to technical or other data developed substantially with Federal funds if such data is needed to ensure the use of competitive procurement methods for the future acquisition of parts to which such data pertains.

"(2) Regulations prescribed under paragraph (1) shall—

"(A) direct appropriate agencies of the Department of Defense to establish reverse engineering programs which provide domestic business concerns an opportunity to purchase or borrow spare or replacement parts from the United States for the purpose of design replication or modification to be used by such concerns in the submission of subsequent offers to sell the same or like parts to the United States, but nothing in this clause shall limit the authority of the head of an agency to impose restrictions on such a program related to national security considerations, inventory needs of the United States, the improbability of future purchases of the same or like parts, or any additional restrictions otherwise required by law;

"(B) require that the procuring agency, with respect to each major system acquisition, negotiate with the contractor, and include in the initial development contract and each subsequent production contract, provisions pertaining to technical or other data developed in whole or in part with Federal funds that specify the right of the United States to own, license, use, or otherwise have access to the data and the extent,

if any, of the proprietary interest maintained by the contractor in the data; and

"(C) provide for the imposition of appropriate remedial measures against contractors which improperly designate technical or other data as proprietary.

"(A) The Secretary of Defense shall—
 "(A) consult with representatives of associations representing small business concerns before prescribing regulations under paragraph (1); and

"(B) after such regulations are prescribed, submit to Congress a report detailing how such regulations give consideration to the factors described in clauses (A) through (D) of paragraph (1) and implement the requirements of paragraph (2).

"(d) The Secretary of Defense shall provide that manufacturing data, technical data, or other data that is the property of the United States and under the jurisdiction of the Department of Defense shall be catalogued, stored, and inventoried in a manner allowing for its ready and timely access by any domestic business concern upon the request of the business concern.

"(e) This section does not apply to the National Aeronautics and Space Administration or to the Coast Guard.

"§ 2320. Commercial pricing for spare parts

"(a) Except as provided in subsection (b), a contract made by the Department of Defense for the purchase of spare or replacement parts having commercial application that is made by negotiation may not result in a cost to the United States that exceeds the lowest price at which such parts are made available by the contractor to commercial buyers.

"(b) Subsection (a) does not apply to a contract if the head of the activity within the Department of Defense that administers payments under the contract certifies that the use of the price otherwise required by subsection (a) is not appropriate because of—

"(1) National security considerations; or
 "(2) differences in quantities, quality, delivery, or other terms and conditions of the contract from commercial contract terms.

"(c) A person who submits an offer to the Department of Defense for the supply of spare or replacement parts having commercial application shall certify in its offer that the price offered is its lowest commercial price for the parts or shall submit with the offer a written statement specifying the amount of the excess above the lowest commercial price of the offeror for the products, providing a justification for that excess, and requesting a waiver under subsection (b)(2).

"(d) For the purposes of subsection (b), the head of an activity is the senior commissioned officer or civilian official of the Department of Defense who is assigned to, or employed by, that activity, whose duty station is at or near the same site as the duty station of the officer or official who has authority to administer the contract on behalf of the United States, and who is a supervisor of that officer or official with respect to the performance of contract administration functions.

"§ 2321. Fair distribution of overhead charges for spare parts

"(a) A contract made by the Department of Defense for the purchase of spare or replacement parts may not result in a cost to the United States that exceeds the sum of—

"(1) the direct costs incurred by the contractor for such parts,
 "(2) a share of the contractor's overhead that is directly attributable to such parts, and
 "(3) a reasonable profit.

"(b) Overhead that may be allowed under subsection (a) shall be limited to those amounts that are actually incurred by the contractor and that are properly attributable to—

"(1) the manufacture of the parts covered by the contract;

"(2) changes or modifications made to such parts;

"(3) the testing and evaluation of such parts;

"(4) any value otherwise by the contractor to such parts; or

"(5) any other activity required as an element of performance under the contract.

"(c) Nothing in this section shall require the submission of cost or pricing data.

"(d) This section does not apply to a contract for the purchase of spare or replacement parts from a contractor who is a regular dealer in such parts within the meaning of the Act of June 30, 1936 (commonly referred to as the 'Waish Healey Act') (41 U.S.C. 35-45)."

(b) The table of such chapter is amended by adding at the end thereof the following new items:

- "2319. Competition for spare parts.
- "2320. Commercial pricing for spare parts.
- "2321. Fair distribution of overhead charges for spare parts."

Redesignate section 812 of the title proposed to be inserted by the amendment as section 813 and in subsection (b)(10) of that section strike out "sections 810 and 811" and insert in lieu thereof "sections 810, 811, and 812".

Mr. BEDELL (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.
 (By unanimous consent Mr. BEDELL was allowed to proceed for 10 additional minutes.)

Mr. BEDELL. Mr. Chairman, this amendment does not delete any part of the Nichols amendment. It simply strengthens the amendment and addresses some areas not addressed in the Nichols amendment.

Let me explain the major parts of what my amendment would do.

It provides that anyone can bid on a Government contract for spare parts without having to be on a qualified bidders or products list. Under Government regulations the Government does not have to accept the low bid unless the low bidder has been found to meet adequate criteria and the product has been tested and proven satisfactory.

Nor is it required that the contract go to the low bidder if time requirements preclude adequate testing of parts to be supplied.

Two, my amendment limits sole source contracting of spare parts except for five specific exceptions.

Three, it strengthens the Nichols bill on proprietary rights by requiring the Secretary of Defense to issue regulations that require up front negotiations on proprietary rights to enable potential suppliers to obtain sample parts for purposes of reverse engineer-

ing and to set forth penalties for violating regulations on proprietary rights. It does not remove any part of the Nichols bill in regard to proprietary rights, and those parts of the Nichols bill that are in the amendment, will continue to be in the amendment and will continue to be part of this legislation if my amendment is added.

Four, it requires contractors to supply parts at their lowest commercial price or justify reasons for any higher charge.

Five, it requires that only overhead applicable to the part can be charged to the Government. This will eliminate the ways the contractor justified \$435 for a \$7 hammer.

I had planned to include in this amendment a provision that costs would be a secondary consideration in the selection of architects and engineers with qualifications of the firm and the quality of the proposal receiving primary consideration.

Since this is different from the spare parts issue I have not included it in the amendment. But I will offer such an amendment later in this bill.

Mr. Chairman, the problem of Government procurement came to my attention when the Small Business Subcommittee which I chair held hearings on legislation that was referred to my subcommittee.

As a former businessman, I was shocked to find some of the problems that exist in Government procurement practices. My subcommittee held two full days of hearings on this matter in Washington. We also had a field hearing in North Carolina. My subcommittee investigation included a visit to a Government purchasing department in New York State, and I visited a procurement office in the Washington area.

□ 1730

In addition to this, my committee visited a Navy base in Florida to further investigate this matter. Time is limited. But as an example, I would like to tell the committee about one of my experiences. When the Army, Navy, and Air Force were testifying before us, I asked them "who is responsible for paying \$430-some for a hammer."

The admiral from the Navy said, "I am responsible for that. It was the Navy that did that."

"How did that happen?" I asked him.

"We needed a repair kit for flight simulators," he said, "and when the quote came in from this supplier since it came within our guidelines and seemed reasonable to the buyer, he did not check the prices on the individual items."

"How much did the repair kit cost?" I asked him.

"I don't know, but I can find out for you," he replied.

"I wish you would get for us the cost of the kit and also the cost of the individual items in the kit" I requested.

Well, we finally received the information from the Navy. The repair kit cost the taxpayers \$847,000. The hammer was one of the better buys; it cost only 62 times the normal retail price.

I purchased this tool kit from a local retail store for \$92.44 for some 21 items. Those are common items that include such items as pliers, thickness gages, hammers, socket drive. This 3/4-inch socket was \$1.43; the Government paid \$456 for it, for example.

On and on with the various items. This is the list of the 21 items I bought for a total of \$92.44.

The Government paid over \$10,000 for those identical items, over 100 times the retail price in total for those items. I also have a list of how the supplier justified charging \$436 for a hammer. Here are the figures that he gave us.

The hammer cost \$7, the material packaging \$1, material handling, \$2; spares-repair department, 1 hour; program support administration, 0.4 of an hour; program management; 1 hour; secretarial, 0.2 of an hour; 2.6 hours of engineering support, \$37; overhead, 110 percent, \$41; mechanical subassembly on a hammer, 0.3 of an hour; quality control, 0.9 of an hour; operation program management, 1.5 hours, program planning to buy a hammer, 4 hours; management projection, 1 hour; quality control, 1 hour; total 7.8 hours, \$93; manufacturing overhead, 110 percent, \$102; G&A, \$90; fee, \$56; total of \$436 for a \$7 hammer.

Mr. Chairman, we must bring some sense to this waste of taxpayers money. The Nichols amendment goes part way in addressing this problem.

My amendment does not dilute the Nichols amendment, it strengthens the Nichols amendment and legislates some further considerations in military spending.

Mr. Chairman, we cannot sit idly by and let this waste of taxpayers money continue. We must let our constituents know we mean business.

I urge support of my amendment and the support of the Nichols amendment including my strengthening amendment.

Mrs. HOLT. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Maryland.

Mrs. HOLT. I thank the gentleman. I commend him for supporting the Nichols amendment. I think it should be said here that the testimony we received in the Armed Services Committee was to the effect that this administration, through Mr. Carlucci's efforts, had brought all of this to light; that these are things that were written into contracts in the past and that now we are trying to change that.

I think it brought it to the press's attention, to the public's attention, and certainly should be commended and

we are trying to change those contracts.

Many vendors have been willing to rewrite the contracts so that these spare parts and these tools are not included in the total overhead. I think it is really time that we all set about trying to correct that. But the administration does deserve credit for bringing this to light; bringing it out in the open and making the press and the public aware of it.

I thank the gentleman.

Mr. BEDELL. If I may reclaim my time, I think it is correct the administration is making some efforts. But I would tell the gentlewoman from Maryland that the only way we found this out was by the pursuit of our subcommittee of demanding that we get the information.

I would tell the gentlewoman first that I have had the Navy in my office and the Navy seems to think this method of procurement is still perfectly satisfactory. So that I would hope that the gentlewoman would understand that in this particular case we had to demand from the Navy the information as to what they had paid and it took a large number of phone calls to get it.

Mrs. HOLT. If the gentleman would yield further, certainly in the Armed Services Committee it was brought to the attention of the subcommittee. We were making every effort to try to correct legislation or prepare legislation that would force the Defense Department to look at it further.

But the initial bringing this to light was done by Mr. Carlucci and the people in the Defense Department. When the press began to talk about it then all the committees became concerned and the people became concerned.

But I do think they deserve credit for pointing out the way that these contracts had been written in the past and that it should be corrected.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank my colleague for yielding. Let me make sure I understand the purpose of your presentation. No. 1, do you support the Nichols amendment?

Mr. BEDELL. I support the Nichols amendment and my amendment does not delete anything that is in the Nichols amendment.

If my amendment is passed and we then pass the Nichols amendment as amended by Bedell, it would include everything that is already in the Nichols amendment.

Mr. ROEMER. I see. So your amendment would be in addition to?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. Is it true your amendment would be directed toward competition and adding to the number of firms that might bid on these parts

or individual assemblies thereof, is that true?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. I have a feeling and it is unofficial; informal, that there is some objection to your amendment. Have you had that same feeling?

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. ROEMER and by unanimous consent, Mr. BEDELL was allowed to proceed for 2 additional minutes.)

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank the gentleman from Iowa for yielding.

Does the gentleman have the same feeling that some object, and could you help us, those of us who have not been either on your subcommittee or theirs, as to why they might object to increasing competition or increasing the number of bidders on these spare parts?

Mr. BEDELL. I will do what I can. One of the provisions of my amendment says that anybody can bid on a Government contract. There are those who say that they do not want anybody to bid unless they are qualified bidders or qualified products list.

In my opinion this is a restriction of competition and this indeed is a way of keeping people from being able to bid. Some people object to that. But it should be clearly understood that if my amendment is passed and is added to the Nichols amendment, that anybody will be able to bid but the Government will not be required to take the low bidder until they have satisfied themselves that both the product and the bidder meet the adequate criteria to meet their requirements and if there is not time to do that they are not required to take the low bid.

Mr. ROEMER. I thank the gentleman.

Mr. OTTINGER. Mr. Chairman, will the gentleman from Iowa yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. OTTINGER. I just would like to congratulate the gentleman for the fine job he has done in his subcommittee in bringing out these horrendous situations to public scrutiny, and for his amendment which really adds to and puts teeth into the Nichols amendment which I join him in supporting.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. ADDABBO. I thank the gentleman for yielding.

I sit on the subcommittee with the gentleman. I wish to commend him on this amendment. I think it is very important. I think it is very important. I think we have proven in the past through our hearings with the Small Business Committee that where there is competition you not only get lower prices but you also get better

quality; especially when there is small business involved.

I ask the House to support the gentleman's amendment.

Mr. Chairman, I rise in strong support of the Bedell amendments to H.R. 5167.

Recently a considerable amount of publicity has been given to DOD's purchasing procedures in the area of spare and replacement parts. For example, press reports revealed instances where DOD paid \$1,118 for a plastic stool cap, \$104 for an electric diode and \$435 for an ordinary claw hammer. These outrageous procurement practices are by no means novel to the Congress. The Defense Appropriations Subcommittee has repeatedly directed DOD to improve its record with regard to spare part purchases.

I would like to point out what action has been taken by the Congress and why we are here now in 1984 to legislate some solutions.

In 1968 the Defense Appropriations Subcommittee found that "no procedures to coordinate procurement of this type had been established."

In 1969 the committee report stated that DOD "was not making sufficient and realistic attempts to obtain competition in the procurement of spare parts." The report found that 50 percent was negotiated without price competition.

In 1979 the committee report stated that procurement personnel were not really familiar with the items they were procuring and managing and that this made it easy to pass through the system items which were grossly overpriced. The committee directed DOD to establish remedial policies.

In 1980 the committee directed the establishment of component breakout programs to correct overpricing.

In 1981 the committee report highlighted the area of procurement of spares as needing additional manpower and encouraged DOD to find alternate sources.

In 1982 the committee report stated that "direct purchase of spares from subcontractors (rather than from the prime) should be pursued."

In spite of all these congressional directives dating back some 15 years, noncompetitive purchases of spare parts have actually increased from 50 percent in 1969 to 77 percent in 1982.

Finally in 1983, the fraud and abuse of the taxpayer's dollars was highlighted by the press. Only as a result of unfavorable publicity did DOD decide to make major changes in their procedures for purchasing spare parts.

Unfortunately, the 10-point memorandum issued by the Secretary of Defense in July, 1983 lacks specificity and fails to offer an adequate solution to the spare parts problem. For instance, there is clearly a need for DOD to specifically set forth what constitutes an adequate sole source justification. However, the memo merely states that DOD should " * * * accelerate reform of our basic contract proce-

dures to encourage competition and preclude overpricing." I assure you that within DOD this will only be interpreted as a "best efforts" missive rather than a mandate to get the job done. This is not the proper approach. Instead, specific restrictions should be placed upon the use of noncompetitive sole source contracts for spare parts. The Bedell amendment to H.R. 5167 accomplishes this by enumerating only five specific instances where a noncompetitive sole source contract for spare parts may be awarded.

Other anticompetitive practices are eliminated by the Bedell amendments. The qualified products list and qualified bidders list have been used by DOD to screen out potential offerors. All business concerns should be afforded the opportunity to offer their product or service to the Government. This will effectively increase competition and cost savings without any reduction in the quality of products furnished to the Government.

I urge all my colleagues to support the Bedell amendments to H.R. 5167 as a logical approach to promote competition, reduce, acquisition costs and maintain the Nation's full productive capacity.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the Chairman.

Mr. MITCHELL. I, too, congratulate the gentleman. This is the issue I was speaking to earlier in my colloquy with the gentleman from Alabama.

This puts some teeth into the thing and that is what is needed.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. MITCHELL and by unanimous consent, Mr. BEDELL was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. If your amendment did nothing else than to limit the use of the present qualification criteria, such as qualified products and bidders lists, if it did nothing else than that, that would be a major blow against this kind of rooking of the American public in terms of the way the agencies procure.

□ 1740

The argument will be raised that somehow or another this affects competition.

How in the name of God when you open up a bid to everybody can that affect competition adversely? Particularly when the gentleman insists that the military will have the final say so. The argument on competition is a specious argument. It does not belong here.

I would urge the House to support the gentleman's amendment.

Mr. SCHAEFER. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Colorado.

Mr. SCHAEFER. Mr. Chairman, I rise in support of this amendment, and I would like to thank the gentleman from Iowa for yielding a moment of his time to me to speak to this issue. This is an especially appropriate time for the House to consider solutions to the problems we have with our procurement system. The Department of Defense accounts for the vast majority of Federal purchase dollars and has faced heavy criticism for the inefficiencies in its procurement practices.

I am a member of the Small Business Subcommittee on oversight that held hearings on the procurement system. The findings were shocking—stories of waste and abuse are, tragically, numerous. Of course, there has been no lack of attention to these incredible stories, and I know that you are all well aware of the problems.

Since our oversight hearings we have made a concerted effort to find solutions. Earlier this week, the House approved a related measure, H.R. 4209, which will save the Federal Government millions of dollars—an important first step. The gentleman from Iowa's amendment offers us another opportunity to make significant progress. By increasing competition and amending current policies, this amendment may save billions of taxpayers' dollars and increase the ability of the Department of Defense to provide for the Nation's defenses.

As you read through this amendment you might be surprised that the remedy it recommends is not already practiced—frankly, the amendments just make commonsense.

For example, the Department of Defense would be prohibited from the arbitrary use of sole source noncompetitive contracts for the purchase of spare and replacement parts, which the General Accounting Office estimates could save 20-40 percent on these purchases; contractors would have to make their products available to the military at prices no higher than their lowest comparable commercial charge; though quality would remain the primary criterion, I think these initiatives make commonsense.

I encourage my colleagues to approve this amendment. It isn't the final solution, and we must continue our efforts to oversee and improve the procurement system, but we must begin today to put a halt to the terrible waste that is occurring. When deficit spending is threatening the Nation's well-being waste like this is both tragic and embarrassing. The Nation cannot afford it, and you and I, in keeping with our public trust, cannot allow it to continue.

The CHAIRMAN. The time of the gentleman from Iowa (Mr. BEDELL) has expired.

(At the request of Mr. MINETA and by unanimous consent, Mr. BEDELL was allowed to proceed for 3 additional minutes).

Mr. MINETA. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from California.

Mr. MINETA. I thank the gentleman for yielding.

Mr. Chairman, I rise for the purpose of engaging in a colloquy with our distinguished colleague from Iowa about his amendment.

In requiring the Secretary of Defense to promulgate regulations as the gentleman does in section 2317(C)(1)(d), would I be correct in stating that it is not the gentleman's intention to instruct or even permit the Secretary to require a transfer to the Government of proprietary technical data relating to products developed wholly at private expense and offered for sale to the general public such as the goods and services often developed by high tech industries?

Mr. BEDELL. Yes; the gentleman from California has correctly stated my position.

Mr. MINETA. And if the gentleman would yield further, are there procedures of note to assure us that the congressional intent in this very complex and important area be carried out by the Department of Defense?

Mr. BEDELL. Yes; as a matter of fact, I have included in my amendment a provision which requires that the Secretary shall after promulgating these regulations submit to the Congress a report detailing how such rules and regulations give due consideration to each of the objectives set forth in this section and discussed here tonight.

Mr. MINETA. I thank the gentleman for his answers. I congratulate him for his leadership in this very important issue and strongly support his amendment.

Mr. BILIRAKIS. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Florida.

(Mr. BILIRAKIS asked and was given permission to revise and extend his remarks.)

Mr. BILIRAKIS. I thank the gentleman for yielding.

Mr. Chairman, I rise in support of the Bedell amendment adding section 1010, and ask permission to revise and extend my remarks.

I will attempt to be brief here, but I wanted to make mention of the fact that when I first arrived in Congress, I was determined to oppose wasteful and excessive Federal spending.

This was part of the commitment I made to the residents who are greatly concerned of the Ninth Congressional District in Florida, and it was, and is, a commitment I take very seriously. At a time when we face large deficit spending, it is evident that we cannot tolerate waste in the Federal budget—from whatever the source.

In this regard, I have supported legislation in the past which would act to restore competition in DOD spare parts procurement. Within the normal committee process, I have backed legislation which would remove existing

barriers to competition and open up the procurement process.

This support was part of my general commitment to efficiency in Government spending, but it was also a reaction to continuing, specific reports of contract overcharges in spare parts procurement.

By now, many of the examples of this flagrant waste in spare parts procurement are well known to the public. But I think at least a few examples are worth mentioning. It has, for example, been documented that over \$1,100 was paid for a plastic stool cap worth barely a quarter, that \$430 was paid for a claw hammer, and that \$110 of taxpayer money was used to purchase a 4-cent diode.

In fact, I had first hand experience with these conditions. During an official visit to a defense procurement center in Florida, I borrowed a paper decal that was worth, at best, a few cents. It cost the Government and the American taxpayer approximately \$50. I know. I lost the decal and was faced with the discouraging probability of having to reimburse the Government for this expense.

The amendment before us would produce at least four major reforms in the spare parts procurement system. The amendment would: First, end the discriminatory use of qualified bidder's lists, which can act to exclude potential bidders from certain contracts; second, prohibit the arbitrary use of sole source contracts by imposing new criteria for their use; third, require the Department of Defense issue new rules and regulations concerning the definition of legitimate proprietary rights for purposes of DOD contracting, and fourth the amendment will require the Government to catalog, store, and inventory the manufacturing data it already owns so that this information will be more accessible to potential offerors.

Each of these reforms will allow more effective competition for DOD spare and replacement parts. As Mr. BEDELL has noted, we have been "jaw-boning" this issue for 15 years and during this time the percentage of sole source awards in spare parts procurement has risen from 50 percent in 1969 to an incredible 77 percent in 1982.

It strains credulity to suggest that we can have anything approaching the best buy when 77 percent of spare part contracts are let to one predetermined contractor. It strains the credibility of this institution to let this practice go on, to let spare parts, a \$13 billion a year expenditure, be purchased without effective competition.

I think it is time that we took some action and I believe the pending amendment will help to restore competition and result in lower end prices to the Government, and, of course, the American taxpayer. I urge my colleagues to join me in supporting this important alteration of DOD procurement law.

May 30, 1954

CONGRESSIONAL RECORD — HOUSE

H 4935

*Brooks opposes Beckell
Tech. data
provision*

The CHAIRMAN. The time of the gentleman from Iowa (Mr. BEDELL) has again expired.

(By unanimous consent, Mr. BEDELL was allowed to proceed for 1 additional minute.)

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Illinois.

Mr. DURBIN. I thank the gentleman for yielding.

Mr. Chairman, it is my understanding that the impact of the gentleman's amendment is to actually remove the list of qualified bidders and to allow a person or company to bid.

Mr. BEDELL. That is part of my amendment, yes.

Mr. DURBIN. Could I ask the gentleman to consider this worst case example and tell me how his amendment might apply.

What if a company was barred from bidding on Government work because that company had been found to have provided shoddy equipment or perhaps to have been guilty of criminal conduct, would this amendment now say that that company would have the right to bid, regardless of that moral turpitude?

Mr. BEDELL. But the Government would not accept the bid, nor be required to accept the bid. So it would be a useless procedure for him to go through.

Mr. DURBIN. So there is no requirement herein that the lowest bid be accepted?

Mr. BEDELL. No, there is no such requirement.

Mr. DURBIN. I thank the gentleman.

Mr. BROOKS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the amendment to the Nichols amendment while I support the effort to correct the abuses that DOD has been experiencing in the procurement of spare parts.

Now the gentleman's amendment to the Nichols amendment goes considerably beyond the purpose of spare parts.

In doing so, it threatens to disrupt the legitimate procurement activities of the Department of Defense in a wide range of products and services.

Mr. KAZEN. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from Texas.

Mr. KAZEN. I thank the gentleman for yielding.

Did I understand the gentleman to say that he opposes the Nichols amendment?

Mr. BROOKS. No; the gentleman is not correct in that.

Mr. KAZEN. I wanted to get the record straight.

Mr. BROOKS. The amendment by Mr. BEDELL to the Nichols amendment is the one which I find particularly objectionable.

I say that that amendment goes beyond the purchase of spare parts. It threatens to disrupt the legitimate procurement procedures of the Department in a pretty wide range of products and services.

The language contained in that amendment is similar to the portions of H.R. 2133, a bill to amend the Small Business Act which was scheduled to be voted upon by the House on May 15. But Chairman MITCHELL removed this bill from the calendar in part, I guess, because of the strong opposition by many Members of Congress and a large segment of private industry.

□ 1750

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my distinguished friend, the gentleman from Maryland.

Mr. MITCHELL. That was not the reason for pulling the bill.

Mr. BROOKS. What was the reason?

Mr. MITCHELL. I am going to tell the gentleman, if he will continue to yield to me.

Mr. BROOKS. I yield to my friend.

Mr. MITCHELL. There were some members of a subcommittee who thought that they would come up with a substitute which would have eroded the intent of H.R. 2133. And rather than come up with a half bill substitute, I wanted the strongest possible bill.

We are going to meet and we are going to come back with a bill as soon as I can get my Small Business Committee together.

That is essentially what BEDELL is doing with his amendment, making it stronger, because there is no way in the world that you can say that this amendment would disrupt the whole procurement system. But even if it did, my own basic gut feeling is that the only way you are going to get a fair shot with DOD in particular is to restructure the entire procurement process. It is not going to work without a complete restructuring.

I thank the gentleman for yielding.

Mr. BROOKS. Let me just comment and say that, in short, the bill which the gentleman described and which I call H.R. 2133 is, in my judgment, seriously flawed and is no less deficient when presented in a piecemeal fashion such as this little bit that they want to tack on Mr. NICHOLS' amendment.

Clearly, this amendment, while seeking to cure the illness, may kill the patient. It contains a provision which will have the effect of eliminating qualified bidders or products lists. These lists are used to insure that the Department receives thoroughly tested and proven products such as those used in the military and the space systems. And I am certain that the DOD has abused its use of these lists by keeping some qualified firms and products out of the Federal marketplace. But I will say this: If we

killed every program that experienced some abuse, some bad little horror story, we would not have a Department of Defense.

Another major area of deep concern is that the amendment seeks to empower the Secretary of Defense to define "legitimate proprietary interest" regarding technical and other data rights. Further, all Federal agencies, all of them, would have to adhere to the Secretary's determination in this matter. There are several serious problems related to this provision.

First, it is totally inappropriate for the Department of Defense to be issuing Government-wide regulations. Under current law, such regulations are issued by a council composed of DOD, NASA, and GSA under the leadership of the Office of Federal Procurement Policy. This procedure insures that the views of the major procuring agencies, as well as the public, are considered prior to the issuance of substantive changes in regulations. The amendment, however, requires only that associations representing small business concerns be consulted.

The CHAIRMAN. The time of the gentleman from Texas (Mr. BROOKS) has expired.

(By unanimous consent, Mr. BROOKS was allowed to proceed for 5 additional minutes.)

Mr. BROOKS. Second, this provision is not limited to spare parts and in fact affects a wide range of products and services such as computer software, scientific and medical devices, and other high technology items. Since there is no exemption for commercial products and other items developed at private expense, the provision will encourage the violation of proprietary data rights of small and large companies alike. Once again, just because there are data rights abuses in the spare parts area, there is no reason to apply a remedy which will adversely affect a wide range of Government suppliers.

Despite the concerns that I have outlined, many of my colleagues may find it a little bit difficult to vote against an amendment which purports to solve the problem of the \$435 clawhammer. But I would like to point out that we have been faced before with many so-called reform measures that cause much more harm than good.

I would urge all Members to look at this proposal for what it is and to vote against it and support the Nichols amendment without this decoration.

Mr. ROTH. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to the gentleman from Wisconsin, and then I will yield to the gentleman from Kentucky (Mr. HOPKINS).

Mr. ROTH. I thank the gentleman from Texas for yielding. I know he has given this legislation a good deal of thought and much consideration. The gentleman said that this amendment, the Bedell amendment, would disrupt

the procurement procedures. Well, we certainly would not want to do anything like that, would we. After all, GAO said that if we make the connections called for in this area over a period of time, we could have saved \$25 billion. The Grace Commission report said that within 1 year with competitive bidding, as the Bedell amendment calls for, we would save \$9.3 billion.

Now, we realize that our deficit is close to \$200 billion and this is not going to solve our deficit problems entirely. But certainly \$9.3 billion, my friend, is not chickenfeed. If anything, the Nichols amendment, which I support, and the Bedell amendment, which I support, do not go far enough, and I am going to tell the gentleman why I feel that way. There is no onus, no burden put on anyone in DOD because of these unconscionable cost overruns.

Mr. BROOKS. May I say to my friend that I am going to have to regain my time, because I promised also to yield to the gentleman from Kentucky (Mr. HOPKINS).

Mr. HOPKINS. I thank the gentleman for yielding.

Let me remind my colleagues that the gentleman in the well is the chairman of the Government Operations Committee and has spent many, many hours and has vast knowledge on this subject.

I would agree with my colleague from Maryland, perhaps this does not go far enough. But it is eons ahead of where we were.

And if I may ask the gentleman in the well, in his opinion, based on his knowledge and experience, if the amendment of the gentleman from Iowa were to pass, would it not open up bidding by all vendors and thereby open up the possibility that a vendor, well intended as he may be, might not be qualified to supply either the quality or the quantity that might be needed by the armed services?

Mr. BROOKS. I believe the gentleman states the situation accurately. I think it would endanger the procurement of properly tested equipment, services and facilities that many areas of our Defense establishment need in the worst way if we are going to have a good defense system.

Mr. HOPKINS. If the gentleman will yield further, would it not, then, if that were the case, based on the gentleman's experience, cost more, if that were the case, if that should happen?

Mr. BROOKS. I think that is correct. This will ultimately result in higher cost of spare parts. They are not facing the problem. They are trying to destroy the whole situation. They do not understand the entire procurement process. They are trying, with an aborting amendment, to set aside just what the Defense Department is supposed to do. What we need is general legislation. We need general legislation on competition. That is the heart of good pricing—competition.

Mr. HOPKINS. So the Nichols amendment then is a step in the right direction?

Mr. BROOKS. That is what I said and that is what I believe. It is not perfect. We are not going to cure the world, not the whole world, this week. But we can make a step forward, and the Nichols amendment does that.

Mr. HOPKINS. I thank the gentleman.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my friend, the gentleman from Louisiana.

The CHAIRMAN. The time of the gentleman from Texas (Mr. BROOKS) has again expired.

(On request of Mr. ROEMER and by unanimous consent, Mr. BROOKS was allowed to proceed for 1 additional minute.)

Mr. ROEMER. I thank my distinguished colleague for yielding.

Let me make sure I understand what the gentleman just said in answer to our colleague from Kentucky.

Is the gentleman making the case that if the Bedell amendment is adopted by this committee, the price of clawhammers is going to go up from \$435?

Mr. BROOKS. It could.

Mr. ROEMER. Does the gentleman really believe that?

Mr. BROOKS. I am not going to buy any of that. I did not buy this Allen wrench they offered for \$9,000. But the cost could go up. This Allen wrench was offered at \$9,000 to the Air Force, and it cost more than that whole stack of television gizmos that we had already on here.

Mr. ROEMER. The gentleman has made a serious charge about the amendment of the gentleman from Iowa, that the price of already inflated spare parts could go higher.

Mr. BROOKS. Yes; I think it could.

Mr. ROEMER. Could the gentleman explain his charge?

Mr. BROOKS. Sure, it could go higher, certainly.

Mr. ROEMER. How?

Mr. BROOKS. Would anybody in their right mind believe that you would sell an Allen wrench like this one for more than 45 cents? But they offered it to the Government for \$9,000. I do not think you could go much higher than \$9,000 on an Allen wrench.

Mr. NICHOLS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I must oppose the amendment offered by my friend from Iowa (Mr. BEDELL). In so doing, let me say that I commend my colleague for his persistence in bringing the problems associated with spare parts to the attention of the Members. We differ in the approach in solving these problems. After more than a year-long investigation and eight hearings on the subject, the Armed Services Commit-

tee has reported a rather comprehensive bill.

□ 1800

We believe that the provisions in the amendment just offered which have been accepted by my chairman and by my ranking minority Member, address the real issues in a much more comprehensive and effective manner.

Many of the provisions in my amendment encompass, and in fact are more stringent, are more demanding than those in the amendment offered by Mr. BEDELL. In addition, I am opposed to the substance of Mr. BEDELL's amendment and let me explain to the Members why.

The amendment would, in my judgment, preclude the Department of Defense's use of a qualified products list which are necessary to insure qualified products are offered to the Government. Let me explain the qualified products list, if I may.

It is much like getting the Underwriter's Laboratory seal of approval, which all consumers rely on as an indication that the products has met certain safety standards.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. OTTINGER. Why on Earth would you have to be on a qualified bidders list to supply a claw hammer or an allen wrench?

Mr. NICHOLS. Let me tell the gentleman that I am not talking about claw hammers. We have about 100,000 items a year that are bought out of the 4 million items that we buy on the qualified bidders list. Let me tell the gentleman why that is necessary that we not abandon the qualified bidders list, if I may.

We think it is necessary that DOD must test products ahead of time before we buy them. Because the Defense Department is obliged to buy from the lowest bidder, it does not have the option of going out and picking the best product and buying it. Those of you who read Jack Anderson's column, and I do not usually quote from Jack Anderson's column, but on the 17th of May, he gave a clear example why qualified bidder's lists are needed.

In that column he cited the loss of about 16,000 American servicemen in the last 21 years due to accidental death. And he stated, and I will quote:

Often our soldiers paid with their lives for penny-pinching practices that led to accidents. One such instance has been the increase in drowning accidents due to faulty and inadequate life jackets.

It is obvious then why lifejackets are on a qualified bidders list.

The same thing would apply for brake components on our aircraft. If that brake system fails or wears out prematurely, we do not only lose a \$25 or \$30 million aircraft, but we lost a human life as well.

I think it would be a very bad mistake to do away with qualified bidders lists. Bids ought to be evaluated ahead of time to determine if the product he offers meets Defense Department specifications. We need to ascertain the qualities of the product he is offering ahead of schedule and not after his bid has been offered.

I strongly object to the amendment offered by Mr. BEDELL.

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. MAVROULES. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has hit the nail right on the head with talking about screws and everything else here this afternoon.

The qualitative edge is one thing that we take pride in, because we do have that qualitative edge when we start talking and comparing with other nations. I think both amendments are pretty good. I am in support of the Nichols amendment and against the Bedell amendment, as much as I do that reluctantly. Let me give you my reasons why.

Although I personally, from the Armed Services point of view, have many differences with the Pentagon and the Defense Department, let us give credit where it is due. As for the Secretary of Defense, who ~~has~~ put into use at the present time his new auditing procedures; internal auditing, which again is attacking some of the problems that were referred to here this afternoon.

We have to take one step at a time, Mr. Chairman, one step at a time, and I think we have taken that initial step. We have sanitized our bill; I think it is a bill that could be approved by the Members of Congress, and we have put people on notice by stating this in our committee hearings. That, if indeed it does not work; if indeed it does not work, we are going to take a second look at it down the road.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. Nichols) has expired.

(By unanimous consent, Mr. Nichols was allowed to proceed for 2 additional minutes.)

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. MAVROULES. The other point that we must make crystal clear: All of those who testified before our committee, all of them, were asked one question when they were investigating the so-called fraudulence procedures, is that, "Do we have any proof of any fraud taking place among the contractors and the defense industry?"

Not once, not once did someone come forth, at least through our internal auditing group, stating that there was no fraud committed. That is a very, very important point. So the point that we have to make here this

afternoon is this: We have a good piece of legislation; we have had days and days of testimony on it. I think after listening to the Chairman here this afternoon, I think we have an obligation to go with those who took the testimony and came out with a decision.

Therefore, Mr. Chairman, I support your bill, and I am against the other amendment.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Ohio.

Mr. KASICH. You know, there are different ways of looking at things sometimes. In this instance, I must disagree with the argument of the distinguished chairman of the Government Operations Committee.

I would make the argument that if people in this Chamber are concerned about the spare parts problem, then they ought to read the amendment. Because in this amendment, as a colloquy between the sponsor of this amendment and another gentleman on the floor showed we have language that says that the Secretary of Defense ought to consider whether there should be a limit on proprietary rights if the data was developed substantially with Federal funds.

Under the current law, if Federal funds, if just one dime of Federal funds is used to develop a part, the data reverts to the Government. This amendment weakens the law that is now in effect.

Now, the gentleman has a toolbox up there, and he wants to solve the toolbox problem.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. Nichols) has again expired.

(By unanimous consent, Mr. Nichols was allowed to proceed for 1 additional minute.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Ohio.

Mr. KASICH. I happen to have some spare parts of my own. I have got a spring here that should cost 60 cents, but the Government paid \$15.27 for it. Under this amendment if that part was developed by a private company, that part could remain proprietary forever. The abuse would continue.

If the gentleman from Maryland is sincere in his efforts to try to solve this problem, then he cannot support any amendment that goes in the direction of watering down the 7-year limit on proprietary rights, which he complimented me for just 10 minutes ago.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. KASICH. If the gentleman would let me finish my statement, I would be more than happy to yield.

Mr. MITCHELL. I would ask that the gentleman not question my sincerity under any occasion.

Mr. KASICH. That is not what I am attempting to do.

Mr. MITCHELL. That is the way it came out.

Mr. KASICH. I want to apologize.

The CHAIRMAN. The Chair would insist on regular order. The gentleman from Alabama (Mr. Nichols) has the time.

Mr. KASICH. I want to say to the gentleman from Maryland that I do not in any way, shape, or form question his sincerity. What I am suggesting to the gentleman is that if he is serious about the 7-year limit that is placed on proprietary rights, which he argued is the most serious provision in the Nichols bill, then he cannot support this amendment.

Mr. NICHOLS. Mr. Chairman, I must ask that the amendment be defeated.

Mr. KASICH. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise to oppose the amendment for one basic reason: The gentleman who offers this amendment says it is designed to strengthen the Nichols bill. But the gentleman's amendment weakens the 7-year provision that is contained in the present Nichols bill, which now puts a limit on proprietary rights for those firms that develop parts with the use of Government funds, as well as those that develop parts at their own expense. I am particularly concerned about proprietary rights for items like a washer that the Government is paying 76 cents for, but could buy for 12 cents, or again, the spring, which the Government is paying \$15.27 for, but ought to be buying for 60 cents.

□ 1810

In a colloquy, the question was asked that if somebody should develop an item at their own expense, does that mean that their rights should be protected forever? The answer given to that question was yes, but I do not agree with that. If such practices are allowed to continue, companies that produce those simple parts will be allowed to be the sole supplier for these parts for as long as they wish, which means that company would operate forever in a monopoly situation with the Government.

That is a very, very important point, and I want the gentleman from Maryland, who complimented me on my provision, to understand my argument here. I certainly would never question the integrity or the sincerity of the gentleman from Maryland on this. In fact, I commend him for his work, but I want him to understand this very crucial argument.

The other point I tried to make is that language in this amendment weakens the present Federal law as it applies to proprietary rights. Under current Federal law, if the Government puts one dime into the development of that part, the data on that part reverts back to the Government. But the Bedell amendment states that if data is developed partially at Gov-

ernment expense, proprietary rights may be granted to the contractor. That is without question a weakening of current Federal law.

So if this House is sincere, if this House wants to make a strong effort to try to take a major step forward, Members will oppose this amendment.

Let me state one more thing that was not pointed out in the Nichols bill. There are two provisions in the Nichols bill, one that says a contractor cannot prevent a small contractor from selling to the Government. That has been one of the major problems that we have had, because major contractors have gone to their subcontractors and said, "You do not tell the Government you are making this part for us." The teeth in the Nichols bill says that that shall not occur.

And there is another significant feature in the Nichols bill, requiring contractors to identify the subcontractors who produce the part. That would allow the Government to go directly to the manufacturer of this spring or of this washer and buy that part directly from the subcontractors. There are, without question, teeth in the bill, in the provision I just mentioned and the limitation on proprietary rights. Ladies and gentlemen, we do not want to water down the 7-year provision that says that the Government ought to be able to collect data and allow other companies to use it to compete for parts, because it is competition that brings down the prices.

So when an argument is made on one side that we have expensive items, but then on the other side we weaken or suggest that we weaken current Federal law that is designed to get us the cheapest possible prices, I say that is not correct. I say we ought to review this amendment and we ought not to weaken the 7-year limit on proprietary rights, and we ought to continue to support the Nichols bill as now written.

Mr. PRICE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the Bedell amendment. We all agree that the overcharges for spare parts is inexcusable. What we disagree on is how to meet the problem.

The approach proposed by the gentleman from Alabama, (Mr. NICHOLS) is more comprehensive than that proposed by the gentleman from Iowa (Mr. BEDELL) and provides the best solution, in my opinion, to this unfortunate problem that has damaged the credibility of the defense procurement process.

Mr. Chairman, I oppose the amendment offered by the gentleman from Iowa (Mr. BEDELL).

Mr. FUQUA. Mr. Chairman, I move to strike the requisite number of words.

(Mr. FUQUA asked and was given permission to revise and extend his remarks.)

Mr. FUQUA. Mr. Chairman, I rise in opposition to the Bedell amendment and in support of the Nichols amendment, and I do it with great reluctance for my friend, the gentleman from Iowa, who I know, and my good friend, the gentleman from Maryland, who I know worked very hard in trying to perfect this amendment, but it does raise some very serious problems about some of the policy changes in the Federal procurement process which I think would be brought about if the amendment were adopted.

The Bedell amendment would provide that no small business could be denied the opportunity to have its offer considered by a Federal agency if it is not on a qualified bidders list or its products are not on a qualified products list. However, prequalification techniques are a standard and accepted practice in the Federal Procurement process.

These techniques, as used today, are neither designed to, nor do, to my knowledge, discriminate against small business or anybody else who desires to do business with the Federal Government. Rather, these procedures promote efficiency and economy to the Government, and are particularly important safeguards in areas requiring special skill, for instance in new technologies developed in the space program and a lot of the programs that come under the jurisdiction of the Committee on Science and Technology. My concern is that these goals would be impeded, rather than promoted, by such a provision of this kind.

If you were trying to buy a microscope, it is a lot different than someone building a clawhammer or an Allen wrench. Some of the sophisticated equipment that you need you must make sure that the people are qualified to produce not only quality but also that they can produce the product. If you get into a program and suddenly they default, as they may do, then the Government is back in the pickle again of trying to get out.

In addition, the amendment directs the Secretary of Defense to promulgate rules and regulations defining "legitimate proprietary interest," as has already been mentioned, in an attempt to restrict a perceived abuse of such designations to impede competition.

Although the amendment states that the Secretary shall give due consideration to the statements of policy contained in the uniform patent bill for universities, small business, and not-for-profits—the thrust of the amendment is to look at the rights to technical data developed with Federal funds, a time limit on rights to technical data and requiring a contract clause specifying the Government's rights to own or use.

This part of the amendment runs contrary to the whole effort to encourage high technology expansion and innovation from these companies that work with the Federal Government.

For those reasons, I urge rejection of the amendment offered by the gentleman from Iowa.

Mr. AVCOIN. Mr. Chairman, will the gentleman yield?

Mr. FUQUA. I would be happy to yield to my friend, the gentleman from Oregon.

Mr. AVCOIN. I appreciate the gentleman yielding.

Mr. Chairman, the gentleman in the well knows the respect that this gentleman has for him. I do disagree with the statement that he has made and the position he has taken on the Bedell amendment, however, because in my judgment, Mr. BEDELL has laid out for us an alternative that has real teeth in it and offers a real chance for taxpayers to get the best deal they possibly can.

I think really that is what our job ought to be. One of the strengths of the Bedell amendment, it seems to me, is the reforms it offers in terms of sole-source procurement. I have not heard anything that the gentleman has said, and I am not picking on him because I have not heard anything in the whole discussion this afternoon about the reforms in sole-source procurement that the Bedell amendment offers.

I found out, to my astonishment, that in fiscal year 1982 the military spent \$13 billion on spares and replacement parts, and 77 percent of those purchases were on a sole-source, noncompetitive basis. The GAO report estimates that 30 to 40 percent savings could be found if we simply reformed that. Bedell does it. I cannot understand why the gentleman is opposed to that.

Mr. FUQUA. Let me say to my friend from Oregon that I am not condoning some of the previous practices that have gone on. I think the gentleman from Alabama is attempting to correct that, but in the process of doing this, let us not destroy the whole concept of competitive bidding by opening to unqualified bidders. Certainly everybody can do it and the present procedure of qualified bidders does not discriminate against anyone.

Mr. AVCOIN. I ask the gentleman, what is competition if it is not opening the doors and letting people in to bid?

Mr. FUQUA. We have open competition today. We need more.

Mr. LEVIN of Michigan. Mr. Chairman, as a cosponsor of H.R. 5064, the Defense Spare Parts Procurement Reform Act, I rise in support of the Nichols amendment on spare parts procurement.

The last 3 years have been marked by the most rapid and expensive military buildup in U.S. peacetime history. For many of us in Congress, the administration's sharp increases in the level of defense spending beyond levels necessary for an effective defense, especially during a time of serious economic stress, have been a source of major concern. This is why it is par-

FUQUA opposes tech data in Bedell

ticularly distressing to many of us in Congress and the public to read every day of million-dollar cost overruns in weapons programs, and the unfathomable prices our Government has paid for simple spare parts that can be purchased at hardware stores for a mere fraction of the cost we pay to contractors.

Last year, Congress took several important steps to promote accountability in military procurement by the creation of an independent Office of Operational Test and Evaluation to manage the weapons testing process; requiring weapons manufacturers to provide warranties on the weapons they sell to the government; and requiring the DOD to report to Congress on its efforts to solve the spare parts problem.

Mr. Chairman, this amendment takes direct steps to make necessary reforms in the defense acquisition process by getting at the heart of the spare parts problem: accountability and management incentive. This amendment is the culmination of almost a year of study by Chairman Nichols and his Investigations Subcommittee. The amendment will provide better planning in the procurement of spare parts by requiring DOD buyers to check existing inventories before ordering, in addition to checking the prior procurement history of the same item. It will allow the DOD to purchase directly from subcontractors, thereby eliminating the added expense of the contractor-as-middleman relationship. Additionally, it clears the uncertainty about technical rights by requiring contractors to stand behind any data they provide to the Government. The amendment also will allow for recognition of individual efforts to increase competition and achieve cost savings during personnel evaluations, and requires the assignment of a competition advocate to each contracting activity.

Mr. Chairman, as we embark on consideration of a spending measure to commit \$98 billion for military procurement, it is imperative that we act now to curb the waste and abuse in defense purchasing practices. I urge adoption of the Nichols amendment.

Mr. HARKIN. Mr. Chairman, it is time that American taxpayers stopped being played for suckers. We are all scandalized at the thought of the taxpayers shelling out \$436 for a \$7 hammer or \$938 for a \$5 plastic stool leg cap, and so forth.

The question is whether we are going to do anything about it. Congressman BEDELL's amendment will really have an effect. We should all support it.

The amendment increases the ability of small businesses to bid on these spare parts contracts. It opens up the system to competition. It is a scandal that the Department of Defense overpays by dozens and hundreds of times on some spare parts. A large part of the reason is that the Department

buys 77 percent of their spare parts through sole-source contracts where there is only one supplier. Back in 1969, a congressional report took the Department to task over spare parts. And, then, 50 percent of the purchases were negotiated without price competition. Now, 15 years later, things have gotten a lot worse.

Mr. Chairman, we need to do more than simply codify the Defense Department's regulations. The Bedell amendment has real teeth. It would prohibit arbitrary sole source bidding.

It also requires contractors to supply parts at the lowest commercial price. Any deviation would have to be specifically explained. If there is some reason for a very high price, if the national security or some very special circumstance exists, it should be explained. This provision is completely logical.

You hear all kinds of screams of anguish from the defense contractors. You hear about all kinds of technicalities. But, the question is: Are we here to serve the contractors or the taxpayers.

I urge a "yes" vote on the Bedell amendment. ●

□ 1820

Mr. DICKINSON. Mr. Chairman, we have been on this amendment now for an hour and 20 minutes. I ask unanimous consent that all debate on this amendment terminate at 6:30, 10 minutes from now.

The CHAIRMAN. On this amendment and all amendments thereto?

Mr. DICKINSON. On this amendment and all amendments thereto, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Alabama?

There was no objection.

The CHAIRMAN. Members standing at the time the time for limitation of debate was set will be recognized for 45 seconds each.

(By unanimous consent, Mr. MITCHELL yielded his time to Mr. BEDELL.)

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. OTTINGER).

Mr. OTTINGER. Mr. Chairman, I rise in strong support of the Bedell amendment.

I think some of the arguments that have been made here are spurious. There has clearly been a cozy relationship over the years among the Defense Department, the contractors, and the committee, and this qualified bidders' list is a key part of that, keeping people from being able to bid on particular products. The gentleman from Iowa made clear that the Defense Department, in selecting the bidder, has a right to look at the qualifications of that bidder. So the idea of having to purchase from people who cannot produce adequate brakes or lifejackets is just spurious.

Mr. Chairman, I urge adoption of the amendment.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. ZSCHAU).

Mr. ZSCHAU. Mr. Chairman, I would like to address a quick question to the author of the amendment, the gentleman from Iowa (Mr. BEDELL).

In his amendment it indicates that the Department of Defense should establish reverse engineering programs. Does that mean that if a company, for example, develops a printed circuit board like the one I have here, the Department of Defense would then be authorized at taxpayer expense to pay for reverse engineering of this in order to enable other people to develop it or to offer it for sale to the Government?

Mr. BEDELL. Mr. Chairman, will the gentleman yield?

Mr. ZSCHAU. I yield to the gentleman from Iowa.

Mr. BEDELL. No; the Department of Defense does not go to any expense in this regard. It simply opens it up so that other firms, if they wish to do so, would be able to obtain parts in order to be in a position to bid on those products.

The CHAIRMAN. The Chair recognizes the gentleman from Kentucky (Mr. HOPKINS).

Mr. HOPKINS. Mr. Chairman, the point I would like to make is that no one, to my knowledge, who has worked on this legislation now for over a year on the subcommittee is on the side of the contractors. Nobody is trying to shelter them. The fact is that anybody can bid who wants to and who is qualified.

The point is, if they are not qualified to produce, then it could end up costing the taxpayers more money, and I know of no member of this committee, I say to the gentleman from Iowa (Mr. BEDELL), who is well intentioned in his amendment, that wants that. I think this is a right step in the right direction.

The CHAIRMAN. The Chair recognizes the gentlewoman from California (Mrs. BOXER).

Mrs. BOXER. Mr. Chairman, I would like to say that I think the Bedell amendment strengthens the Nichols amendment, and I think both amendments are really good for the taxpayers, so I support both amendments.

I think the gentleman from Florida said in opposition to the Bedell amendment: "Don't destroy competitive bidding by opening it up to everybody."

I simply cannot agree with that statement. We should open it up to everybody to lower prices on these military spare parts. That is what competitive bidding is all about, and I hope we will support both of these amendments before us.

(By unanimous consent, Mr. STRATTON and Mr. DICKINSON yielded their time to Mr. NICHOLS).

The CHAIRMAN. The Chair recognizes the gentleman from Virginia (Mr. DANIEL).

Mr. DANIEL. Mr. Chairman, I ask the gentleman from Iowa (Mr. BEDELL) if he would respond to a question.

Is it my understanding that the gentleman's amendment in no way affects the procurement policy, practices, or regulations of the military commissaries?

Mr. BEDELL. Mr. Chairman, if the gentleman will yield, that is correct.

Mr. DANIEL. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The Chair recognizes the gentleman from Louisiana (Mr. ROEMER).

Mr. ROEMER. Mr. Chairman, I rise in support of the Nichols amendment and of the Bedell amendment. They fit together. They make stronger a process which is inherently weak.

I hear the objections from the other side that the dividing line is the qualified bid list. What the Bedell amendment does is open it up. In a strange free-enterprise system, he lets more companies bid on these products.

What is wrong with that?

He allows the military the right, having chosen the low bidder, to select the quality that meets their standards.

Mr. Chairman, the Bedell amendment is right here, and we as the Congress ought to follow it.

The CHAIRMAN. The Chair recognizes the gentleman from Massachusetts (Mr. CONTE).

(Mr. CONTE asked and was given permission to revise and extend his remarks.)

Mr. CONTE. Mr. Chairman, I support the Bedell amendment.

This amendment which is being considered will be, I think, another major step in bringing the word "competition" into the vocabulary of Government procurement. Once we limit the reasons that the Department of Defense can purchase spare parts under a sole-source process, we will create price competition and bring these prices down. Members of Congress will be very, very proud if we pass this amendment.

As a corollary benefit, this competition will involve more businesses in the defense procurement process, and this will strengthen and broaden the industrial base.

Mr. Chairman, in answer to the questions of the gentleman from Louisiana (Mr. ROEMER) to the—

The CHAIRMAN. The time of the gentleman from Massachusetts (Mr. CONTE) has expired.

The Chair recognizes the gentleman from Iowa (Mr. BEDELL).

Mr. BEDELL. Mr. Chairman, may I be permitted to close debate? It is my amendment. May I be permitted the opportunity to close debate?

Mr. CHAIRMAN. The Chair will state that that may be done only by unanimous consent.

Mr. BEDELL. Mr. Chairman, I ask unanimous consent that I be permitted to close debate.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Alabama (Mr. NICHOLS).

Mr. NICHOLS. Mr. Chairman, I rise to respond to the suggestion of the gentleman from Oregon that he had heard no discussion related to sole-source procurement. Let me say to the gentleman from Oregon that the figures he quoted are well known to our committee. They are of much concern to our committee, and we intend to do something about them.

For that reason, we have established competition advocates by law for every contracting office in the military in this country. These people are there with engineering and technical backgrounds and are able to challenge any claims that just one company can provide sole-source procurement for a part.

In addition, Mr. Chairman, there are presently pending three separate bills to establish by statute the exceptions for sole source on all contracts. The issue is better addressed in those bills, H.R. 2545, H.R. 5184, and S. 338.

Mr. Chairman, I appreciate the attention which the gentleman from Iowa has given this subject. I hate to have to oppose him, but I hope we will not do away with the qualified bidders list that is very, very important, and for that reason I urge the Members to vote down the Bedell amendment.

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. BEDELL).

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I rise in support of the gentleman's excellent amendment.

It has been said during the debate that this will disrupt the whole procurement process, particularly the procurement of items the defense establishment needs in the worst way.

The problem is that in too many instances the defense establishment is procuring those items in the worst way.

Mr. Chairman, I commend the gentleman from Alabama (Mr. NICHOLS) for his excellent amendment, and I support the amendment offered by the gentleman from Iowa (Mr. BEDELL) to that amendment. Something good and needed has been made better and is most definitely needed.

Mr. BEDELL. Mr. Chairman, I thank the gentleman from New York (Mr. BOEHLERT).

Mr. Chairman, the reason I requested to be last is that I wanted to find out if there were any other arguments against this amendment. As nearly as I can tell, the argument against the amendment is that it will open up competition and permit anyone to bid.

If Members are against anyone having an opportunity to bid, then

they ought to vote against my amendment. But I hope we are concerned enough about taxpayers' dollars that we are going to say right now that we are going to stop some of these practices.

Mr. Chairman, I want it understood clearly that my amendment does not delete any part of the Nichols amendment, and I urge a vote for this amendment.

The CHAIRMAN. All the time has expired.

The question is on the amendment offered by the gentleman from Iowa (Mr. BEDELL) to the amendment offered by the gentleman from Alabama (Mr. NICHOLS).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. NICHOLS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 324, noes 75, not voting 34, as follows:

(Roll No. 189)

AYES—324

Ackerman	Dannemeyer	Harrison
Addabbo	Daschle	Hayes
Akaka	Daub	Heiner
Albosta	Davis	Heffler
Anderson	de la Garza	Hefel
Andrews (NC)	Delums	Hightower
Andrews (TX)	Derrick	Keller
Applegate	Dicks	Howard
Archer	Donnelly	Hoyer
AuCoin	Dorgan	Hubbard
Barnes	Dowdy	Huckaby
Bartlett	Downey	Hughes
Bates	Dreier	Hyde
Bedell	Durbin	Ireland
Bellenson	Dwyer	Jacobs
Bereuter	Early	Jenkins
Berman	Eckart	Jones (NC)
Bethune	Edgar	Jones (OK)
Blaggi	Edwards (CA)	Jones (TN)
Billakis	Emerson	Kastner
Bliley	Erdreich	Kaplanmeier
Boehlert	Erlenborn	Kemp
Boggs	Evans (IA)	Kildee
Boland	Evans (IL)	Kindness
Boner	Fascell	Kleczka
Bonior	Fazio	Kugovsek
Bonker	Feltham	Koller
Borski	Ferraro	Kostmayer
Bosco	Fiedler	Kramer
Boucher	Fields	LaFalce
Boxer	Fish	Legomansino
Britt	Florio	Lantos
Broomfield	Foglietta	Latta
Brown (CA)	Foley	Leach
Brown (CO)	Ford (TN)	Leland
Broyhill	Fowler	Levin
Burton (CA)	Frank	Levine
Burton (IN)	Frenzel	Levitas
Campbell	Frost	Lewis (FL)
Carney	Garcia	Lipinski
Carper	Gekas	Livingston
Carr	Gephardt	Loeffler
Chapple	Gilman	Long (MD)
Clarke	Gingrich	Lovery (CA)
Clay	Glickman	Lowry (WA)
Coats	Gonzalez	Lujan
Coelho	Goodling	Luken
Coleman (TX)	Gradison	Lundene
Collins	Gramm	Lungren
Conable	Gray	Mack
Conte	Green	MacKay
Conyers	Gregg	Madigan
Cooper	Guarini	Markey
Corcoran	Gunderson	Marlenee
Coughlin	Hall (IN)	Martin (IL)
Courter	Hall, Ralph	Martin (NC)
Coyne	Hall, Sam	Martinez
Craig	Hamilton	Matsui
Crane, Daniel	Hammerschmidt	Mazouzi
Crane, Philip	Harkin	McCandless

McCollum
McDade
McGrath
McHugh
McKernan
McKinney
McNulty
Michel
Miller (CA)
Miller (OH)
Mineta
Mitchell
Moakley
Molinar
Mollohan
Moody
Moore
Moorhead
Mrasek
Murphy
Murtha
Natcher
Neel
Nelson
Nelson
Nowak
O'Brien
Oberstar
Obey
Olin
Ortiz
Ottinger
Owens
Panteta
Parris
Pashayan
Pattman
Patterson
Paul
Pease
Penny
Perkins
Petri
Pickle
Porter
Pritchard
Pursell
Rahall

Rangel
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Rodino
Roe
Roemer
Rogers
Rose
Rostenkowski
Roth
Roukema
Roybal
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Shannon
Sharp
Shaw
Shelby
Shumway
Sikorski
Siljander
Siskiy
Skeen
Slattery
Smith (FL)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Robert
Snowe
Snyder
Solarez
Solomon
Spratt

St Germain
Stagers
Stangeland
Stenholm
Stokes
Studds
Sundquist
Swift
Synar
Tauke
Tauxin
Taylor
Thomas (GA)
Torres
Torrice
Towns
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Wells
Wheat
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)

Messrs. SAWYER, BURTON of Indiana, COLEMAN of Texas, LIVINGSTON, ORTIZ, BLILEY, DOWDY of Mississippi, LUJAN, HEFNER, NELSON of Florida, KRAMER, PASHAYAN, and ROSE and Mrs. BOGGS changed their votes from "no" to "aye."

So the amendment to the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama (Mr. NICHOLS), as amended.

RECORDED VOTE

Mr. NICHOLS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 396, noes 0, not voting 37, as follows:

[Roll No. 190]

AYES—396

Ackerman
Addabbo
Akaka
Albosta
Alexander
Anderson
Andrews (NC)
Andrews (TX)
Annunzio
Applegate
Archer
Aspin
AuCoin
Badham
Barnes
Bartlett
Bateman
Bates
Dingell
Bezell
Bellenson
Bennett
Beretuer
Berman
Bethune
Bevill
Biaggi
Bilirakis
Bliley
Boehert
Boggs
Boiland
Boner
Bonior
Bonker
Borski
Bosco
Boucher
Boxer
Britt
Brooks
Broomfield
Brown (CA)
Brown (CO)
Broyhill
Burton (CA)
Burton (IN)
Campbell
Carney
Carper
Carr
Chandler
Chappell
Chapple
Cheney
Clarke
Clay
Clinger
Coats
Coelho
Coleman (TX)
Collins
Conable
Conte
Cooper
Corcoran
Coughlin
Courtier
Coyne
Craig
Crane, Daniel
Crane, Philip
Daniel
Dannemeyer
Darden
Daschle
Daub
Davis
de la Garza
Dellums
Derrick
DeWine
Dickinson
Dicks
Dingell
Donnelly
Dorgan
Dowdy
Downey
Dreier
Duncan
Durbin
Dwyer
Dyson
Early
Eckart
Edgar
Edwards (AL)
Edwards (CA)
Emerson
English
Erdreich
Erlenborn
Evans (IA)
Evans (IL)
Fascell
Fazio
Feighan
Ferraro
Fiedler
Fields
Fish
Filippo
Florio
Foglietta
Foley
Ford (MI)
Ford (TN)
Fowler
Frank
Frenzel
Frost
Fuqua
Garcia
Gejdenson
Gekas
Gephardt
Gillman
Gingrich
Glickman
Gonzalez
Goodling
Gradison
Gramm
Gray
Green
Gregg
Guarini
Gunderson
Hall (IN)
Hall, Ralph
Hall, Sam
Hamilton
Hammerschmidt
Hansen (UT)
Harkin
Harrison
Hartnett
Hatcher
Hayes
Heiner
Hefel
Hertel
Hightower
Hiler
Hills
Hopkins
Horton
Howard
Hoyer
Hubbard
Huckaby
Hughes
Hunter
Hutto
Hyde
Ireland
Jacobs
Jenkins
Johnson
Jones (NC)
Jones (OK)
Jones (TN)
Kaptur
Kasich
Kastenmeier
Kazen
Kemp
Kennelly
Kildee
Kindness
Kluczka
Kogovsek
Kolter
Kostmayer
Kramer
LaFalce
Lagomarsino
Lantos
Latta
Leach
Lehman (FL)
Leland
Levin
Levine
Levitas
Lewis (CA)
Lewis (FL)
Lipinski

Livingston
Lloyd
Loeffler
Long (LA)
Long (MD)
Lott
Lowery (CA)
Lowry (WA)
Lujan
Luken
Lundine
Lungren
Mack
MacKay
Madigan
Markey
Marlenee
Martin (IL)
Martin (NC)
Martin (NY)
Martinez
Matsui
Mavroules
Mazzoli
McCain
McCandless
McCloskey
McCollum
McCurdy
McDade
McEwen
McGrath
McHugh
McKernan
McKinney
McNulty
Mica
Michel
Mikulski
Miller (CA)
Miller (OH)
Mineta
Mitchell
Moakley
Molinar
Mollohan
Montgomery
Moody
Moore
Moorhead
Morrison (CT)
Morrison (WA)
Mrasek
Murphy
Murtha
Myers
Natcher
Neal
Nelson
Nichols
Nielsen
Nowak
O'Brien
Oberstar
Obey

Olin
Ortiz
Ottinger
Owens
Oxley
Panteta
Parris
Pashayan
Pattman
Patterson
Paul
Pease
Penny
Perkins
Petri
Pickle
Porter
Price
Pursell
Quillen
Rahall
Rangel
Ratchford
Ray
Regula
Reid
Richardson
Ridge
Rinaldo
Ritter
Roberts
Robinson
Roe
Rohrabacher
Rogers
Rose
Rostenkowski
Roth
Roukema
Rowland
Roybal
Kudd
Russo
Sabo
Savage
Sawyer
Schaefer
Scheuer
Schneider
Schroeder
Schulze
Schumer
Seiberling
Shannon
Sharp
Shaw
Shelby
Shumway
Shuster
Sikorski
Siljander
Siskiy
Skeen
Skelton
Slattery
Smith (FL)

Smith (IA)
Smith (NE)
Smith (NJ)
Smith, Denny
Smith, Robert
Snowe
Snyder
Solarez
Solomon
Spence
Spratt
St Germain
Stagers
Stangeland
Stenholm
Stokes
Stratton
Studds
Stump
Sundquist
Swift
Synar
Tauke
Tauxin
Taylor
Thomas (CA)
Thomas (GA)
Torres
Torrice
Towns
Traxler
Udall
Valentine
Vander Jagt
Vandergriff
Vento
Volkmer
Vucanovich
Walgren
Walker
Watkins
Waxman
Weaver
Weber
Wells
Wheat
Whitehurst
Whitley
Whittaker
Whitten
Williams (MT)
Williams (OH)
Winn
Wise
Wolf
Wolpe
Wortley
Wyden
Wylie
Yates
Yatron
Young (AK)
Young (FL)
Young (MO)
Zschau

NOES—75

Alexander
Annunzio
Aspin
Badham
Bateman
Bennett
Bevill
Brooks
Byron
Chandler
Chappell
Cheney
Clinger
Daniel
Darden
DeWine
Dickinson
Dingell
Duncan
Dyson
Edwards (AL)
English
Filippo
Ford (MI)
Fuqua

NOT VOTING—34

Anthony
Barnard
Breax
Bryant
Coleman (MO)
Crockett
D'Amours
Dixon
Dymally
Edwards (OK)
Franklin
Gaydos
Gibbons
Gore
Hall (OH)
Hance
Hansen (ID)
Hawkins
Holt
Jeffords
Leath
Lehman (CA)
Lent
Marriott
Martin (NY)
Minish
Packard
Pepper
Sensenbrenner
Simon
Stark
Tallon
Wilson
Wirth

□ 1850

The Clerk announced the following pairs:

On this vote:
Mr. Lehman of California for, with Mr. Franklin against.
Mr. Crockett for, with Mrs. Holt against.

NOES—0

NOT VOTING—37

Anthony
Bernard
Breax
Bryant
Byron
Coleman (MO)
Conyers
Crockett
D'Amours
Dixon
Dymally
Edwards (OK)
Franklin
Gaydos
Gibbons
Gore
Hall (OH)
Hance
Hansen (ID)
Hawkins
Holt
Jeffords
Leath
Lehman (CA)
Lent
Marriott
Minish
Packard
Pepper
Pritchard
Rodino
Sensenbrenner
Simon
Stark
Tallon
Wilson
Wirth

□ 1900

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. STRATTON

Mr. STRATTON. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. STRATTON: Page 131, after line 2, insert the following

responsible for contracting and acquisition policy, and several auditors, as well as a competition advocate and breakout procurement center representative.

In each case we heard testimony about extraordinary prices charged by a contractor or enormous price increases from 1 year to the next. For example, in a recent audit by the Department of Defense Inspector General, of 15,000 aircraft engine parts reviewed, 4,000 had increased in price more than 500 percent and some by more than 1,000 percent. We heard from Navy and DOD auditors that the Government paid \$100 to \$110 for parts which were in the DOD supply system for \$0.04 and \$0.05.

Why did these increases or extraordinary payments occur? Were they isolated incidents? We heard numerous reasons from the DOD including lack of personnel to fill out the forms to requisition parts through the supply system; lack of technical data to compete acquisitions; inability to compete because the item was proprietary; and quality control problems if the Government buys a part from other than the known supplier. Ordering of parts and negotiating prices after the order is placed is justified because they do not have time to negotiate prices and still submit the order in time to account for the usual 18- to 24-month leadtime. But the problems uncovered and responses I just read are only the tip of the iceberg. The problem of spare part price increases, inventory management, and long leadtimes is a 20-year-old problem that resurfaces every few years. However, in that time there has never been an adequate solution proposed. I believe that has not occurred in part because this is a management problem which cannot be resolved by simply issuing new regulations or enacting legislation. The statutes and regulations which would prohibit many of the practices which led to these abuses are already in existence—they were simply not followed. The only way we will resolve these issues and insure that the taxpayers' money is not wasted is to focus attention to the problem. I think that has occurred as a result of the various hearings in both the House and the Senate, as well as the abundance of publicity which has been generated. However, the Armed Services Committee wants to insure that the attention and resources dedicated to resolving these issues in the Department of Defense do not wane once the publicity stops.

This amendment will accomplish that objective by imposing a management discipline on the system and by making it clear that Congress will not tolerate excessive spare parts prices. The committee worked long and hard to insure that this bill would attack the root causes and not just the symptoms of the problem. For these reasons I commend this amendment to

my fellow colleagues and urge your support.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has expired.

(On request of Mr. KASICH and by unanimous consent, Mr. NICHOLS was allowed to proceed for 4 additional minutes.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to my colleague on the committee, the gentleman from Ohio.

Mr. KASICH. I appreciate the gentleman yielding.

Mr. Chairman, let me say to the House that I could not agree more with the statements of the gentleman from Kentucky (Mr. HOPKINS). The House of Representatives, and I do not think it would be an overstatement to say that also the taxpayers of this country, owe a great debt of service to the chairman of the Subcommittee on Investigations. The chairman, under what was at many times intense pressure, called hearings time and time again to bring forward those people who, at the Government level, are in charge of procurement, a very complicated issue that took great deal of time to understand.

The chairman also saw fit to bring contractors before the subcommittee in an attempt to receive their side of the story and then put together a piece of spare parts legislation that was balanced.

Let us get to basics. The basics are that there were spare parts that were being sold by contractors to the Government for prices that were 200, 300, 400, even 500 percent in excess of what the Government should have paid for them. The public is frustrated. In fact, I even think that the majority party in this House has a commercial on television right now where we see a man hold up a wrench and say, "That is what we should be paying for this."

Everyone knows what we are talking about when we talk about the problems of inflated prices on spare parts. This legislation, the Nichols bill, which has been intensely studied and put together over a period in excess of 1 year, is going to go farther than any legislation in this Congress toward solving this problem.

I will give my colleagues a couple examples. The chairman has in his legislation the establishment of competition advocates. Those are people who will work in the services, and whose sole job will be to spur an increase in competition. We have already seen competition advocates successfully increase competition within the Navy. We are going to see it happen in other areas of the Armed Forces because of the language in this bill.

Another important item requires contractors to identify the manufacturers of items. What had been happening is that contractors were stamping their names on parts that had been manufactured by subcontractors,

and dramatically increasing the price that was being charged to the Government. The Nichols bill requires manufacturers to identify who actually made the part, and to eliminate all interference in the selling of those spare parts by the firm that manufactured it. If we go directly to the manufacturers, and bypass the prime contractors, we are going to get it for a much cheaper price.

The bill requires the Department of Defense to check its own spare parts supply inventory when ordering spare parts. In our investigation, the chairman found examples of the Government buying parts at excessive rates even though those same parts were available through the Government own inventory. We literally threw money away on parts that were sitting on our own shelves.

It also goes far in the data rights section. Let me say this: The data rights section is a vital part of this bill.

The chairman was good enough to accept an amendment from a freshman Republican that would provide a 7-year limit on proprietary rights. Under the current law, if a company receives proprietary rights on a product, that means for the next 200 years that company has the exclusive or monopoly right to sell that part to the Government. As the Air Force itself says, when you do not have competition in the procurement of spare parts the cost of those items will increase dramatically.

This bill provides for significant reform in the data rights area. It states that the Government will receive all data needed to procure the part. It states that when Government funds are used to research and develop an item, it will not be proprietary. And it provides a 7-year cutoff period, stating that after a period of 7 years or less, a company shall not have exclusive or monopoly rights to sell the part to the Government.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent, Mr. NICHOLS was allowed to proceed for 3 additional minutes.)

Mr. KASICH. If the gentleman will yield further, what it essentially will do is to permit the Government to bring more contractors into the process of bidding on spare parts. As we get more contractors, and as we have more competition, we are going to see a solution to this problem.

I want to compliment the gentleman from Alabama (Mr. NICHOLS) for standing up in what were very difficult times, coming forward with a bill that I think will go a long way toward solving the spare parts problem. It is not going to be totally solved under this bill but we go a long way toward that end and I want to compliment the chairman for his leadership in the subcommittee.

the procurement procedures. Well, we certainly would not want to do anything like that, would we. After all, GAO said that if we make the connections called for in this area over a period of time, we could have saved \$25 billion. The Grace Commission report said that within 1 year with competitive bidding, as the Bedell amendment calls for, we would save \$9.3 billion.

Now, we realize that our deficit is close to \$200 billion and this is not going to solve our deficit problems entirely. But certainly \$9.3 billion, my friend, is not chickenfeed. If anything, the Nichols amendment, which I support, and the Bedell amendment, which I support, do not go far enough, and I am going to tell the gentleman why I feel that way. There is no onus, no burden put on anyone in DOD because of these unconscionable cost overruns.

Mr. BROOKS. May I say to my friend that I am going to have to regain my time, because I promised also to yield to the gentleman from Kentucky (Mr. HOPKINS).

Mr. HOPKINS. I thank the gentleman for yielding.

Let me remind my colleagues that the gentleman in the well is the chairman of the Government Operations Committee and has spent many, many hours and has vast knowledge on this subject.

I would agree with my colleague from Maryland, perhaps this does not go far enough. But it is eons ahead of where we were.

And if I may ask the gentleman in the well, in his opinion, based on his knowledge and experience, if the amendment of the gentleman from Iowa were to pass, would it not open up bidding by all vendors and thereby open up the possibility that a vendor, well intended as he may be, might not be qualified to supply either the quality or the quantity that might be needed by the armed services?

Mr. BROOKS. I believe the gentleman states the situation accurately. I think it would endanger the procurement of properly tested equipment, services and facilities that many areas of our Defense establishment need in the worst way if we are going to have a good defense system.

Mr. HOPKINS. If the gentleman will yield further, would it not, then, if that were the case, based on the gentleman's experience, cost more, if that were the case, if that should happen?

Mr. BROOKS. I think that is correct. This will ultimately result in higher cost of spare parts. They are not facing the problem. They are trying to destroy the whole situation. They do not understand the entire procurement process. They are trying, with an aborting amendment, to set aside just what the Defense Department is supposed to do. What we need is general legislation. We need general legislation on competition. That is the heart of good pricing—competition.

Mr. HOPKINS. So the Nichols amendment then is a step in the right direction?

Mr. BROOKS. That is what I said and that is what I believe. It is not perfect. We are not going to cure the world, not the whole world, this week. But we can make a step forward, and the Nichols amendment does that.

Mr. HOPKINS. I thank the gentleman.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my friend, the gentleman from Louisiana.

The CHAIRMAN. The time of the gentleman from Texas (Mr. BROOKS) has again expired.

(On request of Mr. ROEMER and by unanimous consent, Mr. BROOKS was allowed to proceed for 1 additional minute.)

Mr. ROEMER. I thank my distinguished colleague for yielding.

Let me make sure I understand what the gentleman just said in answer to our colleague from Kentucky.

Is the gentleman making the case that if the Bedell amendment is adopted by this committee, the price of clawhammers is going to go up from \$435?

Mr. BROOKS. It could.

Mr. ROEMER. Does the gentleman really believe that?

Mr. BROOKS. I am not going to buy any of that. I did not buy this Allen wrench they offered for \$9,000. But the cost could go up. This Allen wrench was offered at \$9,000 to the Air Force, and it cost more than that whole stack of television gizmos that we had already on here.

Mr. ROEMER. The gentleman has made a serious charge about the amendment of the gentleman from Iowa, that the price of already inflated spare parts could go higher.

Mr. BROOKS. Yes; I think it could.

Mr. ROEMER. Could the gentleman explain his charge?

Mr. BROOKS. Sure, it could go higher, certainly.

Mr. ROEMER. How?

Mr. BROOKS. Would anybody in their right mind believe that you would sell an Allen wrench like this one for more than 45 cents? But they offered it to the Government for \$9,000. I do not think you could go much higher than \$9,000 on an Allen wrench.

Mr. NICHOLS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I must oppose the amendment offered by my friend from Iowa (Mr. BEDELL). In so doing, let me say that I commend my colleague for his persistence in bringing the problems associated with spare parts to the attention of the Members. We differ in the approach in solving these problems. After more than a year-long investigation and eight hearings on the subject, the Armed Services Commit-

tee has reported a rather comprehensive bill.

□ 1800

We believe that the provisions in the amendment just offered which have been accepted by my chairman and by my ranking minority Member, address the real issues in a much more comprehensive and effective manner.

Many of the provisions in my amendment encompass, and in fact are more stringent, are more demanding than those in the amendment offered by Mr. BEDELL. In addition, I am opposed to the substance of Mr. BEDELL's amendment and let me explain to the Members why.

The amendment would, in my judgment, preclude the Department of Defense's use of a qualified products list which are necessary to insure qualified products are offered to the Government. Let me explain the qualified products list, if I may.

It is much like getting the Underwriter's Laboratory seal of approval, which all consumers rely on as an indication that the products has met certain safety standards.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. OTTINGER. Why on Earth would you have to be on a qualified bidders list to supply a claw hammer or an allen wrench?

Mr. NICHOLS. Let me tell the gentleman that I am not talking about claw hammers. We have about 100,000 items a year that are bought out of the 4 million items that we buy on the qualified bidders list. Let me tell the gentleman why that is necessary that we not abandon the qualified bidders list, if I may.

We think it is necessary that DOD must test products ahead of time before we buy them. Because the Defense Department is obliged to buy from the lowest bidder, it does not have the option of going out and picking the best product and buying it. Those of you who read Jack Anderson's column, and I do not usually quote from Jack Anderson's column, but on the 17th of May, he gave a clear example why qualified bidders lists are needed.

In that column he cited the loss of about 16,000 American servicemen in the last 21 years due to accidental death. And he stated, and I will quote:

Often our soldiers paid with their lives the penny-pinching practices that led to accidents. One such instance has been the increase in drowning accidents due to faulty and inadequate life jackets.

It is obvious then why lifejackets are on a qualified bidders list.

The same thing would apply for brake components on our aircraft. If that brake system fails or wears off prematurely, we do not only lose a \$20 or \$30 million aircraft, but we lost a human life as well.

I think it would be a very bad mistake to do away with qualified bidders lists. Bids ought to be evaluated ahead of time to determine if the product he offers meets Defense Department specifications. We need to ascertain the qualities of the product he is offering ahead of schedule and not after his bid has been offered.

I strongly object to the amendment offered by Mr. BEDELL.

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. MAVROULES. I thank the gentleman for yielding.

Mr. Chairman, I think the gentleman has hit the nail right on the head with talking about screws and everything else here this afternoon.

The qualitative edge is one thing that we take pride in, because we do have that qualitative edge when we start talking and comparing with other nations. I think both amendments are pretty good. I am in support of the Nichols amendment and against the Bedell amendment, as much as I do that reluctantly. Let me give you my reasons why.

Although I personally, from the Armed Services point of view, have many differences with the Pentagon and the Defense Department, let us give credit where it is due. As for the Secretary of Defense, who has put into use at the present time his new auditing procedures; internal auditing, which again is attacking some of the problems that were referred to here this afternoon.

We have to take one step at a time, Mr. Chairman, one step at a time, and I think we have taken that initial step. We have sanitized our bill; I think it is a bill that could be approved by the Members of Congress, and we have put people on notice by stating this in our committee hearings. That, if indeed it does not work; if indeed it does not work, we are going to take a second look at it down the road.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. Nichols) has expired.

(By unanimous consent, Mr. Nichols was allowed to proceed for 2 additional minutes.)

Mr. MAVROULES. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. MAVROULES. The other point that we must make crystal clear: All of those who testified before our committee, all of them, were asked one question when they were investigating the so-called fraudulence procedures, is that, "Do we have any proof of any fraud taking place among the contractors and the defense industry?"

Not once, not once did someone come forth, at least through our internal auditing group, stating that there was no fraud committed. That is a very, very important point. So the point that we have to make here this

afternoon is this: We have a good piece of legislation; we have had days and days of testimony on it. I think after listening to the Chairman here this afternoon, I think we have an obligation to go with those who took the testimony and came out with a decision.

Therefore, Mr. Chairman, I support your bill, and I am against the other amendment.

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Ohio.

Mr. KASICH. You know, there are different ways of looking at things sometimes. In this instance, I must disagree with the argument of the distinguished chairman of the Government Operations Committee.

I would make the argument that if people in this Chamber are concerned about the spare parts problem, then they ought to read the amendment. Because in this amendment, as a colloquy between the sponsor of this amendment and another gentleman on the floor showed we have language that says that the Secretary of Defense ought to consider whether there should be a limit on proprietary rights, if the data was developed substantially with Federal funds.

Under the current law, if Federal funds, if just one dime of Federal funds is used to develop a part, the data reverts to the Government. This amendment weakens the law that is now in effect.

Now, the gentleman has a toolbox up there, and he wants to solve the toolbox problem.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. Nichols) has again expired.

(By unanimous consent, Mr. Nichols was allowed to proceed for 1 additional minute.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Ohio.

Mr. KASICH. I happen to have some spare parts of my own. I have got a spring here that should cost 60 cents, but the Government paid \$15.27 for it. Under this amendment if that part was developed by a private company, that part could remain proprietary forever. The abuse would continue.

If the gentleman from Maryland is sincere in his efforts to try to solve this problem, then he cannot support any amendment that goes in the direction of watering down the 7-year limit on proprietary rights, which he complimented me for just 10 minutes ago.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. KASICH. If the gentleman would let me finish my statement, I would be more than happy to yield.

Mr. MITCHELL. I would ask that the gentleman not question my sincerity under any occasion.

Mr. KASICH. That is not what I am attempting to do.

Mr. MITCHELL. That is the way it came out.

Mr. KASICH. I want to apologize.

The CHAIRMAN. The Chair would insist on regular order. The gentleman from Alabama (Mr. Nichols) has the time.

Mr. KASICH. I want to say to the gentleman from Maryland that I do not in any way, shape, or form question his sincerity. What I am suggesting to the gentleman is that if he is serious about the 7-year limit that is placed on proprietary rights, which he argued is the most serious provision in the Nichols bill, then he cannot support this amendment.

Mr. NICHOLS. Mr. Chairman, I must ask that the amendment be defeated.

Mr. KASICH. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I rise to oppose the amendment for one basic reason: The gentleman who offers this amendment says it is designed to strengthen the Nichols bill. But the gentleman's amendment weakens the 7-year provision that is contained in the present Nichols bill, which now puts a limit on proprietary rights for those firms that develop parts with the use of Government funds, as well as those that develop parts at their own expense. I am particularly concerned about proprietary rights for items like a washer that the Government is paying 76 cents for, but could buy for 12 cents, or again, the spring, which the Government is paying \$15.27 for, but ought to be buying for 60 cents.

□ 1810

In a colloquy, the question was asked that if somebody should develop an item at their own expense, does that mean that their rights should be protected forever? The answer given to that question was yes, but I do not agree with that. If such practices are allowed to continue, companies that produce those simple parts will be allowed to be the sole supplier for these parts for as long as they wish, which means that company would operate forever in a monopoly situation with the Government.

That is a very, very important point, and I want the gentleman from Maryland, who complimented me on my provision, to understand my argument here. I certainly would never question the integrity or the sincerity of the gentleman from Maryland on this. In fact, I commend him for his work, but I want him to understand this very crucial argument.

The other point I tried to make is that language in this amendment weakens the present Federal law as it applies to proprietary rights. Under current Federal law, if the Government puts one dime into the development of that part, the data on that part reverts back to the Government. But the Bedell amendment states that if data is developed partially at Gov-

Mr. NICHOLS. I thank the gentleman from Ohio.

Mr. COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Texas, a member of the committee.

(Mr. COLEMAN of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLEMAN of Texas. I thank the gentleman for yielding.

Mr. Chairman, I rise to express my strong support for the amendment offered today by Mr. NICHOLS, chairman of the House Armed Services Subcommittee on Investigations, to the Department of Defense authorization bill in the area of spare parts. I commend him and the members of his subcommittee for their hard work and leadership in this reform movement.

I am proud to be a cosponsor of the legislation, H.R. 5064, which is the basis of this amendment, as reported by the House Armed Services Committee. It represents a year of careful examination by the Investigations Subcommittee in response to the much publicized spare parts procurement process by the Defense Department. The amendment provides for more cost effective and efficient purchases of spare parts.

A great number of my constituents have contacted me to express their deep concern over the matter of excessive prices for spare parts by the military. This amendment helps alleviate some of those concerns. It directs that the Department of Defense should refuse to pay prices that are not fair and reasonable, should make purchases in quantities that offer the best price for the number of units needed, and use standard or commercial parts whenever technically acceptable or cost effective.

In addition, the amendment encourages competition by requiring that Government personnel evaluation systems recognize efforts to increase competition and other cost savings and mandates review of noncompetitive acquisitions. It requires contractors to identify manufacturers and producers of items so as to avoid the "middleman" where practical. The amendment also requires planning in the Department of Defense acquisitions to insure that the Department check its inventory and records before ordering from a contractor.

With respect to concerns about technical data, the amendment defines categories in which the Government shall have unlimited rights in technical data and requires contractors to warrant that data they provide be in conformance with the contract. It also mandates the Department to develop a plan for improving its data management system to allow for easier access to technical data which the Government possesses, and restricts certain limitations on the Government's use of technical data.

I think the amendment includes well-reasoned moves in the direction of much needed reform. I urge my colleagues to support it.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from California.

Mr. HUNTER. I appreciate the gentleman yielding.

Mr. Chairman, I simply want to say in the area of proprietary rights, data rights, in my experience with the Navy and with contractors that is one of the biggest problems we have and the biggest generator of cost overruns, where you have a company which makes an original part and thereafter for the next several hundred years has the right to repair that part, and there are other companies who could repair the part if they had the proprietary rights, if they had the data or the blueprints essentially that were available. They could it for maybe half the price but they cannot because the company that originally manufactured the part has the rights to that data.

I commend the committee for putting that very important element into this package. I think that this bill, in fact, will operate to greatly reduce the cost of defense to the American taxpayers.

Mr. NICHOLS. I thank the gentleman from California.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Maryland, the distinguished chairman of the Small Business Committee.

□ 1720

Mr. MITCHELL. I thank the gentleman for yielding. I want to commend him for his effort.

But I have a series of serious concerns about the nature of this amendment. I am appreciative of the fact that we are going to encourage agency personnel to do things through an evaluation system, the identification of items and so forth, encourage the establishment of data management systems. But you have to lay that against the background of what this Congress has been trying to do since 1969.

Since 1969, various committees of the Congress have looked at this issue and have suggested certain things that ought to be done. But they were never really done.

Essentially it got to be a jawboning process, with DOD, and which was blithely ignored. The record will show that when the dialog first got started 50 percent of the spare parts were sole source, noncompetitive in DOD. Despite 1969 and the ensuing years, that figure has risen to 77 percent.

I guess what I am saying, though, is I commend the gentleman for all of the work he has done, and particularly my colleague for his very good amendment. It comes almost down to, except

in the case of your amendment, it comes down to jawboning again.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent Mr. NICHOLS was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. That is my only concern. I would like to see an amendment that was a little bit tougher. Yours is all right, no question about that.

But the rest of it, it certainly seems to me to encourage, to encourage to identify, to encourage the agency to identify every other source, that is what we have been telling them since 1969, and that is what they have ignored.

Mr. NICHOLS. Let me respond to the gentleman, my friend from Maryland, and tell him he is exactly correct. This has been an ongoing problem ever since I have been in Congress, ever since you have been in Congress.

But let me remind the gentleman we have never put this into the law. We have always done it by regulations, and the Secretary of Defense, and admirals and generals, they come and they go. For that reason, that is why we are putting it into the law. We feel like it has sufficient teeth in it to do the job.

Mr. MITCHELL. I thank the gentleman for his explanation.

I am not yet satisfied, but I do commend you for these first forward steps you have taken.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the distinguished gentleman from Alabama for yielding. I endorse his amendment.

I support the very careful work which the gentleman has done. I commend him for the leadership which he has brought to the House, and I urge my colleagues to adopt his amendment.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Illinois.

(Mr. DURBIN asked and was given permission to extend remarks.)

Mr. DURBIN. Mr. Chairman, I would like to commend Mr. NICHOLS for preparing this legislation which shows that Members of Congress are truly concerned about eliminating waste, correcting system failures, and improving management deficiencies in the Government.

The Democratic freshmen have been concentrating their efforts on identifying ways to control the high Federal deficits. When the President's Private Sector Survey on Cost Control, the Grace Commission, published its findings earlier this year, we were naturally interested in applying those recom-

responsible for contracting and acquisition policy, and several auditors, as well as a competition advocate and breakout procurement center representative.

In each case we heard testimony about extraordinary prices charged by a contractor or enormous price increases from 1 year to the next. For example, in a recent audit by the Department of Defense Inspector General, of 15,000 aircraft engine parts reviewed, 4,000 had increased in price more than 500 percent and some by more than 1,000 percent. We heard from Navy and DOD auditors that the Government paid \$100 to \$110 for parts which were in the DOD supply system for \$0.04 and \$0.05.

Why did these increases or extraordinary payments occur? Were they isolated incidents? We heard numerous reasons from the DOD including lack of personnel to fill out the forms to requisition parts through the supply system; lack of technical data to compete acquisitions; inability to compete because the item was proprietary; and quality control problems if the Government buys a part from other than the known supplier. Ordering of parts and negotiating prices after the order is placed is justified because they do not have time to negotiate prices and still submit the order in time to account for the usual 18- to 24-month leadtime. But the problems uncovered and responses I just read are only the tip of the iceberg. The problem of spare part price increases, inventory management, and long leadtimes is a 20-year-old problem that resurfaces every few years. However, in that time there has never been an adequate solution proposed. I believe that has not occurred in part because this is a management problem which cannot be resolved by simply issuing new regulations or enacting legislation. The statutes and regulations which would prohibit many of the practices which led to these abuses are already in existence—they were simply not followed. The only way we will resolve these issues and insure that the taxpayers' money is not wasted is to focus attention to the problem. I think that has occurred as a result of the various hearings in both the House and the Senate, as well as the abundance of publicity which has been generated. However, the Armed Services Committee wants to insure that the attention and resources dedicated to resolving these issues in the Department of Defense do not wane once the publicity stops.

This amendment will accomplish that objective by imposing a management discipline on the system and by making it clear that Congress will not tolerate excessive spare parts prices. The committee worked long and hard to insure that this bill would attack the root causes and not just the symptoms of the problem. For these reasons I commend this amendment to

my fellow colleagues and urge your support.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has expired.

(On request of Mr. KASICH and by unanimous consent, Mr. NICHOLS was allowed to proceed for 4 additional minutes.)

Mr. KASICH. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to my colleague on the committee, the gentleman from Ohio.

Mr. KASICH. I appreciate the gentleman yielding.

Mr. Chairman, let me say to the House that I could not agree more with the statements of the gentleman from Kentucky (Mr. HOPKINS). The House of Representatives, and I do not think it would be an overstatement to say that also the taxpayers of this country, owe a great debt of service to the chairman of the Subcommittee on Investigations. The chairman, under what was at many times intense pressure, called hearings time and time again to bring forward those people who, at the Government level, are in charge of procurement, a very complicated issue that took great deal of time to understand.

The chairman also saw fit to bring contractors before the subcommittee in an attempt to receive their side of the story and then put together a piece of spare parts legislation that was balanced.

Let us get to basics. The basics are that there were spare parts that were being sold by contractors to the Government for prices that were 200, 300, 400, even 500 percent in excess of what the Government should have paid for them. The public is frustrated. In fact, I even think that the majority party in this House has a commercial on television right now where we see a man hold up a wrench and say, "That is what we should be paying for this."

Everyone knows what we are talking about when we talk about the problems of inflated prices on spare parts. This legislation, the Nichols bill, which has been intensely studied and put together over a period in excess of 1 year, is going to go farther than any legislation in this Congress toward solving this problem.

I will give my colleagues a couple examples. The chairman has in his legislation the establishment of competition advocates. Those are people who will work in the services, and whose sole job will be to spur an increase in competition. We have already seen competition advocates successfully increase competition within the Navy. We are going to see it happen in other areas of the Armed Forces because of the language in this bill.

Another important item requires contractors to identify the manufacturers of items. What had been happening is that contractors were stamping their names on parts that had been manufactured by subcontractors,

and dramatically increasing the price that was being charged to the Government. The Nichols bill requires manufacturers to identify who actually made the part, and to eliminate all interference in the selling of those spare parts by the firm that manufactured it. If we go directly to the manufacturers, and bypass the prime contractor, we are going to get it for a much cheaper price.

The bill requires the Department of Defense to check its own system supply inventory when ordering spare parts. In our investigation, the chairman found examples of the Government buying parts at excessive rates, even though those same parts were available through the Government's own inventory. We literally threw money away on parts that were sitting on our own shelves.

It also goes far in the data rights section. Let me say this: The data rights section is a vital part of this bill.

The chairman was good enough to accept an amendment from a freshman Republican that would provide a 7-year limit on proprietary rights. Under the current law, if a company receives proprietary rights on a product, that means for the next 200 years that company has the exclusive or monopoly right to sell that part to the Government. As the Air Force itself says, when you do not have competition in the procurement of spare parts, the cost of those items will increase dramatically.

This bill provides for significant reform in the data rights area. It states that the Government will receive all data needed to procure the part. It states that when Government funds are used to research and develop an item, it will not be proprietary. And it provides a 7-year cutoff period, stating that after a period of 7 years or less, a company shall not have exclusive or monopoly rights to sell the part to the Government.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent, Mr. NICHOLS was allowed to proceed for 3 additional minutes.)

Mr. KASICH. If the gentleman will yield further, what it essentially will do is to permit the Government to bring more contractors into the process of bidding on spare parts. As we get more contractors, and as we have more competition, we are going to see a solution to this problem.

I want to compliment the gentleman from Alabama (Mr. NICHOLS) for standing up in what were very difficult times, coming forward with a bill that I think will go a long way toward solving the spare parts problem. It is not going to be totally solved under this, but we go a long way toward, that end, and I want to compliment the chairman for his leadership in the subcommittee.

Mr. NICHOLS. I thank the gentleman from Ohio.

Mr. COLEMAN of Texas. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Texas, a member of the committee.

(Mr. COLEMAN of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLEMAN of Texas. I thank the gentleman for yielding.

Mr. Chairman, I rise to express my strong support for the amendment offered today by Mr. NICHOLS, chairman of the House Armed Services Subcommittee on Investigations, to the Department of Defense authorization bill in the area of spare parts. I commend him and the members of his subcommittee for their hard work and leadership in this reform movement.

I am proud to be a cosponsor of the legislation, H.R. 5064, which is the basis of this amendment, as reported by the House Armed Services Committee. It represents a year of careful examination by the Investigations Subcommittee in response to the much publicized spare parts procurement process by the Defense Department. The amendment provides for more cost effective and efficient purchases of spare parts.

A great number of my constituents have contacted me to express their deep concern over the matter of excessive prices for spare parts by the military. This amendment helps alleviate some of those concerns. It directs that the Department of Defense should refuse to pay prices that are not fair and reasonable, should make purchases in quantities that offer the best price for the number of units needed, and use standard or commercial parts whenever technically acceptable or cost effective.

In addition, the amendment encourages competition by requiring that Government personnel evaluation systems recognize efforts to increase competition and other cost savings and mandates review of noncompetitive acquisitions. It requires contractors to identify manufacturers and producers of items so as to avoid the "middleman" where practical. The amendment also requires planning in the Department of Defense acquisitions to insure that the Department check its inventory and records before ordering from a contractor.

With respect to concerns about technical data, the amendment defines categories in which the Government shall have unlimited rights in technical data and requires contractors to warrant that data they provide be in conformance with the contract. It also mandates the Department to develop a plan for improving its data management system to allow for easier access to technical data which the Government possesses, and restricts certain limitations on the Government's use of technical data.

I think the amendment includes well-reasoned moves in the direction of much needed reform. I urge my colleagues to support it.

Mr. HUNTER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from California.

Mr. HUNTER. I appreciate the gentleman yielding.

Mr. Chairman, I simply want to say in the area of proprietary rights, data rights, in my experience with the Navy and with contractors that is one of the biggest problems we have and the biggest generator of cost overruns, where you have a company which makes an original part and thereafter for the next several hundred years has the right to repair that part, and there are other companies who could repair the part if they had the proprietary rights, if they had the data or the blueprints essentially that were available. They could it for maybe half the price but they cannot because the company that originally manufactured the part has the rights to that data.

I commend the committee for putting that very important element into this package. I think that this bill, in fact, will operate to greatly reduce the cost of defense to the American taxpayers.

Mr. NICHOLS. I thank the gentleman from California.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Maryland, the distinguished chairman of the Small Business Committee.

□ 1720

Mr. MITCHELL. I thank the gentleman for yielding. I want to commend him for his effort.

But I have a series of serious concerns about the nature of this amendment. I am appreciative of the fact that we are going to encourage agency personnel to do things through an evaluation system, the identification of items and so forth, encourage the establishment of data management systems. But you have to lay that against the background of what this Congress has been trying to do since 1969.

Since 1969, various committees of the Congress have looked at this issue and have suggested certain things that ought to be done. But they were never really done.

Essentially it got to be a jawboning process, with DOD, and which was blithely ignored. The record will show that when the dialog first got started 50 percent of the spare parts were sole source, noncompetitive in DOD. Despite 1969 and the ensuing years, that figure has risen to 77 percent.

I guess what I am saying, though, is I commend the gentleman for all of the work he has done, and particularly my colleague for his very good amendment. It comes almost down to, except

in the case of your amendment, it comes down to jawboning again.

The CHAIRMAN. The time of the gentleman from Alabama (Mr. NICHOLS) has again expired.

(By unanimous consent Mr. NICHOLS was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. That is my only concern. I would like to see an amendment that was a little bit tougher. Yours is all right, no question about that.

But the rest of it, it certainly seems to me to encourage, to encourage to identify, to encourage the agency to identify every other source, that is what we have been telling them since 1969, and that is what they have ignored.

Mr. NICHOLS. Let me respond to the gentleman, my friend from Maryland, and tell him he is exactly correct. This has been an ongoing problem ever since I have been in Congress, ever since you have been in Congress.

But let me remind the gentleman we have never put this into the law. We have always done it by regulations, and the Secretary of Defense, and admirals and generals, they come and they go. For that reason, that is why we are putting it into the law. We feel like it has sufficient teeth in it to do the job.

Mr. MITCHELL. I thank the gentleman for his explanation.

I am not yet satisfied, but I do commend you for these first forward steps you have taken.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Michigan.

Mr. DINGELL. I thank the distinguished gentleman from Alabama for yielding. I endorse his amendment.

I support the very careful work which the gentleman has done. I commend him for the leadership which he has brought to the House, and I urge my colleagues to adopt his amendment.

Mr. DURBIN. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman from Illinois.

(Mr. DURBIN asked and was given permission to extend remarks.)

Mr. DURBIN. Mr. Chairman, I would like to commend Mr. NICHOLS for preparing this legislation which shows that Members of Congress are truly concerned about eliminating waste, correcting system failures, and improving management deficiencies in the Government.

The Democratic freshmen have been concentrating their efforts on identifying ways to control the high Federal deficits. When the President's Private Sector Survey on Cost Control, the Grace Commission, published its findings earlier this year, we were naturally interested in applying those recom-

ing and to set forth penalties for violating regulations on proprietary rights. It does not remove any part of the Nichols bill in regard to proprietary rights, and those parts of the Nichols bill that are in the amendment, will continue to be in the amendment and will continue to be part of this legislation if my amendment is added.

Four, it requires contractors to supply parts at their lowest commercial price or justify reasons for any higher charge.

Five, it requires that only overhead applicable to the part can be charged to the Government. This will eliminate the ways the contractor justified \$435 for a \$7 hammer.

I had planned to include in this amendment a provision that costs would be a secondary consideration in the selection of architects and engineers with qualifications of the firm and the quality of the proposal receiving primary consideration.

Since this is different from the spare parts issue I have not included it in the amendment. But I will offer such an amendment later in this bill.

Mr. Chairman, the problem of Government procurement came to my attention when the Small Business Subcommittee which I chair held hearings on legislation that was referred to my subcommittee.

As a former businessman, I was shocked to find some of the problems that exist in Government procurement practices. My subcommittee held two full days of hearings on this matter in Washington. We also had a field hearing in North Carolina. My subcommittee investigation included a visit to a Government purchasing department in New York State, and I visited a procurement office in the Washington area.

□ 1730

In addition to this, my committee visited a Navy base in Florida to further investigate this matter. Time is limited. But as an example, I would like to tell the committee about one of my experiences. When the Army, Navy, and Air Force were testifying before us, I asked them "who is responsible for paying \$430-some for a hammer."

The admiral from the Navy said, "I am responsible for that. It was the Navy that did that."

"How did that happen?" I asked him.

"We needed a repair kit for flight simulators," he said, "and when the quote came in from this supplier since it came within our guidelines and seemed reasonable to the buyer, he did not check the prices on the individual items."

"How much did the repair kit cost?" I asked him.

"I don't know, but I can find out for you," he replied.

"I wish you would get for us the cost of the kit and also the cost of the individual items in the kit" I requested.

Well, we finally received the information from the Navy. The repair kit cost the taxpayers \$847,000. The hammer was one of the better buys; it cost only 62 times the normal retail price.

I purchased this tool kit from a local retail store for \$92.44 for some 21 items. Those are common items that include such items as pliers, thickness gages, hammers, socket drive. This 5/8-inch socket was \$1.49; the Government paid \$456 for it, for example.

On and on with the various items. This is the list of the 21 items I bought for a total of \$92.44.

The Government paid over \$10,000 for those identical items, over 100 times the retail price in total for those items. I also have a list of how the supplier justified charging \$436 for a hammer. Here are the figures that he gave us.

The hammer cost \$7, the material packaging \$1, material handling, \$2; spares-repair department, 1 hour; program support administration, 0.4 of an hour; program management; 1 hour; secretarial, 0.2 of an hour; 2.6 hours of engineering support, \$37; overhead, 110 percent, \$41; mechanical subassembly on a hammer, 0.3 of an hour; quality control, 0.9 of an hour; operation program management, 1.5 hours, program planning to buy a hammer, 4 hours; management projection, 1 hour; quality control, 1 hour; total 7.8 hours, \$93; manufacturing overhead, 110 percent, \$102; G&A, \$90; fee, \$56; total of \$436 for a \$7 hammer.

Mr. Chairman, we must bring some sense to this waste of taxpayers money. The Nichols amendment goes part way in addressing this problem.

My amendment does not dilute the Nichols amendment, it strengthens the Nichols amendment and legislates some further considerations in military spending.

Mr. Chairman, we cannot sit idly by and let this waste of taxpayers money continue. We must let our constituents know we mean business.

I urge support of my amendment and the support of the Nichols amendment including my strengthening amendment.

Mrs. HOLT. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Maryland.

Mrs. HOLT. I thank the gentleman. I commend him for supporting the Nichols amendment. I think it should be said here that the testimony we received in the Armed Services Committee was to the effect that this administration, through Mr. Carlucci's efforts, had brought all of this to light; that these are things that were written into contracts in the past and that now we are trying to change that.

I think it brought it to the press's attention, to the public's attention, and certainly should be commended and

we are trying to change those contracts.

Many vendors have been willing to rewrite the contracts so that these spare parts and these tools are not included in the total overhead. I think it is really time that we all set about trying to correct that. But the administration does deserve credit for bringing this to light; bringing it out in the open and making the press and the public aware of it.

I thank the gentleman.

Mr. BEDELL. If I may reclaim my time, I think it is correct the administration is making some efforts. But I would tell the gentlewoman from Maryland that the only way we found this out was by the pursuit of our subcommittee of demanding that we get the information.

I would tell the gentlewoman first that I have had the Navy in my office and the Navy seems to think this method of procurement is still perfectly satisfactory. So that I would hope that the gentlewoman would understand that in this particular case we had to demand from the Navy the information as to what they had paid and it took a large number of phone calls to get it.

Mrs. HOLT. If the gentleman would yield further, certainly in the Armed Services Committee it was brought to the attention of the subcommittee. We were making every effort to try to correct legislation or prepare legislation that would force the Defense Department to look at it further.

But the initial bringing this to light was done by Mr. Carlucci and the people in the Defense Department. When the press began to talk about it then all the committees became concerned and the people became concerned.

But I do think they deserve credit for pointing out the way that these contracts had been written in the past and that it should be corrected.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank my colleague for yielding. Let me make sure I understand the purpose of your presentation. No. 1, do you support the Nichols amendment?

Mr. BEDELL. I support the Nichols amendment and my amendment does not delete anything that is in the Nichols amendment.

If my amendment is passed and we then pass the Nichols amendment as amended by Bedell, it would include everything that is already in the Nichols amendment.

Mr. ROEMER. I see. So your amendment would be in addition to?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. Is it true your amendment would be directed toward competition and adding to the number of firms that might bid on these parts

or individual assemblies thereof, is that true?

Mr. BEDELL. That is absolutely correct.

Mr. ROEMER. I have a feeling and it is unofficial; informal, that there is some objection to your amendment. Have you had that same feeling?

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. ROEMER and by unanimous consent, Mr. BEDELL was allowed to proceed for 2 additional minutes.)

Mr. BEDELL. I yield to the gentleman from Louisiana.

Mr. ROEMER. I thank the gentleman from Iowa for yielding.

Does the gentleman have the same feeling that some object, and could you help us, those of us who have not been either on your subcommittee or theirs; as to why they might object to increasing competition or increasing the number of bidders on these spare parts?

Mr. BEDELL. I will do what I can. One of the provisions of my amendment says that anybody can bid on a Government contract. There are those who say that they do not want anybody to bid unless they are qualified bidders or qualified products list.

In my opinion this is a restriction of competition and this indeed is a way of keeping people from being able to bid. Some people object to that. But it should be clearly understood that if my amendment is passed and is added to the Nichols amendment, that anybody will be able to bid but the Government will not be required to take the low bidder until they have satisfied themselves that both the product and the bidder meet the adequate criteria to meet their requirements and if there is not time to do that they are not required to take the low bid.

Mr. ROEMER. I thank the gentleman.

Mr. OTTINGER. Mr. Chairman, will the gentleman from Iowa yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. OTTINGER. I just would like to congratulate the gentleman for the fine job he has done in his subcommittee in bringing out these horrendous situations to public scrutiny, and for his amendment which really adds to and puts teeth into the Nichols amendment which I join him in supporting.

Mr. ADDABBO. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from New York.

Mr. ADDABBO. I thank the gentleman for yielding.

I sit on the subcommittee with the gentleman. I wish to commend him on this amendment. I think it is very important. I think we have proven in the past through our hearings with the Small Business Committee that where there is competition you not only get lower prices but you also get better

quality; especially when there is small business involved.

I ask the House to support the gentleman's amendment.

Mr. Chairman, I rise in strong support of the Bedell amendments to H.R. 5167.

Recently a considerable amount of publicity has been given to DOD's purchasing procedures in the area of spare and replacement parts. For example, press reports revealed instances where DOD paid \$1,118 for a plastic stool cap, \$104 for an electric diode and \$435 for an ordinary claw hammer. These outrageous procurement practices are by no means novel to the Congress. The Defense Appropriations Subcommittee has repeatedly directed DOD to improve its record with regard to spare part purchases;

I would like to point out what action has been taken by the Congress and why we are here now in 1984 to legislate some solutions.

In 1968 the Defense Appropriations Subcommittee found that "no procedures to coordinate procurement of this type had been established."

In 1969 the committee report stated that DOD "was not making sufficient and realistic attempts to obtain competition in the procurement of spare parts." The report found that 50 percent was negotiated without price competition.

In 1979 the committee report stated that procurement personnel were not really familiar with the items they were procuring and managing and that this made it easy to pass through the system items which were grossly overpriced. The committee directed DOD to establish remedial policies.

In 1980 the committee directed the establishment of component breakout programs to correct overpricing.

In 1981 the committee report highlighted the area of procurement of spares as needing additional manpower and encouraged DOD to find alternate sources.

In 1982 the committee report stated that "direct purchase of spares from subcontractors (rather than from the prime) should be pursued."

In spite of all these congressional directives dating back some 15 years, noncompetitive purchases of spare parts have actually increased from 50 percent in 1969 to 77 percent in 1982.

Finally in 1983, the fraud and abuse of the taxpayer's dollars was highlighted by the press. Only as a result of unfavorable publicity did DOD decide to make major changes in their procedures for purchasing spare parts. Unfortunately, the 10-point memorandum issued by the Secretary of Defense in July, 1983 lacks specificity and fails to offer an adequate solution to the spare parts problem. For instance, there is clearly a need for DOD to specifically set forth what constitutes an adequate sole source justification. However, the memo merely states that DOD should "accelerate reform of our basic contract proce-

dures to encourage competition and preclude overpricing." I assure you that within DOD this will only be interpreted as a "best efforts" missive rather than a mandate to get the job done. This is not the proper approach. Instead, specific restrictions should be placed upon the use of noncompetitive sole source contracts for spare parts. The Bedell amendment to H.R. 5167 accomplishes this by enumerating only five specific instances where a noncompetitive sole source contract for spare parts may be awarded.

Other anticompetitive practices are eliminated by the Bedell amendments. The qualified products list and qualified bidders list have been used by DOD to screen out potential offerors. All business concerns should be afforded the opportunity to offer their product or service to the Government. This will effectively increase competition and cost savings without any reduction in the quality of products furnished to the Government.

I urge all my colleagues to support the Bedell amendments to H.R. 5167 as a logical approach to promote competition, reduce, acquisition costs and maintain the Nation's full productive capacity.

Mr. MITCHELL. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the Chairman.

Mr. MITCHELL. I, too, congratulate the gentleman. This is the issue I was speaking to earlier in my colloquy with the gentleman from Alabama.

This puts some teeth into the thing and that is what is needed.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. MITCHELL and by unanimous consent, Mr. BEDELL was allowed to proceed for 2 additional minutes.)

Mr. MITCHELL. If your amendment did nothing else than to limit the use of the present qualification criteria, such as qualified products and bidders lists, if it did nothing else than that, that would be a major blow against this kind of rooking of the American public in terms of the way the agencies procure.

□ 1740

The argument will be raised that somehow or another this affects competition.

How in the name of God when you open up a bid to everybody can that affect competition adversely? Particularly when the gentleman insists that the military will have the final say so. The argument on competition is a specious argument. It does not belong here.

I would urge the House to support the gentleman's amendment.

Mr. SCHAEFER. Mr. Chairman, will the gentleman yield?

Mr. BEDELL. I yield to the gentleman from Colorado.

the procurement procedures. Well, we certainly would not want to do anything like that, would we. After all, GAO said that if we make the connections called for in this area over a period of time, we could have saved \$25 billion. The Grace Commission report said that within 1 year with competitive bidding, as the Bedell amendment calls for, we would save \$9.3 billion.

Now, we realize that our deficit is close to \$200 billion and this is not going to solve our deficit problems entirely. But certainly \$9.3 billion, my friend, is not chickenfeed. If anything, the Nichols amendment, which I support, and the Bedell amendment, which I support, do not go far enough, and I am going to tell the gentleman why I feel that way. There is no onus, no burden put on anyone in DOD because of these unconscionable cost overruns.

Mr. BROOKS. May I say to my friend that I am going to have to regain my time, because I promised also to yield to the gentleman from Kentucky (Mr. HOPKINS).

Mr. HOPKINS. I thank the gentleman for yielding.

Let me remind my colleagues that the gentleman in the well is the chairman of the Government Operations Committee and has spent many, many hours and has vast knowledge on this subject.

I would agree with my colleague from Maryland, perhaps this does not go far enough. But it is eons ahead of where we were.

And if I may ask the gentleman in the well, in his opinion, based on his knowledge and experience, if the amendment of the gentleman from Iowa were to pass, would it not open up bidding by all vendors and thereby open up the possibility that a vendor, well intended as he may be, might not be qualified to supply either the quality or the quantity that might be needed by the armed services?

Mr. BROOKS. I believe the gentleman states the situation accurately. I think it would endanger the procurement of properly tested equipment, services and facilities that many areas of our Defense establishment need in the worst way if we are going to have a good defense system.

Mr. HOPKINS. If the gentleman will yield further, would it not, then, if that were the case, based on the gentleman's experience, cost more, if that were the case, if that should happen?

Mr. BROOKS. I think that is correct. This will ultimately result in higher cost of spare parts. They are not facing the problem. They are trying to destroy the whole situation. They do not understand the entire procurement process. They are trying, with an aborting amendment, to set aside just what the Defense Department is supposed to do. What we need is general legislation. We need general legislation on competition. That is the heart of good pricing—competition.

Mr. HOPKINS. So the Nichols amendment then is a step in the right direction?

Mr. BROOKS. That is what I said and that is what I believe. It is not perfect. We are not going to cure the world, not the whole world, this week. But we can make a step forward, and the Nichols amendment does that.

Mr. HOPKINS. I thank the gentleman.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. BROOKS. I yield to my friend, the gentleman from Louisiana.

The CHAIRMAN. The time of the gentleman from Texas (Mr. BROOKS) has again expired.

(On request of Mr. ROEMER and by unanimous consent, Mr. BROOKS was allowed to proceed for 1 additional minute.)

Mr. ROEMER. I thank my distinguished colleague for yielding.

Let me make sure I understand what the gentleman just said in answer to our colleague from Kentucky.

Is the gentleman making the case that if the Bedell amendment is adopted by this committee, the price of clawhammers is going to go up from \$435?

Mr. BROOKS. It could.

Mr. ROEMER. Does the gentleman really believe that?

Mr. BROOKS. I am not going to buy any of that. I did not buy this Allen wrench they offered for \$9,000. But the cost could go up. This Allen wrench was offered at \$9,000 to the Air Force, and it cost more than that whole stack of television gismos that we had already on here.

Mr. ROEMER. The gentleman has made a serious charge about the amendment of the gentleman from Iowa, that the price of already inflated spare parts could go higher.

Mr. BROOKS. Yes; I think it could.

Mr. ROEMER. Could the gentleman explain his charge?

Mr. BROOKS. Sure, it could go higher, certainly.

Mr. ROEMER. How?

Mr. BROOKS. Would anybody in their right mind believe that you would sell an Allen wrench like this one for more than 45 cents? But they offered it to the Government for \$9,000. I do not think you could go much higher than \$9,000 on an Allen wrench.

Mr. NICHOLS. Mr. Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment.

Mr. Chairman, I must oppose the amendment offered by my friend from Iowa (Mr. BEDELL). In so doing, let me say that I commend my colleague for his persistence in bringing the problems associated with spare parts to the attention of the Members. We differ in the approach in solving these problems. After more than a year-long investigation and eight hearings on the subject, the Armed Services Commit-

tee has reported a rather comprehensive bill.

□ 1800

We believe that the provisions in the amendment just offered which have been accepted by my chairman and by my ranking minority Member, address the real issues in a much more comprehensive and effective manner.

Many of the provisions in my amendment encompass, and in fact are more stringent, are more demanding than those in the amendment offered by Mr. BEDELL. In addition, I am opposed to the substance of Mr. BEDELL's amendment and let me explain to the Members why.

The amendment would, in my judgment, preclude the Department of Defense's use of a qualified products list which are necessary to insure qualified products are offered to the Government. Let me explain the qualified products list, if I may.

It is much like getting the Underwriter's Laboratory seal of approval, which all consumers rely on as an indication that the products has met certain safety standards.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. NICHOLS. I yield to the gentleman.

Mr. OTTINGER. Why on Earth would you have to be on a qualified bidders list to supply a claw hammer or an allen wrench?

Mr. NICHOLS. Let me tell the gentleman that I am not talking about claw hammers. We have about 100,000 items a year that are bought out of the 4 million items that we buy on the qualified bidders list. Let me tell the gentleman why that is necessary that we not abandon the qualified bidders list, if I may.

We think it is necessary that DOD must test products ahead of time before we buy them. Because the Defense Department is obliged to buy from the lowest bidder, it does not have the option of going out and picking the best product and buying it. Those of you who read Jack Anderson's column, and I do not usually quote from Jack Anderson's column, but on the 17th of May, he gave a clear example why qualified bidder's lists are needed.

In that column he cited the loss of about 16,000 American servicemen in the last 21 years due to accidental death. And he stated, and I will quote:

Often our soldiers paid with their lives for penny-pinching practices that led to accidents. One such instance has been the increase in drowning accidents due to faulty and inadequate life jackets.

It is obvious then why lifejackets are on a qualified bidders list.

The same thing would apply for brake components on our aircraft. If that brake system fails or wears out prematurely, we do not only lose a \$25 or \$30 million aircraft, but we lost a human life as well.