

**APPENDIX H: Memo to Defense Secretary William Cohen from U.S. Senator Tom
Harkin, October 31, 1997**

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The Honorable William Cohen
Secretary of Defense
The Pentagon
Washington, DC 20301

Dear Secretary Cohen:

It is come to my attention that certain elements of the Administration's recent acquisition reforms have become a means for contractors to inappropriately avoid important accountability measures. I urge the Department of Defense to review its acquisition policy regarding the definition of commercial items and make changes to end some inappropriate and potentially costly practices.

Recent changes to federal acquisition regulations have exempted contractors from supplying cost data if their products are deemed "commercial" (i.e. under FAR Part 12). The intent of these changes was to allow a lower level of scrutiny for commercial items that are "off-the-shelf" and subject to true competition. It makes sense that items whose prices are kept low due to market forces need not have the same level of scrutiny and accountability.

However, the Department of Defense has applied these acquisition policy changes to a number of items which stretch common sense to the breaking point. For example, I must question the DOD's determination that a number of major acquisition items are purchased under the commercial exemption. How can Atlas rockets and C-130J aircraft be considered "commercial" items? Obviously, these are not items found in the commercial sector. More importantly, they are not items that are priced due to the forces of supply and demand. Items bought solely or primarily by the federal government should not fall under the "commercial" definition.

I understand the DOD Inspector General is conducting a number of investigations on items bought under the commercial definition. According to press reports, the IG has found a number of items that are being bought at a price higher than when the items were bought earlier and were not considered "commercial." These examples only underscore the need to apply the commercial definition in a manner that is appropriate.

I therefore urge the DOD to review and change its acquisition practices to correct the current problems in applying the definition of "commercial" items to its contracting procedures.

Sincerely,



Tom Harkin
United States Senator

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