

Originally Processed With FOIA(s):
2005-0336-F

FOIA Number:
2005-0336-F

FOIA MARKER

**This is not a textual record. This is used as an
administrative marker by the George Bush Presidential
Library Staff.**

Record Group/Collection: George H.W. Bush Presidential Records
Collection/Office of Origin: Science and Technology Policy, Office of (OSTP)
Series: Bromley, D. Allan, Files
Subseries: General Science Files

OA/ID Number: 62039
Folder ID Number: 62039-006

Folder Title:
Life Sciences - General [1992]

Stack:

Row:

Section:

Shelf:

Position:

0

0

0

0

THE WHITE HOUSE

WASHINGTON

April 1, 1992

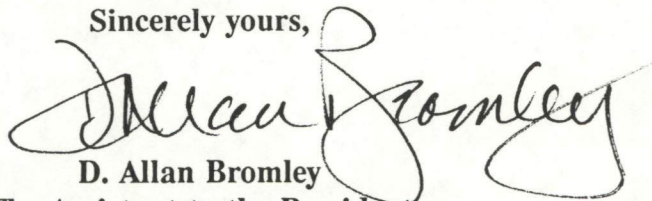
Dear Mr. Camp:

I would like to request that a diplomatic passport be issued for Donald A. Henderson for travel to Switzerland beginning May 2, 1992.

Dr. Henderson has been asked by the World Health Organization (WHO) to participate in a meeting of their Technical Committee on the Global Eradication of Poliomyelitis on 4-6 May in Geneva. WHO is convening epidemiological experts from Japan, Malta, India, Pakistan, Poland, Czechoslovakia, Ghana, the Netherlands and the United States; representatives from UNICEF, Rotary International and various international vaccine manufacturers; as well as officials from the six WHO regional offices. They will establish priorities, identify deficiencies and recommend technical strategies for their program. Dr. Henderson has developed extensive expertise in worldwide eradication of disease over the past 35 years before joining the Office of Science and Technology Policy. As my Associate Director for Life Sciences, he is closely following this issue for my Office.

Enclosed are the requisite two new photographs, along with his personal passport and a completed passport application. I would appreciate your contacting Margaret Quinlan on 456-2892 when the passport is ready. I greatly appreciate your assistance.

Sincerely yours,



D. Allan Bromley
The Assistant to the President
for
Science and Technology

Enclosures

Mr. William Camp
Acting Deputy Assistant Secretary
for Passports
Department of State
1425 K Street, NW, Room 358
Washington, D.C. 20522-1705

THE WHITE HOUSE

July 7, 1992

Dear Bob:

I agree that the proposed
revised Executive Order for the
National Academy of Sciences
as discussed in your memo of
June 18 makes good sense and

would urge you to proceed with
the necessary mechanics.

Man Gromley
OK?



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

1 8 JUN 1992

MEMORANDUM FOR SAMUEL K. SKINNER, CHIEF OF STAFF TO THE PRESIDENT
W. HENSON MOORE, DEPUTY CHIEF OF STAFF TO THE
PRESIDENT
RICHARD G. DARMAN, DIRECTOR, OFFICE OF MANAGEMENT
AND BUDGET
D. ALLAN BROMLEY, ASSISTANT TO THE PRESIDENT FOR
SCIENCE AND TECHNOLOGY
WALTER E. MASSEY, DIRECTOR, NATIONAL SCIENCE
FOUNDATION

FROM:  Robert E. Grady, Associate Director for Natural
Resources, Energy and Science

SUBJECT: Proposed Revision of the Executive Order for the
National Academy of Sciences - ACTION

Dr. Frank Press, President of the National Academy of Sciences (NAS), has requested that the Administration issue a revised Presidential Executive Order governing the working relationship between the NAS and its operating arm, the National Research Council (NRC), and the Federal agencies. The Executive Order was last updated in 1956.

The NRC has provided useful advice to the Administration on a wide range of issues, including CAFE, national standards for mathematics education, energy modelling, global change research, and space sciences. I recommend that the Administration issue a new Executive Order as proposed by the Academy, with several proposed modifications described below. With your concurrence, I will proceed with the mechanics of clearance of the revised E.O.

Background

The National Academy of Sciences (NAS) is a non-profit corporation chartered by Congress in 1863. NAS was joined by the National Academy of Engineering in 1964 and the Institute of Medicine in 1970, both established under the NAS charter. The National Research Council (NRC) was created in 1916 as the operating arm of NAS (and now the other two academies as well). The working relationship between NRC and the Federal agencies was established in Executive Order (E.O. 2859 (May 11, 1918) as amended by E.O. 10668 (May 10, 1956)). Through its many boards and commissions as well as ad hoc committees, NRC carries out the NAS charter to review, provide advice on, investigate or report on any subject of a scientific or technological nature.

The Executive Office of the President, as well as many Federal agencies, have often called on the NRC to review Federal

agency programs. The NRC has reviewed and made recommendations on many government R&D programs, including, inter alia, the U.S. Global Change Research Program, the Space Station, materials R&D, astronomy and astrophysics, space technology, aeronautics, chemistry, biology, and science and mathematics education.

The work of the NAS/NAE/IOM/NRC is paid for by agencies through grants, contracts and cooperative agreements. The Congressional charter limits reimbursement to the "actual expense" of the work. Reimbursements are subject to OMB Circular A-122, "Cost Principles for Nonprofit Organizations," to FAR Cost Accounting Standards, and to the Federal procurement regulations of the sponsoring agency. A 1984 memorandum from the Office of Federal Procurement (OFPP) permitted non-competitive ("sole source") selection of the NAS/NRC by Federal agencies under a provision of OFPP Policy Letter 84-2. Although this Policy Letter has been superseded by the Competition in Contracting Act of 1984 (CICA), substantially similar language is embodied in this Act for civilian agencies (41 U.S.C. Sec. 253(c)(1)) and defense (10 U.S.C. Sec. 2304(c)(1)).

Proposed Changes to the Executive Order

The draft of the revised E.O. proposed by Dr. Press is attached. The major changes, along with my proposed modifications are described below.

Whereas Clauses: The proposed changes are largely editorial or conforming in nature, i.e., adding a direct quote from the Congressional charter and recognizing the existence and roles of the the NAE and IOM, both of which have been created since the last amendment to the original E.O. In addition, language has been added to reflect current practice regarding participation of officers and employees of the Federal Government in the work of the NRC.

Paragraph 1: Functions: New language is proposed to recognize science and engineering as a key part of the economy, and to direct the NRC to "disseminate" information to a broad audience. This is more active language than the original, but recognizes the current practice of the NRC.

Paragraph 2: Representation: The proposed change would delete all of the old language and replace it with language that reflects current practice regarding participation of Government officers and employees on NRC panels and committees. The change is, in my view, a significant improvement.

Paragraph 3: Cost Reimbursement: This new language essentially restates the language of the NAS Congressional charter in providing for "actual expense" of studies and reports provided under grants, contracts or cooperative agreements, but without any award fee (profit).

We would propose adding to this Paragraph language incorporating by reference the sections on unallowable costs that are now part of OMB Circular A-21, "Cost Principles for Educational Institutions." Although the Academies and NRC are subject to OMB Circular A-122, this Circular has not been updated to exclude reimbursement for these unallowable costs. Given that the Academy has returned funds to the Government as a result of a GAO audit, we believe that the only prudent course is to make NAS subject to the same rules as universities and colleges.

Paragraph 4: "Sole Source" Procurement: This new language would give relative permanence to the OFPP determination that agencies could make awards to NAS on a non-competitive basis if they make a determination that this is the best way to proceed. While we have no objection to the inclusion of this language (it is consistent with CICA), we would propose changing "should" to "may" as noted in the draft E.O. This change would permit such non-competitive awards, rather than direct them.

Attachment

112/15
DRAFT

The National Academy of Sciences is a nonprofit corporation chartered by Act of Congress in 1863. The Academy's charter provides in part that "the academy shall, whenever called upon by any department of the Government, investigate, examine, experiment, and report upon any subject of science or art, the actual expense of such investigations, examinations, experiments, and reports, to be paid from appropriations which may be made for the purpose, but the academy shall receive no compensation whatever for any services to the Government of the United States." 36 U.S.C. §253 (1988). For more than a century, the Academy has provided such services to the Government of the United States at the request of Congress and agencies of the Executive Branch.

The National Research Council was organized by the Academy in 1916 at the request of President Woodrow Wilson as a measure of national preparedness and has been perpetuated by the Academy as requested by President Wilson in 1918 in Executive Order 2859 and President Dwight Eisenhower in 1956 in Executive Order 10668. Ex. Ord. No. 2859, May 11, 1918, as amended by Ex. Ord. No. 10668, May 10, 1956, reprinted following 36 U.S.C. §253 (1988). The National Research Council is the operating arm of the National Academy of Sciences and the National Academy of Engineering, the latter having been established in 1964 under the charter of the National Academy of Sciences.

DRAFT

- 2 -

The passage of time and new developments have made reaffirmation and further amendment of the Executive Order regarding the National Research Council desirable. Proposed amendments to the Executive Order are attached. Also attached is a discussion of the proposed amendments.

DRAFT

PROPOSED AMENDMENTS

to the

Presidential Executive Order

concerning the

National Research Council

(deletions are indicated by strikeovers
and additions are indicated by underlining)

Ex. Ord. No. 2859, May 11, 1918, as amended by Ex. Ord. No. 10668, May 10, 1956, 21 F.R. 3155, ~~provided~~ is further amended to provide as follows:

WHEREAS the congressional charter of the National Academy of Sciences provides in part that "the academy shall, whenever called upon by any department of the Government investigate, examine, experiment, and report upon any subject of science or art, the actual expense of such investigations, examinations, experiments, and reports, to be paid from appropriations which may be made for the purpose, but the academy shall receive no compensation whatever for any services to the Government of the United States"; and

WHEREAS the National Research Council (hereinafter referred to as the Council) was organized in 1916 at the request of the President by the National Academy of Sciences, under its congressional charter, as a measure of national preparedness; and

WHEREAS the Council is the principal operating agency of the National Academy of Sciences and the National Academy of Engineering, the latter having been established in 1964 under the charter of the National Academy of Sciences; and

WHEREAS the Institute of Medicine of the National Academy of Sciences, established in 1970 under the Academy's charter, conducts its program activities under the approval, operating, and review procedures of the Council; and

WHEREAS in recognition of the work accomplished ~~by the National Academy of Sciences~~ through the Council in organizing research, in furthering science, and in securing cooperation of government and nongovernment agencies in the solution of their problems, the Council has been perpetuated by the Academy as requested by the President in Executive Order No. 2859 of May 11, 1918; and

DRAFT

- 2 -

WHEREAS the effective prosecution of the Council's work requires the close cooperation of the scientific and technical branches of the Government, both military and civil, and makes representation of participation by officers and employees of the Government in the work of the Council desirable:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

1. The functions of the Council shall be as follows:

(a) In general, to stimulate research in the mathematical, physical, and biological sciences, and in the application of these sciences to engineering, agriculture, medicine, and other useful arts, with the object of increasing knowledge, of strengthening the national defense including the contribution of science and engineering to economic growth, of ensuring the health of the American people, and of contributing in other ways to the public welfare.

(b) To survey the broad possibilities of science, to formulate comprehensive projects of research, and to develop effective means of utilizing the scientific and technical resources of the country for dealing with such projects.

(c) To promote cooperation in research, at home and abroad, in order to secure concentration of effort, minimize duplication, and stimulate progress; but in all cooperative undertakings to give encouragement to individual initiative, as fundamentally important to the advancement of science.

(d) To serve as a means of bringing American and foreign investigators into active cooperation with the scientific and technical services of the Department of Defense and of the civil branches of the Government.

(e) To direct the attention of scientific and technical investigators to the importance of military and industrial problems in connection with national defense, and to aid in the solution of these problems by organizing specific researches.

(f) To gather and collate scientific and technical information, at home and abroad, in cooperation with governmental and other agencies, and to disseminate ~~render~~ such information ~~available~~ to duly accredited persons and the public.

DRAFT

~~2. The Government shall be represented on the Council by members who are officers or employees of specified departments and agencies of the executive branch of the Government. The National Academy of Sciences shall specify, from time to time, the departments and agencies from which Government members shall be designated, and shall determine from time to time, the number of Government members who shall be designated from each such department and agency. The head of each such specified department or agency shall designate the officers and employees from his department or agency, in such numbers as the National Academy of Sciences shall determine, who shall be members of the Council, but shall designate only those persons who are acceptable to the Academy.~~

~~This order shall not be construed as terminating the tenure of any person who has heretofore been designated as a member of the Council.~~

2. Scientists, engineers, and other technically qualified professionals who are officers or employees of departments and agencies of the executive branch of the Government are encouraged to participate in the work of the Council as requested by the Council to the extent authorized by the head of the officer's or employee's agency or department and permitted by law.

3. To the extent permitted by law and regulation, and in accordance with the congressional charter of the National Academy of Sciences, the actual expense of investigations, examinations, experiments, and reports by the Academy for the executive branch of the Government shall be paid to the Academy under contracts, grants, or other forms of agreement between the Academy and the appropriate department or agency, but the Academy shall receive no compensation whatever for any services to the Government of the United States. ^

4. When a department or agency of the executive branch of the Government determines that the National Academy of Sciences, because of its unique qualifications, is the only source which can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet the department's or agency's program requirements, acquisition of services by the Academy ~~should~~ be obtained on a noncompetitive basis in accordance with applicable law and regulations. may

→ Further, the Academy shall be subject to all provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations", and, in addition, Section C(8), and Section J of OMB Circular A-21, "Cost Principles for Educational Organizations", as amended October 1, 1991, regarding the allowability of certain items involved in determining costs.

DISCUSSION OF PROPOSED AMENDMENTS

DRAFT

to the
Presidential Executive Order
concerning the
National Research Council

WHEREAS CLAUSES

Editorial changes and conforming amendments would be made in the whereas clauses of the Executive Order to incorporate a quotation from the congressional charter of the National Academy of Sciences, to recognize the roles of the National Academy of Engineering and the Institute of Medicine (the latter having been created under the charter of the National Academy of Sciences in 1970), and to reflect current practice regarding participation by officers and employees of the Government in the work of the National Research Council.

PARAGRAPH 1

Paragraph 1 of the Executive Order currently describes the functions of the National Research Council. Clause (a) would be amended by adding to the objectives of research "the contribution of science and engineering to economic growth" and also "ensuring the health of the American people." Clause (f) would be amended to recognize the responsibility of the National Research Council to "disseminate" scientific and technical information to duly accredited persons "and the public."

DRAFT

PARAGRAPH 2

Paragraph 2 of the Executive Order currently provides for "representation" of the Government on the National Research Council. Paragraph 2 would be deleted and replaced by a new Paragraph 2 which more accurately reflects current practice regarding participation by officers and employees of the Government in the work of the National Research Council.

PARAGRAPH 3

Proposed new Paragraph 3 of the Executive Order would address the Academy's right under its congressional charter to Government reimbursement of the expenses incurred by the Academy in doing work for the Government. The charter provides that "the academy shall, whenever called upon by any department of the Government investigate, examine, experiment, and report upon any subject of science or art, the actual expense of such investigations, examinations, experiments, and reports, to be paid from appropriations which may be made for the purpose, but the academy shall receive no compensation whatever for any services to the Government of the United States."^{1/} The Academy performs its work for the Government under contracts, grants, and cooperative agreements with sponsoring Government agencies.

Pursuant to the terms of the congressional charter, the Academy's right to reimbursement for the costs of work done by the Academy for the Government is limited to the "actual expense" of such work, without compensation above the actual cost of the

DRAFT

Academy's services, and may be limited for any particular contract with the Government to the maximum amount payable under the contract.^{2/} The Academy's cost reimbursement from the Government is also subject to OMB Circular A-122, "Cost Principles for Nonprofit Organizations,"^{3/} to the Cost Accounting Standards,^{4/} and to the Federal procurement regulations to which the Academy has agreed by contract to be bound.^{5/} Although the Academy cannot receive an unrestricted "fee" from the Government, some unreimbursed "actual expense" may be recoverable by the Academy from sponsoring Government agencies under a special form of non-fee arrangement so long as the reimbursement does not exceed "actual expense" and no element of profit is involved.^{6/}

PARAGRAPH 4

Proposed new Paragraph 4 would address the "sole source" procurement status of the Academy. As noted above, the Academy performs its work for the Government under contracts, grants, and cooperative agreements with sponsoring Government agencies. In 1984, the Director of the Office of Federal Procurement Policy issued a memorandum to federal agency procurement executives regarding contracts with the Academy.^{7/} The memorandum was issued in response to requests for guidance from a number of agencies regarding the status of the Academy "as a source for Government requirements, of the type that fall within the charter of the Academy, on a noncompetitive basis."

DRAFT

The OFPP memorandum notes the Academy's congressional charter and Executive Orders 2859 and 10668 and states in part:

"The Academy is uniquely qualified to assemble scientific and engineering expertise of the highest reputation from the public and private sectors to address national problems of high priority. It is able, through its advisory panels and committees, to provide independent and objective findings and opinions as well as acceptance of these findings and opinions by the target audience."

The memorandum concludes by stating:

"When an executive agency determines that the National Academy of Sciences because of these unique qualifications is the only source which can provide the measure of expertise, independence, objectivity, and audience acceptance necessary to meet program requirements, acquisition of such services should be processed on a noncompetitive basis under circumstance number one of OFPP Policy Letter 84-2."

While OFPP Policy Letter 84-2 has been superseded by subsequent legislation,^{8/} the basic concepts and principles involved as they apply to the Academy remain substantially the same.^{9/} Proposed new Paragraph 4 of the Executive Order would give permanence to the concepts embodied in the OFPP memorandum, and appropriate recognition to the special relationship of the Academy to the Government under the Academy's congressional charter, by incorporating the operative language of the OFPP memorandum into the Executive Order.

DRAFT

1. 36 U.S.C. §253 (1988).
2. 39 Comp. Gen. 71 (1959).
3. OMB Circular A-122, 45 Fed.Reg. 46022, July 8, 1980, corrected 46 Fed.Reg. 17185, March 17, 1981, amended 52 Fed.Reg. 19788, May 27, 1987.
4. See 48 CFR Part 30 and 4 CFR Parts 331 through 420. See also 56 Fed.Reg. 26968, Wednesday, June 12, 1991.
5. In Re National Academy of Sciences -- Applicability of Armed Services Procurement Regulations to Independent Research and Development Reimbursement, Comp.Gen. B-58911, August 1, 1977.
6. See In Re American Chemical Society, 61 Comp.Gen. 146 (1981) and American Chemical Society v. United States, 438 F2d 597 (Ct.Cl. 1971).
7. Executive Office of the President, Office of Management and Budget, Memorandum to Agency Procurement Executives from Donald E. Sowle, Administrator, Office of Federal Procurement Policy, "Contracts with the National Academy of Sciences," March 5, 1984.
8. See, generally, Competition in Contracting Act of 1984, Pub.L. 98-369, Division B, Title VII, July 18, 1984, 98 Stat. 1175 et seq., and subsequent amendments. See also Issuance of OFPP Policy Letter No. 84-2, "Noncompetitive Procurement Procedures," RESCISSION Memorandum, 49 Fed.Reg. 34435, August 30, 1984.
9. Compare 3(a)(1) of OFPP Policy Letter No. 84-2, 49 Fed.Reg. 8315, March 6, 1984 (allowing noncompetitive procurement when "[t]he property or service needed by the Government is available from only one source and there is no competitive alternative nor can competitive alternatives be developed in time to satisfy the requirements of the Government") with 41 U.S.C. §253(c)(1) (1988) (allowing noncompetitive procurement when "the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency") and 10 U.S.C. §2304(c)(1) (1988) (allowing noncompetitive procurement when "the property or services needed by the agency are available from only one responsible source or only from a limited number of responsible sources and no other type of property or services will satisfy the needs of the agency").