

REAUTHORIZATION OF THE OFFICE OF FEDERAL
PROCUREMENT POLICY

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FEDERAL SPENDING
PRACTICES AND OPEN GOVERNMENT

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

MARCH 2 AND 9, 1979

Printed for the use of the Committee on Governmental Affairs

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REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

FRIDAY, MARCH 2, 1979

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SPENDING
PRACTICES AND OPEN GOVERNMENT,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 3302, Dirksen Senate Office Building, Senator Lawton Chiles (chairman of the subcommittee) presiding.

Present: Senators Chiles and Pryor.

OPENING STATEMENT OF SENATOR CHILES

Senator CHILES. We will convene our hearings. Sunset is a popular idea on Capitol Hill. It's a concept with a lot of public support throughout the country.

In my view, that popularity and support is well founded. The American public has time and time again voiced its concern that government is no longer effective or responsive to the will of the people, and that once created, programs just have a way of bloating and hardening, and oftentimes they seem to take on a life of their own, paying no attention to the Congress which created them or to the public which they are supposed to serve.

It is no surprise that the taxpayers are turned off by the way that government runs. It is no surprise that taxpayers blame the Federal Government for the inflation which plagues us all. Taxpayers feel that too much of the Government has gone out of control.

Sunset laws bring responsibility and responsiveness back into the Government. Sunset would force Congress to review agencies and programs periodically to determine whether they are still needed. The authority for a program would expire, and unless it is rejustified, then the sun would set on the ineffective or unneeded programs.

In its simplest sense, sunset is a process that Congress can use to exercise greater control over the results of its legislative actions. It complements and strengthens other methods of sensible oversight.

The congressional budget process sets a national spending ceiling, and keeps spending for different functional parts of the budget within that ceiling. Sunset would review programs within spending functions and examine the underlying reasons for the individual programs.

Together then, sunset and the congressional budget process would allow Congress to maintain discipline over the budget as a whole, and

over the separate parts of the budget. Together they give Congress the tools to effectively control the Federal budget and to monitor the efficiency of Federal programs.

Sunset is a congressional process. It requires Congress to evaluate the organization and the administration of programs in order to decide which ones are worth keeping. This may not seem like the most exciting work, but it is one of the most important responsibilities of the Congress, effective oversight.

Sunset thereby forces Congress to go back and look at what it has created. Congress has to ask itself, Is this program needed? Is it well run? Is it carrying out the purposes it was created to carry out? Is it responsive to the public? Does it justify us taking the taxpayer's dollars and putting them into this program? Does it meet one of our national priorities?

These are tough questions, and the answers require tough work. Perhaps a fear of asking these questions and doing that work, a fear of active oversight, is the reason why sunset has not yet become law. Everyone supports the idea, but perhaps the fear of actually having to spend that amount of time, reviewing our favorite programs, is why we don't have a sunset law.

Sunset may not be a reality yet, but there is no reason why we can't apply the principles of sunset to individual programs and agencies, and that is why we are here this morning. Today we are going to do a review of an agency that was created with a sunset provision.

Back in 1974, I sponsored a bill, which eventually became law, that established the Office of Federal Procurement Policy in the Executive Office of the President.

Section 11 of that law authorized funds for the Office of Federal Procurement Policy, but only for 5 years.

Those 5 years are up on September 30. The Office of Federal Procurement is supposed to be the focal point of the executive branch for the policies which govern the acquisition process. It was placed in the Executive Office of the President to assure high-level leadership and direction for the policies and regulations which affect the way the Government spends almost \$90 billion every year.

It was designed to direct the consolidation and simplification of our procurement policies. Those policies have become needlessly complex, very uncoordinated, and outdated. The Office of Procurement Policy was established to cut the unnecessary waste and paperwork that outdated and outmoded regulations and procedures have created.

The creation of an Office of Federal Procurement Policy was the first recommendation, and the No. 1 recommendation of the Commission on Government Procurement. The Procurement Commission found that there was no one place in the Government where business, State and local governments, Federal agencies, and the Government could go on matters of governmentwide procurement policy. No agency had ever taken charge. Each agency went its own way, without paying attention to what the other agencies were doing.

As a member of the Procurement Commission, I supported the idea of creating an agency to bring some order to the chaos. As the sponsor

of the legislation which created the Office of Federal Procurement Policy, I tried to make certain that it would work and it would have the tools to do its job.

Public Law 93-400 sets out the powers and duties of the Office of Federal Procurement Policy. It is worth taking a moment to review some of those major duties and powers—No. 1, to establish a system of uniform, coordinated procurement regulations; to establish a system for collecting and disseminating data about the executive branch procurement activities; to promote research programs in procurement policies, and to promote training programs in procurement for Government employees; to prescribe policies for procurement under Federal grants, including grants to State and local governments; and to monitor and revise policies relating to reliance on the private sector by the Federal Government.

One important feature of the law establishing the Office of Federal Procurement Policy is the emphasis placed on the responsiveness to Congress and openness to the public. The Office of Federal Procurement Policy is required to notify Congress prior to issuing major regulations. It is required to establish a system to solicit the viewpoints of the affected parties, and to open formal meetings to the public.

One of the greatest cries that we hear from business every day is these tremendous numbers of rules and regulations that are placed upon them, often in which they feel they have no opportunity, really, to respond. Some little notice is put in the Federal Register. If they don't pick it up, if they aren't able to do something within the 90 days, or what period of time before it becomes law, that rules their life, and them trying to run their businesses.

We try to change the Office of Federal Procurement Policy to make it make it much more responsive. These requirements bring sunshine into the field of procurement policy, an area which too long had been left in the dark.

The sunset provision in the Office of Federal Procurement Policy was designed to insure that the Office would never forget that it must be accountable to Congress and to the public. I believe that by keeping the Office on its toes, we make sure that it is more conscientious, and that it doesn't forget to whom it is responsible.

The Office of Federal Procurement Policy was given an important job to do. Its purpose is to simplify Government policies, not to create a whole set of new ones. It is supposed to bring sense to the way the Government spends \$90 billion a year.

Today we begin to determine how well it has met those responsibilities.

Our first witness today is Dr. John White, the Acting Deputy Director of OMB. Before coming to OMB, Dr. White was an Assistant Secretary of Defense for Installations and Logistics.

Dr. White, we are delighted to have you before the committee this morning.

Dr. WHITE. It is a pleasure to be here, Mr. Chairman. With your permission, I have a brief statement which I would like to read.

Senator CHILES. Very well.

**TESTIMONY OF DR. JOHN P. WHITE, ACTING DEPUTY DIRECTOR,
OFFICE OF MANAGEMENT AND BUDGET**

Dr. WHITE. Mr. Chairman, at your invitation, Director Jim McIntyre asked me to come here this morning to give you OMB's views on the Office of Federal Procurement Policy and whether it should be continued beyond its first 5-year sunset review.

President Ford signed Public Law 93-400 in August 1974, to create OFPP in OMB with directive authority over Federal procurement policies, procedures, regulations, and forms.

Based on this administration's experience, we can testify to the fact that it was a wise move in several respects. First, we agree that location in OMB enables OFPP to be effective in fulfilling the role intended for it by the Commission on Government Procurement and the Congress, and to serve the President.

On the one hand, the unique statutory configuration of OFPP does present peculiar problems in coordinating OMB authorities and activities. Clearly, OFPP is an anomaly on the OMB organization chart. The potential for outright conflict might be seen by some.

Nevertheless, we can frankly say these potential difficulties have been smoothly and effectively avoided, due to the close and harmonious working relationship we have insisted upon OFPP receiving in OMB.

We further have demanded that management related functions, such as those of OFPP, receive integrated consideration throughout the range of OMB responsibilities.

More important, the organizational location for OFPP responds to a principal question expressed in the legislative history. An independent office would be both less effective and more disruptive, owing to its detachment from the mainstream decisionmaking of the executive branch. Locating OFPP as an adjunct to another agency, say Defense or GSA, would simply not permit the level of authority, perspective, and objectivity needed to truly improve the Federal Government's acquisition system.

Also, we want to endorse the statutory foundation for the Office. Here, too, problems were foreseen in potential conflicts that might be better handled by administrative assignments only. The last 5 years have demonstrated that Public Law 93-400 was well crafted. The statutory base has served to avoid conflicts by making authority and accountability clearer than if administrative changes alone anchored the Office.

It is also extremely important that the Office have directive rather than advisory authority in order to carry out its responsibilities. The Director and I have participated directly and personally in all major OFPP programs. I do not know how these things could have been as effectively achieved without a statutory body located in OMB.

I know that there was some resistance to the creation of OFPP in 1974, despite the evidence and the recommendation in the report of the Commission on Government Procurement. There had been many promises of voluntary cooperation and interagency coordination as an alternative to a statutory office.

We are not sure that every agency still would give OFPP an unqualified endorsement. We all know that it is only natural for each

agency to feel that it should be autonomous. Some might complain that having to be responsive to the OFPP limits their flexibility at times. What little any agency may have sacrificed in flexibility has been offset by the overall advantages.

OFPP's efforts, in cooperation with the agencies, have improved acquisition by the Federal Government. Improvements include uniformity of regulations and procedures, uniform interpretation and implementation of statutes, having a focal point for resolutions of differing agency positions, presenting a single coordinated position to Congress and to the public on matters of acquisition policy.

Speaking from my own experience in both OMB and DOD, I know that OFPP has added immeasurably to the stature, visibility, and effectiveness of the Federal acquisition process. The list of its accomplishments and the projects underway, which were covered in its most recent report to the Congress, encompass the major issues in the acquisition field.

Let me make one other observation. I know the sponsors of OFPP viewed the Office as a special creation of Congress, with strong ties to congressional responsiveness. We have honored their intentions, but from my perspective, it is equally important to note that OFPP has become an effective arm of the Executive Office of the President. OFPP has developed into an invaluable lever for administration efforts in the anti-inflation program, in urban policy through the labor surplus area program, in meeting the President's goals for small and minority business, in managing the use of consultants, and in the President's thrusts to economize, reduce regulations and redtape in the Federal contracting.

I want to note that OFPP is a small organization, despite the scope of its projects and its influence. This is what Congress envisioned in enacting the law, a small, highly qualified professional staff. It is as it should be. I am sure that the hard work, dedication, and output of the Office surpasses even what Congress anticipated.

In conclusion, the administration supports the continuation of OFPP in its present form, size, and mission. OFPP will continue to receive our support to pursue an aggressive reform program that I believe serves both the President and the Congress very well.

That concludes my remarks, Mr. Chairman. I would be pleased to answer any questions.

Senator CHILES. I thank you for your statement. I think it is a very conclusive statement.

In your opinion then, you feel that OMB has been successful in reducing confusion and duplication in procurement policy?

Dr. WHITE. Yes, Mr. Chairman, I do. I think there is a long way to go, a lot of work to do yet, but I think we have made a very good start in that direction.

Senator CHILES. I am interested in your statement that you feel that the Office of Federal Procurement Policy, in addition to being responsive to the Congress, has also served as a valuable lever for the President.

Dr. WHITE. Yes, sir, I do, and I saw that as an Assistant Secretary of Defense in dealing with the Office, and I see it even more vividly now from where I sit.

It provides us with a very special device that we can use in terms of implementing policies that the President has developed.

Senator CHILES. That was certainly a part of its mission as well. I think Congress wanted to feel like we were going to have some handle, and it would be responsive, and we at least would be able to see and know what was going on. Certainly it was intended that it would be the focal point in which you could sort of make decisions, and that you wouldn't have different agencies looking at procurement policy from completely different missions, and going off in the 30 directions as we had in the past, but that you would have some focal point. You could raise a decision level to that focal point and that would be a decision right where the President could view it, could work his will in making and resolving conflicts, but that you would do it in a single place and not through trying to work through all the agencies.

Would you say from your observations in DOD and now in OMB that it has been working in that regard?

Dr. WHITE. Yes, Mr. Chairman. I think it has been working very well in that regard.

Senator CHILES. I know that there are some of the agencies and some of the interest groups who feel that they would rather have those decisions still made in the fragmented way because, of course, their voice can be more strongly heard that way. Many times the conflicts are still there.

Eventually they have to turn to the White House where they are going to be resolved, but I think it takes much longer to be able to bring them into perspective.

Would you agree with that observation?

Dr. WHITE. Yes, sir, I would.

Senator CHILES. What do you think would be the impact on agency operations today if the Office of Federal Procurement Policy was not reauthorized?

Dr. WHITE. I think it would be a very serious mistake not to reauthorize it because I think the agencies would very quickly revert to the situation that we had before its creation whereby they would operate largely autonomously in these areas, and there would be a continuing proliferation of regulations, some of which are contradictory and certainly don't help the business community that we have to deal with.

Senator CHILES. At the time of the creation and right after the Office was created, there was much concern in a number of the agencies, DOD being one of the particular agencies, that this little group is going to try to dictate what procurement policies should be in the acquisition of weapons, in the things that we know best now to do, that we have been doing for all of these years. Who are they to even try to get into this and to tell us that we need to change our regulations, or that we need to have regulations that coordinate with the rest of the Government when obviously we are different and we have always done it in a different way?

Are those voices still there? What has happened in that regard?

Dr. WHITE. I don't think from my experience that they are there in anywhere near the—

Senator CHILES. Were their fears realized?

Dr. WHITE. I think their fears were not realized. The voices had been clearly muted largely because it doesn't work as a pure conflict

or dictatorial situation. It works as a cooperative situation between the agencies and OFPP, and we at OMB in cooperation with Mr. Fettig get involved when we think it is necessary.

A good illustration is the development of the new contracting out A-76 procedures where there was very close cooperation from the Defense Department, from the Veterans Administration, and other key agencies in putting together working groups led by OFPP, but not totally controlled by OFPP, so there is a great deal of give and take.

I was involved in that in the Defense Department, and Mr. Fettig and I met on a regular basis, not only in groups, but also privately to iron out these differences, so I think it made things much better.

We didn't see that as "them" imposing something on us. There is clearly the recognition of need for change. The same is true with the major weapon systems acquisition process, and I deal regularly with Dr. Perry in that area, and he doesn't see this as an intrusion into the Department of Defense.

Senator CHILES. Now if you will put on your OMB hat, one of our concerns, and the Procurement Commission themselves had originally recommended that the Office should be a separate office, is wanting to put it within the Office of the President, but sort of have it as a separate office.

As we got into our hearings, and we were working on the bill itself, it became clear to us if we created OFPP as a separate office, it was not going to have the clout, it was not going to have the viability. It was just going to end up being sort of an appendage of what was out there, and so we felt that we were going to have to put it in OMB in order to have it in the Office of the President, and have it have some kind of clout and visibility.

You see that made sort of a hybrid critter when we did that because we set a separate statutory office within OMB. OMB didn't like that to start with. None of the purists that want to look at the charts liked that, but we couldn't figure any other way to do that.

Now what is the feeling in OMB in this regard? You have touched on it in your statement, and what do you think would happen if we today in reauthorizing OFPP made it a separate office and removed it from OMB?

Dr. WHITE. I think the decision to put it in OMB was a wise decision. The Office has been well integrated. It is separate in terms of the decisionmaking process, but it is involved in our budget reviews, for instance. Participating in those is very important. They are involved in all our regular weekly meetings and discussions. They are involved in all of the coordination of issues which in any way affect that Office, and when they speak, they not only have the statutory basis from which to speak, but they also, because of being in OMB, have a certain extra added leverage which people recognize is there in terms of what is going on. So I think to make them an independent office would lose a great deal in terms of their day-to-day leverage on the departments, which is really where you want the cooperation to take place.

Senator CHILES. How has that added leverage worked, or how does OMB back up the Office of Federal Procurement Policy?

Dr. WHITE. Well, in a multitude of ways; there are formal ways, in situations with respect to things like major acquisition procedures,

A-109, where Mr. McIntyre has sent letters to Dr. Brown regarding these matters. There are informal matters in the same area, as I mentioned earlier. I talk regularly with Dr. Perry, and we get regular reports from Mr. Fetting, in fact, weekly reports that give us an update of the progress in these various areas. He indicates to us any areas where he thinks he might need our assistance, so there is a regular give and take, and at the staff level there is also a regular give and take.

Senator CHILES. Do you think that all procurement policy authority within OMB should flow from the Office of Federal Procurement Policy, or should some matters be handled by other divisions of OMB?

Dr. WHITE. I suppose there might be some grading there, but large letter areas that are defined in procurement ought to be handled by OFPP. We like to see the rest of OMB involved in that, and obviously there are things that they deal with that affect procurement, so some things may be initiated in other parts of the organization, but I think in summary when it is in fact a procurement matter, we ought to, and do try to turn to OFPP for it.

Senator CHILES. You think that the Office of Federal Procurement Policy's statutory authority has helped OMB's role in managing acquisition policy?

Dr. WHITE. I don't think there is any question about it.

Senator CHILES. If a bill was introduced to reauthorize the Office of Federal Procurement Policy, how long should that authorization run?

Dr. WHITE. Well, as you know, we support the notions that you discussed earlier in your opening statement with respect to sunset.

I think that the 5 years that has been the case currently was smart, and I don't see any reason not to pick a period like 5 years again. I don't think there is any scientific way to do this. Two, 3 years probably is too short, given the importance of what has been done. Longer than that you kind of lose the ball in terms of an end date, so 5 years strikes me as a reasonable intermediate length.

Senator CHILES. Do you know of any provisions of Public Law 93-400 that should be modified if a new Office of Federal Procurement Policy authorization bill is introduced?

Dr. WHITE. As of now, from our point of view, Mr. Chairman, no, I do not. We have done our own reviews. Obviously we are going to be interested in what information is developed in these hearings, and we will follow those closely and reconsider it, but as of now, no.

Senator CHILES. If the Office is reauthorized, what do you see as being the most important goals for it to pursue?

Dr. WHITE. I think there are a number of goals, some of them ongoing, and some of them new.

Let me touch on a few. In terms of ongoing efforts, there is the Federal acquisition regulations, which I think is really the cornerstone of what was intended in the creation of this office, and that has to be pursued.

Efforts that I mentioned with respect to implementation of the A-76 contracting out procedures take a great deal of work and have to be pursued.

A-109, the same goes for A-109 as A-76. There are a number of new laws which we are now working with where we have a great deal more

to do before we can say we have been successful—the Small and Minority Business Act, for instance. The administration has a major commitment to increase contract awards in that section. We have made a good start, but there is a lot to do.

The labor surplus area program is an area where we are just really getting started. The Contract Disputes Act is another. There are other things that I see downstream, problems of industrial innovation, problems of encouraging research and development, that I think this Office ought to play a role in. There are questions that have been raised that we need to look at with respect to profit policy, so I think there are major elements ongoing.

There are these new laws, and then there are some other areas that we see we would like to have the Office involved in.

Senator CHILES. Thank you very much for your testimony.

Dr. WHITE. Thank you, Mr. Chairman.

Senator CHILES. Our next witness will be Mr. Robert Keller, the Deputy Comptroller General of the United States.

GAO was a strong advocate in the creation of OFPP and helped to get the legislation setting up the Office of Federal Procurement Policy enacted.

Mr. Keller, I want to thank you and General Staats and the staff in the General Accounting Office for your continuing efforts in monitoring the Office of Federal Procurement Policy, and in following up on the recommendations of the Procurement Commission.

Your work in this area shows GAO at its best. We are delighted to have you with us today, and also to have John Flynn and Burt Hall. Burt has had a little experience in this area, and so has Mr. Flynn.

Mr. KELLER. Thank you very much, Mr. Chairman. Burt, as you point out, has been our key man following up on the Procurement Commission recommendations.

Senator CHILES. You have got a very complete statement, and we will certainly put it in the record, if you could summarize it for us.

Mr. KELLER. I will be happy to, Mr. Chairman.

TESTIMONY OF ROBERT E. KELLER, DEPUTY COMPTROLLER GENERAL OF THE UNITED STATES, ACCOMPANIED BY JOHN FLYNN AND BURT HALL

Mr. KELLER. First, we are very glad to be a part of your sunset review. We have supported sunset, like you have. We think it is an important activity of the Congress.

As far as OFPP is concerned, Mr. Chairman, the Congress charged the Office with overall procurement policy and with six specific statutory functions.

The first is the establishment of a system to coordinate procurement regulations of the executive agencies and to make the regulations uniform, to the extent possible. OFPP has designed the new system called the Federal Acquisition Regulations. We believe that this new system has great potential for simplifying contracting and improving government/business relations.

We have a report in process right now, Mr. Chairman, which will be out in May. Our report will match the features of the new system

against the concerns of the Procurement Commission in the regulations area.

Our report will show that the Commission's concerns about uniformity and readability are being met, but we believe the new regulations fall short to some extent in preventing the proliferation of regulations within the agencies. We will suggest some guidelines in our report to give FAR more control over individual agency regulations.

Second, a point that you mentioned in your opening statement, was the establishment of an effective and timely method of getting increased interest on the part of the public in participating in the development of procurement regulations.

We think the OFPP has greatly improved this situation, but there are two aspects that need policy attention. Under the present FAR draft, regulations are subjected to a wide public participation if they are significant, but the term significant is not defined, and I think we all recognize there can be individual views on what is significant and what isn't.

Senator CHILES. Significance could be in the eyes of the beholder.

Mr. KELLER. That is correct, sir, and we think the guidelines should have some test, and it may be that significant is not the right word. There probably should be some other method.

Senator CHILES. That would be a change that we would be talking about in the legislation itself.

Mr. KELLER. It could be or it could be done in the regulations.

Senator CHILES. I see.

Mr. KELLER. We think there should be an earlier public participation before proposed regulations are put out on the street. I think the President in an Executive order last year recognized that the feeling of the general public is that once a regulation is issued, even if only in draft form, it is pretty well set in concrete.

I suspect there is some truth in that. There are probably several different ways to accomplish an earlier participation, but we have found no consensus on a single approach. We will attempt, in our report, to bring this problem out and to make outline alternatives as to how early participation by the public can be achieved.

The third statutory function, Mr. Chairman, of OFPP is to monitor and revise policies and procedures relating to Government reliance on the private sector for needed goods and services. This, of course, is the A-76 issue. It is national in scope because it is of vital interest to both the Government and to private business.

OFPP has gone through two phases in carrying out this function. The first phase was the enforcement of the existing OMB A-76, and the second phase, will bring about quite a change in A-76, and that is still in the process of being finalized, as I understand it.

One matter, Mr. Chairman, which we brought out in the recent report, was that, the Procurement Commission itself recommended that Congress enact a statute establishing a national policy on contracting out.

This has not been done. I have found no evidence myself of the administration urging the Congress to do it. Likewise, I have found no one in Congress grabbing the ball. There have been some resolutions introduced.

Senator CHILES. Calhoun doesn't seem to want that ball.

Mr. KELLER. It is a politically tough situation I think, but the Commission did recommend it. We think it is important because you go back on the OMB circulars for the last 20 years on contracting out, and the emphasis changes with administrations. As to whether it can be solved by Congress, I don't know, but it is the only way we can think of that a national policy can be established.

Senator CHILES. A-6 in the hands of Congress is very much like the old adage of the old story of whisky. When you say "whisky," if you mean that demon rum, that takes away the children from their mothers and so on and so forth, I am against it, but if you mean that liquid of fellowship that brings companions together, warms the hearts, then I am all for it, and I'm afraid that's kind of how Congress is in A-76.

If you mean reliance on the private sector and the free enterprise, I'm for it. If you mean taking away some of the jobs in my district that are now in the hands of the Government, then I'm against it.

Mr. KELLER. I bring it up as an issue which I think Congress should try to resolve. Whether they can or not. I don't know.

You will recall, Mr. Chairman, in developing the Procurement Commission recommendations on this issue, unanimity was lacking.

Senator CHILES. Yes.

Mr. KELLER. It took some time.

Senator CHILES. It changed from day to day.

Mr. KELLER. That's right, sir.

Senator CHILES. I interrupted you.

Mr. KELLER. The fourth function of the OFPP is to promote the conduct of procurement research. The legislative history of the act states that the purpose is to foster innovation and creativity and the orderly development of promising procurement techniques.

I have to report, Mr. Chairman, from our observation, we don't believe that very much has been achieved in this area. OFPP's research activity has been done mostly through the Federal Acquisition Institute. The Institute itself has; one, set up defense and civilian research councils; two, performed a survey of civilian agency research needs; and three, sponsored two research projects. Overall, neither the OFPP nor the Federal Acquisition Institute has done much in the first 5 years to research ways to improve the productivity, and the performance of the operating agencies.

Our own study on this subject which was issued in 1977 showed that civilian agencies have been reluctant to undertake this kind of research, and the defense program has lacked some momentum.

The fifth function, Mr. Chairman, is to establish a procurement data system to meet the needs of the Congress, the executive branch, and the private sector. This system began operating just a few months ago with 143 agencies participating.

It is too early to judge its effectiveness, but we think a good start has been made.

Your interest, Mr. Chairman, in having the Government use available commercial products instead of relying on voluminous Federal specifications for development of specialized items is, of course, well known. You will be interested in knowing that the new reporting

system as it now exists does not have the capability suggested by the Procurement Commission to provide data on amounts of commercial products bought.

We have brought this to the attention of OFPP officials who have said that the situation will be corrected.

The sixth function, Mr. Chairman, is to promote programs for recruiting, training, career development, and performance evaluation of procurement personnel.

The Commission found that agencies were appointing many contracting officers not qualified by experience and training. Legislative history of the act stresses that improvements in the procurement process can only be achieved if personnel are equipped to cope with the increasing complex demands of contemporary procurement.

To help carry out this function, OFPP created the Federal Acquisition Institute in 1976. FAI has moved out in the education and training field by encouraging universities to incorporate undergraduate and graduate level programs, by sponsoring new courses, by upgrading and extending certain Government-wide basic contracting courses. FAI, however, still needs to evaluate existing agency training programs.

In addition, work needs to be done on programs to promote college recruiting and to develop programs for performance evaluation of procurement personnel. I understand that a draft career development guide has now been circulated.

FAI started with great dedication, but has been hampered by staffing problems, inconvenient physical location, and we think an overextended scope. Also, OFPP could give major emphasis to FIA by setting up qualification requirement goals that all personnel would eventually be required to meet to be appointed as contracting officers.

We think such a policy would spur a continued effort between the Institute and the operating agencies to develop an effective procurement work force.

Senator CHILES. I think the potential of the Federal Acquisition Institute is tremendous, and the more I look at that now in the light of what I have seen happen in General Services and other areas, the more I become convinced that a lot of that happened because we have not had trained career personnel, skilled at what they were supposed to be doing.

Many times their counterparts in the private sector would be so much better qualified than they would be, and there would be a turnover. There would be low morale, and in many instances, I think it has led to not only the waste and inefficiency, but often to the fraud that has occurred in many of the areas, and I am tremendously concerned that we try to do something.

This is sort of a nonsexy, not glamorous agency. It has been very hard to even keep it alive, to keep any funding for it, have any attention focus on it. Originally, as you know, it was housed in the Department of Defense, funded out of the Department of Defense budget, and every time we would go to a conference committee meeting of the appropriations, somebody in the House would take that out because there was no reasoning that the Department of Defense should be funding something that was an appendage, that was stuck

on there, and we would fight to try to save some kind of funding for it.

Then we transferred it in conference language to OMB, and have tried to place it there, and they don't want it there. They are concerned with their numbers, and here we are trying to run a lean agency and lean down other agencies for the President. We certainly can't have our numbers go up, and so it looks like it is sort of a child that no one wants. No one wants to almost claim its parentage, and yet I think it has a tremendous role to be performed and is attempting to perform that role through the most adverse of circumstances.

Where does GAO think that the Institute should be housed?

Mr. KELLER. I recognize the Director of OMB's problem of spaces. We have thought about this quite a bit, Mr. Chairman. We think it should be as a part of OMB.

As you have stated, the Congress did fund it, this past year, in OMB. As I understand it, nothing has really changed because OMB is still worried about the space situation. However, there are several matters that lead us to that conclusion.

One, by tasking the Defense Department, specifically, the Department of Army, to run this Institute, I think the image is created that this is just another defense activity and maybe there is not a great deal of enthusiasm for civilian agencies to participate.

As I recall, I have been told that most of the staff comes out of the Defense Department or did come out of the Defense Department. There is an image problem.

Second: There is the physical location of the Institute itself, as I understand it, in Cameron Station in Alexandria, which is a bit out of the way from the center of procurement activities—maybe not the volume, but at least when you look at the civilian side, and it also creates the image that this is just another military institute.

I suppose there is no great wisdom or scientific way to say where it should be put, but these are our thoughts. We think it is important. I certainly agree with you that for a long time, too long perhaps, the Government just has not given enough attention to the qualifications of the contracting people, and that is not saying anything against the contracting people themselves, but it is a very important activity. Procurement involves a great deal of Federal funds, and it should be done from the Government side in the best possible fashion.

Senator CHILES. We are paying for that past policy every day in the waste and inefficiency and in the fraud and corruption.

We are also paying for it in the lack of credibility of the people in their Government. It seems that the rewards for these people have been based on the one that got the most contracts out, got the most money out, but not on the basis of the effective way that it was done or the fraud-free way.

A lot of that again has to be in training and building a training cycle and building morale, in a proper promotionship ladder, to give some kind of professional pride in the job that you are doing.

Mr. KELLER. I certainly agree, Mr. Chairman.

Senator CHILES. You mentioned that minimum training standards. Do you think that S. 5 should be amended to require the Office of Federal Procurement Policy to set minimum training standards?

Mr. KELLER. Well, it certainly should be considered, Mr. Chairman. I would hope that OFPP could move out on its own to do this, but a little help in the law would not hurt.

Next, Mr. Chairman, I would like to move to our favorite subject, the followup on the Procurement Commission's recommendations.

As you will recall, 149 recommendations were made by the Commission. I think I would be one of the first to say that all of the 149 recommendations do not have equal importance as far as procurement area is concerned, although all are certainly worth consideration. We are frankly worried as to whether OFPP is giving the Commission recommendations adequate attention and that the recommendations may be getting a little less emphasis now than in the past.

I think it is important that this effort to wind up the Commission recommendations be continued for several reasons. One, the report itself of the Commission is now 6 years old, and I think it is rapidly getting out of date.

We think, and would recommend, that the OFPP try to very rapidly bring this to a conclusion.

The statistics I have are pretty close to OFPP's annual report. There are 18 recommendations that have been neither accepted nor rejected, which is a little more than 10 percent.

Eleven have been rejected, which is a small part, of course, but of the accepted recommendations, action is complete on only 26, and action is pending on 94.

Senator CHILES. Sometimes the easiest way to predict is to just have action pending for a long period.

Mr. KELLER. Or accept a recommendation and really not do anything about it, which is another way of rejecting it I guess. I am not saying that OFPP did that, but I think it does need attention to wind this up.

Of course, the Commission itself took 3 years to make the recommendations, but I think 5 years is a pretty fair span of time to try to put them into effect, so we would encourage OFPP to try to finish up the job in this area.

In our report, we will highlight where each recommendation stands, and try to give you an assessment of the prospects for concluding action on each of the recommendations.

My next two pages really deal further with the Procurement Commission recommendations, and OFPP's reporting system, which we think could be improved.

I would like to discuss systems acquisition reforms, which is A-109. The major system acquisition reforms were conveyed to the executive branch agencies by OMB circular A-109 in April 1976. We think the agencies, however, have been slow to conform their system acquisition policies and practices to the new methods.

On February 20 of this year, we published a report on implementation of circular A-109 by the Department of Defense, and in a short time we will be issuing another report which will cover the Department of Energy, the Department of Transportation, GSA, and NASA. These studies conclude that there is very little sense of urgency about installing the new reforms. In fact, very few acquisitions are underway within the guidelines, which are now 3 years old. That is the date of the OMB circular.

Although the primary responsibility for applying A-109 rests with the agency heads, OFPP has used the budgetary review process to only a limited extent to expedite matters. The point here is, we think, OFPP and the budget examiners could do some more in the budget process to try to get the agencies to implement A-109.

The two GAO reports which I mentioned offered a number of recommendations to various agency heads, asking them to clear up policy differences with A-109, to finish building new mission structures, and to hasten the implementation of 109 reforms.

We will also, as I mentioned, recommend that OMB and OFPP staffs press more aggressively to get compliance.

We will note also in our report that the Commission recommendations for system acquisition are anchored to its proposal that agencies should organize and budget their affairs by mission, and that Congress should review and oversee in the same way.

This requirement for budget presentation is in the Congressional Budget Act, as well as in A-109. Also, several committees, including the House Armed Services Committee, are exploring or experimenting with the new concept. I would have to say, Mr. Chairman, that mission budgeting in the end is up to Congress, for it can require or not require agencies to submit budgets along mission lines. There have been mixed reviews in the Congress as far as mission budgeting is concerned, but I think progress is being made.

The next item, Mr. Chairman, is commercial product reforms. The Procurement Commission found that the Government supply operations would be more efficient and less costly by placing greater reliance on commercial products delivered to customers through commercial distribution channels, as opposed to products developed to Government specification and channeled through Government warehouses.

Actions by OFPP have provided a partial response to the Commission recommendations in this area. Policy change has been made to emphasize the purchase of commercial products without using technical specifications.

OFPP plans to have in place by July 1979 the necessary regulations, procedures, and techniques to implement the policy. As yet, OFPP has not acted on the Commission recommendations to use industrial funding and to continually evaluate procurement and distribution systems on a total cost basis.

We reported in July 1978, comparable treatment of this recommendation, as with other Commission recommendations, would require the executive branch to accept, in which case legislation should be proposed; or reject; or modify the recommendation as presented.

This is one of the particular parts I am talking about, one of the recommendations that has been accepted but no action taken.

Mr. Chairman, next I will just comment briefly on the activities of OFPP insofar as wage busting is concerned. You will recall, Mr. Chairman, you were quite interested in the Air Force and NASA contracts at Cape Canaveral, and NASA and the Air Force developed a procedure which was designed to prevent so-called wage busting by bidders or incumbent contractors.

You asked us to look into it and see how it actually worked out. We found that it worked quite well. The procedures that the Air Force and NASA had set up—this is back in 1977—we recommended

that OFPP establish a governmentwide policy along these lines. This has been done, and we understand that several agencies have taken steps to issue the new policy.

We think this is important, Mr. Chairman, because we think it is the type of role envisioned for OFPP, and second, there was pending a bill which would make all professional employees subject to the Service Contract Act.

We felt, and so reported to the House Labor Committee, that we thought that this would be very costly to the Government, and that the alternative should be used to cure the wage busting proposition. We thought this was a better way to do it, and we still feel that way. We think it has been successful.

Next, Mr. Chairman, a brief comment on the OFPP's role in the anti-inflation program. As you know, the President by Executive order on November 1, 1978, as part of his wage controls, specified that each executive agency and military department shall incorporate in its contracts a clause which requires Federal contractor compliance with the wage and price standards of the Council on Wage and Price Stability.

OFPP has a responsibility for the overall direction of this procurement provision, including issuing regulations and procedures for determining exceptions and granting exemptions.

We were asked to testify before the subcommittee of the House Government Operations Committee in February of this year, and we were asked to specifically address the question as to whether there was authority for the President to issue the Executive order and, in effect, say that for contracts over \$5 million, a contractor had to agree to be subject to the wage and price controls; otherwise, he would not get the contract.

It was our conclusion, Mr. Chairman—we so stated before the Committee—that in our opinion the President did not have the authority to, in effect, debar contractors if they didn't comply with the program.

Senator CHILES. I understand that is now being tested, that is going to be tested, or is in the court now to be tested; is that correct?

Mr. KELLER. I read in the paper about a week ago that the labor unions planned to take it to court. Whether they have actually done it or not, I don't know.

Senator CHILES. GAO has a position that feels that, legally, the President does not have this authority. Justice has taken the position that the President does have the authority, and I assume the President has told OFPP to exercise this, and that is where it stands now.

Mr. KELLER. I would assume so, Mr. Chairman. The courts will ultimately resolve it if the case goes in, of course, but really, the whole case was built around a section in the Federal Property Administrative Services Act of 1949 which, in our opinion, wasn't broad enough to encompass that. In light of the history that Congress itself has been very careful about giving the executive branch authority for wage and price controls, particularly mandatory authority, the courts will have to pass on that one.

However, I do want to point out that the OFPP has been engaged in other anti-inflation activities. Since 1978, OFPP's anti-inflation council, which is chaired by the Administrator of OFPP, has repre-

sentatives of the 12 major procurement activities, has sought to avoid, reduce, or delay the purchase of goods and services whose prices are rising rapidly, and to reflect the principle of declaration in new or renegotiated contracts which contain escalation clauses.

We think this is a proper activity, and we commend the OFPP for doing this.

I think, Mr. Chairman, if I have skipped over part of my statement, it can be filed, and that would be fine, but I would like to conclude by saying that we think OFPP has had a very difficult role to perform, and borrowing a little bit on the conversation between you and Dr. White, it is difficult for a so-called central control agency to get complete acceptance by the other agencies. That has been the way of life in Washington for many, many years, but I think they have done a very commendable job, and there still may be some pockets of resistance here and there, but overall, I think they have done well, and it has been difficult.

I also want to point out that, while we have some criticisms of the actions that OFPP has taken and its lack of progress in some areas, we believe that on balance, they have done a very credible job, and it would be our recommendation that the Office be reauthorized.

Senator CHILES. Do you know of any statutory changes? You have mentioned just one area—outside of that, that you, GAO, would recommend be incorporated in the act?

Mr. KELLER. There is one area I am sure you are aware of. I don't know how it is going to come out. This is the question of the application of the Service Contract Act to the repair of aircraft engines, where OFPP has one position and the Department of Labor has another position. As I understand it, the Attorney General now has a question as to who has the authority in that area.

I think it could be that, depending on how the Attorney General may come out on it, the committee may want to deal with that question in the statute.

Senator CHILES. One of the most important tasks that the Office of Federal Procurement Policy should be carrying out is to reduce paperwork in the procurement process. I know of the importance the GAO attaches to the paperwork it does.

How would you assess their efforts in the area of paperwork reduction?

Mr. KELLER. I would have to say, Mr. Chairman, that we have not given the paperwork recommendations as much attention as the other recommendations.

The Commission made some 19 recommendations, covering a wide range of procurement activities, as far as paperwork reduction is concerned. I understand that 7 of these recommendations have been implemented by OFPP, 2 have been rejected, and the remaining 10 are being actively pursued.

I think that is about as far as I can go, because we have not emphasized that part of the recommendations.

Senator CHILES. We have Senator Pryor with us.

Senator PRYOR. I only have one question. It is my understanding, Mr. Chairman, that you had a great deal to do with the creation of this particular Office, and I would just like to ask this question.

Is OMB the proper place for your Office to be placed? Is this working with the greatest degree of efficiency? I think that would be my question.

Mr. KELLER. Well, I don't want to speak as if I am with OFPP, but I would like to answer your question.

There is a great deal of controversy, sir, or discussion as to where this Office should be, both in the Procurement Commission itself, and at the time legislation was being considered by Congress.

As I recall, the Senate placed it as an independent agency in the Executive Office of the President, the House; otherwise, I think it was in conference, it was settled that it was to be a part of OMB. I think that was probably a wise solution. I think it is probably the most satisfactory solution, as I view it.

Senator PRYOR. I think, Senator, that's all.

Senator CHILES. As I recall that, it was just like you said, except in reverse. The Senate decided it ought to be in OMB.

Mr. KELLER. It could well be my recollection was wrong. I recall there was a difference between the two.

Senator CHILES. We want to thank you very much, Mr. Keller, for your statement in this regard, and for your work that GAO does, and I think you bring out some interesting points that we certainly can follow up with in the Office of Procurement Policy as to the progress that you are making.

Mr. KELLER. Thank you very much.

Senator CHILES. I probably will have some questions for the record that I would like to introduce to you. Thank you.

[The prepared statement of Mr. Keller follows:]

PREPARED STATEMENT OF ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL
OF THE UNITED STATES

Mr. Chairman and members of the subcommittee: We appreciate the opportunity to appear today to present our views on the work of the Office of Federal Procurement Policy (OFPP) since its creation in 1974.

Like you, Mr. Chairman, the Comptroller General was a member of the Commission on Government Procurement which recommended the establishment of such an office. We strongly advocated the creation of OFPP in testimony before your Subcommittee. At that time, we said that a clear congressional mandate, with the stature and continuity it would confer, was essential to: establish strong executive branch policy; effect regulatory coordination among the some 20 Federal procurement agencies; sponsor legislative reform; achieve efficiency and economy in procurement operations, and build public confidence in the procurement process.

To accomplish these objectives on August 30, 1974, Public Law 93-400 was enacted. This law established OFPP in the Office of Management and Budget as the focal point for Federal procurement policy.

OFPP STATUTORY FUNCTIONS

The Congress charged OFPP with overall procurement policy direction and six specific statutory functions. These functions correspond with particular recommendations of the Procurement Commission. Our comments on them are based on material developed for an upcoming GAO report to the Congress assessing OFPP's action to date on the Commission's 149 recommendations. This report, to be released in May, is the eighth in a series monitoring action on Procurement Commission recommendations for the Congress.

The first OFPP statutory function is the establishment of a system to coordinate procurement regulations of the executive agencies and to make the

regulations uniform to the extent possible. OFPP has designed a new system called the Federal Acquisition Regulation System (FAR). We believe this new system has great potential for simplifying contracting and improving Government/business relationships.

Our report will match features of the new system against the concerns of the Procurement Commission in the procurement regulation area. The comparison will show that the new system addresses the Commission's concerns about uniformity and readability but falls short to some extent in controlling the proliferation of regulations.

The new system identifies several kinds of regulations the individual operating agencies cannot issue, but it is unclear about what kinds they can issue both topside and down through the organization. Our report will recommend clarification and suggest further guidelines that might be useful in curbing proliferation.

The second function assigned to OFPP is to establish an effective and timely method of getting interested parties to participate in the development of procurement regulations. Here again OFPP has improved the overall situation, but two aspects of the new policy need attention.

1. Regulations are subjected to wide public participation if they are significant, but the term "significant" is not defined. Without guidelines or tests of significance, either the Federal agencies or OFPP could at any time deny that a particular regulation is significant.

2. Participation could still be quite limited in that an agency or OFPP can bring a new regulation into almost final form before interested parties or the public are invited to participate.

The President's Executive Order 12044 on improving Federal regulation last year confirms our belief that once a regulation is published for comment most people believe it is almost impossible to change it. The central question of whether a different kind of regulation is possible or some alternative other than a regulation is possible is extremely difficult to address. Many favor bringing those to be affected by a regulation into the thinking process at an earlier stage of the proceedings. However, we found no consensus on how this might be done. Our report will outline several alternatives for the Congress and OFPP to consider.

The third statutory function is to monitor and revise policies and procedures relating to the Government's reliance on the private sector for needed goods and services. This policy is national in scope and the Commission's recommendation would have it clearly stated in our basic laws as opposed to letting the policy vacillate with each administration.

OFPP has gone through two phases in discharging this function. The first one dealt with enforcement of existing OMB Circular A-76. The second dealt with reviewing and revising that Circular's procedures. Our report of last fall concluded that, before any new set of procedures could truly be effective, it was necessary to develop a firm national policy that has both legislative and executive branch endorsement and support.

OFPP did not air the Commission's recommendation with the Federal agencies and the private sector and it is still open. OFPP claims in its status reports that the enactment of OFPP legislation giving that Office A-76 monitoring responsibility reflects congressional response to this Commission recommendation. We find nothing in the legislative history to support this claim. On the contrary, the history is clear that Congress specifically separated the A-76 policy issue from enactment of OFPP's legislation. We continue to believe that a clear understanding and support by both branches of Government is essential to successful administration of the policy.

The fourth function is to promote and conduct procurement research. The legislative history states the purpose is to foster innovation and creativity and the orderly development of promising procurement techniques. So far not very much has been achieved in this area. OFPP's research activity has been done mostly through the Federal Acquisition Institute. The Institute has: (1) set up defense and civilian research councils, (2) performed a survey of civilian agency research needs, and (3) sponsored two research projects. Overall, however, neither OFPP nor the FAI has done much in the first 5 years to research ways to improve productivity and performance in the operating agencies.

Our own study of this subject issued in September 1977, showed that civilian agencies have been reluctant to undertake this kind of research and that the defense program lacked momentum.

The fifth function is to establish a procurement data system to meet the needs of the Congress, the executive branch, and the private sector. This system began operation just a few months ago with 144 agencies participating. It is too early to judge its effectiveness but we think a good start has been made.

Your interest, Mr. Chairman, in having the Government use available commercial products instead of relying on voluminous Federal specifications for development of specialized items is well known. You will be interested in knowing that the new reporting system, as it now exists, does not have the capability suggested by the Procurement Commission to provide data on amounts of commercial products bought. We brought this to the attention of OFPP officials who have said the situation will be corrected.

The sixth OFPP function is to promote programs for recruitment, training, career development, and performance evaluation of procurement personnel. The Procurement Commission found that agencies were appointing many contracting officers not qualified by experience and training. Legislative history stresses that improvements in the procurement process can only be achieved if personnel are equipped to cope with the increasing complex demands of contemporary procurement.

To help carry out this function, OFPP created the Federal Acquisition Institute in July 1976. The FAI has moved out in the education and training field (1) by encouraging universities to incorporate undergraduate and graduate level programs, (2) by sponsoring new courses, and (3) by upgrading and extending several Government-wide basic contracting courses. FAI still needs to evaluate existing agency training courses. In addition, work needs to be done on programs to promote college recruiting and to develop programs for performance evaluation of procurement personnel. A draft career development guide has been circulated.

The FAI started with great dedication but has been hampered by staffing problems, an inconvenient physical location, and an overextended scope. Also, OFPP could give major impetus to the FAI by setting up qualification requirements that all persons would eventually be required to meet to be appointed as contracting officers. Such a policy would spur a continuing effort between the Institute and the operating agencies to develop an effective procurement workforce.

ACCOUNTABILITY FOR PROCUREMENT COMMISSION RECOMMENDATIONS

OFPP is also responsible for completing action on the Commission's 149 recommendations. Legislative history is clear that OFPP's annual report is to give the Congress an analysis, evaluation, and review of the status of these recommendations.

OFPP's recent January 1979 annual report is not completely responsive to this mandate. Our remarks are influenced by three factors. (1) More than 6 years have been passed since the Commission issued its report; (2) The report itself is fast getting out of date, and (3) Decisions and actions are needed promptly to bring this program to a timely conclusion.

Let me summarize the current status of the recommendations.

Status:	Number
Neither accepted nor rejected.....	18
Rejected.....	11
Accepted:	
Action complete.....	26
Action pending.....	94
Total.....	149

The May report will highlight where each recommendation stands today and discuss the prospects for concluding action on them.

Since its creation in 1974, OFPP has submitted reports to the Congress three times; April 1976, May 1977, and January 1979. These reports contain a general description of OFPP's activities, many of which are traceable to Commission recommendations. The May 1977 OFPP report included a copy of a periodic report used internally by OFPP to show the status of individual recommendations. Such a status report was not included in OFPP's latest report to the Congress but did provide the basis for a one-page statistical summary. This one-

page statistical summary does not, in our opinion, provide the needed analysis, evaluation, and review cited in the legislative history.

Internal status reports are prepared by OFPP two or three times a year. They track actions on the recommendations for the benefit of OFPP officials, the executive agencies and, as I mentioned before, served as a foundation for the OFPP annual statistical summary. OFPP's internal status reports have several problems.

They contain some premature assessments that implementation of recommendations is complete.

They contain constantly shifting (missed) target dates for completing implementation that give no indication of original target dates for action or reasons for delay.

They do not show multiple actions within individual recommendations.

They do not identify incremental tasks required to carry out individual recommendations.

Our May report will offer a redesign of OFPP's status report aimed at getting much clearer visibility on remaining actions and responsibilities for achieving them. Improvement in the OFPP's reporting on Commission recommendations is essential if the executive branch and the Congress is to be kept continually and better informed of the progress, problems, and tasks remaining to implement the Commission recommendations.

As for the undecided recommendations, 6 years seems long enough to consider them. Decisions are needed to accept or reject before the information gets out of date and so that the Congress will have the opportunity to legislate if it disagrees.

SYSTEMS ACQUISITION REFORMS

After hearings by this Subcommittee, the Commission's major system acquisition reforms were conveyed to the executive agencies by OMB Circular A-109 of April 5, 1976. The agencies, however, have been slow to conform their system acquisition policies and practices to the new methods.

On February 20, 1979, we published a report on implementation of Circular A-109 by the Department of Defense. In a short time, we will be issuing a similar report concerning implementation by the Department of Energy, Department of Transportation, GSA, and NASA. These studies conclude that there is little sense of urgency about installing the new reforms. Very few acquisitions are underway within the guidelines, now 3 years old. Although the primary responsibility for applying A-109 rests with agency heads, OFPP has used the budgetary review process to only a limited extent to expedite matters.

The two GAO reports offer a number of recommendations to the various agency heads asking them to clear up policy differences with A-109, to finish building new mission structures, and to hasten implementation of A-109 reforms. We will also recommend that OMB/OFPP staffs press more aggressively to get compliance with A-109.

We will note that the Commission recommendations for system acquisition are anchored to its proposal that agencies should organize and budget their affairs by mission, and that Congress should review and oversee in the same way. The requirement for budget presentation is in the Congressional Budget Act as well as in A-109. Also, several committees—including the House Armed Services—are exploring or experimenting with the new concept. Mission budgeting in the end is up to the Congress for it can require or not require agencies to submit budgets along mission lines.

COMMERCIAL PRODUCT REFORMS NEED ATTENTION

The Procurement Commission found that Government supply operations would be more efficient and less costly by placing greater reliance on commercial products delivered to customers through commercial distribution channels as opposed to products developed to Government specifications and channeled through Government warehouses.

Actions by OFPP have provided a partial response to the Commission's recommendations in this area. A policy change has been made to emphasize the purchase of commercial products without using technical specifications. OFPP plans to have in place by July 1979 the necessary regulations, procedures, and techniques to implement the policy.

OFPP has not acted on the Commission's recommendation to use industrial funding and to continuously evaluate procurement and distribution systems on

a total cost basis. We reported in July 1978 that comparable treatment of this recommendation, as with other Commission recommendations, would require the executive branch to accept (in which case legislation should be proposed), reject, or modify the recommendation as presented.

More information on OFPP's progress in this area will be provided through a separate study of several agency operations that we now are performing.

OFPP POSITION ON WAGE BUSTING

The Service Contract Act of 1965 is intended to protect all Government contractor service employees except bona fide executives administrators, and professionals from "wage busting." Wage busting is the practice of lowering employee wages and fringe benefits by incumbent or successor contractors, in an effort to become the low bidders or offerors on Government service contracts, when the employees continue to perform the same jobs. Recognizing the existence of this practice and that categories of employees were exempted from the Act's coverage, legislation was introduced in the 95th Congress that would have brought professional employees under the Act's coverage.

In July 1977, we advised the Chairman of the House Education and Labor Subcommittee on Labor-Management Relations that, while we agreed wage busting should be discouraged, we believed the legislation was both undesirable and unnecessary, would unduly increase service contract costs, would have an adverse impact on the professional salary structure in both the private sector and the Government, and would create additional burden on the agencies administering the legislation.

At about that same time in 1977, you, Mr. Chairman, asked us to review the impact of special procurement procedures used by NASA and the Air Force to prevent service contract wage busting for professional employees in the Cape Canaveral area. Our review confirmed that those procedures helped prevent wage busting of noncovered employees during the 1977 recompetition of several major service contracts. We concluded that the procedures had demonstrated that a procurement policy directed toward discouraging wage busting in service contracts was a viable alternative to the proposed legislation and recommended that the Administrator of OFPP establish a Government-wide policy along the same lines.

OFPP agreed, and on March 29, 1978, the Administrator issued a policy letter (No. 78-2) which directed that Federal procurement procedures be developed to assure equitable compensation for all professional service contract employees. The letter provided appropriate language for inclusion in all future solicitations whenever professional employees are expected to be needed to perform the services. We understand that several executive agencies, including the Air Force and NASA, have taken steps to implement the new policy. OFPP's role in dealing with the wage busting issue in our view, was a proper one, and the kind of role envisioned for OFPP by the Congress when it enacted Public Law 93-400.

OFPP'S ROLE IN THE ANTI-INFLATION PROGRAM

Executive Order 12092, dated November 1, 1978, specifies that each executive agency and military department shall incorporate in its contracts a clause which requires Federal contractor compliance with the Wage and Price Standards of the Council on Wage and Price Stability. OFPP is responsible for the overall direction of this procurement provision, including issuing regulations and procedures for determining exceptions and granting exemptions.

OFPP's implementing regulations set forth the certification provisions to be included in bids, proposals, and contracts on or after February 15, 1979, and define the conditions under which waivers may be granted.

On February 5, 1979, representatives of the General Accounting Office testified before the Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government Operations, that Executive Order 12092 is not authorized by statute. It would follow from this that the implementing procurement regulations would also lack the force and effect of law. I should add that the position of the Administration is supported by a memorandum of the Assistant Attorney General, Office of Legal Counsel.

The OFPP regulations provide that companies that the Council on Wage and Price Stability determines to be noncompliant or that refuse to certify compliance shall be ineligible for additional Government contracts in excess of \$5 million,

unless compliance is waived by the head of the contracting agency. DOD, which maintains fairly good procurement statistics, estimates that over 1,400 of its contracting actions are valued over \$5 million each, for a total value of about \$27 billion annually. Projecting the DOD data Government-wide, OFPP officials estimated that there are probably no more than 2,000 such transactions in excess of \$5 million totaling about \$40 billion each year. The number of contractors and contract actions that actually will be covered under the anti-inflation program is unknown; this will depend on how the Council rules on various exceptions and exemptions and how many waivers are granted by agency heads.

OFPP also has been engaged in other anti-inflation activities. Since May 1978 OFPP's Anti-Inflation Council, which is chaired by the Administrator, OFPP, and has representatives of the 12 major procurement agencies, has sought—to avoid, reduce, or delay the purchase of goods or services whose prices are rising rapidly, and—to reflect the principle of deceleration in all new or renegotiated Federal contracts which contain escalation clauses. Leadership for the procurement initiatives and subsequent purchasing actions has been assigned to OFPP.

OFPP is currently providing assistance and information to the Council on Wage and Price Stability, as well as directly to non-federal governmental units, intended to extend the anti-inflation program's procurement provisions to State and local governments.

In conclusion, Mr. Chairman, I would point out that OFPP has a difficult role to perform, and; while we have some criticism of actions and its lack of progress in some areas, we believe on balance that the Office has done a credible job, and we recommend that the Office be reauthorized.

Senator CHILES. Our next witness is Hugh Witt, the Director of Government Liaison, for United Technologies Corp., and prior to taking his present position, Mr. Witt was the first administrator of the Office of Federal Procurement Policy.

Mr. Witt, we feel that you are kind of qualified to speak on this subject since you have started off being the first daddy maybe of this agency, or the first administrator. Now you are on the other side, and you are feeling some of the policies of the agency, so we are delighted to have you here, and you have your testimony.

Mr. Witt. Thank you, sir. It is not very long, as you can see, since I undoubtedly don't have to cover the subject in as much detail as Mr. Fettig would be expected to do. I appreciate the opportunity certainly to be here.

Senator CHILES. I used to put you on right after GAO got off and ask you about the progress that was being made.

Mr. Witt. I remember that very well, Mr. Chairman. I spent quite a bit of time here, as I say, under different circumstances and a slightly different environment, but I would like to thank you for the courtesy you have extended to me during my tenure as the first Administrator.

I realize you would get frustrated now and then, but during that frustrating experience, I think the subcommittee was understanding most of the time. I remember very well Mr. Fettig sitting up there thinking up the nasty questions. The shoe certainly is on the other foot.

**TESTIMONY OF HUGH E. WITT, DIRECTOR OF GOVERNMENT
LIAISON, UNITED TECHNOLOGIES CORP., AND FORMER ADMINIS-
TRATOR, OFFICE OF FEDERAL PROCUREMENT POLICY**

Mr. Witt. Mr. Chairman, I have given a lot of thought to the pros and cons of continuing OFPP. I can frankly say that having put 2½ years into getting it started, my first inclination was to automatically

say it should be given an extended lease on life. Then I did have second thoughts.

The main reason I slowed down for a more in-depth consideration was the fact that during my 26 years of Government service, I had seen many agencies begun, and practically none terminated.

Also since I left Government, I have had a better view certainly of what the industrial world has to put up with in dealing with those agencies of the Federal Government.

I had a reputation in Government circles of being one of the few career people who shut down Government installations and put work out into the private sector, and still survived. I was proud of that reputation then, and I am still proud of it today.

Accordingly, I have given as close an evaluation as possible to the product of the OFPP in relation to how things were before that agency's creation, and how they are now, and how they might very well be in the future.

I began by looking at one of the more controversial issues, one that I happened to sign in 1976; namely, OMB circular A-109 dealing with the acquisition of major systems. On balance, I still believe the thrust of that document is in the right direction.

You might be interested to know that I have received both criticism and acclaim on A-109 from my friends in the Government and also in industry. For instance, some of the service people in the Defense Department feel that too much decisionmaking is given to the Secretary of Defense. Needless to say, the Secretary of Defense's staff does not share that feeling.

On the other side, some of my industry colleagues have been brought up short by the circular when they had a good thing started on a single source basis with a program manager. Then on the other side of the coin, I have heard sighs of relief from industry people who were given a chance to bid on a program because it was opened up to competition by A-109. It depends upon where you are standing at the time.

Again, I am convinced that the overall result is a healthy one for industry and the Government.

I also believe that much of the current emphasis on establishing a clearly stated need for a program stems from the recent push in that direction by the Office of Federal Procurement Policy. Any time you tell someone he must prove he needs something before he can spend a lot of money on it, you must certainly be on the side of the angels, and after applying the need test to the Office of Federal Procurement Policy, I conclude that it should be continued.

Based on my experience in the Department of Defense, and as Administrator of OFPP in the Office of Management and Budget, I am convinced that a policy office at the level of the Executive Office of the President is in the best interest of both industry and Government.

In my opinion, the acquisition process and its related functions is too important to be left to a fragmented decisionmaking process. A central office, looking across all agencies, goes far to solve this problem.

I should make clear at this point that I am not discussing the quality of the present OFPP staff, or the precise number of people needed to operate the Office. I am saying that an office, performing the

tasks which the Office of Federal Procurement Policy has been performing, is required and should be continued.

The Office serves a valuable need as a referee between conflicting Government agencies. An appropriate structure at the right level of Government did not exist to meet this need prior to the creation of the Office of Federal Procurement Policy in late 1974.

OFPP also serves as a point where initiatives can be taken for improvement in the way the Government does its business, initiatives which can be taken across the agencies on a horizontal basis instead of vertically within one agency.

The executive agencies, engrossed in day-to-day operations, are generally not the most fertile fields for strong initiatives to change the way they are doing business. Mr. Chairman, I have been there, and I can speak from experience.

Voltaire once wrote, "Every man is the creature of the age in which he lives; very few are able to raise themselves above the ideas of the times." I believe the concept of an OFPP provides the opportunity for us to raise ourselves above the ideas of the times.

The cross-fertilization of ideas and concepts by the agencies has been promoted by the Office of Federal Procurement Policy. As you so well know, Mr. Chairman, it's a mighty big Government out there, and the more we can meet the communications gap, the better off we will be. I frankly did not find a burning desire within Government to bridge this gap.

I could be more specific and work my way through a list of actions which were begun during my tenure as Administrator and which have been started in the last 2 years. However, the OFPP report to the Congress covering 1977 and 9 months of 1978 was issued within the last 30 days. It contains a discussion of these actions in more detail than I could supply, and very obviously with more accuracy than I could supply.

Accordingly, I will not review those with you since I am sure you and your staff have the report.

Mr. Chairman, on a more personal note, I would like to speak to a subject I would call tilting at windmills. In 1974 when I left my position as Principal Deputy Assistant Secretary of Defense in the Pentagon and made that fateful trip across the Potomac, some cynics referred to it as the River Styx, I thought of the poet John Milton's words, "Better to reign in hell than serve in heaven."

I don't know of anyone who considers the Pentagon to be heaven, but then I suppose it's all relative when you think of starting an office like OFPP from scratch.

Well, I had my reign in hell, so to speak, and I have no regrets. One of the principal reasons I have no regrets is because I was able to tilt at some mighty big windmills. I suppose the biggest tilting was when I took on the mighty Labor Department over jurisdiction of certain procurement aspects of implementation of the Service Contract Act.

As it turned out, my decision in that matter was reversed by the new administration's Director of OMB. All I can say to that is that you win some and you lose some. I would be less than candid, however, if I did not confess that I take a certain amount of vicarious pleasure in noting that my successor has recently taken on the Labor Depart-

ment, head on, over responsibility for certain procurement aspects of the Service Contract Act.

The reason I bring this isolated issue into our more general discussion of the Office of Federal Procurement Policy is that I, as Administrator, had the opportunity to "tilt at a windmill," and Mr. Chairman, I consider that very important in our form of government, which, considering the size of our agencies, has developed an extremely large and layered bureaucracy to run it.

In other words, the Office of Federal Procurement Policy provides a great arena in which to tilt at those windmills which now and then need a healthy tilt.

The Service Contract Act issue had been festering for years without resolution. Without an office such as OFPP, there would have been a tiltee, but no tilter. Win or lose, there must be at least a chance for battle on those kinds of issues.

One other point I would like to make. That concerns the political bias which may be placed on the Office. There is no question that the Congress, in its wisdom, dictated that the Administrator would be politically acceptable to whatever administration is in office. Otherwise the Congress would not have insisted on a Presidential nominee who they could confirm or reject.

In other words, Mr. Chairman, I feel sure that you gentlemen wanted a crack at whomever was recommended by the President for the job.

At the same time, the procurement community over the years has established itself as a group which is basically apart from politics and from political pressure. This puts any Administrator in the precarious position of working for someone who was elected through the political process, but the Administrator still must represent in effect thousands of objective, dedicated professionals who are proud to be in the procurement business.

Mr. Chairman, I can only say that the Administrator of the Office of Federal Procurement Policy must walk a very narrow tightrope which sways dangerously in the breeze. At the same time, I am convinced the Office is at the correct level of Government, or it will not be effective. Having been on that tightrope, I can only offer my best wishes for a nice sense of balance.

I would like to make one final point. I notice an increasing amount of legislation which calls for action by the Office of Federal Procurement Policy. This is beneficial in that it reflects a growing understanding in Congress of the existence of the Office itself, and a desire to make use of it, and I do believe that has been beneficial.

I can remember that I had a hard time finding people up here who knew about the Office when I was starting out. On the other hand, when you consider the relatively small size of the Office of Federal Procurement Policy, I fear that it may be taking on more than it can effectively handle. I can envision the staff becoming buried under such a large variety of tasks that it will not perform any of them very well, and a poor reputation can quickly render an agency useless, particularly in a town like Washington, D.C. They are always watching to see who falls behind the herd. There are a lot of wolves around, Mr. Chairman.

In conclusion, my recommendation is to continue the Office as established by Public Law 93-400, and to give it all of the support it earns and deserves.

Thank you, sir.

Senator CHILES. Thank you very much, Mr. Witt, for that very comprehensive statement. I want to note that I think you served in a very, very fine capacity as the first Director of this fledgling agency, the Office of Federal Procurement Policy. I think you certainly did an outstanding job in that capacity, and I am delighted to see that as you have been taken off the bureaucratic ladder, that you have now become a philosopher.

Mr. WITT. Well, Thomas Jefferson once said, "As Government grows, freedom recedes," and the further away from Government you get, the more you understand that!

Senator CHILES. Senator Pryor, do you have some questions?

Senator PRYOR. Mr. Witt, as the Administrator of OFPP, you were a member of OMB, but you operated within your own statutory base. OMB had originally objected to establishing a separate statutory base. OMB had felt that the objectives of the OFPP law could be accomplished administratively, so therefore, my question is based upon your experience in this endeavor, how important do you believe that a separate statutory base is, and how would your performance have been affected had there been no statutory base for OFPP?

Mr. WITT. I am firmly convinced that a statutory base is very important. No question about that. I had some problems very definitely at the OMB level when I was starting out with the Office. It was a brand new agency, and was sort of injected into OMB. They certainly had not asked for it, and indeed had said they didn't care much for having the Office there, which put a new Administrator in a rather tenuous position to begin with.

At the same time, the more that I worked with the OMB staff, and the more I worked with the Director at that time, the more I believe we became more and more comfortable with each other.

I very definitely needed the clout of the Director of OMB. There is no question about that. Anyone who looks at the OMB A-109 circular which deals with major weapons systems will note that there are two signatures on it. One is mine, and one is the Director of OMB. The people who have the responsibility in the agencies for implementing a circular of that type, which was not strictly in weapons systems acquisition, but overlapped a little bit into things like the comptroller's job in agencies, for instance, they would not take advice from the Administrator of the Office of Federal Procurement Policy because they felt they were not specifically in that frame. It was very healthy to have the Director of OMB have his name on there as well as mine. We got much more attention, particularly, I noticed at budget time.

Senator PRYOR. That was going to be my next question. OFPP has become I assume a part of the budget process. Does this give you additional so-called clout?

Mr. WITT. Well, it helped me. It helped me in performing my duties as I saw it.

Senator PRYOR. Do you feel that OFPP should be an integral part of the budget process itself?

Mr. WITT: Well, I think there is a line where they can overstep their area of responsibility, but I think it worked out pretty well. I would say that the old timers in OMB who have the budget review responsibilities are well dug in, and it is pretty hard to get into their area anyway. I wouldn't worry much about it.

Senator PRYOR. Did you have at OFPP at that time as the Administrator, or did you feel that you had at that time an impact on the budget decisions that were being made?

Mr. WITT. Not much.

Senator PRYOR. Should you have had more impact in those budget decisions?

Mr. WITT. Well, we were really just getting into this. I think that might be a better question for my successor because we were really just getting into the budget review process to assure that acquisition policies were being followed, and I don't think I was into it far enough.

The first year, of course, we were busy trying to get staffed up, and we spent a lot of time answering inquiries from all over the place, including quite a few inquiries from our distinguished chairman here today, so that we had a lot of other things to do besides take on the whole budget process, very frankly.

Senator PRYOR. If legislation is introduced to reauthorize OFPP, how long in your opinion should that authorization run for? In other words, how long should the authorization run?

Mr. WITT. Another 5 years would be my best judgment.

Senator PRYOR. Should the same provision be in the new legislation that OFPP should be subject to sunset and reevaluated at that particular time?

Mr. WITT. Absolutely.

Senator PRYOR. Do you feel that any provisions of Public Law 93-400 might be modified in a new OFPP authorization bill, any changes in the law that might be necessary?

Mr. WITT. I think it is a pretty well balanced document, Senator. I can't think of any major changes that I would make.

Senator PRYOR. Mr. Chairman, I think for the moment that covers my list of questions.

Senator CHILES. Can you think, Mr. Witt, of any immediate thrust that you would see that OFPP should be pursuing if it was reauthorized for another existing period of time?

Mr. WITT. Well, they have got a pretty full plate right now. I would like to reiterate my sense of alarm over the fact that I see quite a bit of legislation coming out of the Congress with statements in there to the effect that the Office of Federal Procurement Policy will implement this, and issue instructions, and issue regulations and so forth. With the 30, 35 people, and all the jobs that are already laid on, I do not see that they will be able to pick up a large additional amount of responsibilities.

Senator CHILES. Do you think it would be wise to allow OFPP to grow and to have considerable numbers of additional people to take on these jobs, or would that go against the thrust of why it was created, to serve as this coordinating agency and focal point agency, and to be staffed with very few competent professional people?

Mr. WITT. In my opinion, if the workload is increasing in the future, if I were the Administrator, I would probably be asking for more people.

Senator CHILES. If we grant more people, will we dilute or change really the basic nature of OFPP is what I am referring to? Will it become just another agency with level upon level upon level?

Mr. WITT. We used to have quite a few discussions, as you may well imagine, on just how big the Office should be and where it should stop and so forth. We thought on balance, that the number of people we had was just about right, and I notice that my successor has kept it roughly the same size since then, which means that he has not been getting more people, or he is reflecting my good judgment, I'm not sure which. But I think it is about right for the workload. I really do.

At the same time, as you say, if the workload increases, if they have to have more people, then you have that ever-present danger of just building another big bureaucracy, and if we can avoid that, we certainly should. How you can keep people who are doing the job from being assigned more duties, I don't know. It is a good indication that the Office is functioning well. It seems to me that it is being located by committees up here for a further assignment of tasks, but there is a delicate balance where it would just become another big, clumsy bureaucracy, and that is what you want to avoid.

Senator CHILES. Senator Pryor?

Senator PRYOR. Mr. Witt, when the Congress mandates an office with additional responsibilities, and you have other duties and functions to perform pursuant to legislative enactment, do you find resistance among the other agencies that you deal with in carrying out those duties, those new duties? Do they resist this change?

Mr. WITT. Well, everybody resists change to a certain extent. I was in the Pentagon when the Office was originally set up, and there were a lot of us who felt it was completely unnecessary. The more that we looked at it, some of us, the more we decided it had something to offer.

At that time, of course, I didn't know I was going to be offered the job to run this new agency. After I decided to take the job, it certainly looked better to me from that side to begin with, but I think now if you ask the agencies that are on the receiving end, shall we say, of the decisions in the Office of Federal Procurement Policy, I think you will find that they are more and more discovering some very good points and some benefits for their agencies.

I found this in getting into the Federal Acquisition Institute, that some agencies didn't even know that other agencies had an educational program going, and they were getting ready to set up their own educational program and didn't know that another agency had vacant space and facilities and faculty to teach that course.

Now that is a sad comment, particularly for the taxpayer who is paying for some empty space in one place and watching another agency build up the same operation because of lack of communication.

Senator PRYOR. When you were Administrator under the present conditions, did this Office ever make decisions or establish policy in procurement that mandated even by implication other agencies to assume new duties and responsibilities or to hire new members of their staff to carry out the decisions that your agency or your former agency made?

Mr. WITT. I don't know of any tasks that I laid on an agency where it would have to go out and hire people to perform. Most of them, to my knowledge, were sufficiently staffed to perform anything that we laid on them.

Now some of them had to do a little reorganizing to pick up some of the tasks, and they might very well have gone out and hired somebody to do some of the work that we asked them to do, but I don't remember hearing a lot of screaming and moaning, so it must not have been too bad.

Senator PRYOR. Mr. Witt, you mentioned in your very fine remarks, and I quote, "tilting at windmills." In January 1977, you issued an OFPP directive which would have changed the application of certain requirements of the Service Contract Act which has been discussed.

Based upon your experience at OFPP and your dealings with the Department of Labor, I wonder if you might share some of your observations with us. First, when you were Administrator, how did you view OFPP's role and authority in establishing Government-wide procurement policies in light of the Labor Department's authority to establish labor standards which are implemented through the procurement process?

Mr. WITT. Well, there was no question that they did not agree with my interpretation of our responsibilities as I read Public Law 93-400.

Senator PRYOR. In other words, the Labor Department did not agree?

Mr. WITT. That is correct, and they certainly let me know about it, and so we had, as I say, a certain amount of collision. This happens in the Government.

Senator PRYOR. Did they let you know about it by not responding to your request?

Mr. WITT. We had a number of meetings. Edmund Burke said: "All Government is founded on compromise and barter," and it seems to me that we try to work out our differences.

Senator PRYOR. This is quite a philosopher here.

Senator CHILES. He has had a lot of time.

Mr. WITT. I have had more time to think philosophically since I left that job, Senator. We sat down and tried to reason together, so to speak, but we still were on a collision course, and as I said in my comments, we had been carrying on a running battle over some of these issues.

I had even seen them in the Defense Department before I left there to cross the river, so that I knew that the Department of Defense was unhappy with the DOL interpretation. I knew that NASA was. I knew that the position we had adopted in the Office of Federal Procurement Policy was fully supported by the General Accounting Office, and I can guarantee it is always good to have the General Accounting Office with you on any of those fights, so we felt that we certainly had a very strong position.

Now in fact the General Accounting Office and I had both gone over to testify at the Department of Labor on this issue before the administrative law judge, and we laid out our position, but nothing ever came out of the Department of Labor on the issue.

I decided to tilt at the windmill by issuing a piece of paper which laid out our position, and stating that I had the authority to do it. It is my interpretation of Public Law 93-400.

Senator CHILES. If I might interrupt just a moment, I think what we are trying to determine is not on the particular dispute and not on the particular merits of the dispute, but did the act and did the Office of Federal Procurement Policy allow that dispute which you said had been brewing for a long, long time and had been simmering for a long time, allow that to escalate to a point where the issues could be clearly drawn and so the decision could be made?

You made a decision, as I understand it, one way and OMB then overruled you on that decision?

Mr. WIRT. That's right.

Senator CHILES. But at the time it did, and a decision was made, and would you say that having the Office of Federal Procurement Policy allowed that to come into focus, a dispute between the DOD, the Department of Labor, and NASA and others, and to bring that up and to have that determined?

Mr. WIRT. Yes; it had been, as I say, in a festering state for several years, and I decided to see if I could resolve it. I don't think it would have been brought to a head in the way it was without the Office of Federal Procurement Policy. I don't see how it would have.

Senator PRYOR. Should this Office be an office of final authority? Should it be an office that acts as a referee, or should it be a consultant?

Mr. WIRT. It should be all of those, depending on the issue and the severity of the issue, how important it is; namely, a number of issues we were able to get settled by refereeing between two agencies, and they would finally agree to a solution. We were referee there.

Sometimes, in my opinion, you have to bite the bullet and go ahead and sign out something where you always have one side unhappy, but part of the problem in any big government is getting decisions made. It is very easy to let them slide, and I think this agency, if run with a fairly firm hand, can get some decisions made that would not be made otherwise, in my opinion.

Senator PRYOR. Mr. Chairman, I think that's all I have.

Senator CHILES. We thank you very much for your appearance.

Mr. WIRT. It was good to be here, Mr. Chairman, in this capacity.

Senator CHILES. Our final witness today is the current Administrator of the Office of Federal Procurement Policy, Mr. Lester Fetting.

I note, Mr. Fetting, that you have got a 60-page statement here. I don't know whether that suggests to me whether you think you are going to run 7 minutes of 12 and do a read and run strategy. I want you to know if you read this statement, you better have brought your lunch because I am going to ask you about 60 pages of questions.

Mr. FETTING. No, I don't want you to think I am on the defensive, Mr. Chairman. The statement is comprehensive only in the interest of building a thorough record. This is an awfully important review, and as the earlier testimony indicated, as this legislation moves forward for the consideration of Congress, it is going to attract much controversy.

Because of that, I would like to submit the statement for the record, and really hit the highlights in three general areas.

Senator CHILES. The statement in full will be admitted.

Mr. FETTING. Thank you.

TESTIMONY OF LESTER A. FETTIG, ADMINISTRATOR, OFFICE OF
FEDERAL PROCUREMENT POLICY

Mr. FETTING. I have to begin by offering again, as I have in my earlier appearances, my compliments for your being here. It was just about 6 years ago exactly that Senator Sam Erwin sat right there at the end of the table with a four-volume Procurement Commission report that he didn't quite know what to do with, and you, Mr. Chairman, sat here, having been on the Procurement Commission, and got a small opening to establish an ad hoc committee.

The record of oversight that you have established here was probably one of the largest reasons we have seen movement, and we have proved to the taxpayers that the millions that were invested in Commission studies really can pay dividends. The trick to it is this type of oversight, and by way of opening, I would be remiss if I didn't offer my compliments again.

Broadly, I would like to touch three areas. First, I would like to just paint a landscape, take a snapshot of where we stand and what our responsibilities are, just very briefly.

Second, I would like to outline for you what has been accomplished over the last 5 years, hitting the highlights; and third, I would like to offer some observations on the character of the Office, the nature of the job, and touch on some of the issues that Senator Pryor and you are interested in.

In the broad picture, it pays to sit back for a moment. This 93-400 law leaves 25 people to oversee 4,000 separate provisions of law that impact Federal contracting; 60 major regulatory systems; 877 different sets of procurement regulations measured down to the third tier; 13 major OMB circulars involving OFPP's responsibilities; and 5 Executive orders.

We have on our books 50 projects and initiatives. We participate in 30 interagency groups, ranging from Presidential groups like the Interagency Commission on Women, all of which are heavily involved in procurement preferences.

In the last 2 years since my confirmation, I have testified about 35 times before 13 different congressional committees on as wide a range of subjects as you can imagine, from small business, progress payments, minority business, and labor surplus area contracts. We have been a spokesman for the community. When you reform, you have a responsibility to go out and tell people what you are trying to do, and our staff has participated in literally hundreds of public forums.

Over the last 2 years, 10 major policy issuances have emanated over my signature.

The ammunition we have to confront that mass is strong. Public Law 93-400 is statutory. It gives directive authority. The law says, thou shalt prescribe. It says the executive agencies shall follow. We have the ability to command interagency resources, and on the other side of the coin, we are heavily tied to congressional responsiveness.

The law requires us to report to Congress, to submit for prior review major policy issuances. It limits our discretion to intervene in specific agency contract transactions, so we don't become an appeals forum or

a fly speck on the system. There are 15 million contract actions each year.

That is the situation. What I would like to do now is describe some major initiatives which, I think show how we have coped with the situation and brought about some major improvements. I would like to do so by referencing the explicit statutory functions which were laid out in 93-400, beginning with section 6d, mandating a uniform regulatory system.

The picture I want to paint of our current situation is nothing short of a paperwork explosion. We took the time and spent some money to do a thorough analysis of just where this regulation and paperwork problem resided, in connection with Federal contracts. This is what we found; 485 different offices around this Government issue, regularly, a series of procurement directives. They call them bulletins, regulations, guidelines, what have you. They constitute 877 different sets, 65,000 pages, one out of every three which is new or revised every year. Most importantly, not one single effective governmentwide mechanism for regulatory controls.

In response to that, beginning in January 1978, we reached an inter-agency agreement to begin what we call the Federal acquisition regulatory project. It is not just plans or a promise; it is a reality. The agreement in 1978 led to the detail of 60 people, topnotch people from principally the Defense Department and GSA. To give you an example of the caliber, the DOD team is led by Navy Captain Vince Pistolessi, and Air Force Colonel John Slinkard; Phil Read from GSA's Director of Federal Procurement Regulations heads up their efforts; and in my office we have a corps of nine people headed by Bill Thyboms working full time on this project.

All the writers were sent to writing school to learn how to write plain English, and although it may sound like a simple job, among the other things we have done—not promising to do, which is not so simple in a bureaucracy—we reached agreement on one common outline for the regulation for all agencies, modified to be put in the Code of Federal Regulations.

We carved up writing assignments. There was jealousy as to who would get the first crack at zero-based writing; 11 of the 45 major pieces have already been produced and put out for public comment. The period for comments has already closed on some, and they are going through final review.

Our current schedule calls for the last piece to go out the door by the end of this month, and I have every expectation that we will reach our original planning goal of having in place, on one table, an acquisition regulation that will replace the myriad of confusion we have now.

I might also say we have a very effective system of controls that has been proposed separately by the executive agencies, that will require prior notice of any further executive agency issuances, to keep the problem from recurring after the FAR goes into effect.

Section 6(d)(2) requires very strong public participation. Let me briefly say, all our issuances have been put in the Federal Register, and many even three times. On the major ones, for example, on contracting out, we originally went to the Federal Register only with our

ideas. We went out with 37 particular changes that we were proposing, went out again when we put those into a circular, and finally we will be going out again.

On contracting out specifically, that is an explicit requirement in the law. The new administration, in March 1977, committed to the Congress that we would take a clean sheet of paper and review the situation. As you well know, Mr. Chairman, there are few issues in Government contracting that touch so many raw nerves as when jobs in a district are at stake, both private jobs and public jobs.

We have recast contracting out policies, and they will be issued shortly. It only awaits Mr. McIntyre's signature.

It will recognize principal reliance on the private sector. The Government is not in business to be in business, but at the same time, we have explicitly recognized, and we have been fair and balanced, that there are some functions that, no matter what the cost, must be performed by government, and that is an important recognition.

Finally, the taxpayer deserves a break, and we put heavy emphasis on cost comparison. We have produced what most people said couldn't be done, a uniform cost handbook for all these cost comparisons in the future.

As you know, the way the routine usually goes is, the agency in the past would do a cost comparison on the back of an envelope to suit its own predilections. The Congressman in the district would be required to inquire. The GAO would be asked to do yet a different cost comparison, which would conflict with the one done by the unions.

The whole scene is going to be stabilized by the requirement for one set of rules, by-the-book procedures. We try to be very fair to the workers. We have an appeals process built in, and I am quite satisfied that, once and for all, we will have built in a firm foundation, a management system, for contracting out issues.

Moving to section 6(d)(4), which mandates research, training, and career development, there, too, we have a hard program in the Federal Acquisition Institute (FAI), and I have some hard results that I want to call to your attention.

We are talking about approximately 130,000 Federal workers that administer Federal contracts one way or another. It is a massive work force, and they deserve far more care and attention than they have gotten in the past.

Roughly, half of them are eligible for retirement over the next 10 years, and we can confront major breakdowns in the ability of the Government to manage its contracting money.

For that reason, we will have effective, April 1979, a government-wide demographic system so we will know the characteristics of our work force. Already preliminary indications show, for example, that as high as 28 percent of the people in the work force on Long Island are ready to retire now, as compared to 8 percent in Dayton, Ohio. We will know in advance where we are falling short on training, what specialty skills are drying up, and as I say, we already have preliminary results there.

We have pushed, prodded, cajoled, and I think had success with the Civil Service Commission. For the first time ever, the whole acquisition process is getting a thorough upgrading review. The classi-

fiction standards, which really haven't been looked at for over 10 years, and then only in piecemeal fashion, the Civil Service Commission now intends to adopt for its own in career reviews.

Under the FAI, we have put out a thorough task analysis. We can't even tell today what functions and tasks we require of our work force; 20,000 people have returned this. It is the most thorough analysis and groundwork for a complete reclassification of Federal contracting jobs. I will leave that for the committee.

Likewise, with respect to the Deputy Comptroller's recommendations on training requirements, we have out now, for final review, one standard guide for career development for all Federal contracting officers. It includes, for example, minimum training requirements. This guide will be issued to all agencies.

The guide is not enough, though. We need that as a baseline. We intend to follow it up with implementation, as I said, to make sure the work force that carries this enormous load gets the attention it deserves.

In training also, the FAI has had significant success. For example, when Congress passes a new law, like the labor surplus area program, the usual pattern is that people in the field sometimes never even get the word that there is a new law, or if they do, it has come down many layers and its intent is lost.

We decided to do what OFPP and FAI are supposed to do. We are not a schoolhouse. We are a coordinator and a management arm. Under FAI leadership, we did one set of video tapes that answered all the tough questions, and sent it directly to the field. Five hundred copies were directly produced; 30,000 contracting people were trained within 2 months.

Civil Service Commission estimates that on that one project, we saved \$300,000 from the repetitive, duplicative process that otherwise would have been followed, and all the results in the program itself that Congress desires have still not reached my expectations. We did double the performance under the program during that time period.

Also, we have central training packages on systems acquisition in process. I believe 700 people have already received formal training, and 1,800 more are targeted. You have to be kind to the people upon whom you impose change, and the process of education is necessarily a slow one, but it does not need to be necessarily a confused one, as it has been.

We have tried to use FAI in this way. We have other packages on anti-inflation, ethics, prevention of fraud, A-76 and others.

Also in the education area, I want to report some definite hard results. After much negotiation and review, the National Association of Schools of Public Affairs and Administration have given their blessing to creating special masters in public administration specialties in Federal acquisition. That is a major step forward in giving this whole career profession, which is one of the comers, not just at the Federal level but at the State and local purchasing as well, giving it the type of educational recognition it deserves to draw the brilliant talent into the field.

Twenty universities are working directly with FAI to establish or modify curricula for graduate training, and at the undergraduate

level we established a model program with American University, and 104 students have already entered that program.

Senator CHILES. Is there going to be a job for these students when they have a degree in this, or are they just going to have a career?

Mr. FERRIS. As a minimum, it looks like there are a lot of job openings coming up in Long Island, and we will know that better as the system goes mainline, but all the crude data that we have to date, dating back to the Procurement Commission, indicates a serious problem in filling the work force, and as I say, it is not just a Federal problem. More and more emphasis is being placed on purchasing functions with State and local. The same contracting out phenomenon that we have seen at the Federal level is now really starting to percolate at State and local government levels, faced with increased austerity in their search for the most cost effective ways of doing business.

The State University of New York has agreed and has established a credentialing program to grant associate degrees for procurement workers to give them recognition, and we already have our first graduate, on the strength of his experience, his course work, and his training.

That is enormous incentive, particularly to the lower levels in the work force that are looking for career upward mobility and for recognition in this profession.

Research—I will be the first to say I am not personally pleased with what has been accomplished. We have served in a very effective coordinative role. For the first time, we have coordinated the Defense Acquisition Research Council and the Civilian Agency Research Council. For the first time, we know what everybody else is doing in procurement research, but we have not been as aggressive a sponsor as I would have liked to have been.

We have sponsored several projects, but clearly the priorities and the intention has left that as one of the short areas that I would enumerate over the past 5 years, and I would agree with the General Accounting Office on that point.

The law also required a data system. Strange as it might have sounded, the Government doesn't know today how much we are buying and what, who, what methods, where it is going, what sort of programs are being implemented.

We have flown by the seat of our pants until today in estimating some very important numbers, for example, in setting the \$5 million threshold in the anti-inflation program. We are very insecure in our estimate to be able to tell the President precisely what impact that would have, how many contracts, where in geographical regions.

With Mr. McIntyre's direct help—and let me tell you, it took that—the Defense Department agreed to become the executive agent for the Federal procurement data system, and I am pleased to present to you today the very first governmentwide data of the first \$16 billion spent by the Federal Government in fiscal year 1979.

Anyway you choose from 32 major data elements, everything from the name of the contractor to the place of performance, dollar level to the method of performance—competitive negotiation, noncompetitive, sole source. This is going to be an immensely important tool, and will be directly accessible.

The senior staff of the project and the people from Defense came by to my office yesterday, plugged in the terminal to my phone, and called out for me over the phone the first sound data I have had on the anti-inflation effects. With that type of accessible, government-wide figure on our procurement behavior, I can't estimate the number of uses it can be put to.

Each of those represents different cuts of the data which will be regularly issued. The system was a burden on the agencies. We got much negative feedback, and the first quarter processing has been relatively slow, as you can see. We have only got the first 16 billion of the quarter, and it will take until March 15 to finish the quarter, but this is the first time the system is on line. The software is in place, and the data is flowing.

I would like to move to what ranks in my mind as the first priority for OFPP, and that is systems acquisition. A-109, as Mr. Witt told you, is the first major issuance of the Office of Federal Procurement Policy, the first major test really on how effective OFPP could be in this mode.

The current status is not as good as I would like. The circular has been on the street for almost 3 years now, and the GAO has given high marks to NASA, and for the most part to the Defense Department for implementing A-109, but here again, we have got a reality, Mr. Chairman. Five years later I am not telling you just what is to be done, but what can be done.

I am prepared to tell you that we have seen improvement. Harold Brown has signed a mission needs statement. All the military departments are well versed in writing mission element needs statements. Already just in one case, a Navy training program, two of the very important attributes of A-109 have come home to give us benefits. The Navy needs new aircraft to replace its training fleet. In a former day and age, we might have been well downstream before the appropriations committee might have said "Admiral, have you thought about the Air Force's training needs? It seems to me we have gone downstream. Doesn't the Air Force need equivalent capability?"

That issue came up directly, and the reason it had to come up was because a mission element needs statement was being prepared, and that is being discussed now at the Office of the Secretary of Defense level.

The opportunity for saving there, for eliminating duplication is exactly what A-109 is all about. This program also demonstrates another real difference in what we are getting. We saw it in the shipboard combat system. The Navy was not allowed to go out on the street asking for a training aircraft of a particular weight, size, and crew complement. Rather they were required to go out on a mission basis, to ask what kind of capability do I need to train pilots?

The preliminary work is being done by contractors. We have opened up this latitude. They didn't just propose a training aircraft. They brought the most innovative technology in. We got feedback, and according to one contractor, his proposal will show the way to knock literally 50 percent off the Navy's pilot training bill by allowing these new technologies to come in and be integrated on a broad mission need basis.

I could name other programs, but I want to assure you that there are 17 across the Government which are on track, on line, and now let me digress for a minute because I think it is important in the earlier discussion on how OFPP fits with OMB.

What can we do to use the budget process? We have used the budget process. Last year, OMB budget examiners, OFPP staff, the Office of the Secretary of Defense people and military people all sat down and reviewed 58 programs in fiscal 1980's budget to judge compliance with A-109.

We found many in compliance. We found many in noncompliance. Mr. McIntyre followed that review up with a letter to Secretary Brown stating, and I can quote fairly accurately, that unless corrective action were taken, it would be difficult for OMB to support the current fiscal 1980 budget requirements, and that further, we would take A-109 explicitly into account in this current year's budget review to judge whether those programs ought to be in the budget in the first place.

I have to say that we have been getting enormous cooperation, and it would be one thing if Dr. Perry and Dale Church and Jim Woolsey and General Slay were fighting A-109, seeking to subvert it, but they are not. They believe in it. They understand the principles and the benefits we can have.

Progress comes slowly, major reforms like this, but I am satisfied to say we are not fighting the guerrilla war on this subject.

I could go on and on into many areas, but I would miss some very important hard results if I didn't dwell for a minute on our commercial products push.

Here, too, I have got to thank people again like Colonel Justin Holmes in the Defense Department. Without their cooperation, we would have made little progress, but we have converted these detailed specs into simple, functional specs. We have gone out. Competition has gone up, and price has gone down. We saved \$797,000 on undershirts. We saved \$65,000 on military boxer shorts and bed sheets, \$2 million on X-ray film.

The first test on gasoline went out this month, and the results are expected to be good. In meat, as you know, we have converted the whole system now principally because of your earlier investigations and continued pressure, with \$9.3 million in savings.

Fish has just been converted to industry standards. Competition went up. Price went down a full dollar a pound. Fish portions to the Defense Department that we were spending \$1.85 for is now down in the marketplace to a standard 85 cents a pound. Fish sticks for which we were paying \$2.20 a pound is down to \$1.05 a pound, for a total savings of \$5 million.

I can't say these things would not have happened without an OFPP, but I can honestly say I doubt it, in this time period we have, without the very direct pressure that we have put on them.

Across the board of 45,000 specs and standards, GSA, in conformance with our direction, has thrown out 696; 875 are targeted to go. DOD has identified 9,000 that can be converted.

I will leave for the record other discussions of accomplishments. I think the record is a good one, albeit too slow for my taste in some

areas. I would like to just spend a few minutes on what I think are probably more important subjects.

This is an ideal opportunity to state and restate that there is some underlying directions that we are carrying in this buying business. We are not just custodians of the latest random projects that have been added to our plate, which overflows regularly, but they all tie together, and we are trying to do three things. We have been trying to do three things, and we will continue.

No. 1, we are trying to put competition back to work, and substitute competition for regulations.

No. 2, we are trying to redesign our practices to stimulate new technology and innovation.

No. 3, we are trying to interface with the commercial marketplace better. They all go hand in glove. The competition sharpens when you introduce new technology. Innovation in the marketplace goes away when you don't allow it.

I think the record needs to recognize those things because in my day-to-day activities, those are the touchstones, the measures by which we do keep perspective on these projects.

I also want to say as a matter of characterizing the Office and the way I think it has to operate is that OFPP can't just be the protector of Federal practices. A lot of things we do may make eminent sense in terms of just protecting the Government buyer, adding regulations, checks, quality control, so on, but it is sort of like the Heisenberg physics principle. That is the one that says if you are watching something, what you are watching is changing because you are watching it.

In the Federal Government we have too often forgotten that the way we buy, changes who we buy from. Little annoying things like increased overhead, we cause that. We cause that behavior. We cause companies to keep different books, to structure their incentives differently.

OFPP has got a management relationship, and that is the higher order responsibility because over the long run, if we don't do that right, the marketplace goes away. Competition dies. I think that bears stating on an occasion like this.

Finally, another important point, as you may have noticed from John White's testimony on through, we have got sort of a Soviet style purge of names underway here. This is a removal of names.

We are trying to substitute acquisition for procurement. That is not just for novelty or sloganeering. I want to tell you why because I think it is a new intellectual perspective on what this business is all about. When people have understood the word procurement, they think of the lawyers and the contracting people who process the negotiating of that contract, signing it, and they are missing some important dimensions.

Acquisition goes to the front end; how you define the Government's need in the first place depends on what they will tell you, what kind of competition you can get.

Likewise, when we talk about warehousing and commercial distribution systems, you can't treat those issues because the root of the problem is how you are allowed to write the specs and who is buying.

Acquisition means the requirements process, the procurement or contracting process, and the logistics process. We have got a management problem here, and we have got to install a management perspective. So although it may seem simple to rename the Federal Procurement Institute the Federal Acquisition Institute, rename the ASPR, the Armed Services Procurement Regs the Defense Acquisition Regs, your major overhaul bill is the Federal Acquisition Reform Act, and I would like to endorse that and maintain appreciation for the new management thrust we have got in this area.

I have two other points to make, and I will try to be brief.

Senator CHILES. Are you trying to say that you ought to be the OFPP?

Mr. FERRIS. If the situation dictates that the statute is going to be revised, some people on the House side I would imagine, would expect they would like to do that. That would be one of the changes that I would say the committee would consider.

Senator CHILES. Some of the people on the House side might want to make more changes than that.

Mr. FERRIS. Yes, sir. That's what I have heard. Again, I want to take a brief minute because this is a very important oversight opportunity to talk about one of the major new perspectives that has got to set in in this more than likely \$110 billion a year business.

This procurement data system for the first time is giving us rigorous data collection. Our estimates apparently have been very low.

Just a word about socio-economic programs—we have got over 50 on the books. A lot of them are familiar to you—the minority business, the Buy American Act—but the list goes on and on. I have appended a list of 40-some-odd in my statement. We have to consider such things as what ships they have to be shipped on.

The perception over the years on the part of the acquisition community has been to first and foremost recognize what an awesome burden and complication and inefficiency these programs lay on us. Nowhere in Government is there more clear contradiction between telling a contracting officer and his people to buy the best goods, get the most reasonable prices, and at the same time levying some 50-odd requirements which inevitably restrict competition, increase prices, and otherwise make his job more difficult.

It is a serious argument, and it has been one of the key political issues in this business over the years.

I would like to say that I think it is time for a change. I think the change has come, and I would like to think OFPP has been a spokesman for that change in recognizing the difficulties and that the socio-economic programs are every bit as important a part of the jobs of those 130,000 people as is their buying function.

The reason for that, to be candid about it, is our political process, political leadership. Congress and the Presidents historically have not been able to turn their backs on a \$100 billion tool that we can use to address the Nation's critical problems. How can you ignore a \$100 billion lever when it can be used to help small business, build a better economic fabric for the country?

How can you ignore it when you can use it to help minority business get into the mainstream, building a better social fabric for the coun-

try? How can you ignore it when with even one contract set aside for the labor surplus area, that one contract in a deteriorating urban area can keep some people there, give them some jobs, can change the whole complexion and attitude about urban areas and their hope for the community?

I would like to think that we have reached a new plateau of perspective here, and I have certainly tried to execute the OFPP's authority. We are no longer turning our back on these programs, wishing we had a simple word, wishing these incumbrances would go away, and they are big ones.

They never did go away. They are not going to go away. The Congress, based on the 95th's record, is even more anxious as is President Carter to make Federal dollars work harder. We can't expand the budget as well as we have been used to, and a clear strategy, and an effective one, is to say in addition to buying, we have got to serve additional purposes.

I think those perspectives bear stating, and I would like to compliment the key leaders across the Government for turning about and trying to be responsible critics engaging with the Congress and the committees and the White House, not wishing these programs would go away, but lending their unique expertise and telling them how they can work because they all know how they can fail.

Finally, as to OFPP authority, the bill is strong, and I have tried to use the authorities strongly for several reasons. The sunset review gives you good incentive. The public, as you recognize, as a general matter is fed up with the pace and productivity of the bureaucracy.

The scope of change is enormous, and finally, I think OFPP is very much an experiment yet, as I said, to see whether procurement commissions or anything like that could pay off at all, whether a small bureaucracy can do any good or keep itself from becoming just another added layer.

I want to recognize, though, and probably have some discussion, when you take a strong office and use its authority aggressively, you impinge on many political sensitivities, and we have done that; no question about it.

Probably the two most difficult and sensitive areas have been contracting out and contract wage laws. In both cases, we, like Mr. Witt, have tried to confront those issues head on, as he put it, but in an even-handed, objective manner. We have been responsive to the Congress. Doors have been open to everybody, labor, industry and agencies alike, and we will have a new contracting out package shortly. I don't expect to receive cheers from everyone, but I think it will command the respect of everyone.

Likewise, we have underway now for White House review the most comprehensive review of these contract wage laws. Service Contract and Davis-Bacon. I believe even the Labor Department, who were originally apprehensive about the value of engaging in this dialog, will concede at this point it has been valuable, and we have already reached agreement on a number of improvements in the area.

The main point, and I will wrap up with that, is that special interests, legitimate special interests, may be uncomfortable within OFPP. We are disturbing what has been the status quo for so many years.

The status quo hasn't been very good, either. Labor unions are upset about wage data, as are the agencies.

I will argue as forcefully with Congressman Thompson or Ken Blaylock or Tom Donahue as I will with industry and agencies alike, it is in their interest to have a strong OFPP because otherwise, the status quo never gets any better, and they run a bigger risk because if the problems do arise in an unstructured environment, at the top level, there is no accountability.

When you have an OFPP, you have someone whom the Senate confirmed, whom you can call to the table. You have responsiveness provisions, and you have somebody to argue with. You have a chain of accountability.

With that, I guess I would support continuation of the Office, Mr. Chairman.

Senator CHILES: I have been holding my breath to figure out how you would come down on that!

Mr. FERRIG: Despite the fact that Mr. Carter has frozen all salaries for the last 2 years, I would recommend the continuation of the Office for a limited span, I think.

Thank you.

Senator CHILES: Thank you for your statement. It seems that the Office of Federal Procurement Policy falls into two different areas.

The first involves policies and procedures, the mechanics of the Federal purchasing system, things like A-109 and the national supply system.

The second area covers the ways in which Federal procurement is used to meet other objectives, like the Buy American Act, the Davis-Bacon Act, wage and price controls.

Everyone takes your role in the first area kind of for granted. You seem to get in a lot more hot water in the second area.

I think you kind of laid out why you think the second area is so important, but should the nature of OFPP's role be different in one area than it is in the other?

Mr. FERRIG: No. I view the essential ingredients as the same. Cohesiveness and coordination—you need that, whether it is a buying practice or implementing a minority business program.

Accountability—the Congress and the White House need somebody to go to to have accountability and followup.

The third ingredient is that we take little pride in just putting out a piece of paper. The hard changes have to result, and whether that is a socioeconomic program or A-109, it requires a dedicated forum.

Senator CHILES: In July 1978, you issued a policy determination to resolve a dispute between the Department of Labor and the Department of Defense, covering the application of the Service Contract Act.

In the absence of an Office of Federal Procurement Policy, how was such a conflict between two executive departments to be resolved?

Mr. FERRIG: If history is any indication, they don't get resolved, as a normal matter. The problems continue to build, and hostility continues to grow to the point where, literally, you get a breakdown in communications between agencies.

I won't call it fraud, but gamesmanship sets in, when you have no effective forum to go to, and no relief for the tension. Procure-

ment agencies, for example, have availed themselves of every possible flexibility to, for example, perhaps not ask for wage determinations when an outcome is questionable, or to perhaps put protective clauses in the contracts that may or may not require them to enforce the law, and that is not a happy situation.

I think more important than my ruling on that case which we were asked to look into was the immediately subsequent action, where I asked all the agencies to join with me in a comprehensive review of these wage laws.

We had laid out 26 issues that we were seeking to resolve. The vast bulk of them are contested and will require higher level decisions, but the balance was useful.

Senator CHILES. Don't you think maybe that is a more useful way, before there is a specific contest on a specific point of contention, to try to use OFPP as the catalyst to bring together these potential areas of conflict and see if there can be some resolution as to where jurisdiction is and what definition and other solutions like that, prior to the time that a specific issue raises its head?

Mr. FERRIG. Absolutely. Otherwise you are always reacting, and you never know when the next case is going to have to be treated, and it can't be done in a well-managed fashion if you leave yourself exposed to that.

Senator CHILES. I note there is a little difference in the situation now, that your dispute finds itself in, and the one Mr. Witt was involved in.

In that one, the decision simply escalated, and in effect OMB assumed, you might say the White House made a decision which was contrary to what OFPP had decided. In this instance, the ball has been tossed to Justice to determine whether OFPP has the authority.

It seems like maybe in this instance there has not been, really, a resolution because that is now sort of an interpretation of the statutory intent. It looks to me like that is sort of a sliding rather than a facing decision.

Mr. FERRIG. The Attorney General is due to issue his decision on that dispute shortly. I think, regardless of what that decision says, we have proved the worth of having OFPP's say in that one case, and that is what he is deciding on. Did I have the authority to do what I did, is less important than the review which has occurred and will continue, irrespective of the Attorney General's view.

In fairness to the administration and Mr. Witt, his decision came at a very awkward time during a transition by the administration, which was inordinately slow, and we have had an opportunity to get a broader appreciation for the issues since that time.

Senator CHILES. How do you resolve the conflict of interest between OFPP's policy to promote economy and efficiency in government procurement and our social policy, such as protecting wage standards and our other social commitments?

Mr. FERRIG. Well, as I said, not simply, but the way to do it is to face up to the fact, and this is why we need these career programs to involve those 130,000 people in sharing in decisionmaking. I can't quote as well as Mr. Witt, but it is kind of the essence of government to make tradeoffs between competing demands.

Sure they have got a tough job. They are serving two masters, and they conflict, but that is no different from most high-level important

positions of public trust. They have to exercise enormous and very important judgment to know when a set-aside is going to help a small firm or a minority firm, when the cost impact will hurt both his mission performance and not achieve long-run good for the concerned companies. That is what makes this profession so difficult.

Senator CHILES. Going now to the OFPP's role in the anti-inflation program and the legality of that role, the General Accounting Office, the American Bar Association, and the AFL-CIO have all contested the legality of this program. The lawsuits are being filed which ask the courts to declare the program illegal.

Would you comment on the legality of the program itself and on the legality of OFPP's role in the program?

Mr. FERRIS. Yes, I would very much like to. If I might correct one of the assumptions, the ABA as a body has not so asserted. Mr. Silberman has asserted that the President's actions were inconsistent with basic procurement authority. I think that is a necessary distinction.

We treated the legal issue very, very carefully before the President made his decision to include it on October 24. As a practical matter, Mr. Chairman, every time you get a new major socioeconomic intervention, you get court cases, and you get different legal opinions. It is to be expected.

I want to put it in that cast, first of all. Even with a law, as in the case of the local public works 10 percent set-aside, that went to the Supreme Court and will go there again, so in that vein, it shouldn't be surprising.

Also in the general vein, if the political leadership of the country has seen fit to use the acquisition process to help with critical social problems of the magnitude of small business, minority business, and urban policy, I would find it difficult, and I think you would, too, to face a man on the street and ask the question: Why is it, Mr. President, or why is it, Mr. Congressman, that if President Johnson can issue an Executive order to debar contractors for a very good reason, because they don't have adequate affirmative action programs, why is it that this \$100 billion can't be used to help my number one problem, which is inflation?

Senator CHILES. Might part of that difference be in that one area of contracts, the Congress has directly spoken and set those contracts, set those areas that says there will be a small business set-aside, there will be a set-aside, and in the other area you are simply having the Executive try to speak?

Mr. FERRIS. That is true in general cases, but let me follow up on President Johnson's case. That Executive order is not explicitly grounded in the law. I will concede to the GAO and Mr. Silberman that there is a contextual connection that they argue.

They argue that the Civil Rights Act of 1964 and other congressional actions made it clear this was consistent with the contemporary congressional intent, but President Johnson's Executive order was also challenged in the court.

Let me point out, the GAO has been very consistent over the years and said President Johnson's action was illegal, and two separate circuit courts of appeal, in Philadelphia and New Orleans, upheld the President's authority on that.

One other precedent that is very much on the mark, in 1958, President Eisenhower—

Senator CHILES. Congress was still in doubt on that, and we saw fit to write that into the recent SBA bill.

Mr. FERRIS. That is correct, but the legal contest and assertions were much the same for Johnson's Executive order in 1968 and for President Eisenhower's order in 1958, although it was a short-lived program. That Executive order required—I ask you to note this—a statement that the contractor was in compliance with the provisions of the voluntary oil import quota program in order to be eligible to bid.

That, too, was taken to court, and the Washington, D.C., District Court upheld the President's authority.

Senator CHILES. Let me pose a hypothetical question. Suppose a contracting agency asked for bids on a project. Company A submits a bid for \$100 million, and Company B submits a bid for \$200 million. Before that contract is awarded, the Council on Wage and Price Stability determines that Company A is not in compliance.

Would Company B be awarded that contract, even though they are \$100 million higher in their bid than Company A; and if so, where does OFPP fit into this kind of hypothesis?

Mr. FERRIS. Well, let me answer the specific first, and talk about OFPP's role.

Yes, that is correct. The contractor A, as long as he chose not to sign a certificate as part of his contract that he was in compliance, would not be eligible for award.

Likewise, the contractor who refused to concede affirmative action program would be denied the award, and we would pay the extra \$100 million.

Likewise, under the new Public Law 95-507, the contractor which refused to sign the requirement for a small and minority subcontracting plan would not get the award.

The main point I would like to make is the generic statute which goes back to 1949 in this case. The Federal Property Act does not say we automatically must award to the low bidder. The law requires award to that offeror whose bid is most advantageous to the Government, price and other factors considered.

The Congress and the Presidents over the years have seen fit to judge those other factors. As for OFPP's role, I think this is very important. We have very, very carefully constructed a very clean and arms-length almost completely detached relationship with the audit function, the compliance reviews, and the Council on Wage and Price Stability.

We do not even need to communicate. The regulations which I put out which, again I will point out, might have gone many different ways, were uniformly implemented. There is only one set of regulations on this, of four pages, and it is in simple English, and it is very direct, although, if I can use an analogy, we are the speed limit signs.

It is a traffic cop kind of situation. We don't have a policeman follow every vehicle on the road to determine whether or not he is speeding. We post a sign limit, and that is what OFPP regs require. When he signs the contract, that is a speed limit sign. It says, I am not speeding beyond the guidelines. The traffic cops we don't need to deal with. They are the auditors, and if on a random occasion they hit an intersection and go visit a company and find out that he has been

speeding and has falsely certified to the effect, then we have a very simple and well understood contract process for penalties, but I do want to emphasize that we have tried to craft a very clean and simple management structure here.

We could have designed very poor ones that would have severely threatened these 15 million contract actions a year, but this is very simple and self-enforcing.

Senator CHILES. In your confirmation hearing in May 1977, you told us that OFPP had a staff of 32, that there were 8 women, all of whom are in the clerical categories GS-8's, 9's and 10's, one of whom is black.

You also stated that, and I think I am quoting you,

I think I am going to have fairly soon an opportunity to exert some affirmative action there as we look at the reorganization staffing in the Office. I am very sensitive to the problem, and I am going to take affirmative steps to get qualified people.

What kind of progress have you made in affirmative action and what is the composition of your professional staff?

Mr. FERRIG. I would like to report to you on that. I should state the opportunities I foresaw were considerably foreshortened by the President's reorganization of the Executive Office which left us aiming for a reduction in staff in terms of capacity, but nevertheless, I am happy to say that we have added a black woman professional to the staff since that time.

In addition, our hiring at the clerical level has included two other black women, and I believe those are the salient actions.

Senator CHILES. One black woman professional?

Mr. FERRIG. Yes, sir.

Senator CHILES. It sounds a little less than spectacular.

Mr. FERRIG. I would agree. It needs to be measured in the context of the flexibility we have had. I can say we have tried to be sensitive to the matter.

Senator CHILES. This subcommittee found serious problems in the administration of the 8(a) program. In our report on these problems, we specifically gave a coordinating role to the Office of Federal Procurement Policy in SBA.

How has that coordination worked? Maybe I should ask is there any coordination at all?

Mr. FERRIG. Yes, there is. It was somewhat interrupted by the personnel changeover in SBA. They now have a board, an associate director, Bill Clements, who has taken hold in recent months quite directly.

We have worked directly with Bill Clements. I took it upon myself, immediately after 95-507 was passed, which as you know set the 8(a) program on a statutory footing and improved it greatly, to convene an interagency group to arrive at the very outset at agreement on who would implement which pieces and do so in a coordinated fashion.

The particular 8(a) program standards and operating procedures were clearly intended, and indeed given to SBA as their responsibility. Despite having no direct role and indeed having that role directed elsewhere, we have consulted with Mr. Clements regularly on those regulations, which I would endorse, that were issued January 24 I believe.

In the meantime, OFPP has put out, and the public comment period is now closed, Governmentwide regulations to maximize the uniformity and simplicity in the subcontracting area. There are a number of controversial provisions there that have been called to our attention. That is the purpose of public comment, and we are in the process now of finalizing those regulations.

Senator CHILES. Has the Federal Government's use of the small and minority business set-asides served a legitimate purpose?

Mr. FERRIG. There is no question. You can argue that and see it quite clearly in two contexts. First of all, if you want to be selfish and pragmatic about it, over the long run, the Federal Government, as a buyer, benefits from a better base of supplies. For example, every conclusive study has shown that small business is a disproportionate contributor to new product innovation, not only new products, but new management. Many small companies are founded just for the purpose of innovating new products. It is in the self-interest of the Government to enhance those roles.

The same applies in getting minority business into the mainstream of the supply base. You can argue easily on a self-interest basis that over the long run, the number of companies, their viability, their ability to compete and command sectors of the work force, is in our self-interest.

The other dimension you have to take into account in justifying those programs is, as I said earlier, that we have to recognize that we are not just asked to be buyers. We are asked to be agents of social and economic change.

It is difficult. It makes the trade-offs difficult, but the goals are equally important. Driving home from work or sharing the beer on the lawn, the contracting people it would seem to me can take as much or more pride in having cultivated a small minority business or made an award in a labor surplus area, the same degree of pride that they can take in negotiating a new contract.

Senator CHILES. GAO, in testifying, said that your public participation regulations apply to significant policies and regulations. The term "significant" is not defined. How do you determine what is the significant policy?

Mr. FERRIG. Whenever a Congressman tells me he thinks it is significant.

Senator CHILES. Do you think that we ought to have some definition of what is significant?

Mr. FERRIG. I would like to give that some more thought, and I would be anxious to see those guidelines that GAO has promised to give you. It is an ambiguous area right now, and as a general matter I guess I would prefer more detailed guidelines.

There is a danger, however. There is a trade-off, depending on how the guidelines are drafted. You may require more delay, paperwork, further implementation difficulties for marginal items that really don't even command or deserve the attention of the Congress.

For example, the rule of thumb I have used is that if even one individual, whether it is the head of the day care center down at HEW or one member of Congress, makes his views known that he thinks it is a significant issue, we have gone as far as they would like to go. If even one party has demanded a public hearing, we have had a public

hearing. If one Congressman has expressed the desire for delay or review, we have delayed and met with the Congressman directly.

Although it is an area of ambiguity, I would be interested in clarification.

Senator CHILES. You leaned on the side of making virtually everything significant?

Mr. FERRIG. Absolutely, and that hasn't proved to be too difficult. We tend not to put out a lot of lower level insignificant policy issuances. We try to concentrate on the priority items.

Senator CHILES. GAO also is complementing you on your attempts to have more public participation. They pointed out that maybe that public participation could be much more meaningful if they were invited in at an earlier stage before the new regulation is substantially in final form. What is your comment on that?

Mr. FERRIG. I agree with the observation, and we have tried to accommodate it as follows. On particularly sensitive issues like contracting out, as I said, we didn't go out even with a draft circular. We went out with a generic description of the type of changes that were under consideration.

We took a full year. We got enormous input on it, just digesting the public view on the direction of the proposed changes. Only then did we go out with the draft circular, again for public comment. You can do that if you are sensitive.

More important, though, I think when the FAR is completed, under our proposed maintenance and issuing system, agencies will get to see and comment on the proposals at the same time the public does. That is a requirement. It will go directly out.

Senator CHILES. It seems like to me we are always kind of wanting the public to be in on the landing, but we don't let them see the takeoff. I think that we are sort of doing it with mirrors. If we say we are saving much public participation, we have already shaped the regulation at the time we ask them to come in and comment.

Mr. FERRIG. I agree.

Senator CHILES. When you used to sit up here beside me, you used to be a tiger at pushing me to jump on Hugh Witt about what kind of progress he made in regard to the Procurement Commission recommendations.

I note in listening to the GAO report today that we still have an awful lot of those regulations that are unresolved, and this clock has now run some 5 years.

Mr. FERRIG. Part of that is my own doing, you see, because I do have in mind that you can't say you have completed an action until you see the hard changes.

I have instructed the staff to recategorize some that might have been judged completed, and put in a pending category, and even though all the framework is in place and the paperwork has been issued, I don't want to call those completed.

For example, on A-109, we don't have complete the A-109 compliance data yet.

The second point is that I think I disagree, and I am anxious to review the report with you to see specifically what judgments they reached to put them in those categories, but in many cases, I am convinced that action is being taken, it is not being ignored, for example, in the contracting out.

We have addressed the issues the Procurement Commission raised. I believe the GAO has put them in either a not resolved position, or the not decided category. I think the General Accounting Office, and I mean no criticism, has set up a number of measures by which they judge which category a recommendation goes into that don't fit the pattern of the decisionmaking process that we have used.

Senator CHILES. Well, you have got 18 in which no action has been taken, according to their report. Will you give me something for the record as to what those 18 are and why they are hanging out?

Mr. FERRIS. I certainly will. As I said, I believe you will find some of those in the category where I can point to direct action, perhaps of a different nature than the GAO might have expected, that we can demonstrate are underway.

Senator CHILES. If a bill to authorize the Office of Federal Procurement Policy is introduced, how long should that authorization run?

Mr. FERRIS. The 5 years does seem reasonable. I guess John White's sentiments are mine as well. Inasmuch as in the weapons acquisition program, if your mission need says I want you to propose to me only solutions that I can have available for the forces 4 years from now, you are going to get relatively more conservative, less advanced state-of-the-art proposals.

I think when you come down below 5 years, you are going to tell the Administrator to make his proposals a little bit more conservative and to perhaps not deal with some of the more far-reaching state-of-the-art advances and major reforms that he could reach for within a 5-year span. The bureaucracy, as slow as it is, I don't think deserves much more patience than 5 years for even the most fundamental reforms.

A-109 has been out 3 years, and I am optimistic that within 5 I will be able to say that is completed.

We have uniform implementation. That is a major reform, so 5 years does strike me as a reasonable figure.

Senator CHILES. Do you have any provisions of Public Law 93-400 that you think should be modified in the new authorization bill?

Mr. FERRIS. I went through the bill very carefully, and I looked at every provision, and frankly, I was astounded at how well it has held up and how the flexibilities and the ambiguities have not created real problems. They have pretty much shaken themselves down.

OMB's relationship with OFPP—and I can only suggest minor changes, and unless the bill is open for a major overhaul, I wouldn't even suggest them at this time. They are of a minor nature, things like perhaps recognizing the acquisition management cast that has developed since the Procurement Commission, but only of that order.

I, of course, will be very interested; as Dr. White said, we have an open mind on the subject. We will participate actively in suggestions for statutory change. We are not saying that we are opposed to that change.

Senator CHILES. Senator Roth was unable to be here today, so we will keep the record open for any questions that he might like to submit.

These hearings will continue next Friday, March 9, at 10 o'clock, and we may want you to come back.

Mr. FERRIS. I will be pleased to do so.

Senator CHILES. Thank you very much.

[The prepared statement with attachments and supplemental statement of Mr. FERRIS follow:]



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

OFFICE OF FEDERAL
PROCUREMENT POLICY

HOLD FOR RELEASE UNTIL DELIVERY
Expected at 10:00 a.m.
Friday, March 2, 1979

STATEMENT BY THE
HONORABLE LESTER A. FETTIG
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES
AND OPEN GOVERNMENT
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
MARCH 2, 1979

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to come here this morning to review the performance of the Office of Federal Procurement Policy (OFPP).

STATUTORY BASE

OFPP was established by P.L. 93-400, signed by President Ford on August 31, 1974, with a five-year life. The statute placed OFPP in the Office of Management and Budget (OMB) with directive authority over Federal procurement policies, regulations, procedures and forms. The statute enumerated specific tasks for OFPP, as well as a broad charter, expressed in Section 2 "Declaration of Policy", for promoting economy, efficiency, and effectiveness in Government procurement organizations and operations. The authority given to the Administrator to "provide overall direction of procurement policy" indicates the breadth of the charter given to OFPP. OFPP's authority impacts one out of every five dollars expended by the Federal Government.

Along with this broad charter of responsibility, Congress also expressed its intent that OFPP should not be a large office. The statute does not contain any specific restrictions. However, the legislative history speaks in terms of an initial staff of perhaps 40 or so. The statute did direct the Executive agencies to assist OFPP by furnishing services, personnel and facilities. This very wise provision enables the Office to remain small, but still pursue its objectives, drawing on outside resources as workload and priorities dictate. Agencies also become more directly involved in the development of policies, regulations, procedures and forms.

I would like to begin my remarks by noting that OFPP has indeed remained very small. Our authorized ceiling for FY 79 is 25, including both professional and clerical personnel. We have augmented that staff with personnel detailed to us from the agencies for special projects, as envisioned by P.L. 93-400, to a total direct complement of 32 people.

REVIEW OF ACTIVITIES AND ACCOMPLISHMENTS

Needless to say, that small staff has been and is a busy one. I am impressed with the dedication and professionalism of the staff and I am proud of the role OFPP has played -- particularly in the past two years -- in charting the course

for Federal acquisition. Our recent report to the Congress covering the period from January 1977 through September 1978 includes the status of all the major projects. I will not repeat them all here, but I would like to touch on the most significant ones and those which relate to the specific requirements set forth in P.L. 93-400.

FEDERAL ACQUISITION REGULATION

Section 6(d) of P.L. 93-400 enumerates six functions which Congress specifically directed the Administrator to undertake.

The first was to establish "a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies." It is no simple task to introduce such changes into a system that has been built incrementally for over 30 years. But I am happy to report that we made a major step forward toward uniform simplified regulations early in 1978, when we launched the Federal Acquisition Regulation (FAR) project. P.L. 93-400 requires a system of regulations. However, S. 1264, the proposed Federal Acquisition Act in the 95th Congress, and S. 5, its successor in this Congress would require a single regulation. In anticipation of such a legislative requirement we established a top priority project to promulgate a single regulation for all agencies by August 1979.

Such a legislative requirement was recently included in P.L. 95-507, which amended the Small Business Act.

The FAR will replace the Federal Procurement Regulations (FPR), the Defense Acquisition Regulation (DAR) and other agency procurement regulations. The goal of the FAR is to replace the present proliferation of redundant and sometimes conflicting regulations with a single regulation which is uniform, clear, and understandable. This will be the sole primary regulation for \$100 billion in annual Federal acquisitions. The FAR is not a plan or a promise. It is a reality and we have achieved some important milestones already:

- All agencies agreed to cooperate in January 1978.
- Drafting is being done by 40 Defense, 16 GSA and several other agency people -- full time since March 1978 -- along with a core OFPP staff of 9.
- First rank, talented people were committed, as exemplified by DOD's project directors, Air Force Col. John Slinkard and Navy Captain Vince Pistolessi; GSA's Director, Phil Read; and OFPP's Project Director, Bill Thybony.
- All writers were first sent to school to learn how to write in plain, simple English.
- A single, common outline was agreed to conform to the Code of Federal Regulations (for the first time), and initial writing assignments were parceled out.
- The most advanced information processing technology was applied. All drafts are on a central computer, can be directly exchanged between

writing teams, and can go directly from tape to print at the Government Printing Office (GPO).

- o Draft segments have been exchanged between writing groups and then go to OFPP for final review.
- o Of the 45 major segments, 11 have been issued for public comment in the Federal Register beginning in January, 1979. The remainder are scheduled to be published for comment by March 31, 1979. Each part has a 60-day comment period.

After thorough review of all public comments, a final FAR, ready for publication, is targeted for August 31, 1979, OFPP's "sunset" date. Following, of course, congressional review, the new system could become effective in the Spring of 1980.

OFPP recently completed a thorough survey of acquisition regulations in 19 executive branch agencies. The survey found:

- o 485 offices regularly issuing procurement regulations;
- o 377 different sets of regulatory issuances: bulletins, instructions, regulations, etc;
- o 64,600 pages in effect;
- o 21,900 new or revised regulation pages being issued each year (1 page for each 3 in effect);

- o 11 of 19 agencies accounting for 97% of regulations identified;
- o Proliferation concentrated in large agencies with multiple levels of regulatory authority (services, bureaus, administrations, etc.);
- o DOD with over 30,000 pages (48% of total), not including issuances below major command level; and
- o 83% of all regulations being issued at levels below agency or department headquarters.

These figures represent only part of the picture since the survey, in most cases, did not reach the lowest levels within the agencies, which issue local regulations. The cause of this paperwork explosion appears to be a combination of complex organizational structures, multiple levels of regulatory authority, and a total absence of effective regulatory management. Nowhere in the executive branch is there any mechanism to control, or even oversee, procurement regulations issued at successive levels below the agency or department headquarters.

The new FAR system will remedy the proliferation problem through strict limitations on what the agencies may issue to implement or supplement the FAR, combined with active oversight and enforcement by a FAR executive staff. Proliferation of regulations will be controlled by:

- o Publishing in the Federal Register and in the Code of Federal Regulations, Title 48, all implementing regulations
- o Requiring all agency acquisition regulations to follow FAR format and numbering system.

- o Authorizing and approving all agency acquisition regulations at agency headquarters level.
- o Consolidating necessary regulatory coverage at highest practicable level within FAR System.
- o Prohibiting restatement or paraphrasing of higher level coverage in agency acquisition regulations.
- o Prohibiting issuance within agencies of acquisition policies or procedures in any form other than agency acquisition regulations.
- o Directly distributing loose-leaf changes to agencies through publication in Federal Register.
- o Requiring the FAR Executive Staff to oversee agency acquisition regulations including periodic reviews.

We believe that the regulation proliferation problem can be controlled while, at the same time, providing sufficient flexibility to accommodate unique agency needs. By raising internal regulatory directives to the level of published regulations, we can readily oversee the extent of compliance or non-compliance with FAR requirements, including those designed to limit proliferation. An additional benefit of the FAR System will come from increased public visibility. Since the CFR is available in libraries throughout the country, any potential contractor will have access to all regulations governing Federal acquisition, regardless of the particular agency or bureau involved — written in understandable, plain English.

Before I leave this subject, I would be remiss if I did not acknowledge and express my appreciation for the cooperation of DOD and GSA and the resources they have dedicated to this project. Almost 60 professional and clerical personnel from these two agencies have been given training in clear writing and are working full time on the FAR. This heavy application of resources now will pay dividends when the FAR becomes the single "bible" for Federal acquisition.

PUBLIC PARTICIPATION

Section 6(d)(2) of P.L. 93-400 sets forth the function of "establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms". Section 14(b) requires formal public meetings of OFPP for the purpose of establishing significant procurement policies and regulations.

Implementation of these separate requirements has been closely linked. Two OFPP Regulations were published for comment in the Federal Register in August 1976. The first was intended to establish the Federal Procurement Regulatory System and the second to establish the procedures for public hearings in connection with OFPP policy development. These regulations themselves were the subject of a public hearing in September 1976.

From the very outset, OFPP has published all proposed policies in the Federal Register, allowing a minimum of 30 days, and in most cases 60 days, for public comment. Some subjects, such as Organizational Conflicts of Interest and Reliance on the Private Sector have been published two or three times before a policy was finally evolved.

Public hearings have been held on all major policy matters whenever requested by even one interested party.

In addition to the Federal Register publication, OFPP maintains a mailing list of agencies, associations and interested public parties which receive direct notice.

As I noted above, the draft Federal Procurement Regulatory System will be superseded by the single regulation. Compliance with statutory requirements will be formalized in the FAR, which directs that all substantial policies, regulations, procedures, forms, and revisions must be published for public comment for 60 days. This will be done simultaneously with agency comments, so that the public will have an opportunity to submit its viewpoints before regulations are "carved in stone," as has so often been the case in the past. The FAR will also include a requirement for public hearings prior to finalizing significant policies or regulations.

RELIANCE ON THE PRIVATE SECTOR

Section 6(d)(3) of P.L. 93-400 gives the Administrator the responsibility for "monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services". This policy of reliance on the private sector is expressed in OMB Circular A-76.

In March 1977, the then Deputy Director of OMB, Jim McIntyre, made a commitment to Congress to conduct a complete review of Circular A-76 and its implementation. A comprehensive review was initiated in June by OFPP and all interested parties were invited to submit comments and recommendations. The new policy will build on three principles:

- (1) Rely on the private sector. The Government's business is not to be in business. Where private sources are available, they should be looked to first to provide the commercial or industrial goods and services needed by the Government to act on the public's behalf.
- (2) Retain certain governmental functions in-house. Certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees.

(3) Aim for economy; cost comparisons. When private performance is feasible and no overriding factors require in-house performance, the taxpayer deserves and expects the most economical performance and, therefore, rigorous comparison of contract costs versus in-house costs should be used when appropriate to decide how the work will be done.

Thirty-seven specific changes were proposed for public comment in November 1977. A draft Circular was published in August 1978. A new Circular and Cost Handbook will be issued shortly.

FEDERAL ACQUISITION INSTITUTE

Sections 6(d)(4) and (6) of P.L. 93-400 give the Administrator responsibility for "promoting and conducting research in procurement policies, regulations, procedures, and forms," and "recommending and promoting programs of the Civil Service Commission and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel."

In July 1976 OFPP established the Federal Acquisition Institute (FAI), to:

- Improve business management in the Government through upgrading and professionalizing the acquisition workforce.

11.

- Serve as the central point for Government-wide planning, development, implementation and evaluation of acquisition research, education, and training.
- Develop and establish acquisition career development programs.

The need for such an organization was recognized by the Commission on Government Procurement, and is the focal point for complying with the statutory responsibilities enumerated above.

Since starting in July, 1976, the FAI has gone through a major management review to focus and accelerate its attention on career development, one of the most critical problems facing the Government's 130,000-person contracting workforce. Nearly half of that workforce will be eligible for retirement within 10 years.

In order to seize control of these critical workforce problems, a new, central information system will be on-line by April, 1979, to give us the demographics of the problem. For example, we already know that 28% of the workforce on Long Island is eligible to retire now, compared to, for example, 8% in Dayton, Ohio. This Government-wide system will give us, as managers, the ability to forecast trends in retirement, training, grade levels, employee mobility and speciality requirements before they undermine the effectiveness of our contracting system.

Other FAI initiatives in career development include:

- o Task Analysis Project (the first conducted in any career field)
 - Constructed task inventory of 1480 tasks
 - Administered to 22,600 people
 - First results - 15 April 1979
 - Purpose:
 - Revise job standards (Sep 79)
 - Identify Government-wide needs for training
 - Develop career master plans (management of workforce) for each major specialty.

- o Classification and Qualification Program
 - Clarify role of contracting officer - identify duties, responsibilities
 - Assess impact of new legislation and policies on that role
 - FAI, functional managers, and the Office of Personnel Management (OPM) jointly will prepare new job standards (the last major revision was in 1969)

- o Career Development Objectives
 - Unify career development practices across Government
 - Skills and knowledge required
 - Training toward tasks
 - Performance evaluation

- Establish career patterns
 - Personnel intake
 - Executive development
 - Upward mobility
 - Job referral, personnel inventory

- Establish goals to upgrade personnel
 - Training - education
 - Counseling
 - Job appraisal
 - Equivalency testing
 - Certification

FAI has also mounted an aggressive training program.

- o OMB Circular A-109 (Major Systems Acquisitions Policy)
 - Coordinating all agency (civil and DOD) training efforts related to A-109.
 - Initiated training of over 2,000 Federal executives
 - agency-head orientation
 - senior executive seminars
 - senior manager seminars
 - world-wide distribution of A-109 videotape

o Sponsored development of following additional courses

<u>Course Title</u>	<u>Developer</u>	<u>Location</u>	<u># Trained</u>
<u>Attendees</u>			
Seminar on OMB Circular A-109	DSMC	Ft. Belvoir, Va.	100
Seminar on OMB Circular A-109	Middlesex Rsch Ctr, Inc.	Ft. Belvoir, Va.	60
Federal Acquisition Management	DSMC	Ft. Belvoir, Va.	25
Fundamentals of Systems Acquisition	DSMC	Ft. Belvoir, Va.	25
Principles of Acquisition Contracting	ALMC, Ft. Lee, Va.	Washington, D.C.	30
Seminar in Acquisition Asst Secy Level	Sterling Institute	Washington, D.C.	25
Seminar in Acquisition Sr. Managers	Sterling Institute	Andrews AFB, MD	50

o Focused large training effort on 7 other OFPP priorities, using videotapes, instructor text materials and student handouts:

- A-109
- Anti-inflation Policy
- Amendments to Small Business Act (P.L. 95-507)
- Use of Contracts Under Grants and Cooperative Agreements Act (P.L. 95-224)

- Ethics: Prevention of Fraud & Corruption
- Transition to the Federal Acquisition Regulations
- Implementation of A-76 - Contracting Out

FAI does not duplicate other Government training facilities or programs: it serves to consolidate and give central direction to these scattered efforts. For example, in order to implement the Labor Surplus Area set-aside policy, FAI training materials were directly given to 30,000 people; \$300,000 in cost was avoided; one and one-half years of training time was saved; and contract awards under the program doubled.

FAI has also concentrated on education. The Procurement Commission reported a generally low average procurement workforce education level -- high school plus three months.

At the Graduate level, FAI is:

- Working with 20 universities to design new curricula;
- Promoting a model MPA program endorsed by National Association of Schools of Public Affairs and Administration and announced to almost 300 universities.
- Promoting a model MBA to be presented to American Assembly of Collegiate Schools of Business on May 1.

At the Undergraduate level, FAI is:

- Sponsoring a model program at American University which has enrolled 104 students;
- Developing curricula guides, lesson plans, up-to-date materials sent to other universities;
- Establishing three regional faculty seminars scheduled for this summer.

To upgrade and give credit for existing workforce talents, FAI has arranged associate level degree credentialing, including arrangements for

- Granting an associate degree in procurement, available without time limit anywhere in the world by the University of the State of New York;
- Already having the first graduate of the credentialing program receive a BA degree two years ahead of normal schedule; and
- Prompting other colleges, universities, and two-year institutions to agree to establish new education programs near major work force centers: Los Angeles, Dayton, Seattle, Minneapolis and other cities.

Overall, FAI education goals are as follows:

	STUDENT ENROLLMENT GOALS		
	Fall 1979	Winter 1979	Fall 1980
Associate	200	500	800
BA	500		1,000
Grad MPA	100		100
MPA	100		100

In the research area, FAI has conducted an in-house study of Acquisition Research Needs (300 interviews in eight civil agencies). The study identified

10 major problem areas:

1. Manning
2. Personal Attitudes
3. Role of Contracting/Procurement
4. Training
5. Socio-Economic Objectives
6. Acquisition Process - Complexity
7. Acquisition Process - Efficiency
8. Authority
9. Acquisition Process - Length
10. Accountability

These problem areas will form the basis for future FAI work.

The FAI also established interagency Research Councils to disseminate information and coordinate efforts; will conduct a research symposium (May 1979); will conduct an acquisition conference (August 1979); and finally, maintains the FAI Library, containing the most extensive collection of material on acquisition in the United States. The library began as the library of the Commission on Government Procurement.

FEDERAL PROCUREMENT DATA SYSTEM

Section 6(d)(5) of P.L. 93-400 requires the Administrator to establish "a system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector."

After an extensive period of study of development and design, the Federal Procurement Data System (FPDS) was established by OFPP in February 1978. A Federal Procurement Data Center has been established in the Defense Department to run the system. The following points illustrate the scope of the system:

- o Reporting began October 1, 1978 (1st quarter FY 1979).
- o Acquisitions by 143 agencies are being reported.
- o First quarterly reports are now being produced
- o FPDS, for the first time ever, will provide total, uniform information on executive branch contracts - a tremendous analytical and management tool for the Congress, executive agencies and the private sector.

- o The FPDS will produce individual transaction reports on all actions over \$10,000. The reports will contain the following information in addition to other important data:

- Contracting agency and specific office
- Date of action
- Contractor
- Place of performance
- Dollars obligated
- Product or service acquired
- Type of contract (for example, fixed price, or cost-type)
- Type of business (small, large, minority, woman-owned, non-profit)
- Estimated completion date
- Information regarding:
 - Affirmative Action Programs
 - Consultant Services
 - Walsh-Healey Act
 - Davis Bacon Act
 - Labor Surplus Areas
- Extent of Competition
- Estimated percent of foreign content

In summary, the FPDS, when fully operational, will for the first time provide a clear picture, in one centralized location, of the data needed to access the workings of our acquisition systems. This capability will lead to more improvements in the acquisition process as well as more effective implementation of Acquisitions laws.

COMMISSION ON GOVERNMENT PROCUREMENT RECOMMENDATIONS

OFPP has also exercised oversight responsibility for the 149 recommendations of the Commission on Government Procurement. We want to ensure that all of these recommendations are fully considered, and that those accepted by the executive branch are properly implemented. We review the status of each of these recommendations approximately every six months in order to make sure that target dates are being met, or if targets have slipped, what the reasons were and what action is needed. The current status of the Commission recommendations is as follows:

Executive Branch Positions Established	131
Accepted	119
Implementation Completed	23
Legislation Required	19
Still in Process	77
Rejected	12
Executive Branch Positions in Process	18
TOTAL	149

MAJOR SYSTEM ACQUISITIONS POLICY

Twelve of the recommendations of the COGP which are in the process of being implemented deal with Major System Acquisitions. The policy for major systems is our highest priority, particularly in view of the significant share of the acquisition budget that goes into major systems. OMB Circular A-109, which was issued in April 1976 focuses on three primary areas:

- a formal mission-oriented structure for the front end;
- Encouraging innovative solutions to agency needs; and
- an extended use of competition beginning early and continuing on through the system acquisition process.

Seventeen departments and agencies have been identified to implement A-109:

- Departments of Agriculture, Commerce, Defense, Energy, Health, Education, and Welfare, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, and Treasury; and
- General Services Administration, Environmental Protection Agency, National Aeronautics and Space Administration, Veterans Administration, and the Corps of Engineers.

Through the Federal Acquisition Institute, OFPP is developing orientation and training courses for all levels of management in the Federal agencies. A-109 orientation and training to date and planned include:

- Over 700 personnel have completed formal training courses.
- Over 1800 agency personnel have been identified to receive formal training this year.
- Over 5,000 industry and agency personnel have received indoctrination orientation briefings.
- More than 25,000 circulars and pamphlets have been distributed throughout the Government and industry.

Five departments and agencies (DOD, HEW, Energy, EPA, and NASA) have implemented A-109 in actual program application. We will continue to work with the agencies and emphasize the benefits of the A-109 procedures until the Circular is fully implemented.

SMALL AND MINORITY BUSINESS

Several recommendations of the Commission on Government Procurement relate to the most effective implementation of numerous socio-economic objectives in the acquisition process. Of the more than 40 socio-economic policies, small and minority business participation commands the greatest attention. I will only mention the implementation of Public Law 95-507 to illustrate OFPP's involvement.

On October 24, 1978 the President signed P.L. 95-507 amending the Small Business Investment Act and the Small Business Act. Section 211 of P.L. 95-507 requires the submission by major prime contractors (\$1,000,000 for construction contracts; \$500,000 all other contracts) of pre-award plans regarding subcontracting to (1) small business concerns and (2) small "disadvantaged" concerns. The plans must contain percentage goals and are to be incorporated into the contract.

OFPP implementation was published in the Federal Register on January 16, 1979. Approximately 80 comments have been received to date, and we expect that final regulations implementing this law will be issued in March, 1979.

COMMERCIAL BUYING PRACTICES

A policy of acquisition and distribution of commercial products (ADCoP) has already produced significant savings.

The policy emphasizes use of commercial, off-the-shelf, products and commercial distribution channels instead of products acquired via detailed specs for distribution through the Government depot system. ADCoP emphasizes that the Government should be able to use off-the-shelf products in the same manner as other consumers or industrial users.

Following are some examples of how ADCoP has been applied for specific products:

- o A 20 page specification for military undershirts was replaced with a half page purchase description, resulting in savings of \$797,000 in July 1978, compared to the price paid two months earlier.
- o Lengthy specifications for military boxer shorts and bed sheets were scrapped in favor of short purchase descriptions for a savings of \$65,000.
- o Using a three-line purchase description for x-ray film and buying in large quantities under master contracts, \$2 million was saved.
- o A commercial specification was used for test buy of 51 million gallons of gasoline at a cost of about \$25 million. If the gasoline meets test requirements, DOD will apply the commercial standard to annual purchases of more than 375 million gallons.

- o Simplified purchase descriptions have been used for ice cream makers, electrical fuses, bath towels, plumbing fixtures, Worcestershire sauce, salad dressing, salt, chain saws, and cotter pins.

ADCoP is being incorporated in the Federal Acquisition Regulation (FAR). Draft part 10 is expected to be completed by March 30, 1979. Part 10 will serve as interim guidance to agencies pending issuance of the FAR.

SPECIFICATIONS AND STANDARDS ACCOMPLISHMENTS

- o In December 1977, OFPP directed DOD and GSA (the two major spec preparing activities) to develop a Government-wide management system favoring functional over detailed specifications.
- o GSA manages approximately 5,000 Federal specifications; DOD, about 40,000 Federal and military specifications.
- o GSA has achieved a net reduction of approximately 696 Federal specifications and standards with an additional 875 in coordination for possible cancellation.
- o Department of Defense has tentatively identified some 8,000 to 10,000 detailed specifications for possible cancellation or conversion to CID's. Program in DOD is just getting underway and, although few specifications have actually been cancelled thus far, it presents a large saving potential.

Another important effort in connection with commercial products has been the improvement of food quality assurance and specifications management. Working with the Departments of Agriculture and Defense, OFPP has been instrumental in the following accomplishments:

- o 101 new meat graders trained at California State University - Chico, with additional 100 by October 1, 1979.
- o Guidelines are in process for USDA's management of Government's food specifications.
- o USDA assumed 70 percent of responsibility for meat inspection; balance to be accomplished by October 1979. U.S. Department of Commerce (USDC), National Marine Fisheries Service (NMFS), is totally performing its assigned inspection role for seafood.
- o USDC inspections to U.S. grade standards for seafood have resulted in \$5 million saving during 1977 and 1978 over previous DOD procurements.
- o Meat inspections for DOD from April 3, 1978, to December 31, 1978, reflect less than 7/100 of one percent product-related deficiencies; seafood, no deficiencies.

o "Going commercial" resulted in 90 percent of DOD food acquisitions delivered through commercial distribution channels bypassing Government depots (\$3.3 billion of a total annual volume of \$4 billion).

Finally, in the commercial products area, OFPP has worked with the Department of Defense and Veterans Administration to improve management of the acquisition of drugs and medical devices. DOD and VA signed an agreement in mid 1978 to share acquisition of drugs and medical devices. Thirty manufacturers of single offeror drugs have been assigned to DOD and VA for acquisition without duplication; accounts for 75 percent of \$400 million annual volume of all drugs acquired.

UNDERLYING THEMES: COMPETITION; TECHNOLOGY; THE MARKETPLACE

Now, Mr. Chairman, I would like to turn from OFPP's accomplishments to discuss some underlying themes which I think are significant and will be more so for OFPP's future.

OFPP listed over 29 separate, active projects in its last annual report to Congress. Each has commanded our attention for a variety of reasons: new laws, new Executive Orders as well as self-initiated efforts. Each is important in its own right and, taken together, I believe, they paint a broad picture of responsible and aggressive management in the many diverse areas which impinge on the Federal acquisition process.

But because OFPP, by its character, must be both active and reactive, there's a real danger that now and even more so in the future, we may lose sight of some of the underlying directions we wish to take Federal acquisition as a system.

This is an ideal opportunity to restate what have been -- and will continue to be -- three underlying themes for our efforts, the common touchstones and measures of direction in the process of reconstituting Federal acquisition practice.

They are:

- (1) To substitute effective competition for burdensome and artificial forms of regulatory controls.
- (2) To redesign Federal practice to stimulate and encourage new technology.
- (3) To redesign Federal practice to better interface with the American commercial marketplace.

Clearly, these three themes are related and mutually supportive. We deny the taxpayers full benefit of competition if we do not tap the full potential of the marketplace. The marketplace derives its energy and dynamism largely from new product and management innovation. Competition sharpens in the face of innovative solutions to Government needs.

The important point to keep in mind is that OFPP needs to do more than manage a skelter of apparently unrelated projects. It has a higher responsibility to direct Federal acquisition practice along some clearly understood lines which tell where we are going and can command broad confidence that these directions are correct.

Some people still fail to see, for example, the common thrusts in both OMB Circular A-109 governing major systems acquisition and our commercial products policy. What could be more disparate, it seems, than buying a weapon and underwear?

The themes are there, even if couched in different terminology. To begin new weapon programs with a broad agreement on mission needs, or to reduce 20 pages of specifications for boxer shorts to a half-page purchase description are equivalent reforms. Why? Because they open the door to more effective competition, widen the opportunity for broader product innovation and allow for fuller participation of all members of the marketplace.

Likewise, with small and minority business efforts. When we rebuild efforts to enhance the role of small and disadvantaged business under the new law, when we simplify the Federal Acquisition Regulations, we do so not just because small and minority firms somehow "deserve" special treatment in some abstract sense. We do so because we broaden the base of competition. We do so because smaller firms have always been the disproportionately larger source of innovation. We do so because 97% of the American marketplace is small business and account for over half the total employment.

It is important to keep these underlying concerns constantly in mind as an organization like OFPP goes about its business. OFPP always needs to be a rudder as well as a keel.

THE HEISENBERG PRINCIPLE

This leads to one other important observation that bears mention, again not because it's difficult to understand but because it's too easily overlooked.

The Heisenberg principle in physics has its equivalent principle in acquisition. What we observe in nature changes just because we are observing it. Likewise, how we go about buying materially changes those we buy from.

The decade-long practice of making key system design decisions in Washington has literally served to untrain engineers from creative innovation in the defense industry. Emphasis has tended to shift from engineering to marketing and lobbying skills in corporate behavior. A-109 has much to say about rebalancing these trends -- indeed, it was consciously designed to do so.

Our decades-long accretion of regulations and controls, all seen as valid protections for a prudent buyer, nevertheless change the sellers, by adding increased overhead burdens and stifling innovation and the entrance of small and minority firms into the Federal marketplace.

It will never be sufficient for OFPP to look upon its role simply as the custodian of Federal practices. The higher order responsibility to the taxpayer requires that OFPP manage the relationship between buyer and seller for the long-term health and protection of Federal acquisition.

As in the case of meat procurement, when we overload detailed specifications, require special equipment, rely on armies of inspectors, all these moves viewed just from the Government's standpoint might seem acceptable or even necessary.

But look what we did to our marketplace: we killed it. Competition went away, we became inordinately dependent on a few suppliers, prices went up and fraud set in.

We will never serve the best interest of the taxpayers by failing to concern ourselves with the effects on the sellers which arise from our actions as buyers .

One final point on this matter. The passage of S. 5, the "Federal Acquisition Reform Act" would go a long way towards achieving optimum use of the marketplace. I would like to stress the importance of avoiding restrictions in other legislation which inhibit competitive acquisition.

RESHAPING THE BUYING BUSINESS: ACQUISITION VERSUS PROCUREMENT

OFPP is both the product and promoter of the most far-reaching reforms ever in Federal contracting. With the original catalyst of the Procurement Commission in 1972, momentum has built, achievements have accelerated and a reexamination of methods and precepts has touched virtually every facet of the business of buying.

Perhaps the most significant yet apparently superficial sign of this reform scope is our effort to replace the word "procurement" with the word "acquisition."

We no longer have the Armed Services Procurement Regulation; we have the Defense Acquisition Regulation. These, in turn, will yield to a government-wide set of Federal Acquisition Regulations.

The Federal Procurement Institute is now the Federal Acquisition Institute.

In every key agency, we now have an Acquisition Executive. In the Defense Department, for example, the Undersecretary for Research and Engineering carries that title and the key staff position is the Deputy for Acquisition, which now embodies the former procurement function located elsewhere before the Carter Administration.

The landmark legislation to build a new statutory foundation, S. 5, carries the title Federal Acquisition Reform Act.

What's behind this semantic purge is far more than novelty or sloganeering.

Our perception of this business of buying has changed dramatically. Our understanding of what's right and what's wrong, where the problems lie and where the solutions can be found has literally outgrown the conventional use and meaning of the work "procurement." Both mentally and organizationally, we need to recast our notions beyond the narrowly understood "procurement" connotations.

Why? Put simply, we have found Federal buying traditions increasingly cast in three separate sets of specialties:

- o Requirements -- expressing the Government needs
- o Procurement -- the business of contracting for those needs
- o Logistics -- the business of using and managing what's bought.

Problems arising in each arena have been treated in that arena. The most profound, yet easy to understand, change in our thinking is that we need to manage these special functions together, to manage the acquisition process.

Problems in logistics -- spare parts and supply and warehousing -- have their roots in the way we set requirements and do our contracting. You cannot have an efficient National Supply System unless you address the front-end issues of who's specifying which items and who's procuring those items.

Problems in procurement -- in competition and overruns and prices -- have their roots in the way requirements have been set. You cannot generate effective competition without properly matching the Government's expression of need with the ability of the marketplace to respond. This is true whether we talk of overly detailed specifications for mousetraps and meat or constrained requirements for particular types of weapon systems.

This is why major improvements in buying, whether for major systems or commercial products, rest on a new intellectual appreciation for an acquisition process which must embrace requirements and contracting (procurement) and logistics. They must be viewed and managed in concert in order to make the major improvements we are seeking.

SOCIO-ECONOMIC PROGRAMS

Nowhere has more controversy and difficulty arisen than in applying Federal acquisition to meet social and economic objectives. Many of these programs - - small business preferences, "Buy American" protections -- are time-worn and familiar.

Yet there are others, unfamiliar or forgotten, which taken together present probably the largest single challenge to effective management of the Federal contract process. Attached to my statement is a compilation of 39 separate socio-economic requirements compiled by the Procurement Commission, ranging over air standards, foreign twine, prison-made supplies, humane slaughter of animals and convict labor.

To that list we must add recent anti-inflation conditions under President Carter's executive order; new statutory preferences for small and disadvantaged business under P.L. 95-507; and preferences for firms located in Labor Surplus Areas under P.L. 95-89, P.L. 95-507 and President Carter's Urban Policy.

To put it most bluntly, nowhere is there a more blatant contradiction between the fundamental mission of buying the best goods at most reasonable prices and distorting that goal with socio-economic objectives which likely add short-run costs, limit competition, distort the marketplace and even conflict with each other.

Clearly, it is argued, the Federal job of buying economically would be far more pure and simple without these requirements.

Reaction of the acquisition community in the past has been understandable and well-founded on its concern for the most efficient purchasing. Few new socio-economic programs have enjoyed full support and they have been regarded as enforced encumbrances which need to be endured.

I believe we have reached the point where a new attitude can and should take hold. A new perspective.

History has taught us we have had and will have continued demands through Congress and the President to use Federal contracts to serve in social and economic pursuits. The reason is quite simple: this country's leadership has not, cannot and will not turn its back on a \$100 billion-a-year tool to work on the nation's critical problems.

As difficult as it may seem to recognize, socio-economic programs now rank as important as the basic business of buying in the regimen for acquisition managers. And for good reason.

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When we tend to small business preferences, we build a more vital economic fabric for the country which, in the long run, benefits the Federal Government as a buyer.

When we tend to the special needs of minority business, we build a stronger economic and, more importantly, a stronger social fabric for the country which far transcends the returns from a diversified base of suppliers.

When we tend to the preference for firms located in labor surplus areas, we build hope and health into the country's urban communities--even through just one contract.

We could go on with specific programs but, for all, we make limited Federal dollars work harder to achieve several purposes at once.

Where does that leave us? With some of the most difficult jobs in government. The 130,000 people who administer Federal contracts must serve two masters, play two roles as economical buyers, custodians for the taxpayers' money and as agents of social and economic change, contributors to the national well-being.

That is not easy. We would all wish for a simpler world. Instead we are left with some of the most difficult management decisions reflecting the essence of government: difficult choices between competing demands.

Realizing these things should permit us to take a forthright posture as supporters and constructive critics in fashioning and executing socio-economic programs. OFPP has tried to serve as a positive and responsible spokesman for the acquisition community which, more than any other, can best say how to go about these efforts, what will cause them to fail and how to make them work.

THE SCOPE OF OFPP'S AUTHORITY

Without a doubt, Congress intended and created a strong Office. Within the overall thrust of P.L. 93-400, several particular provisions have proved to be prominent in framing that strength:

o Section 6(a) -- Authority -- "The Administrator shall provide overall direction of procurement policy ... he shall prescribe policies, regulations, procedures, which shall be in accordance with applicable laws and shall be followed by executive agencies ..."

o Section 7 -- Administrative Powers -- "Upon request of the Administrator, each executive agency is directed to make its services, personnel and facilities available to the Office to the greatest practicable extent ..."

o Section 9 -- Effect on Existing Laws -- "The authority of an executive agency under any other law to prescribe policies, regulations, procedures and forms for procurement is subject to the authority conferred (to the Administrator) in Section 6 of this Act."

These are strong provisions. They reflect the Congress' decision that OFPP must have directive -- not advisory -- authority if OFPP was to be able to tackle the reforms needed in the face of a complicated and fragmented scheme of existing procurement authorities.

P.L. 93-400 also, however, crafted checks and balances on that strong authority --

- o Requiring "due regard to the program activities of the executive agencies" (Section 6(a));
- o Restricting the authority "to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance." (Section 6(b)(1));
- o Requiring that "the Administrator shall consult with the executive agencies affected, including the Small Business Administration ..." (Section 6(e));
- o Limiting interference with the agencies' "need for, or use of, specific property, services, or construction" (Section 6(f)(1));
- o Limiting interference in "specific actions in the award or administration of procurement contracts";

o Requiring that "the Administrator shall keep the Congress and its duly authorized committees fully and currently informed ...", including an annual report (Section 8(a));

o Requiring that "at least 30 days prior to the effective date of any major policy or regulation ... the Administrator shall transmit ... a detailed report ..." (Section 8(b));

o Requiring the Administrator to give the General Accounting Office "access to all books, documents, papers and records of the Office" (Section 14(a)); and

o Requiring public notice and open meetings "for the purpose of establishing procurement policies and regulations" (Section 14(b)).

Taken together, the law's provisions circumscribe the limits of OFPP authority, broadly beneath the law but short of individual agency transactions. In between, the exercise of authority is balanced by prior reporting provisions and public participation.

To have authority, though, is not to use it. The basic authority grant to prescribe in Section 6 is conditioned with the phrase, "To the extent he considers appropriate ..." OFPP's authority can be used aggressively or timidly.

As a conscious matter, I have tried to use OFPP's authority aggressively since assuming the post of Administrator for several reasons.

(1) The very discipline of this "sunset" review lends an immediate incentive to either produce or pack up. The public, as a general matter, is thoroughly disenchanted with the overall pace and productivity of the bureaucracy they pay for.

(2) The legislative history and Procurement Commission report clearly envisioned OFPP as a positive force for reform, not just an overseer of current practice.

(3) The scope of needed change is enormous. Our contracting system today represents the accretion of literally forty years of 4,000 statutory provisions, 877 sets of regulations filling 65,000 pages and -- more importantly -- has attempted to operate on precepts which have been overtaken by the modern character of the marketplace.

(4) OFPP represents an experiment which must produce dividends in order to demonstrate that

-- multi-million dollar Government commission studies can produce hard results beyond edification of graduate student theses.

-- a small, high-level bureaucracy, well placed and well supported, can produce net benefits beyond the apparent and distasteful costs of adding yet another layer on the Government's organization chart.

-- This Government can be effectively managed and modernized, as President Carter seeks to do on a broad scale.

An aggressive posture carries with it, however, a commitment to tackle the tough issues. It also necessitates facing up to many political sensitivities which otherwise might rest undisturbed with a more reticent use of authority. And this, too, has been the case.

Probably the two most difficult, sensitive and longstanding problems in Federal acquisition have been contracting out -- OMB Circular A-76 -- and contract wage laws, in particular the Service Contract and Davis-Bacon Acts.

In both cases, OFPP has sought to confront the longstanding difficulties in a fair, objective, even-handed manner, being responsive and attentive to the Congress, Government agencies, industry and both public and private labor groups. Our doors have been open to all.

We will have a new contracting out package shortly.

We have underway the most comprehensive review ever of contract wage law administration.

When complete, I suppose the affected parties -- public employees, private unions, industry, agencies and congressional bodies -- each will remain somewhat dissatisfied with one feature or another, one key decision or another. Yet none, either, have been completely satisfied with the stagnant status quo.

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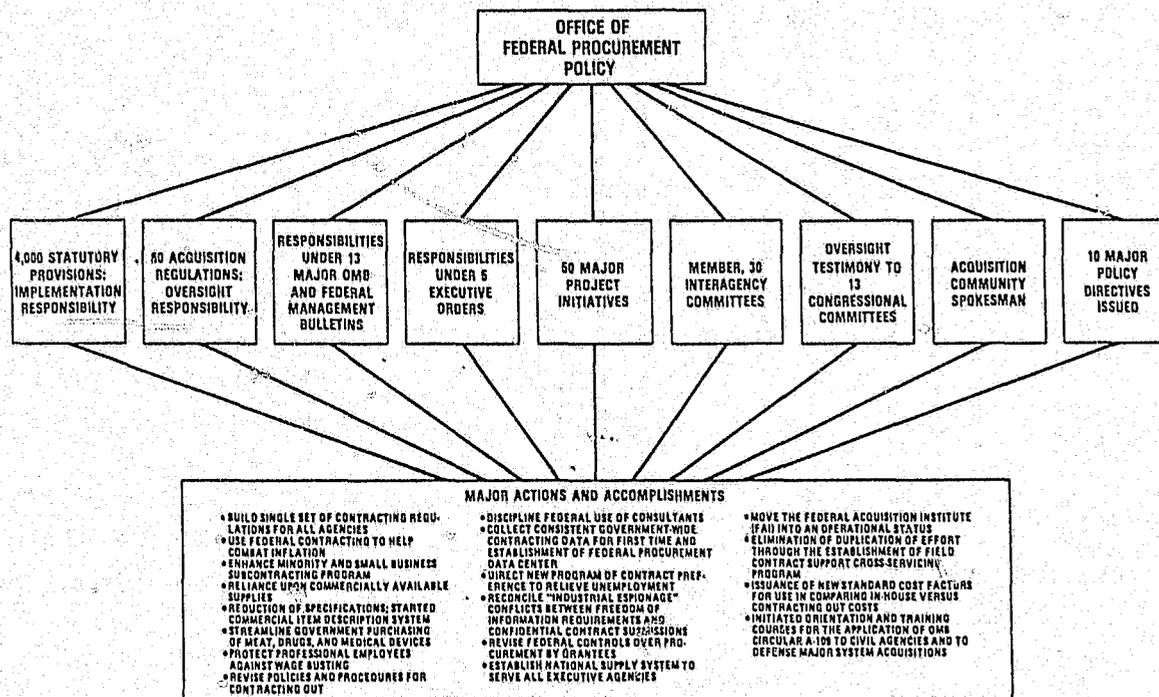
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I hope and expect that beyond the legitimate special interests of each, there will be recognition that we have improved Government management for all.

I will argue as forcefully to Congressman Thompson and Ken Blaylock, to Tom Donohue and Bob Georgine, to industry leaders and agency heads alike that it is in their interest to have a strong and accountable OFPP to deal with the gnawing problems which frustrate their responsibilities to members and missions, stockholders and constituents. Without it, problems will be left to fester, the price paid in inefficiency and unfairness will rise, and, collectively, we will frustrate our responsibilities to the public at large.

In conclusion, Mr. Chairman, let me say I would support reauthorization of OFPP for another limited span, not because so much has been accomplished thus far but because so much more needs to be done.

OFPP INTERFACE WITH ACQUISITION PROCESS 1974 - 1979



ATTACHMENT
OFPP INTERFACE WITH THE ACQUISITION PROCESS

I. MAJOR LAWS FOR WHICH OFPP HAS IMPLEMENTATION RESPONSIBILITIES:

- Armed Services Procurement Act
- Federal Property and Administrative Services Act
- OFPP Act
- Buy American Act
- Rehabilitation Act of 1973
- Energy Policy and Conservation Act
- Resources Conservation and Recovery Act of 1976
- Small Business Act as Amended
- Contract Disputes Act
- Federal Grants and Cooperative Agreements Act
- Prevailing Wage Laws

II. MAJOR ACQUISITION REGULATIONS FOR WHICH OFPP HAS OVERSIGHT RESPONSIBILITIES:

- Federal Acquisition Regulation (FAR)
- Federal Procurement Regulations (FPR)
- Defense Acquisition Regulation (DAR)
- Federal Property Management Regulations (FPMR)
- Agency Implementations of Primary Regulations

III. MAJOR OMB AND FEDERAL MANAGEMENT BULLETINS UNDER WHICH OFPP HAS RESPONSIBILITIES:

- OMB Circular A-109 (Major Systems Acquisition)
- OMB Circular A-76 (Contracting Out)
- OMB Circular A-102 (Attachment O)
- OMB Circular A-110 (Attachment O)
- OMB Circular A-114 (Management of Federal Audiovisual Activities)
- OMB Bulletin 78-11 (Guidelines for Consulting Services)
- OMB Circular A-18 (Policies on Construction of Family Housing)

- OMB Circular A-45 (Rental Quarters)
- Federal Management Circular 74-3 (Government-wide procedures for processing pre-award protests against contract award)
- Federal Management Circular 75-1 (Ensuring consideration of user's experience with Federal agency supply support systems)
- OMB Circular A-104 (Comparative cost analysis for decisions to lease or purchase general purpose real property)
- OMB Circular A-49 (Use of management and operating contracts)
- Section 55 of OMB Circular A-11 (R&D mission budget submittal)

IV. PRIMARY EXECUTIVE ORDERS UNDER WHICH OFPP HAS RESPONSIBILITIES:

- Executive Order 11912 (Implementation of P.L. 94-163)
- Executive Order 10582 (Implementation of Buy American Act)
- Executive Order 11893 (Transfer of Functions from GSA to OMB)
- Executive Order 11246 (Equal Employment Opportunity)
- Executive Order 12092 (Anti-inflation)

V. MAJOR PROJECT INITIATIVES:

- Federal Acquisition Regulation System
- Socio-Economic Programs
- Acquisition and Distribution of Commercial Products
- Food Quality Assurance and Specification Management
- Quality Assurance for Drugs and Medical Devices
- Acquisition Management System for Drugs and Medical Devices
- Market Research and Analysis
- Service Contract Act
- Government Reliance on Private Sector for Goods and Services
- Guidelines for Use of Consultant Services
- Federal Procurement Data System
- Real Property Assignments
- Procurement by Grantees
- National Supply System
- Federal Acquisition Institute (FAI)
- Major Systems Acquisition Policy Implementation
- Organizational Conflicts of Interest
- Government-Wide Profit Policy
- Contract Disputes and Remedies
- Patent Policy

- Debarment and Suspension of Contractors
- Liability for Catastrophic Accidents
- Construction Contracting Policy
- Policy on Management Systems and Contractor Data Requirements
- Federal Interaction with Voluntary Standards Bodies
- Research and Development Acquisition Policy
- Prompt Payment Under Government Contracts
- Modern Cost Estimating and Analysis Techniques
- Buy American Act
- Resource Conservation and Recovery
- Energy Conservation
- International Procurement Code
- Study of Small Purchase Procedures and Regulations
- Procurement Organizational Structures and Flow of Procurement Authority
- Small Business Programs
- Audiovisual Management
- Nonappropriated Fund Study
- Model State and Local Procurement Code
- International Shipment of Household Goods
- Competition in Procurement
- Cost Accounting Standards
- Anti-inflation
- Inter-agency Contract Administration (Cross-Servicing)
- Ethical Standards for Contracting Personnel
- R&D Mission Budget Reports to Congress
- IR&D/B&P Cost Principles and Policies
- Reduction in Costs of Conferences and Symposia
- Increased Use of Small, High Technology Firms
- Reduction of Costs of Contractual Management Systems and Data

VI. INTERAGENCY COMMITTEE MEMBERSHIPS:

- Interagency Council on Minority Business Enterprise (Member)
- Surplus Manpower Committee (Member)
- Policy and Regulation Subcommittee, Interagency Council on Minority Business Enterprise (Chairman)
- 8(a) Subcommittee on Procurement Policy, Interagency Council on Minority Business Enterprise (Member)
- Executive Steering Group for the Labor Surplus Area Program, Interagency

- Coordinating Committee for the Urban Policy (Member)
- Interagency Committee to Study Improvements in the Commerce Business Daily (Member)
- Interagency Working Group on Recycled Materials (Member)
- Interagency Steering Group for Acquisition and Distribution of Commercial Products (DOD, VA, GSA, Commerce, USDA, HEW) (Chairman)
- Interagency Committee on Specifications Management (Member)
- Logistics Career Management Council (Member)
- Medical/Nonperishable Subsistence Supply Management Committee (DOD, VA, GSA, FDA) (Chairman)
- Food Quality Assurance Committee (USDA, DOD, VA, HEW, Commerce, GSA) (Member)
- Board of Visitors, American University Model Undergraduate Program for Procurement (Member)
- Federal Acquisition Institute Policy Board (Chairman)
- Interagency Committee on Training, Applications Task Team (Member)
- Women in Acquisition: Interagency Specialized Work Group (Chairman)
- National Supply System Advisory Board (Chairman)
- Federal Audiovisual Committee (Chairman)
- Administrative Services Reorganization Project (Member)
- Interagency Committee on Labor-Related Procurement Issues (Chairman)
- Subcommittee on Government Procurement of Trade Policy Staff Committee (Member)
- Anti-inflation Procurement Council (Chairman)
- Standing Committee on Procurement Policy of the Federal Construction Council (Member)
- Cost Accounting Standards Steering Group (Member)
- Federal Procurement Data System Advisory Board (Chairman)
- Department of Energy Patent Policy Committee (Member)
- Committee on Intellectual Property and Information of the Federal Coordinating Council for Science and Technology (Member)
- Industrial Innovation - Domestic Presidential Review Memorandum (Member)
- A-E Committee on Federal Construction (Member)
- Interagency Committee on A-E (Member)
- Task Force on Industrial Innovation (Member)

VII. OVERSIGHT AND REPORTING RESPONSIBILITY - FORMAL CONGRESSIONAL INTERACTIONS

U.S. Senate

- Appropriations Committee
- Armed Services Committee
- Governmental Affairs Committee
- Select Committee on Small Business
- Human Resources Committee
- Judiciary Committee

U.S. House of Representatives

- Appropriations Committee
- Armed Services Committee
- Government Operations Committee
- Public Works Committee
- Small Business Committee
- Transportation and Commerce Committee

Joint Senate and House

- Senate Select Committee on Small Business and House Small Business Subcommittee on Antitrust, Consumers and Employment

VIII. SPOKESMAN FOR PROCUREMENT COMMUNITY

Administrator delivered 80 speeches in one-year period from March 1978-February 1979. Professional associations, schools, committees, and other groups addressed included:

- HEW Procurement Conference
- Defense Systems Management College
- National Contract Management Association
- Association of Government Accountants
- George Washington University
- National Security Industrial Association
- Naval War College
- National Construction Industry Council
- American Surgical Trade Association
- Practicing Law Institute
- Michigan State University

- Conference on Wage and Price Guidelines
- American Institute of Industrial Engineers
- Governor's Conference on Fighting Inflation
- Industrial College of Armed Forces

IX. MAJOR POLICY DIRECTIVES

- Policy Letter No. 76-1 (Procurement Policy Concerning Energy Conservation)
- Policy Letter No. 77-1 (Procurement of Recycled Material)
- Policy Letter No. 78-1 (Minority Business Participation)
- Policy Letter No. 78-2 (Prevention of "Wage Busting")
- Policy Letter No. 78-3 (Disclosure of Contractor Information)
- Policy Letter No. 78-4 (Cross Servicing Program)
- Policy Letter No. 78-5 (Motion Picture Contracting)
- Policy Letter No. 78-6 (Anti-inflation Regulations)
- Policy Letter of October 31, 1978 (Deceleration of Economic Price Adjustment Clauses)
- Program Directive (ADCoP)

X. MAJOR ACTIONS AND ACCOMPLISHMENTS

- Build single set of contracting regulations for all agencies
- Use Federal contracting to help combat inflation
- Enhance minority and small business subcontracting program
- Reliance upon commercially available supplies
- Reduction of specifications; started commercial item description system
- Streamline Government purchasing of meat, drugs and medical devices
- Overhaul Government contracting for production of films
- Protect professional employees against wage busting
- Revise policies and procedures for contracting out
- Discipline Federal use of consultants
- Collect consistent Government-wide contracting data for first time and establishment of Federal Procurement Data Center
- Direct new program of contract preference to relieve unemployment
- Resolve conflict over application of Service Contract Act labor standards to Defense contracts
- Reconcile "industrial espionage" conflicts between Freedom of Information requirements and confidential contract submissions

- Revise Federal charges for space rental
- Revise Federal controls over procurement by grantees
- Establish National Supply System to serve all executive agencies
- Improve Commerce Business Daily to aid small business entrepreneur
- Preclude placing nonessential reporting procedures and paperwork requirements on contractors
- Move the Federal Acquisition Institute (FAI) into an operational status
- Elimination of duplication of effort through the establishment of Field Contract Support Cross-Servicing Program
- Issuance of new standard cost factors for use in comparing in-house versus contracting out costs
- Develop standard R&D definitions and formats for mission budget displays
- Initiate orientation and training courses for the application of OMB Circular A-109 to Civil Agencies and to Defense major system acquisitions
- OMB/OFPP joint issuance of OMB Circular A-109, regarding Major System Acquisition

TABLE 1. SOCIAL AND ECONOMIC PROGRAMS

Program	Authority	Purpose
Buy American Act*	41 U.S.C. 10a-10d	To provide preference for domestic materials over foreign materials
Preference for United States Manufacturers	22 U.S.C. 295a	To provide preference for domestic manufactures in construction of diplomatic and consular establishments
Preference for United States Manufacturers	16 U.S.C. 560a	To restrict U.S. Forest Service from purchasing twine manufactured from materials of foreign origin
Preference for United States Products (Military Assistance Programs)*	22 U.S.C. 2354(a)	To require the purchase of U.S. end products for the military assistance program
Preference for United States Food, Clothing, and Fibers (Berry Amendment)*	Public Law 91-171, sec. 624	To restrict the Department of Defense from purchasing specified classes of commodities of foreign origin
Officials Not to Benefit*	41 U.S.C. 22	To prohibit members of Congress from benefiting from any Government contract
Clean Air Act of 1970	42 U.S.C. 1857h-4	To prohibit contracting with a company convicted of criminal violation of air pollution standards
Equal Employment Opportunity*	Exec. Order 11246, Exec. Order 11375	To prohibit discrimination in Government contracting
Copeland "Anti-Kickback" Act*	18 U.S.C. 874, 40 U.S.C. 276c	To prohibit kickbacks from employees on public works
Walsh-Healey Act*	41 U.S.C. 35-45	To prescribe minimum wage, hours, age, and working conditions for supply contracts
Davis-Bacon Act*	40 U.S.C. 276a-1-5	To prescribe minimum wages, benefits, and work conditions on construction contracts in excess of \$2,000
Service Contract Act of 1965*	41 U.S.C. 351-357	To prescribe wages, fringe benefits, and work conditions for service contracts
Contract Work Hours and Safety Standards Act*	40 U.S.C. 328-332	To prescribe eight-hour day, forty-hour week, and health and safety standards for laborers and mechanics on public works
Fair Labor Standards Act of 1938	29 U.S.C. 201-219	To establish minimum wage and maximum hours standards for employees engaged in commerce or the production of goods for commerce
Prohibition of Construction of Naval Vessels in Foreign Shipyards	Public Law 91-171 (DOD Appropriation Act of 1970), title IV	To prohibit use of appropriated funds for the construction of any Navy vessel in foreign shipyards
Acquisition of Foreign Buses	Public Law 90-500, (DOD Appropriation Act of 1969), sec. 404	To restrict use of appropriated funds to purchase, lease, rent, or otherwise acquire foreign-manufactured buses
Release of Product Information to Consumers	Exec. Order 11566	To encourage dissemination of Government documents containing product information of possible use to consumers
Prohibition of Price Differential	Public Law 83-179, sec. 644	To prohibit use of appropriated funds for payment of price differential on contracts made to relieve economic dislocation
Required Source for Jewel Bearings*	ASPR 7-104.37	To preserve a mobilization base for manufacture of jewel bearings

General Procurement Considerations

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Program	Authority	Purpose
Employment Openings for Veterans*	Exec. Order 11598, 41 CFR 50-250, ASPR 12-1102	To require contractors to list suitable employment openings with State employment system to assist veterans in obtaining jobs
Covenant Against Contingent Fees*	41 CFR 1-1500-509	To void contract obtained by broker for a contingent fee
Gratuities*	32 CFR 7.104-16	To provide Government with right to terminate if gratuity is given to a Government employee to obtain contract or favorable treatment
International Balance of Payment*	ASPR 6-805.2, FPR 1-6.8	To limit purchase of foreign end products and services for use abroad
Prison-made Supplies	18 U.S.C. 4124	To require mandatory purchase of specific supplies from Federal Prison Industries, Inc.
Preference to U.S. Vessels*	10 U.S.C. 2631, 46 U.S.C. 1241	To require the shipment of all military and at least half of other goods in U.S. vessels
Care of Laboratory Animals*	ASPR 7-303.44	To require humane treatment in use of experimental or laboratory animals
Required Source for Aluminum Ingot*	ASPR 1-327, FPR subpart 1-5.10	To eliminate excess quantity of aluminum in the national stockpile
Small Business Act*	15 U.S.C. 631-647; see also 41 U.S.C. 252(b) and 10 U.S.C. 2301	To place fair portion of Government purchases and contracts with small business concerns
Blind-made Products	41 U.S.C. 46-48	To make mandatory purchase of products made by blind and other handicapped persons
Duty-free Entry of Canadian Supplies*	ASPR 6-606	To further economic cooperation with Canada and continental defense
Use of Excess and Near Excess Currency*	ASPR 6-000 et seq., FPR 1-6.804-806	To provide preference in award to bidders willing to be paid in excess or near-excess foreign currency
Purchases in Communist Areas*	ASPR 6-401 et seq.	To prohibit acquisition of supplies from sources within Communist areas
Nonuse of Foreign Flag Vessels Engaged in Cuban and North Vietnam Trade*	ASPR 1-1410	To prohibit contractor from shipping any supplies on foreign flag vessel that has called on Cuban or North Vietnamese port after specific dates
Labor Surplus Area Concerns*	Defense Manpower Policy No. 4, 32A CFR 33 (Supp. 1972)	To provide preference to concerns performing in areas of concentrated unemployment or underemployment
Economic Stabilization Act of 1970	12 U.S.C. 1904 note	To stabilize prices, rents, wages, salaries, dividends, and interest
Humane Slaughter Act*	7 U.S.C. 1901-1906	To purchase meat only from suppliers who conform to humane slaughter standards
Miller Act*	40 U.S.C. 270a-d	To require contractor to provide payment and performance bonds on Government construction contracts
Convict Labor Act*	Exec. Order 325A, ASPR 12-201 et seq.	To prohibit employment on Government contracts of persons imprisoned at hard labor
Vietnam Veterans Readjustment Act	Public Law 92-540	To give employment preference to disabled veterans and veterans of the Vietnam era

*Indicates that the program has resulted in the issuance of a standard contract clause.
Source: Commission Studies Program.

As concerns the 18 recommendations on which we had not yet arrived at an Executive Branch position as of the date of our latest status report, let me assure you we have not overlooked them. The problem has been difficulty in coming to agreement among all parties affected as to what is the best course of action. As you can see from my report, we have worked on most of them. As of April 11, 1979, I am pleased to report that five will no longer appear in this category; but we can now report not only a position, but definitive completed action in the case of four and a rejection of one. The detail follows:

1. Recommendation: A-22 (Enact legislation establishing policy of reliance on private sector)

Executive Branch Action: Rejection

Rationale: The desirability of establishing this policy in law has not been demonstrated. An exhaustive, two-year review of the policy was completed in March 1979 -- a review in which the Congress participated. Little support for legislative action was shown by any sector or interest during the review process.

We would also note that the recommendation is directed at the legislative branch. The Congress, in establishing the OFPP, assigned to that Office the responsibility and authority for monitoring and revising this policy. By so doing and by taking no further legislative action on the policy, the Congress, too, appears to have given a de facto rejection to the recommendation.

2. Recommendation: A-23 (Increase level for making cost comparisons to \$100,000)

Executive Branch Action: Acceptance

Status: Implementation Completed

Discussion: The dollar level for making cost comparisons has been raised from \$50,000 to \$100,000 as reflected in the newly revised OMB Circular No. A-76, dated March 29, 1979.

3. Recommendation: A-24 (Establish specific basis for cost comparison)

Executive Branch Action: Acceptance

Status: Implementation Completed

Discussion: This recommendation, with some modification, was accepted -- and is reflected in the newly revised OMB Circular No. A-76 and Supplement No. 1, "Cost Comparison Handbook", both of which are dated March 29, 1979. The Handbook calls for allocating overhead and indirect costs at the installation level, but adjusting in-house cost estimates for any individual costs that would still be incurred under the alternative of contract performance. In cases where work is not a significant portion of total workload, there would be no significant indirect cost allocated to Government performance.

4. Recommendation: A-25 (Increase threshold for new starts)

Executive Branch Action: Acceptance

Status: Implementation Completed

Discussion: Acceptance of this recommendation, in slightly modified form, is reflected in OMB Circular A-76, dated March 29, 1979. The dollar level for activity expansion has been increased to \$100,000 of capital investment, \$200,000 of annual operating expense or 20% of total investments or annual operating cost -- whichever is higher. Revised requirements now state that cost studies will not be conducted to justify a new start unless its annual operating cost is in excess of \$100,000.

5. Recommendation: A-26 (Increase cost differential to justify in-house work on new starts)

Executive Branch Action: Acceptance

Status: Implementation Completed

Discussion: The newly revised OMB Circular A-76 increases the differential favoring commercial performance of new starts to 10% of estimated Government personnel-related costs, plus 25% of the cost of ownership of Government equipment and facilities. The total differential in individual cases will be between 10%-25% of total cost -- depending upon the mix of labor and facility costs.

A status report concerning the remaining 13 follows:

In reviewing the status report, please note that two recommendations, I-4 and I-8, previously were acted upon--rejected. We have decided to take a second look.

COMMISSION ON GOVERNMENT PROCUREMENT RECOMMENDATIONS
EXECUTIVE BRANCH POSITIONS IN-PROCESS

Date _____
Page 1

Recommendations In-Process	Assignment Within OFPP	STATUS	Target For Executive Branch Position	REMARKS
B-1, thru 4. Research and development objectives, organization and performance.	System and Technology	In as much as these recommendations deal with in-house Government technical capabilities, planned implementation will be by an R&D supplement to OMB Circular No. A-76. An interagency ad hoc subcommittee of FCCSET sponsored by OSTP and OFPP is developing criteria to define in-house "core capabilities" and to clarify the role of Government laboratories. Subcommittee final report is due by October 1979.	April 1980	With respect to major systems acquisition the intent of these recommendations is included in OMB Circular No. A-109.
B-8. R&D Cost Sharing	Systems and Technology	Draft R&D section of FAR to be distributed for comments 4/30/79.	8/79	
B-10. Policy concerning independent research and development costs.	Systems and Technology	Draft Cost Principles section of FAR to be distributed for agency comments 4/79.	4/80	

Recommendations In-Process	Assignment Within OFPP	STATUS	Target Date for Executive Branch Position	REMARKS
G-22 thru G-24. P.L. 85-804 extension.	Acquisition Law	In suspense pending legislative positions and implementation of G-1 thru 12 and H-5.	9/79	Low Priority. Implementation would require legislation. Decision whether to seek and what type of legislation will be made after G-1 thru 12 and H-5 are resolved.
H-4 and H-5. Catastrophic Accidents	Acquisition Law	Task group report, including proposed legislation, submitted to OFPP 12/76. Agency comments on legislation being studied by OFPP.		Legislation drafted by inter-agency task force.
I-4 and I-8. Patent Policy	Acquisition Law	I-4 and I-8 which deal with authorization and consent and District Court jurisdiction of patents previously were rejected by the executive branch. This Administration is reviewing the total patent policy and therefore is reviewing its position relative to these recommendations.		Impractical to establish a Target date in view of the diverse positions of several major agencies on this matter.



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

OFFICE OF FEDERAL
PROCUREMENT POLICY

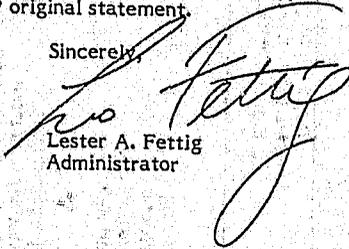
MAR 19 1979

Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
Senate Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

My formal statement for the oversight hearings on the Office of Federal Procurement Policy (OFPP) on March 2, 1979, generally summarized OFPP's major accomplishments, but did not include several significant projects. I am enclosing a supplement detailing those projects which I feel should be made a part of the record of OFPP's performance. I would appreciate it if this supplement could be included in the record along with my original statement.

Sincerely,


Lester A. Fettig
Administrator

Enclosure



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

OFFICE OF FEDERAL
PROCUREMENT POLICY

SUPPLEMENT TO STATEMENT OF
MARCH 2, 1979
BY THE HONORABLE LESTER A. FETTIG
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET
BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES
AND OPEN GOVERNMENT
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

OTHER SIGNIFICANT OFPP PROJECTS

THE COMMERCE BUSINESS DAILY

OFPP has an on-going project working with the Director of the Commerce Business Daily (CBD) in the Domestic and International Business Administration, Department of Commerce, to look into ways to make the Daily a more useful tool for the small business entrepreneur in seeking Government work -- either direct prime contracts or subcontract work with larger firms.

Among early actions taken by OFPP was the emphasis to procuring agencies to provide sufficient lead-times for the preparation of bids. In addition, agencies were urged to ensure that the descriptive data in synopses serves as a meaningful source for potential bidders.

Use of automation and modernization techniques both for compilation and printing of the Daily have been encouraged, with the result that since January 1, 1978, it has been composed electronically by computer. An Interagency Working Group was

established in late 1977 to review the CBD and to make recommendations for its improvement. Some of these have been implemented by both the DAR/FPR and others will be included in the FAR. These include:

- 30-day normal bid time;
- maintaining award publicizing at a \$25,000 threshold for subcontracting opportunities;
- requiring that all sole source awards in excess of \$10,000 be published.

LABOR SURPLUS AREA PROGRAM

This socio-economic program commands an increasing amount of OFPP's attention.

Title V, Procurement Assistance, of Public Law 95-89 signed in August, 1977, contains precedent-setting provisions designed to assist labor surplus areas obtain a larger share of Government contracts. That law amends the Small Business Act to add a new section 15(a) which states that "for purposes of this section priority shall be given to the awarding of contracts and placement of subcontracts to concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment

of under-employment or within labor surplus areas." Section 502 goes on to authorize specifically "notwithstanding any other provision of law" total labor surplus area set-asides, if awarded, may be made at "reasonable prices."

Finally, section 502 directed a redefinition of labor surplus areas and established a priority for award of contracts pursuant to that section, with small businesses in labor surplus areas accorded top priority.

The importance of this program was underscored by the issuance of President Carter's Urban Policy. An important part of that policy to create a "New Partnership" to revitalize and restore the Nation's urban areas is the Labor Surplus Area Program, designed to channel Federal contracts in to areas of labor surplus. These, of course, are generally urban areas.

The Director, OMB, on May 15, 1978, designated the Office of Federal Procurement Policy to take direct oversight responsibility for the program with the General Services Administration operating as lead agency for implementation.

Since that time, we have made considerable progress, but much remains to be done. Specifically, we have moved to make progress on four fronts:

- (1) Training of agency contract personnel;
- (2) Government-wide Coordination of program implementation and procurement regulations;

(3) Setting Targets for levels of agency set-asides; and

(4) Establishing a Reporting System

Because of the late start in 1978, results so far have been modest in terms of actual set-asides made under the program. We believe, however, that the training accomplished during 1978 and the experience gained under the program will, together with OFPP leadership, result in significant improvements in the program this year.

NATIONAL SUPPLY SYSTEM

For over two decades, the need for a single integrated system for procurement and supply of common items used by the Government has been recognized and discussed within the legislative and executive branches. Yet, unnecessary overlap and duplication continue to burden Government procurement and supply operations. To remedy this condition, OFPP has initiated a program to establish a workable National Supply System.

The objective of the System is to establish an integrated Government-wide system for the acquisition and supply of items used by Federal agencies. By so doing, we will eliminate existing duplication, overlap, and waste, and enhance the supply system's responsiveness to its users. A National Supply System Advisory Board was established in October 1976 to serve as the principal interagency mechanism for advising and assisting the Administrator in developing the system. The conceptual definition of the System and an

overall plan were approved in July 1978. This project was closely coordinated with the President's Reorganization Project and will be submitted to the President for review and approval.

ANTI-INFLATION PROGRAM

When the President launched his anti-inflation program in the Spring of 1978, he stated that the Government, in its own buying, would act like any prudent consumer. He gave OFPP the responsibility for implementing procedures to ensure that executive branch agencies carried out this directive. We established an Anti-Inflation Council in May 1978, comprised of the twelve largest purchasing agencies. The Council meets approximately every six weeks to report on such things as finding lower priced substitutes for goods whose prices are rising rapidly, and to exchange ideas on cost cutting measures.

The initial target goods, identified by the Council on Wage and Price Stability, were meat (principally beef), building products (principally lumber and gypsum), fats and edible oils, and leather products.

Agency actions and savings to date as a result of this program are as follows:

- Agriculture has a major program to reduce beef acquisition. For the first 20 weeks of 1978-79 school year, weekly rate of ground beef acquisition averaged 3 million pounds -- down 27% from prior year.

- VA reduced consumption of beef at VA hospitals by reducing servings from 10 to 7 times weekly for normal diets and from 14 to 10 times weekly for selective diets. VA reduced annual consumption of beef by a 1/2 million pounds, valued at \$750,000.
- DOD reduced purchases of beef in FY 1978 by 16.5% as compared to FY 1977.
- TVA postponed construction of Mobile Health Clinic and some maintenance additions to Power Service Centers for one year. (Estimated postponed cost \$600,000). TVA also developed many ways to reduce use of lumber and made suggestions to other agencies.
- GSA's Public Building Service has taken a number of actions to reduce use of lumber and gypsum and estimates annual savings of \$1.5 million.
- GSA discontinued acquisition of leather briefcases costing approximately \$1.5 million annually. Annual savings by purchasing plastic and other types of briefcases will be \$175,000.
- NASA established an anti-inflation program estimated to save \$1.6 million.

The President also directed that the principle of deceleration be reflected in new contracts which contain price escalation clauses. OFPP issued a directive on October 31, 1978, that all new contracts executed in 1979 or revisions of existing contracts in 1979 which contained economic adjustment clauses would provide that the Government would only pay 80% of the escalation generated in 1979.

Phase II of President Carter's anti-inflation program was announced on October 24, 1978. Executive Order 12092, signed on November 1, 1978, directed OFPP to develop and promulgate regulations to apply the wage and price standards in the procurement process after January 1, 1979. We published proposed regulations in the Federal Register for a 30 day public comment period on November 8, 1978. Final procurement regulations, in the form of an OFPP Policy Letter were sent to the Federal Register on December 27, 1978 and the requirements went into effect on February 15, 1979. The regulations require compliance certification by contractors in connection with all awards over \$5 million; provide that firms which are not in compliance are ineligible for Government contracts; and authorize agency heads to waive the certification requirement under certain circumstances. This program will continue to demand a good bit of staff time and attention on our part. Once it is operating smoothly, we plan to revise our regulations to lower the threshold from \$5 million to perhaps \$1 million.

BUY AMERICAN ACT

The Buy American Act became law in 1933. The Act requires purchase of domestic products, with four exceptions:

- Nonavailability
- Unreasonable price
- Use outside the U.S.
- Inconsistent with public interest

A product, to qualify as domestic, must have at least 50% domestic component content, and must be manufactured in the U.S. A price differential of 6% (12% for small business and labor surplus firms) is applied in evaluating bids. However, the Department of Defense has applied a 50% differential since 1963 - originally to ease balance of payments problems.

There have been several legislative proposals to increase the required domestic content and price differentials in favor of domestic products. OFPP testified at three hearings on such proposals last year.

The regulations which implement the Act stem largely from Executive Order 10582 of December 1954. It is clear that these regulations need to be simplified and made uniform. OFPP conducted an extensive study on this matter and drafted a proposed revision to E.O. 10582 in 1977, but postponed further action until action is complete on the International Government Procurement Code. This Code was negotiated as part of the so-called Tokyo round of the Multi-Lateral Trade

Negotiations (MTN) in Geneva, over the past 2-1/2 years. We expect to resume our efforts to improve the Buy American implementation later this year.

INTERNATIONAL GOVERNMENT PROCUREMENT CODE

Closely related to the Buy American problem is the International Procurement Code which I mentioned above. OFPP has participated in the development of this Code by furnishing technical assistance to the Trade Policy Staff Committee in the Office of the Special Trade Representative and to the negotiators in Geneva.

The purpose and status of the Code can be summarized briefly:

- o It would open Government procurement, with certain exceptions, to international competition.
- o It is related to Administration's free trade policy.
- o Buy-National policies in Government purchasing are considered a nontariff barrier to free trade.
- o The Code was negotiated by the U.S. MTN delegation in Geneva.
- o Details of coverage are still being worked out bilaterally -- i.e., what purchasing entities and dollar amounts will be subject to the Code in each signatory country.
- o The threshold for application is 150,000 SDRs (Special Drawing Rights) -approximately \$190,000.
- o Services and National Security purchases are not covered by the Code.
- o Below the threshold, current procedures would apply - e.g., small business set-asides, Buy American differentials, etc.

- o Some changes in current U.S. statutes and regulations would be necessary to accommodate purchasing under the Code.
- o A legislative proposal is being prepared by the Special Trade Representative (STR) and the Department of Commerce, to be presented to Congress in April 1979.

CONTRACT DISPUTES ACT

Another important law passed in the last days of the 95th Congress was the Contract Disputes Act of 1978 (Public Law 95-563). OFPP worked closely with the Congress in developing this legislation, which effectively implemented most of the recommendations of the Commission on Government Procurement in the contract disputes and remedies area. The major provisions of the Act include:

- An option for contractors to appeal directly to court, by-passing the Boards of Contract Appeals;
- An "all disputes" provision, which eliminates the sometimes confusing distinction between disputes arising "under" the contract and those in "breach" of contract;
- New improved procedures to facilitate handling small claims within the Boards; and,
- A requirement to pay interest on claims.

The Government's right to seek judicial review of adverse Board decisions was recognized, and the procuring agencies were given more flexibility in negotiating and settling contract disputes. The Boards of Contract Appeals were strengthened by the clear grant of subpoena, discovery, and disposition powers, and their ability

to attract and retain competent and experienced members was enhanced by raising the grades of the Board members to the supergrade level.

Finally, the judicial process benefited with added flexibility in the Court of Claims either to take new evidence necessary to dispose of a case on appeal, or to remand the case to the Board.

OFPP issued proposed regulations implementing the Act, including uniform Rules for the Agency Boards of Contract Appeals, on January 25, 1979. After evaluation of the public comments, interim final regulations were issued by OFPP on February 26, 1979, and they became effective on March 1, 1979.

ORGANIZATIONAL CONFLICTS OF INTEREST

The development of uniform Government-wide policy on avoidance of organizational conflicts in contracting typifies the overall direction that OFPP can and does provide to the acquisition community.

At present, different agencies have different policies on this subject -- some have none. In September 1977, OFPP published a proposed policy for comment. The policy was revised and republished for new comments in October 1978. The policy would require contractors to:

- Disclose existing or potential conflicts of interest when submitting proposals.

- Stay free of conflicts of interest during contract performance or be terminated.

OFPP received 158 written comments, held numerous meetings with interested parties and conducted a public hearing November 17, 1978. We expect to issue final policy on this subject during April 1979.

PROCUREMENT BY GRANTEES

OFPP's authority under P.L. 93-400 extends to procurement by recipients of Federal grants or other assistance.

OFPP is pursuing a number of initiatives to improve the procedures used by grantees in the award and administration of contracts using Federal funds, while at the same time reducing Federal intrusion and unnecessary controls on grantees.

These initiatives include:

- Grantee Procurement System Certification: The object is to reduce need for agency preaward review of grantee contracts. Procedures have been developed and a pilot program is underway in three agencies. The first pilot review has been completed and a Government-wide program is to follow the pilot test.
- Grantee Procurement Management Improvement: The object is to improve grantees' general procurement procedures, so as to reduce the need for Federal oversight and intrusion. The main vehicle for accomplishing this is a model state and local procurement code developed

by ABA with active OFPP oversight. While we have some reservations about specific provisions, the Code does represent a common standard and has been approved by the ABA House of Delegates (Feb. 13) and is being implemented in 5 states and 4 cities. One state and one city have partially adopted the code.

Revision of Grantee Procurement Regulations: Existing procurement standards for application to grantees (Attachment O to OMB Circular A-102) are being revised to provide for maximum reliance on grantees' procurement systems and to prevent grantor agencies from imposing their own requirements and controls beyond standardized Federal controls. Input from state and local governments, Federal agencies, and vendors were solicited and 117 written comments were received. Numerous meetings were held with interested parties and a public hearing was held on January 16, 1979. A final version should be issued in April, 1979.

CONTRACT WAGE LAWS: WAGE BUSTING

OFPP has an important coordinating role in the implementation of socio-economic programs. This has been easier in some programs, such as small business and labor surplus area contracting, than in the application of contract wage laws. However, I feel that considerable progress has been made in the past year even in this area.

We convened an interagency task force, which I chair, to address labor-related procurement issues. Particular emphasis has been placed on reviewing the Davis-Bacon Act and Service Contract Act. Members include Department of Labor,

National Aeronautics and Space Administration, Department of Defense, Department of Energy, and General Services Administration.

In a closely related matter, OFPP actions directly supported the Department of Labor on the issue of professional "wage busting."

The object was to develop administrative -- rather than legislative -- means of preventing "wage-busting" of professional employees' salaries; i.e., unwarranted reductions in salaries and fringe benefits during competition for Government services contracts. Blue collar and some white collar workers are protected from wage-busting by the Service Contract Act.

OFPP testified on the matter in March 1978 before the House Government Operations Committee's Subcommittee on Legislation and National Security. We made a commitment to develop and promulgate effective administrative regulations.

An OFPP directive (Policy Letter 78-2), establishing policy and procedures to prevent professional salary "wage-busting", was issued to all executive agencies March 29, 1978. It has proven effective in avoiding wage-busting in recent NASA and DOD procurements.

Agencies will be reporting shortly on results and examples as to effectiveness of regulations and need, if any, for revision.

GUIDELINES FOR THE USE OF CONSULTING SERVICES (OMB
BULLETIN 78-11)

In May 1977, the President expressed concern over the misuse of consultants, and requested data from agencies. OFPP analyzed the data submitted by agencies and developed, coordinated and arranged for OMB Bulletin 78-11 to be issued in May 1978.

Agencies are required to implement the policy in Bulletin 78-11 and to effect management controls immediately, and are reporting the number of consulting service arrangements in effect as of June 1, 1978. There has been an overall reduction in the number of such arrangements.

More accurate data will be available in May when the Federal Procurement Data System and the Central Personnel Data File will provide information on the agencies' use of consulting service arrangements for the first quarter of FY 1979.

RESOURCE CONSERVATION AND RECOVERY

Public Law 94-580 requires the use of reclaimed material in the acquisition of products and services by the Government.

OFPP issued Policy Letter 77-1 in 1977 directing specification scrubdown and maximized use of reclaimed materials. This has been implemented in the Defense Acquisition Regulation and the Federal Procurement Regulations.

OFPP is working with the Environmental Protection Agency (EPA) as a member of a working group to develop further specific guidelines for the agencies, and is maintaining necessary liaison with the Congress, agencies and industry.

The first annual report on implementation of the policy was sent to the cognizant Senate and House Committees on August 9, 1978. The next report, detailing CY 1978 results is being compiled for submission during June, 1979.

FIELD CONTRACT SUPPORT CROSS-SERVICING PROGRAM

This program was established by OFPP in August 1978. Its purpose is to have a single Federal agency oversee the Government's interest at facilities where several agencies have dealings with the same contractor. The program encompasses such functions as: (1) pre-award surveys, (2) audits of proposed and incurred costs, (3) quality assurance and inspection of goods being manufactured to Government specifications, and (4) other contract administration matters requiring access to contractors' facilities or their books and records.

Such arrangements result in the avoidance of overlap and duplication of efforts which saves both the Government and its contractors time and money. The merits of cross-servicing were proven through voluntary arrangements. OFPP's program makes cross-servicing mandatory at contractors' locations where overlap and duplication would otherwise result.

Through the use of cross-servicing, NASA, and now DOE, have avoided having to establish a comprehensive field contract administration and audit capability. Other agencies making good use of cross-servicing include Department of Transportation, United States Postal Service, Veterans Administration, General Services Administration, and Department of Agriculture.

GOVERNMENT-WIDE PROFIT POLICY

OFPP is seeking to develop uniform policies and procedures for determining equitable profit objectives in negotiated procurements, as recommended by the Commission on Government Procurement.

The object is to harness the profit motive to stimulate efficient contract performance. Existing profit policies and practices, which are largely cost based and which vary among agencies, may sometimes promote the opposite effect.

A zero-based approach is being taken in an effort to develop a meaningful profit policy which will overcome the inadequacies and inequities of existing policies and practices.

One suggested policy published for public comment on March 6, 1979 would afford Government contractors the opportunity to earn profits comparable to commercial work involving a similar mix of resources, risk and know-how. We are open to suggestions as to other approaches.

[Whereupon, at 1:02 p.m., the hearing was adjourned, to reconvene on Friday, March 9, 1979, at 10 a.m.]

REAUTHORIZATION OF THE OFFICE OF FEDERAL PROCUREMENT POLICY

FRIDAY, MARCH 9, 1979

U.S. SENATE, SUBCOMMITTEE ON FEDERAL SPENDING
PRACTICES AND OPEN GOVERNMENT,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 3302, Dirksen Senate Office Building, Senator Lawton Chiles (chairman of the subcommittee) presiding.

Present: Senator Chiles and Mathias.

Senator CHILES. This morning we will continue our hearings in regard to the "Sunset" proposition of the Office of Federal Procurement Policy. This is our second hearing. We had a day of hearings last week.

Because we have a full panel before us, we will start right in with our witness list.

We are delighted to have Mr. Church from the Department of Defense; Mr. Mauk, Deputy Administrator of the Small Business Administration; and Mr. Evans from the National Aeronautics and Space Administration, and we will begin right away.

Mr. Mauk, we will start out with you, with the Deputy Administrator of the Small Business Administration.

**TESTIMONY OF WILLIAM H. MAUK, JR., DEPUTY ADMINISTRATOR,
U.S. SMALL BUSINESS ADMINISTRATION, ACCOMPANIED BY
ROBERT McDERMOTT, PROCUREMENT ASSISTANCE PROGRAM,
SMALL BUSINESS ADMINISTRATION**

Mr. MAUK. Thank you, Mr. Chairman.

Senator CHILES. Your statements in full will be included in the record, and if there is any way you all can brief those for me that gives us more time for questioning.

Mr. MAUK. I would like to introduce Mr. Robert McDermott, who is head of the procurement assistance program for the Small Business Administration. I would like to read our statement. It is a very short one. It makes some major points that we would like to express today.

We appreciate your invitation to appear here today to offer our comments and views regarding the Office of Federal Procurement Policy. We hope to assist your review of the functions and activities of OFPP to continue beyond 1979.

Because of our procurement programs and our role as advocate for small and minority businesses, the Small Business Administration has

been involved with the Office of Federal Procurement Policy since its inception. As you may recall, in 1973 SBA testified in favor of the establishment of OFPP before both the Senate Subcommittee on Government Procurement and the House Subcommittee on Legislation and Military Operations.

When the Office of Federal Procurement Policy was established by Public Law 93-400, it was mandated to fulfill a number of important objectives, including establishing uniform procurement regulations, a forum to enable concerned parties to participate in the development of procurement regulations, and establishing training programs for Federal procurement personnel.

When we testified before the Congressional Committees in 1973, we stated that the establishment of a centralized, policymaking procurement entity would help the Federal Government clarify and simplify the Federal acquisition system, which in turn, would benefit the small and minority business community. In our view, OFPP has indeed made a great deal of progress in this regard but there still are things to be done.

On October 24, 1978, Public Law 95-507 went into effect. As you know, this law amends the Small Business Act and involves the Federal acquisition process.

Public Law 95-507 reinforces Congressional intent (P.L. 93-400) concerning the establishing of a single simplified procurement regulation regarding the Federal acquisition process. The Administrator of OFPP was directed to consult with the Small Business Administration in formulating regulations and procedures in order to insure input regarding possible impact on small business concerns. He was also directed to incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

OFPP currently is working to complete the "Federal Acquisition Regulation" by August 1979. We believe that when this regulation is completed, it could be an important tool in helping the small and minority business community understand and participate in the Federal procurement process. However, it is essential that this central regulation contain the provisions necessary to implement all mandates and directives establishing Federal acquisition preferences for small and disadvantaged business concerns.

In his statement presented to this committee on March 2, the Administrator of OFPP pointed out the difficulty in using the Federal acquisition process to help meet socioeconomic objectives. It is our job and that of the Office of Federal Procurement Policy to insure that the Federal procurement dollar not only buys the required product, but also is used to strengthen the viability of the small and minority business community. There is room for improvement in accomplishing this goal.

We believe that OFPP and SBA can strengthen and tighten their working relationship, particularly in situations where acquisition policy determinations are likely to impact on small and minority business concerns.

In January 1979, the Office of Federal Procurement Policy published proposed amendments to the existing Defense Acquisition Regulation

and the Federal Procurement Regulations. These proposed regulations were intended to incorporate certain provisions of Public Law 95-507. Had we been consulted on the officially proposed regulations we would not have concurred in their release. In our view, they fail to provide sufficient regulatory guidance to obtain implementation at Federal buying centers.

For example, we would have recommended that OFPP develop and publish specific guidelines to implement the requirement for fiscal year-end reports to the SBA by the heads of Federal agencies on the extent of participation by small and disadvantaged business concerns, including the rationale for any failure to achieve the established agency award goals.

We would also have recommended that OFPP develop and publish mutually acceptable—to SBA and OFPP—policy guidelines to implement the requirement for the head of each Federal agency to establish annual goals for participation by small and disadvantaged business concerns in agency procurement. We also made a number of other recommendations.

If these regulations are not implemented as we suggest, we believe they will deprive small and minority businesses of the assistance intended and mandated by this public law.

We have advised OFPP of our concerns and we have provided them with recommendations which would require specific implementation by acquisition. I must add that they have reacted positively.

Today we continue our support for the operation of the Office of Federal Procurement Policy. OFPP plays a very important role in the overall direction of procurement policy. Although there is much left to be done, OFPP's efforts have improved the Federal procurement process. We believe it should continue those efforts.

In short, Mr. Chairman, although we support the continuation of the Office of Federal Procurement Policy, we believe that it must increase its solicitation of SBA views involving acquisition impact on small business concerns, and particularly involving the implementation of small business procurement legislation.

This concludes my prepared statement. We will be happy to respond to any questions you may have.

Senator CIRCLES. Thank you.

I believe we will go through our prepared statements and then I will ask questions.

Mr. Church?

**TESTIMONY OF DALE W. CHURCH, DEPUTY UNDER SECRETARY
OF DEFENSE R. & E.—ACQUISITION POLICY**

Mr. Church. Thank you, Mr. Chairman. It is a pleasure to be here and discuss with this committee the pending renewal of the charter of the Office of Federal Procurement Policy, previously chartered by Public Law 93-400.

We in the DOD are, indeed, in a unique position to comment on the actions of OFPP and the directions it has taken over the 4½ years since its inception. We in the DOD spend approximately 70 percent of the Federal acquisition dollars, and we feel the impact of OFPP probably greater than any single body.

We have had an excellent, constructive, and cordial relationship with the office since its inception back in 1974. In fact, a significant percentage of the current initiatives that the Administrator put in his last report were conceived and initiated in the DOD and have since been embraced and adopted by the OFPP on a governmentwide basis.

In reviewing OFPP's activities over the last 4½ years, we looked at the overall direction of acquisition policy and program activities, and we would like to offer some constructive suggestions.

I have prepared for the record a statement that goes into some detail, including specific areas where we think improvements could be made.

In general, the office was established because of a need, identified very clearly in the Commission on Government Procurement Report to improve the overall efficiency and effectiveness of the procurement in the Government. It was clearly stated, due regard should be given to the program activities of the executive agencies, and the clear responsibility for individual procurement actions being with the various agencies.

I was in somewhat of a unique position, in this regard, in that I was not in the DOD. I was in industry and did not serve either as a member of the Commission or as an agency representative. From that perspective, I certainly had great anticipation, and probably undue expectations, of what such an organization might be able to accomplish. I think the current staff and the Administrator have tried valiantly to accomplish the objectives set forth in the Commission's Report.

I believe the pressures put on an activity of that kind are such that it becomes clearly impossible for them to do all of the things they are asked to do.

I think better use could be made of the various procurement agencies to support OFPP's activities. For example, in some of the policies they promulgate, we see the policy only after it is issued. Once that is done, it has developed a certain amount of "not invented here" psychology as well as constituencies and that sort of thing, and the constructive comments we might have made in putting it together sort of fall by the wayside.

I think a much better use could be made of the various procuring activities in drafting policies in the first place, and for the office to restrict its activities to the overall review of those drafts in putting them into play.

An example I might make was one, of course, which is very near to you, it was in the State of Florida with respect to "wage busting." The original draft OFPP put out, we believe, was unworkable. We were able to comment on it, and OFPP finally adopted the draft that we proposed. However, it made for a lot of extra work on a lot of people's part on the original drafting, as well as great concern in trying to get the directive out in the time limitation.

A good example of activities OFPP pushed, and pushed hard, is in the "buy commercial" area. That's an area which we in the DOD feel is an excellent activity for greatly improved efficiency and effectiveness in overall Government acquisition. But we believe OFPP has tended to concentrate more on the specifics of implementation as opposed to resolving certain policy problems, at least with respect to DOD. As

a consequence, we are ignoring an area which I consider to be very critical to the success of the program; that is, separating out cost and price analysis—identifying better ways and means and mechanisms for insuring an understanding of the difference between buying in a commercial sense by using price analysis, as opposed to using cost analysis.

Another area is A-109. I think OFPP did a very commendable job in promulgating an excellent overall directive which leads us in exactly the direction that we in the DOD should be going. However, when a directive is superimposed on a number of ongoing programs, it is very difficult, considering the various stages the programs are in at that time, to determine to what extent the directive applies. It has been difficult to work with the services in implementing the program and to make sure that they come into full compliance at the earliest date possible.

OFPP has interjected itself on a program-by-program, almost a day-to-day review of the services' progress in implementing the directive. I think that clearly violates the intent of the charter under which the agencies should be responsible for policy implementation.

There is no question in my mind OFPP should continually keep the pressure on us to implement the policy, and as promptly and in as effective a manner as possible, but with due regard to the agencies' responsibility to carry out individual programs.

I hope this hasn't the flavor of a negative feeling because I really believe there is still a need for OFPP. I think the Commission did a good job of enunciating what that need was. I think that they have laid it out very clearly in the report, and I think the statute lays it out very clearly as to what the functions of OFPP should be.

I think what the Congress needs to do, working with the agencies, is to help protect OFPP from the various pressures put upon it to work on issues involving policy implementation and peripheral issues. This is keeping OFPP with its very small staff from getting on to consideration of overall policy direction the agencies require.

I conclude my statement with what I think summarizes what I am trying to say. We certainly support the existence of such an office, but to insure future success we recommend five things OFPP should focus on and limit its activities to:

1. Assistance in the formulation and enactment of new legislation.
2. Opposition to the continuation or enactment of any inappropriate legislation.
3. Issuance of broad—and I emphasize "broad"—acquisition policies, leaving the detailed implementation to the agencies.
4. Arbitration of disputes between agencies. OFPP certainly has tried to do that, and it is a difficult job. The Service Contract Act is an example of an interagency dispute that has gone on for 4½ years and we still don't have a resolution of the problem.
5. Presentation and support of executive branch acquisition policy requirements before the Congress.

I think within the context of those functions, particularly No. 3 on issuing broad acquisition policy, OFPP would be able to focus its efforts on the overall direction of procurement policy and lead them away from, and lead others from driving them into, the day-to-day

details and the implementation of policies, and of those issues which are not in the mainstream of procurement policies. Certainly there is a need to do a lot in that regard to improve the overall Government acquisition policies, and that is why OFPP is needed. Thank you.

Senator CHILES. Thank you.

[The statement of Mr. Church follows.]

PREPARED STATEMENT OF MR. DALE W. CHURCH, DEPUTY UNDERSECRETARY
OF DEFENSE R&D (ACQUISITION POLICY)

Thank you, Mr. Chairman, for inviting the Department of Defense (DoD) to present an evaluation of the Office of Federal Procurement Policy (OFPP). I understand the importance of these hearings because they will provide the basis for the Committee's decision on legislation to continue the OFPP beyond August 1979.

I believe the DoD is well qualified to contribute testimony as an expert witness on this matter. The DoD obligates 70 percent of the Federal Government's acquisition funds. In FY 1978, we completed over 11 million contractual actions valued in excess of \$67.0 billion and expect to exceed these figures in FY 1979. In the DoD acquisition process, we employ every conceivable type of contract covering the full spectrum of property and services. Our contracting personnel number 45,000 and, together with others in the DoD, are constantly trying to achieve the maximum efficiencies in the contracting process, as well as working to improve our policies, procedures, and practices.

In order to properly evaluate the performance of the OFPP, I believe we must first review why such an organization was established and what were its intended objectives.

The stated purpose of P. L. 93-400 was to improve economy, efficiency, and effectiveness in the acquisition of property and services by the executive agencies. Under the law, the OFPP was created in 1974 to provide overall direction of procurement policy and "with due regard to the program activities of the executive agencies" to prescribe policies, regulations, procedures, and forms of executive agencies in accordance with applicable laws.

Further, the functions of the Administrator shall include:

"(1) establishing a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies;

"(2) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

"(3) monitoring and revising policies, regulations, procedures, and forms relating to reliance by the Federal Government on the private sector to provide needed property and services;

"(4) promoting and conducting research in procurement policies, regulations, procedures, and forms;

"(5) establishing a system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector;

"(6) recommending and promoting programs of the Civil Service Commission and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel."

Based on a comparison of the OFPP's performance against these functions, our assessment is during the four years of its existence it has only addressed these functions with very limited success. The expected significant improvements over the general conditions noted by the Commission on Government Procurement in 1972 in terms of economy, efficiency, and effectiveness have not materialized. The continued existence of the general conditions validates these objectives, and much work is left to be done.

Having concluded these objectives are still valid and considering how much still needs to be accomplished, the next question to examine is whether OFPP's approach to achieving these objectives has been effective and rational.

Let me emphasize this next point:

We believe that the deficiencies noted below regarding OFPP's performance should not be attributed to the diligence of its Administrator who has worked hard to fulfill the objectives.

We believe most of the problems with the OFPP have their origin in the report of the Commission on Government Procurement that created expectations of accomplishment far beyond the capability of any such centralized group. The result has been the Administrator constantly being pressured by many disparate parties to take on trivial problems or those which are well beyond the OFPP's capability.

In order to be more specific, we have reviewed the OFPP's activities over the four years of its existence. Our review discloses during this period the OFPP has initiated activity in several areas. They supported a new statute on disputes, the establishment of the Federal Acquisition Institute, and a new Government-wide acquisition statute. Work in progress includes programs to establish uniform procurement regulations; to establish a data system; and to design improved personnel functions. Other important efforts include those to provide for greater reliance on the private sector (A-76) and to increase emphasis on the acquisition of commercial products. These types of efforts would appear to be well within the capabilities of a broad overview organization such as the OFPP.

However, notwithstanding their positive efforts, there are other at least equally, if not more, important areas where the OFPP has been ineffective in resolving certain problems. For example, Department of Labor interpretations of the Service Contract Act have presented serious problems to the DoD for a number of years. It constitutes a classic situation which detracts from the economy, efficiency, and effectivity of the contracting process. In our opinion, this is the best example of a problem resulting from competing objectives within two or more executive agencies which affect the acquisition process. Yet, after 4 years of effort and still trying, the OFPP has been unable to solve this problem.

Another troublesome area is in the socio-economic field. The contracts function has long been used to implement socio-economic programs. When considered individually, we cannot take issue with them; but, collectively, they disrupt the acquisition process. We look to the OFPP to minimize this disruptive effect by carrying out the recommendations of the Commission on Government Procurement to establish a program for the Legislative and Executive Branches' re-examination of these socio-economic programs and to raise to a uniform \$10,000 level the threshold for their application. We also expect the OFPP to act as liaison with

the various Federal agencies responsible for these programs to assure that disruptive effects are minimized. While the OFPP has accepted the Commission's recommendations, no results have been achieved.

Another example is the implementation of P. L. 94-580 relating to resource conservation and recovery and P. L. 94-163 relating to energy conservation. Thus far, only general policy statements have been forthcoming from the OFPP with no detailed guidance to purchasing offices as to how these laws can be effectively applied to the contracting process. If the contracting process is to effectively reflect the provisions of these two Acts, there is a need for better guidance from the OFPP through coordination with the Environmental Protection Agency and the Department of Energy.

Examples of overly long projects are the development of policies on organizational conflict of interest and bid protests. In these important areas, policy statements have yet to be issued.

If the OFPP were to concentrate its effort on major policy areas of this nature, it could be more effective in achieving its objectives. However, it has expanded its efforts to include matters that are peripheral to the contracting process or involve the daily

operational affairs of the agencies. Examples of those that could be given lower priority would include the national supply system, debarment and suspension, criteria for real property assignments, modern cost analysis and estimating, patent policy, contracting for production of films, model state and local government purchasing code, Federal interaction with voluntary standards bodies, and the program-by-program review of A-109. As a result, we believe many actions are unnecessarily bogged down. If the OFPP is to continue, their limited manpower capability should be concentrated on those policy level projects which relate to economy, efficiency, and effectiveness in Government acquisition of property and services.

Another way to analyze the value of the accomplishments to date is to review the question of whether or not such accomplishments could or would have been achieved without the existence of an OFPP.

Although such an analysis is speculative in nature because the OFPP did exist and there were some successes as noted above, I believe, with the notable exception of A-76, these accomplishments could have been done within the contracting agencies. So the final questions to ask are whether or not there is a continuing need for

such an organization and, if answered in the affirmative, whether or not the OFPP is properly constituted and organized to achieve this need.

As stated above, the general conditions noted by the Commission still exist, and much still needs to be accomplished to improve the efficiency of the contracting process. The current efforts on the Federal Acquisition Regulation being conducted by DoD and GSA will result in an excellent new regulation, but some group with Government-wide perspective will be required to insure the uniformity of implementation and that the regulations are kept current with the needs. Therefore, the answer to the continuing need question is affirmative.

To fill the need, the DoD supports the existence of a small central office for acquisition policy operating within the Office of Management and Budget. However, to insure the success of this office, we recommend the OFPP focus its efforts on top-level policy which:

1. Assists in the formulation and enactment of new legislation;
2. Opposes the continuation or enactment of inappropriate legislation;

3. Issues broad acquisition policies, leaving detailed implementation to the agencies;
4. Arbitrates disputes between agencies;
5. Presents and supports Executive Branch acquisition policy requirements before Congress.

Senator CHILES, Mr. Evans.

**TESTIMONY OF STUART J. EVANS, DIRECTOR OF PROCUREMENT,
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

Mr. EVANS. Thank you, Mr. Chairman.

NASA is pleased to have this opportunity to present to your subcommittee our assessment of the Office of Federal Procurement Policy.

Our last appearance before this subcommittee to present our views on this office was on November 1, 1973. At that time we expressed the belief that procurement throughout the Government should be coordinated and consistent where practical. However, uniformity of policies and practices should not be sought as an objective in and of itself, but only when good judgment dictates that it is desirable. While we supported the overall objectives of S. 2510, we expressed reservations as to the potential for creating an undesirable degree of uniformity inhibiting flexibility on the part of individual agencies to adopt regulations which they believed necessary for the proper conduct of their operations. We were skeptical of the desirability of concentrating the powers proposed by S. 2510 in a single entity divorced from operations and, we foresaw the potential for creation of a large organization with polity and regulatory authority without responsibility for its execution within the parameters of the various and unique agency missions.

We expressed these views as a fundamental research and development agency wholly dependent upon the ability to foster and capitalize upon a continual flow of innovative thought and technology advance. In our 20 years as a unique agency and national resource, we have been overwhelmingly dependent upon a sensible, flexible, and innovative procurement process to maintain a national government, scientific, educational and industrial partnership in U.S. space and aeronautics.

For an agency which performs its mission by spending over 80 percent of its appropriated funds through the procurement process in reliance on various segments of the private sector, a mature sensible procurement policy is vital. We still hold this view. We believe that Public Law 93-400 wisely included a "sunset" provision which necessitates an examination of the performance and value of OFPP over the last 4½ years incident to determining the merits of continuing its role. We have attempted to do so in presenting our assessment today.

Since previous testimony before this subcommittee has set out in some depth the functions and specific tasks imposed upon OFPP, we shall not enumerate them again but confine ourselves to an assessment of the impact that OFPP performance has had upon NASA and our ability to carry out the mission assigned by the National Aeronautics and Space Act. We also believe that NASA should assess the OFPP in large part with regard to their leadership and contributions made to improving the acquisition process which would facilitate a more economical and efficient operation.

The first recommendation of the Commission on Government Procurement was to establish by law a central Office of Federal Procurement Policy in the Executive Office of the President with specialized competence to take the leadership in procurement policy and related

matters. The Commission report stated that creation of a central policy office had been placed first among the Commission recommendations because of its overall importance in achieving the improvements proposed in the procurement process. It is also significant to note that the Comptroller General, in his testimony on S. 2510 to establish the OFPP, recommended that the OFPP be established by legislation to provide the executive branch with the necessary mandate, stature, authority, and continuity so essential to basic procurement reform.

The Commission also recognized that there was no single point in the executive branch responsible for policies that govern the procurement process, and that there was no focal point to meet the demands for information, guidance, and assistance from industry, Government, and the Congress on matters involving Governmentwide procurement policies. It was further recognized that there was no strong central leadership of the various segments of Government which made or strongly influenced acquisition policy.

In our judgment OFPP has clearly filled these needs and discharged the very significant responsibilities placed upon it for central direction and guidance in a mature, professional, and temperate manner. Aside from vastly broad and diverse acquisition operations of the Federal agencies which must be considered in developing uniformity in policy and guidance, OFPP has likewise had to consider the substantial impact of these operations on all segments of the private sector in a manner giving full consideration to many, different, and legitimate interests. The forum provided by OFPP for this purpose is unique and we believe, on balance, that this Office has performed an extremely difficult, somewhat unenviable Solomon-like role in a mature credible manner. We have not always agreed with all of their product; however, our views are sought, considered, and reasonably accommodated in policies developed that reflect due regard to our unique mission along with the broader range of issues which we recognize must also be addressed.

In this respect, the intentional small size of this Office and the need to consult with and rely upon procuring agencies for assistance in policy development has been of marked benefit to NASA in several ways. The opportunity to participate in and contribute to policy deliberations has afforded us a new and important forum at a high level to describe and explain our operations, imparting a valuable insight to policy framers. Concurrently it provides us an opportunity to propose worthwhile NASA innovations for agencywide application and simultaneously adopt other agency improvements in our system.

OFPP projects in which NASA has been involved include the areas of major systems acquisition, initiation of a single, uniform acquisition regulation, revision of the policies and procedures for contracting out, protection of professional employees against wage busting, uniform guidance for Federal use of consultants, use of Federal contracting to help combat inflation, and development of career programs and topics for acquisition research through the Federal Acquisition Institute. While we defer to the General Accounting Office regarding the progress made by OFPP in implementing the 149 recommendations of the Commission on Government Procurement, our overall assessment of OFPP's performance, to date, is that they have performed well in relation to their assigned functions.

This is not to say that there have been no problems, which is true wherever difficult and complex issues are faced. We have, in several projects, believed that OFPP did not initially recognize and take into consideration the operational implications of its proposed policies on the programmatic or mission objectives of NASA. Examples of this include proposed policies on major systems acquisition and the revision of OMB Circular A-76 regarding policies and procedures for contracting out. In this connection, the proposed policy on the OMB Circular A-76 created serious NASA concerns regarding the implications and ramifications which would flow from issuance of the revised circular. As initially proposed, we estimated that issuance of that circular could have reversed the NASA-private sector balance which NASA relies upon to assist in program accomplishments. Nevertheless, following close consultation with the OFPP, the NASA concerns were largely accommodated so that the final revisions of these directives are more workable.

Another OFPP project which required substantial NASA involvement in working out the details of the final implementation was that involving the protection of professional employees from "wage busting" under Federal service contracts. In view of the heavy NASA involvement in service contracts, we were concerned that the proposed OFPP regulations on the subject would not be consistent with what significant experience had taught us was necessary for the protection of professional employees and the achievement of mission objectives. To resolve this issue, we met with representatives of the Department of Defense, and, jointly with them, proposed an alternative regulation which we believed to be compatible with recognized procurement procedures and otherwise workable. Such consultation was highly productive and the implementing regulations approved by OFPP have worked well, from all indications received.

We believe that the projects undertaken by OFPP could not have been initiated or achieved as quickly and effectively without the leadership they displayed together with the authority of the Office. In particular, the OFPP has demonstrated commendable initiative in instituting the project to consolidate and replace existing procurement regulations with a single, uniform acquisition regulation for all Federal executive agencies as recommended by the Procurement Commission.

This project takes on added significance since it forms a major provision of the proposed Federal Acquisition Reform Act—Senate bill S. 5—which you introduced, Mr. Chairman. Further, the OFPP has provided a centralized forum wherein all interested parties, including the Government and the private sector, may express their viewpoints with respect to proposed changes in the laws and regulations affecting procurement.

We also believe that the accomplishments of the OFPP take on greater significance when the properly small size of the OFPP staff is factored in to the assessment.

This office of some 32 people has been tasked with a number of long-standing, difficult, and often controversial issues to consider and resolve. In the light of this, we consider their accomplishments to be significant and quite remarkable. There remains, however, much to be accomplished. An office of this nature has, in our judgment, demon-

strated itself to be the most effective means yet found to achieve the overdue changes recommended by the COGP.

Mr. Chairman, it is our view that the need for a single point in the executive branch responsible for policies that govern the procurement process is as pressing today as it was during the period of the Procurement Commission's studies. Many significant projects involving complex issues have been initiated—some have been completed and others are in various stages of completion. Other projects, career development and training, profit policy, and R. & D. acquisition policies will have to be addressed in the future. We are concerned that without the central office which the OFPP represents, a void will again occur and create the situation which gave rise to the Procurement Commission recommendations to establish the OFPP.

Accordingly, based on our assessment of the value and importance of the OFPP, we recommend that OFPP be continued for another 5 years and that it remain as an integral part of the Office of Management and Budget. We believe that this is necessary as its placement in any other executive agency could diminish its authority, and consequently, its ability to lead and contribute meaningfully to the improvement of the procurement process.

Mr. Chairman, this concludes my prepared remarks. I will be happy to respond to any questions you may have.

Senator CHILES. Thank you, Mr. Evans.

Looking first to SBA, the complex inconsistent procurement regulations act as a real barrier to small business participation in Federal procurement. In 1973, the Small Business Administration stated that a central procurement policy body could contribute substantially to relieving that complexity. One of the most important roles the SBA plays is to advocate greater small business participation in the Federal procurement system, and to help small businesses get Federal contracts.

Has the Office of Federal Procurement Policy, as a central procurement policy body been helpful to the Small Business Administration carrying out its job?

Mr. MATK. Mr. Chairman, it is my understanding from the people on my staff that, in fact, that is the case, but I would like to have Mr. McDermott go into some detail and tell you in what ways that has taken place.

Senator CHILES. Fine. Thank you, sir.

Mr. McDERMOTT. Mr. Chairman, we do believe that OFPP has indeed been helpful as far as improving and increasing the participation of small business and minority and disadvantaged small business in the acquisition process. I think one of the most important things they have done in this area is the promulgation of their regulation of the contracting-out policy. This is going a long way, in our opinion, at SBA to increasing or enabling the small businesses to participate more freely in the Government acquisition process. That's just one example, and there are many more.

Senator CHILES. Has the Office of Federal Procurement been able to standardize forms? Has it established special simplified forms for small business? One of the greatest complaints I hear from our small business people always is that they can't afford to bid on Government business. They can't afford to get involved. There are so many forms,

depending on what agency you are dealing with, and unless you have the kind of staff that can go into all that paperwork, there is no way they can afford to try to compete or get to that business.

Mr. MAUK. I would like to answer that question in two ways, and let Mr. McDermott answer the second question pertaining to impact.

I would like to say that in fact the Small Business Administration now has an ongoing study which we are sampling 1,400 firms across the country to determine the type of paperwork load that the Federal Government is imposing on small business. We expect to have the results of that in the latter part of this year. We have already got some indications and have been able to testify in some hearings.

Senator CHILES. I am very interested in that because this subcommittee also has jurisdiction over the Paperwork Commission's report, so we are vitally concerned with that.

Mr. MAUK. So we will be getting back and reporting to you on that, but I would like to have Mr. McDermott to say how OFPP has helped in this regard.

Mr. McDERMOTT. We agree that the complexity of the regulations, the myriad of forms that have had to be filled out over the years in ever-increasing numbers, it seems, have been a real detriment to small business. We are working closely with OFPP in the writing of the new Federal acquisition regulations, especially in the particular portion that deals with small business, as well as having input on the other portions that may impact on small business, and it is my understanding that when this regulation is finally promulgated that there will be a much reduced load as far as forms are concerned, forms to be filled out, and less complex forms. I believe OFPP is, in fact, working toward less complex and fewer forms.

Senator CHILES. Has the Office of Federal Procurement Policy helped SBA in working together with the procuring agencies?

Mr. McDERMOTT. The answer to that is unequivocally yes. We have had a number of instances where we have had what in our opinion were major disagreements with major acquisition agencies where if, in fact, the policy had been carried out or a particular action had been carried out it would have been detrimental to one or more small businesses. In the instances where we were not able to come to a complete and satisfactory solution for the small business with the procurement agency we have taken these cases to the Office of Procurement Policy, and that goes all the way back to the beginning of OFPP. Perhaps not in every case, but certainly in the majority of cases, we with OFPP have been able to work out a satisfactory solution.

Senator CHILES. Well, that was one of the prime purposes that the Commission was thinking about in an office like this, that it should serve, again, to be the focal place and also the lever where SBA would have problems with procurement agencies. Do you think it has been serving in that role?

Mr. McDERMOTT. I certainly do, Mr. Chairman.

Senator CHILES. In your opinion, where does the Office of Federal Procurement Policy's role stop and the SBA's role stop when it comes to small business? Primarily I want to know, has that line sort of pretty well been accepted by both of you, or by both of the agencies, or are there problems that you think one of the others crossed the line?

Mr. MAUK. In getting prepared for this testimony I am not sure that I would conclude that anyone has crossed the line. I think what we have seen, though, is that we need a greater amount of communication and cooperation between the agencies. In case there are some criticisms leveled by certain people within SBA in terms of making sure that we understand what was going on and being informed and being able to comment prior to publication of certain regulations in the Federal Register.

On the other hand, inquiring about what we have done, initiatives we have taken, I also found within SBA that we could be rightly criticized for in fact not communicating properly in putting together our standard operating procedures.

So I think what we are really talking about is not crossing lines, but communicating better and working closer in terms of getting regulations that really help the small and disadvantaged businessman.

Senator CHILES. The subcommittee found problems in the administration of the 8-A program sometime back and in our report of the program we specifically gave a coordinating role to the Office of Federal Procurement Policy and the ASB. How does that role coordination work, and is the Office of Federal Procurement Policy playing a role in your efforts to reform the 8-A program?

Mr. MAUK. The answer to that question is, yes. Of course, we have worked with them, at least in the first draft stages of promulgating our standard operating procedures relative to the 8-A program. However, I would comment that this is one of the areas where I found that we need more improvement in terms of working together.

In the actual publication in the Federal Register of our new operating procedures for the 8-A program I found that, in fact, we had not gotten together and communicated properly, and it was mostly the Small Business Administration's problem in that regard.

So I think, in fact, that they have been helpful, and actually want to be helpful. I think we can be a little bit more open in working with them and getting us a little closer together and getting some good procedures for assisting 8-A firms.

Senator CHILES. The Federal acquisition system—this would be more to DOD and NASA—the Federal acquisition regulatory system is the creation of a single system of procurement regulations. It is designed to eliminate much of the duplication of paperwork which has characterized today's procurement regulations. Would you all give me your assessment of the Office of Federal Procurement Policy's performance in the Federal acquisition regulation project? Has there been adequate consultation between the office and your respective agencies?

Mr. CHURCH. Mr. Chairman, I will answer that first.

My answer would be in a different perspective than Mr. Evans' comment, because we would be criticizing ourselves at this point. We in DOD have the major share of the work and have a 40-person writing team. It is putting together the initial drafts of the FAR. We are very excited with it. I keep in touch on an almost weekly basis with the group and my two team leaders for progress to date. We are getting many fine comments from the public at large, industry, and others. The team is meeting its goals. It is on time, and it is cutting

the number of words by approximately one-half in all the regulations. We are very excited about the work we are doing on the FAR, and we think it is going to be a significant improvement to our contractors who have to work with it.

So our relationship with OFPP on that has been extraordinary and we are, in fact, the authors. Maybe Mr. Evans has a more objective critique.

Senator CHILES. Mr. Evans,

Mr. EVANS. I would say at the outset, Mr. Chairman, I don't believe we would be talking about a FAR today if we didn't have an OFPP, No. 1.

No. 2, we are a small R. & D. agency. We don't have the size or the resources that does DOD, and in that sense since procurement is so important to us having a focal point is of vital interest to us.

We have written sections of the FAR at the invitation of OFPP in those areas of predominant interest to NASA, the research and development sections of it. We are afforded an opportunity to comment on all that which comes out and we are very pleased with the progress being made, the consideration being given, the factors taken into account.

Again I would stress that I don't think we would be talking about a FAR today if it had not been for OFPP.

Senator CHILES. The FAR seems to be really moving along now and everybody seems to sort of be on board for that. I am delighted to see that.

The General Accounting Office has testified that the authority of procuring agencies to issue additional regulations is unclear. That is a concern that I have. Are we going to put FAR together and then is everybody going to go out and go back to exactly what we were doing before in a myriad of additional regulations? What kind of additional regulations might agencies have to issue under the Federal acquisition regulation system, and should there be some kind of checkoff from the Office of Federal Procurement Policy before issuing these regulations, or how do you envision that working so that we won't have every agency going back and just sort of now making the M1-A adaptation of what is the FAR regulation?

Mr. CHURCH. Mr. Chairman, you have certainly identified, as GAO has, a very difficult area to try to get the correct balance. The agencies do have unique charters and, in many senses, unique problems. They need to be able to address those through their own acquisition regulations as long as they are not redundant to the FAR.

Now, how we go about doing this. I am not sure it can be done totally by statute or regulation or even by procedure. A lot depends upon the good faith and cooperation of the agencies, good overall coordination, and, certainly, most importantly, a good FAR to begin with that they can all respect and acclaim as really a product they can use.

We have worked with the Administrator, and it has been an extremely constructive and cooperative relationship, in trying to bring about an implementation procedure which takes into account those balances.

I think the first draft out for comment is an excellent one. I think it provides those tradeoffs. I know the GAO would like to see more spec-

ificity in some of those things, but I am not even sure that really would work, especially with agencies that truly have a unique character. The key here is communication again. First of all, understanding what is in the FAR, its breadth of coverage and second, communication with those that are monitoring the FAR to insure additional promulgations are not superfluous or redundant.

We in the DOD sometimes have emergency situations where we have to make a very quick turn around. Delaying policy issuance by several months to go through some kind of review process to insure lack of redundancy or superfluity would greatly inhibit our mission and our role. So we must have ability to move quickly and concisely when needed, yet still communicate and make sure we are not putting on a lot of extra regulations.

The current draft is very close to that. Maybe somebody else would like to comment.

Senator CHILES. Yes, Mr. Evans?

Mr. EVANS. I agree essentially with Mr. Church. I would say this, we have looked at it in some depth. With respect to regulations I can see the present NASA procurement regulations rather substantially reduced, and to the extent that organizational differences or differences of that nature require amplification I think we would perhaps simply interleave within the FAR those pages that are peculiar to us in specific circumstances.

At the present time I don't see much of that. I see the FAR two ways, though. That which impacts external agencies and sectors and that which may impact us internally, and I would see the minimum of amplification of the FAR with respect to external impact; in other words, the impact upon industry. We may have to amplify our own external procedures to carry it out, but we have not gotten into that much depth yet to make a firm assessment.

Senator CHILES. I have heard stories in which NASA and perhaps the Department of Defense had disputed the Labor Department's findings and awarded contracts not in compliance with the Department of Labor's wage determinations. I understand, in such cases, that Labor has little or no direct recourse. Apparently, what happens is that these disputes shift to the courts with the employees of the winning contractor suing him to force compliance with the Labor Department's determination. I understand the contractor can charge the agency for defending itself in court as a necessary cost of doing business. The final result is that a dispute between two Federal agencies becomes a dispute between the contractor and his employees with the program agency paying court costs for the contractor, and nobody paying court costs for the employees.

Traditionally what have you done when you reached that impact with the Department of Labor with the application of Service Contract Act or other legislation over which the Department of Labor has asserted authority, what have you done traditionally when you have reached that impact with the Department of Labor?

Mr. EVANS. I believe that there have been relatively few cases in my memory of the nature that you cite, speaking from NASA. There have indeed been court cases brought by both parties, that is industry in one case, Labor on the other.

I would say this: Where a company does have reasonable allocable, allowable overhead costs which may include legal fees in my judgment they are appropriate. We have not had heretofore any forum to hear, examine and objectively assess basic differences of opinion between us as procuring agency and the Department of Labor, and I would look to OFPP—

Senator CHILES. That's the Department of Labor knocking on the back door.

Mr. EVANS. They knock on mine, too.

Senator CHILES. I guess, really, what I am getting around to is, is there a role for an agency like OFPP to play in an agency like this in trying to see that there is a focal point for the settlement of this dispute within the Government rather than throwing it into the courts?

Mr. CHURCH. Yes, Mr. Chairman, we sincerely believe there is. It is an appropriate and proper role. OFPP has been trying to play this role now for almost 4½ years. It has made numerous attempts. As a matter of fact, it worked very diligently with an interagency council, which included the agencies and the Department of Labor, that came out with a report it tried to implement. It is trying again to do that now.

It is a very difficult area for us in DOD because we sincerely believe that the Department of Labor has not applied the law properly. There is no question we have a conflict with the Department of Labor in this area. We think OFPP is in a unique position to listen to the DOD and NASA and the Department of Labor and try to come up with an objective interpretation in line with its oversight responsibility.

Of course, as is well known, the Attorney General is now looking into the dispute which has erupted between OFPP and the Department of Labor, but I think OFPP is in a unique position. That's one of the problems I addressed earlier in my comments. I think we don't allow OFPP the latitude to go ahead and get on with making those kinds of decisions. I think we need to protect it better in its authority to do that.

Senator CHILES. Mr. Evans?

Mr. EVANS. I indeed believe that OFPP has a role in this and I believe that the Congress foresaw a role, at least in the committee reports reporting out the bill that was enacted 4½ years ago. I would like to quote from that, if I may, Mr. Chairman.

It says:

OFPP's cognizance of procurement policy would extend to the procurement aspects of regulations issued by the social and economic agencies, such as the Small Business Administration, the Environmental Protection Agency, and the Department of Labor (Davis-Bacon, Walsh-Healy, contract, safety standards, Equal Employment Opportunity). The Commission found that existing procedures for coordinating the procurement aspects of such socioeconomic regulations, range from virtually nonexistent to barely satisfactory.

I believe, indeed, they have a role to play as much today as I believe the Senate foresaw when this report was filed.

Senator CHILES. Thank you.

Mr. Church, I seem to get the tenor from your statement that the Office of Federal Procurement Policy had been—in fact, I think you said—ineffective in resolving certain problems to our satisfaction, and you named the Department of Labor interpretations of the Service

Contract Act. I find so far that most of the controversy in regard to whether we are going to reauthorize the Office of Federal Procurement Policy as coming from the areas of Department of Labor, and support in those areas the feeling that the OFPP has far exceeded its authority. They shouldn't be in this area at all or has no business tampering with what the Department of Labor espouses, and it looks like because the OFPP has tried to get into that area, which is a real no man's land minefield, has always been a bone of contention between at least NASA and the Department of Labor and DOD and the Department of Labor, that they are getting their hands and feet shot off for walking into that minefield, and, on the other hand, in your statement you seem to be saying that you don't think that they are walking into the cannon fast enough.

Are you satisfied that the Office of Federal Procurement Policy reviewed your complaints of engine overhaul and overruled the Department of Labor?

Mr. CHURCH. Well, Mr. Chairman, I think what I am really saying is that I am hoping that somehow the Congress can shut off the cannons or remove the cannons. I do agree with your statement that the cannons have been firing and there is no question there has been a lot of blood shed over this particular issue. My point was that 4½ years, and really the issue antedated the inception of the OFPP, so it goes back before that, ought to be long enough to resolve the issue.

Senator CHILES. But prior to that, prior to OFPP, did you have anybody that was really attempting to go into that area and really attempting to resolve those kinds of disputes, or did the Department of Labor have that focal point?

Mr. CHURCH. Only in an interagency sense which was not very effective, and, as I pointed out, I think this is the key area where the OFPP serves a very, very important and useful function. As Mr. Evans pointed out, this was exactly the intent of the Congress in establishing this office. My comments were more to point out that there are areas it really was intended to cover and some of these other issues, that are dragging a very small staff off in many directions, keep it from getting on with resolving these longstanding and very serious disputes.

Senator CHILES. Well, when I listen to your statement and then I look at the Department of Energy's statement that says the Office of Federal Procurement Policy has taken on and tried to resolve some very controversial and longstanding procurement issues, their success rate is high. We urge reorganization.

Interior says, we feel it is imperative that the Office of Federal Procurement Policy continue to exhibit a strong leadership role as a single focal point. This role is of vital importance.

Listening to NASA's statement today and SBA's statement, listening to Dr. Frank White who said, "Speaking from my own experience in both the Office of Management and Budget and the Department of Defense I know that the Office of Federal Procurement Policy has added immeasurably to the Federal acquisition process."

I don't get the tenor of those remarks at all from DOD.

Mr. CHURCH. The tenor of our remarks was not intended in any way to say there isn't a great and established need for an OFPP type of organization to exist. We think where it is and how it is consti-

tuted are probably the best. Its size is right for the things it was set up to do.

What we are saying is that OFPP is trying to take on far too many issues. There needs to be a contraction of its assignments so it can focus its attention on those issues that are truly great and underlying problems in the overall efficiency and effectiveness of the procurement process. Working on many of the things that OFPP is asked to work on, with a staff of approximately 30 people, makes it very, very difficult. OFPP has two problems.

First of all, OFPP needs to rely much more on the procuring agencies to do the drafting for it. We have larger staffs, have people who are close to the problems. We can probably do a better job.

Second, OFPP needs to try to keep more of a top level, overall perspective of the process as it goes about its job. If it burns up many of that 30-person staff working on either peripheral issues or on day-to-day implementation problems, then it certainly doesn't have sufficient remaining staff to work on some more important issues like resolution of the dispute on the Service Contract Act.

So our point is, we want to have an OFPP. We think it is correctly chartered and well placed. What we do not want is for OFPP to work on issues which are not the top priority issues.

Senator CHILES. Well, I gather again that DOD has a strong feeling as to what the top priority issues should be and all of their time ought to be spent on those issues and that generally is a stick-your-head-in-a-cannon issue, and stay on that, but when it gets into areas like A109 or some of these others that were considered to be strong issues by the Procurement Commission and by the legislation that created the Office of Federal Procurement Policy you would just as soon they weren't involving themselves with the details of those issues.

It seems to me that they are pushed in a number of directions by different people, including this subcommittee, in some of those areas.

I note that you say that they have had only limited success with their statutory functions.

We now have a centralized data system actually producing Governmentwide figures, and we have never had that before. That's one of the limited successes that I would say that the Office of Federal Procurement Policy had.

Mr. CHURCH. Mr. Chairman, I am not aware of the existence of a Federal-wide data system at the present time. That is a hope, but it does not now exist to my knowledge.

Senator CHILES. Well, they have given us this Federal procurement data system provision and we will have to see that they get it to you now that it is going on.

Well, the fact that the Office of Federal Procurement Policy now has half of the new uniform regulations that have already been issued for public comment, certainly they could claim some credit for their limited success for their role in that. We didn't have that going on before there was an Office of Federal Procurement Policy.

Mr. CHURCH. Mr. Chairman, really, I think OFPP is owed a lot of credit for what it has done. What OFPP has decided to do is accept what we started out to do on the defense acquisition regulation and have a single Government acquisition document which I think is an excellent idea. And we are a long way from home on that yet. We have

only got first drafts out for comment and there is a lot of work yet to be done.

The point I am trying to make is that there are very important issues that need to be accomplished in the future and OFPP needs, with a small staff, to put almost full time on them to be able to get them out in a timely manner and in the fashion in which they ought to be turned out.

Senator CHILES. Well, it is your feeling, or the Department of Defense's, that OFPP should be continued?

Mr. CHURCH. Absolutely. I have said so in my statement and many times today.

Senator CHILES. Among the peripheral activities that you say the Office of Federal Procurement Policy should not be concerning itself with is program reviews to judge compliance with A109. I am conducting A109 program reviews in the Appropriations Committee and I would certainly be upset if the Office of Federal Procurement Policy was not conducting those reviews.

I know that you and Dr. Perry have worked hard on A109, and I certainly appreciate that, but I can't understand the apparent opposition of OFPP following up on A109. We have seen a lot of programs that someone has said on paper, we are now doing this and that's all done, and yet A109 not only in the Defense Department but in a number of other agencies is one of the toughest things that I have ever seen try to be accomplished because generally speaking there is just something about the bureaucracy, you don't want to do something in a different way when you have been used to doing it one way for years and years.

It seems to me that if the Office of Federal Procurement Policy and the Office of Management and Budget determine that a program is not in compliance then it makes sense to use the weight of the OMB in their budget clout to encourage compliance.

Why do you believe that A109 monitoring and followup should be a low priority for OFPP and, therefore, within the Congress?

Mr. CHURCH. Mr. Chairman, I do not believe that A109 is a low priority at all. What I was referring to is the intended purpose of OFPP, which was that the contracting agency should be charged with clear responsibility for individual procurement actions. Certainly, implementation and monitoring of A109 by OFPP is not what was intended by that kind of statement in the Commission's report. I think it is always the prerogative of the Congress to look at issues like A109. We have the services looking at A109. We have our people in OSD looking at A109, and now we have OFPP looking at A109. It is getting to be a problem of when are the services going to have any management time to do the implementation. They spend all their time trying to answer questions about what they are doing. They never have any time to get on with doing it.

So I think it is fine and it is certainly a legitimate part of the OFPP's activities to keep the pressure on DOD to implement A109.

I think when OFPP starts getting in on an individual program-by-program basis and trying to direct the services on how to manage programs, it is micromanagement of the worst kind. We in OSD are trying to eliminate that with respect to the services and now another echelon has been added. We have some excellent managers in

the services. These are very difficult problems to try and implement. You have to have a rather indepth understanding of each program, as to what those implementation problems are, and, particularly where you have ongoing programs, as to what is a start and what is not a start.

And, of course, then we get Congress deciding what programs should be a new start, how we should go about it, and which alternatives we should select. All of which tend to overrule the concept of A109 that we should consider various alternative solutions to our needs. Often the Congress itself selects the alternatives that we must use, and we don't have any choice in those cases. For OFPP to come around and try to take on the program manager, where he doesn't really have any choice, does not really seem to be a very effective use of anyone's time.

And I might ask, with respect to the implementation in the non-DOD agencies, how were they doing over there. It seems to me OFPP is spending an inordinate amount of time working with DOD and we are trying our best already—

Senator CHILES. I think the other agencies think they are spending all their time with them.

Mr. CHURCH. I think our successes are much greater. I think it is due to the efforts of our internal management, but I am saying I don't think this is what was intended by the charter of OFPP. I think this gets into the clear responsibilities of the agencies. I think OFPP has an oversight and overview responsibility here which it has exceeded.

Senator CHILES. Senator Mathias has some questions.

Senator MATHIAS. Thank you, Mr. Chairman.

When I came into the room I think you were still discussing the function of the OFPP in supervising the exercise of certain statutory functions by the various departments of the Government, and I wonder if you could tell the committee what specific statutory functions you have in mind?

Mr. CHURCH. Are you addressing the question to me?

Senator MATHIAS. I am addressing it to the panel. I think it would be useful for us to have sort of a catalog of what's involved here.

Mr. CHURCH. I am not quite sure we understand the question.

Mr. EVANS. I would like to respond in this vein, if I may, Senator. Our statutory functions at NASA are set forth in the National Aeronautic and Space Act. OFPP does not supervise us in the discharge of those functions. There is an interrelationship, particularly at NASA where approximately 80 percent of our appropriations flow through the procurement process in some form or another, so that the process is very vital to us in the conduct of our affairs under the Space Act.

As I said in my statement, we have found a focal point at the position that OFPP occupies to be quite beneficial to us in the exchange of views and the setting forth of the role that we have under the Space Act, and this office has been of considerable benefit to us in their role in Federal Procurement Policy. We have had no difficulties at all in that area.

Mr. CHURCH. I believe the Administrator of OFPP in his statement a week ago listed a long list of statutes and Executive orders which

he felt came within the purview of OFPP, and I think it is a part of the record. So rather than restate those today I think we have already—

Senator MATHIAS. We have incorporated that answer by reference at this point.

Mr. CHURCH. I mentioned a couple of laws in my statement that aren't getting implemented that I think in today's world have very important relevance. They are Public Laws 94-80 and 94-163, dealing with energy and resource conservation. Those were areas where the OFPP was directed to do something and has done very little. I think it is certainly a very important function that we need to do a lot more about.

Mr. MAUK. The Small Business Administration's role is really to be an advocate for the small and disadvantaged firms and we have in the Small Business Act several mandates that tell us precisely what the intent of Congress is of advocating certain positions and what we are really trying to do is to work very closely with OFPP to make sure that the FAR regulations are those that really assist us in this matter of clarifying, simplifying and giving them access to the procurement process. As we have mentioned before, we feel that there, in fact, can be greater communication between ourselves and OFPP.

Senator MATHIAS. Let me pursue it one step further. Having incorporated by reference the long list of statutes the Administrator referred to in his testimony, do you have any objection or do you have any sense of uneasiness with the claim of OFPP to exercise statutory functions which may be assigned to other departments of the Government?

Mr. MAUK. We can just say that we don't find any conflict in the problems in terms of our advocacy position to small business.

Senator MATHIAS. You are speaking for your agency now, and not as a lawyer, right?

Mr. MAUK. Correct.

Senator MATHIAS. Suppose one of you had a contract, and had a Davis-Bacon determination from the agency and OFPP said they wanted to override that. What would be your agency's position?

Mr. EVANS. Here again the authority and responsibilities of the Department of Labor with respect to Davis-Bacon are rather clear. We also feel we have our hands full performing under the National Aeronautics and Space Act, but there is no question in our mind with respect to final determination of the Department of Labor.

Senator MATHIAS. Suppose you got caught in the switches between the two, between the Department of Labor and OFPP. What would you do? These are practical problems.

Mr. EVANS. Oh, indeed, I understand they are, sir.

Senator MATHIAS. You have got to make a decision. What do you do?

Mr. EVANS. I think the first thing I would like to see is what the Attorney General rules.

Senator MATHIAS. I think that is a prudent course of action. But at least we have faced a potential problem. That's what I am trying to get at. Where does the buck stop?

Mr. CHURCH. I might point out that the current Administrator has moved with great courage in that area but not without taking a lot

of rifle shots and cannon shots from others, as the Chairman pointed out earlier.

Senator MATHIAS. Well, I think that's one of the areas of concern as we look at the possible reauthorization, just what position does it put the client agencies of the Government in the potential authority. I think this is a serious question. You say that NASA's position would be to rely on the traditional sources of statutory action or action authorized or directed by the statute, right?

Mr. EVANS. We would indeed be bound by the opinion of the Attorney General.

Senator MATHIAS. That's not quite as clear as you were the first time.

Mr. EVANS. I think what this highlights, though, Senator Mathias, is the need for an organization such as OFPP at the level where it is presently constituted.

Senator MATHIAS. I am sorry, I didn't hear you.

Mr. EVANS. I said I think this highlights the need for such an office we are discussing today at the level where it presently resides.

Senator MATHIAS. Well, I think it also illustrates the need for Congress to make its intent very clear in the statute and if the intent of Congress is very clear in the statute then you don't have to go out and hire a lawyer as often. Ordinary people could read the statute and understand what it means.

Thank you, Mr. Chairman.

Senator CHILES. Thank you very much.

Our next witness is George Coburn, chairman of the Public Contract Law Section of the American Bar Association.

Mr. Coburn, you and your colleagues have been involved in procurement reform efforts for a long time. We are delighted to have you with us this morning. And Mr. Hiestand certainly has been involved in this long before my memory runs on it and the work that he did in the Procurement Commission. We are delighted to have you all before us this morning.

Would you like to introduce your other colleagues?

**TESTIMONY OF GEORGE M. COBURN, AMERICAN BAR ASSOCIATION,
ACCOMPANIED BY KEVIN DRISCOLL, O. S. HIESTAND, AND ROBERT D. WALLICK**

Mr. COBURN. To my far left is Kevin Driscoll of the American Bar Association, governmental relations office. Mr. Hiestand is next to him, and on my right is Robert K. Wallick. Messrs. Hiestand and Wallick are also prominent among the leaders of the section on public contract law.

By designation of President Tate we appear before you to express the strong support of the American Bar Association for the reauthorization of the Office of Federal Procurement Policy for the next 5 years. We think the record so far achieved by OFPP since August 30, 1974, should meet the initial expectations of the framers of Public Law 93-400, and we salute the strong and effective leadership of Hugh Witt and Lester Fettig for having made an impressive and conscientious start. But as I think they would be the first to say, the OFPP

has just begun to take hold and most of its opportunities for achievement are yet to come.

We last appeared before you on November 14, 1973, again on behalf of the American Bar Association, and again in strong support of the bill that, with modifications, became Public Law 93-400.

At that time we expressed two principal concerns about the proposed legislation. We questioned whether the proposed organizational structure was adequate to the vast procurement policy responsibility to be vested in the Administrator; and we specifically urged that provision be made for the Administrator to have authority to regulate the extent to which the development or revision of procurement specifications should be made subject to an effective method of soliciting the viewpoints of interested parties.

Underlying each of these concerns was the perceived need to redress the one-sidedness of many Government procurement policies and specifications that favor the Government's economic interests as a buyer at the expense of fair dealing and equitable relationships among the parties in Government contracting. We pointed out that there are many examples of this one-sidedness in pricing policies, in contract clauses putting unreasonable risk and regulation on contractors, and particularly on small contractors, in so-called anticlaims clauses, in specifications restrictive of reasonable competition, and so forth.

We then called attention to a recent article in the Federal Bar Journal by Herman Braude and John Lane, Jr., that well articulated the inherent conflict of interest between the Government's interest in promoting fair dealing and equitable relationships among the parties in Government contracting and the Government's economic or proprietary interest in maximizing the dollar return on its procurement appropriations.

Let me here repeat, if I may, a part of what we said back then about a major purpose of the OFPP legislation being to redress this one-sidedness in the formulation of procurement policy:

Our concern is that the proposed legislation may not achieve those fundamental reforms. Specifically, we question whether the proposed Administrator and his Deputy would have the time to give the necessary personal attention and consideration to grasp and fairly resolve, amidst growing administrative routine, the competing claims of affected interests on significant and often difficult procurement policy issues. And this need for the exercise of independent personal judgment in the light of the opposing considerations may be too much of a policy formulation burden to place on two men, no matter how highly they may be qualified and motivated, and no matter how competent the help they have from the professional staff.

We therefore ask that you also give careful consideration to the concept of legislating the establishment of a regulatory Board or Commission in the Executive Branch as an alternative to the proposed Office of Federal Procurement Policy. Such a Federal Procurement Policy Board or Commission could have three to five members for fixed and staggered terms, appointed by the President and by and with the advice of the Senate. The members could represent the principal interests concerned in formulation of procurement policy—big business, small business, the construction industry, the Department of Defense or other dominant Government procurement interest, and hopefully a disinterested member representing solely the public interest.

We think that the experience of OFPP in the past 4 years probably confirms that any administrator is able to devote his personal attention only to the most major questions of procurement policy and then on a level of consideration that may be less than thorough. In our

view, there is no way for him to find the time effectively to do much more.

Therefore, the question we pose is whether a policy board or commission would be a more effective structure to achieve over the long term the needed reforms and objectives of Federal procurement stated in the declaration of policy of Public Law 93-400. Such a policy board by representing the affected governmental, private, and public interests would formulate procurement or acquisition policy in a manner that would accommodate and determine the competing interests and considerations. It would be supported by an executive director and a professional staff.

It is important to note that the functions of such a policy board would fundamentally differ from those of the regulatory agencies in that a major purpose of the policy board would be to develop acquisition policies and contract clauses that would facilitate fair dealing and equitable relationships among the parties in Government contracting so as to encourage the best of American industry to compete for Government procurement.

We think that in the reauthorization of OFPP Congress should mandate a study of the establishment of such a policy board or commission by the Office of Management and Budget or by the Administrative Conference over a 2-year period and provide appropriate funding and staff to carry out such a study and report to Congress.

Our second major point, Mr. Chairman, concerns redressing this one-sidedness of the Federal procurement or acquisition policy. That is, in our opinion, the absence of a meaningful opportunity for interested or affected outside groups to participate at the inception of policy or contract clause formulation. We all know that by the time a matter is published for 30 to 60 days of public comment in the Federal Register, the die is largely cast. As it is, the comments are for the most part considered by the proponents of the particular policy or clause. Often the proponents have already compromised on some issues in the internal debates and have become dedicated to their proposal. The public commentators are viewed as critics who lack understanding of the problem. In other words, we believe the public comment opportunity as presently structured is largely a formality or gesture that does not achieve its intended purpose of developing procurement or acquisition policy that reflects fair dealing and equitable relationships.

One way to overcome this—

Senator CHILES. Isn't that comment more directed at the Administrative Procedures Act. OFPP has gone further than about any other agency, have they not, in publishing in advance their regulations? Though, they have sort of become a lead agency as far as I know.

Mr. COVENS. It is a major improvement over what there was before, Mr. Chairman. There is no question about that. Our point is that once it is published for public comment, that's really too late in the day. That indeed the OFPP statute recognizes the importance of public participation at the inception, at the inception of the formulation of a proposed procurement policy, not when it is 99 percent ready to go to be published as a final regulation.

So, therefore, we suggest one way to overcome this difficulty, at least for the interim, and that is for the reauthorization legislation to

strengthen the authority of the Administrator to utilize outside help and advice, and to provide the money to do this.

Let me give you an example of how this could be done. As Mr. Fettig has told you, the major project of his Office at the present time is the development and publication of a single, Governmentwide procurement or acquisition regulation, to be known as the Federal acquisition regulation. This is a very worthwhile project. The problem with it is that it is being written almost entirely by personnel of the Department of Defense and the General Services Administration, with no opportunity for outside input prior to publication for public comment in the Federal Register. It is therefore not surprising that by and large what has already been published for public comment is largely a restatement of the current DOD and GSA policies notwithstanding the well-intentioned commitment by Mr. Fettig to a "zero-based" reconsideration of these policies.

What might have been done instead, had the authority and funding been made available, would have been for the Administrator to appoint an advisory committee or committees to accept voluntary and uncompensated services, and to employ experts and consultants from outside the executive branch and representatives of the affected private and public groups to reevaluate and assess the fairness and the effectiveness of the existing procurement regulations and contract clauses, and to make recommendations to the Administrator for retention, revision, or repeal.

An advisory committee consisting of Government and non-Government people would provide the basis for initial interfaces regarding different points of view and the opportunity to develop objective and equitable policy positions. As you know, this was the approach used for both the Commission on Government Procurement and its study groups and staff. The fact that the COGP recommendations have received widespread acceptance demonstrates the value of this approach to formulating public procurement policies.

We note that the Senate bill that led to the OFPP conferred specific authority in these areas to obtain outside advice and consultation, and we suggest that you consider the restoration of that authority in the reauthorization legislation for OFPP. We are aware, of course, of the requirements of the Federal Advisory Committee Act of 1972, and we do not suggest that the proposed appointment and use of advisory committees by the Administrator not fully comply with that act. But without explicit authorization and the provision of appropriate funding, we doubt that the procedures for "soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms," which is the language of the current law, would be effective and timely within the contemplation of Public Law 83-400.

Now, let me turn to one remaining final problem and this concerns the lack of any established or meaningful opportunity for public participation in the development of procurement specifications. And again, if you will permit me, I will repeat shortly what we said before:

As a minimum, we suggest that the new agency should have authority to regulate the extent to which the development or revision of procurement specifications, as with procurement policies, regulations, procedures, and forms, should

be made subject to an effective method of soliciting the viewpoints of interested parties. We are not aware of any widespread or institutionalized practice of industry consultation in this respect, and we are aware of the many protests to the Comptroller General complaining of specifications restrictive of competition on the one hand or in violation of patent or trade secret rights on the other. Likewise, we are mindful of the many contract disputes involving issues of defective Government specifications. In addition, we believe that the new agency should at least have some means of insuring that procurement specifications comply with the procurement policies of the agency. It would thus seem that the area of specifications would be one for the new agency and the public to get into to a limited extent if these kinds of problems are to be resolved more satisfactorily and with greater public confidence in the fairness and openness of the Federal procurement process.

We make a suggestion on legislative language and how to accomplish that.

Our final comment, Mr. Chairman, is that we believe that the public confidence in the effectiveness of the opportunity for public participation in the formulation of these policies would be strengthened if the law were to require that when a regulation or clause is finally adopted there be some explanation by the Administrator of the considerations that led to the particular choice and that led to the rejection of alternative choices and with that statement of considerations being a useful discipline, sometimes a choice you want to make just will not right itself as a matter of rational choice. Judges find this out all the time. They may want to go some way but if they can't write it from the standpoint of it appearing to be a reasonable choice to take they don't go that way. If it doesn't stand in the light of reason, it perhaps is probably not the way to go.

Senator CHILES. I have never found judges having that particular problem before in lawsuits concerning me in which they decided against me. I never found them having any problem. They either denied or found some way of—

Mr. COBURN. Perhaps your respect for that court would have been increased had there been a statement of reasons in support of it.

That concludes our statement, Mr. Chairman. My colleagues and I will be happy to try to answer any questions.

Senator CHILES. Thank you for your statement. It appears that you have not changed too much in your views since 1973 when you appeared before me.

You recommended changing the Office of Federal Procurement Policy from a management agency to an independent regulatory board. Certainly, I agree with you that the procurement regulations have a substantial impact on the public. Of course, all Federal regulations do whether they are issued by an independent regulatory board or an executive agency.

Procurement regulations are a management tool employed by the Government to insure that the \$90 billion-plus that the Government spends on contracting is spent effectively. Public participation in developing these regulations is one thing, but it seems to me that your proposal is going beyond that. It seems to me that your independent regulatory board actually could hamper the Government's ability to control the way it is going to spend its money.

Mr. COBURN. I would be happy to respond to that, Mr. Chairman. Unlike regulations of, say the ICC or any of the other regulatory

agencies, the end result of procurement is a contract, and a contract, as we all know, is a document that requires the consent of the parties. And we are saying that unless the procurement policies and contract terms and conditions can be supported by the consent of the business community and labor and other interests that participated in the accomplishment of public procurement it is not going to get done.

And we are saying that the best way to attract the best of industry and labor response and participation in Government procurement is to have the implementation of the congressional policies better accomplished through a process that would be responsive to the views of all the concerned parties, Government, industry, labor, and the other interests. Because the end result, as I say, is not dictation or imposition. The end result is a process of contracting and if the objective of the process is to have contract terms that the courts will enforce, the procedures for the establishment of them have to be such as will give some evidence of public consent and public participation in the process of arriving at those terms.

So we say a policy board of three to five persons, maybe you would have a majority of them from interests that would be associated with the Government procurement interests, that's a possibility, but in any event, they would be representative of the totality of the interests and they would proceed by majority vote.

Maybe you could have special procedures for the President in time of emergency to require other means of issuing procurement regulations. But we feel that the process of procurement is simply another way of saying how people make contracts with the Government and the congressional intent, we believe, should say that the contract should reflect consent and not imposition.

May I ask Mr. Hiestand if he would like to speak to this point, because I think in his work on the Model Procurement Code for the several States there is some relevant experience.

Mr. HIESTAND. Just very briefly, Mr. Chairman, I think Mr. Co-burn's points are good. We have seen in doing our Model Code work that a number of States use a policy board. Some were made up completely of people outside the Government who served without compensation instead of per diem and expenses. Some have a mixed board where they choose outside people and have some people in the Government. But they are not regulatory. They are not regulatory in the sense that you think of it normally.

What we are talking about is the process, not whether the person wants to come to the Government to see what the Government will give them to, say run a TV station. We are looking at the policy considerations. On what basis is the Government asking someone to sign a contract with them to supply the Government's needs.

So the policy board tries to get all the viewpoints involved in initiating the policy and for making the policy decisions.

Senator CHILES. It seems to me that Congress really sets the policy.

Mr. HIESTAND. You are saying the basic policies.

Senator CHILES. We set the basic policies and then it becomes a management function as to how the executive branch executes that policy and I don't see why you want to put the independent board into the management function of carrying out a congressional policy.

Mr. HIESTAND. Well, I will put it in two ways. You start with a very broad policy but then there is a lot of discretion delegated through the OFPP, the same kind of delegation that would be made to the policy board. For example, deciding what would be the specific criteria for the use of different procurement methods, what would be the controls on use of Government developed specification versus using commercial products with purchase descriptions and not going into the specifications. You have got a long range of things that still require policy considerations, including the types of contract clauses that the Government agencies then develop. Part of what we are saying is how do you get both parties to consider what is a fair contract clause when so many Government contracts are contracts of adhesion and by the time the contractor gets a chance to get a Government contract he has got no voice at all. He takes it or he does not get the job. And we are saying, in part, the method of getting public comment on contract clauses is too late in which to really get fair clauses.

Senator CHILES. Well, your view on whether there should in fact be a three- or five-member board rather than a single individual as the executive of this agency, I suppose is not entirely new. I think it was represented in the early constitutional debates in regard to the adoption of the Constitution in which there was a strong group at one time that wanted to have a three-man Presidency. One, I think, was to represent the Midwest, at that time, and one the South, or it would be done on different bases but they were going to have a three-man Presidency at that time, so I suppose that's not entirely new, but I recall saying, and it has some application to me, I think, and that's the saying that you search all your parks in all your cities and you will find no statues to committees. I just wonder if we set up this three-man troika whether we really would be solving anything here or whether we would be adding—5 years from now if we reauthorized OFPP whether we would find that they are still talking and arguing about their respective points of view and there would be no decisions made.

Mr. HIESTAND. Well, I would like not to get on the point and argue that there should be a board, but I think what Mr. Coburn has addressed is our concern of the inadequacy of the public participation in formulating policy. We see the possibility of a policy board or a mechanism by which we would have the opportunity for different points of view to sit in the room, to talk, discuss and interchange their experiences to get to a fair policy.

Mr. Coburn's suggestion that we use advisory committees gets to the same idea which we were trying to focus on, that is a different method of how we get public participation in formulating policy.

Senator CHILES. Mr. Coburn, the Defense Department has testified that much of what OFPP has accomplished since its creation could have been accomplished by the procuring agencies themselves.

The office was established in the Office of Management and Budget and given directive authority because the agencies had heretofore not been able to coordinate and get things done.

Based on your experience would you comment on the Defense Department's assertion that almost all of the procurement policies

achievements could have been carried out on a voluntary basis by the agencies, and give me your view on what the impact on the recommendations of the Procurement Commission would be if the office was not reauthorized, if we just let it "sunset?"

Mr. COBURN. Well, our strong belief, Mr. Chairman, is that the recommendation of the Procurement Commission, and this was its first recommendation, certainly has continuing vitality and we would be very discouraged and dismayed if the office were not reauthorized because, as you yourself have recognized, the OFPP, just in the example of providing the opportunity for public comment on proposed procurement regulations has gone way beyond what the Department of Defense or GSA ever have done. For example, Mr. Fettig has held several public meetings on significant proposed policies, public meetings, and that is never done, as far as I know, in the Department of Defense. The public, as I recall, has not been invited to participate in any of the deliberations of the committee that was charged with the formation of the Department of Defense's procurement regulations.

And, also, if you look at some of the more specific policies that OFPP has developed, such as A-109, I doubt very much if that could have been accomplished without OFPP. So I would say that from our perspective, and I will ask Mr. Wallick and Mr. Hiestand to supplement this, that it would be a big step backward for OFPP not to be reauthorized.

Mr. WALLICK. Yes, Mr. Chairman, it would seem to me that we should never have had a FAR, which is well along in its development, without an OFPP. That is quite an achievement in sound government and in the direction toward a single regulatory agency. So I don't think many of OFPP's achievements would have been realized if we hadn't had the central Office of Federal Procurement Policy located in the Office of Management and Budget.

Mr. HIESTAND. Well, I think, yes, it is an area that the agencies could do. I think the record shows that they did not do it and I doubt without this kind of leverage they would do it.

And I remember some of the examples that George Ostrowsky, who was chairman of study group 13A, related to us about commercial products. And the example of how all the services and, I believe, the Veterans' Administration had their own specifications for bacon, and the only difference was the number of slices per pound, and all those differences were different from what the slices per pound are when you and I go to the Safeway and buy a pound of bacon with the result—

Senator CHILES. I remembered that it was different specifications in regard to the purchase of toilet paper.

Mr. HIESTAND. That, too, sir.

On the bacon what this resulted in and the study group demonstrated was that many packers would not bid, and second that that involved special slicing equipment, and I think the study groups said this was costing the Government a quarter of a million dollars extra a year. Well, that existed for a long time and I am not sure it has all been resolved today, but at least we have a vehicle to try to get on top of it now and so that's why I am a real strong supporter of OFPP.

Senator CHILES. One of the apparent controversies involving OFPP is whether it should be serving as a focal point to try to settle disputes

between some of the other agencies; particularly we have had a dispute involving the Department of Labor and the Department of Defense, between NASA, I think, and the Department of Labor.

Would you give us your views as to whether there should be a focal point for settling those disputes and if so should that be part of the role of the Office of Federal Procurement?

Mr. COBURN. Mr. Chairman, there is no American Bar position on this issue, but Mr. Hiestand would be glad to speak to it in his personal capacity.

Senator CHILES. Calhoun doesn't seem to want this ball.

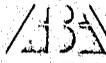
Mr. HIESTAND. I was certainly well aware of the problems and the difficulties in this area at the time the Procurement Commission was looking at the whole process. I had been through many of those problems in my experience as an attorney with the Government and I think, at least it is my recollection, and I have gone back to the study group and the Commission report, that that was intended, that we needed this kind of a focal point to resolve these kinds of issues in my opinion, that's what the Procurement Commission's recommendations were. And I think it is still needed and I hope that Congress will clarify it in a way that we do have a specific base within the executive branch to resolve these kinds of difficulties. They get long and drawn out. They cause many problems, and they cost the taxpayers a lot of money in some situations.

Senator CHILES. The American Bar Association has contended that the President's anti-inflation program as applied to Government contracting is illegal. Is your criticism directed at the administration's authority to establish that particular program or is it aimed just at the Office of Federal Procurement Policy's role in that program? I guess I am asking if the Office of Federal Procurement Policy did not exist what would be the effective legality of the Government's contract provisions of the anti-inflation program? Senator Roth is very interested in this subject, too, and I think he will perhaps be here later.

Mr. COBURN. Mr. Chairman, if I may, the American Bar Association as such has not taken a position on this currently. Our section on public contract law did file a statement with Mr. Fettig and we will be glad to submit that for the record, if you would like it.

Senator CHILES. Fine.

[The statement referred to follows:]


AMERICAN BAR ASSOCIATION *ONE*
SECTION OF PUBLIC
CONTRACT LAW

WRITER'S ADDRESS AND TELEPHONE

December 7, 1978

Honorable Lester A. Fettig
Administrator for
Federal Procurement Policy
Office of Management and Budget
New Executive Office Building, Room 9001
Washington, D.C. 20503

Dear Mr. Fettig:

Re: Proposed OFPP Policy Letter
78- Wage and Price Standards
for Federal Contractors

This replies to your invitation for public comment by December 7, 1978 on the OFPP proposed DAR and FPR coverage of "Wage and Price Standards for Federal Contractors." These views are being presented only on behalf of the Section of Public Contract Law and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and should not be construed as representing the position of the ABA.

At the outset, we want to express our support of the President's anti-inflation program. It is a voluntary program that deserves the best efforts of industry and labor to live up to in the national interest. We also believe it appropriate for the President to require the application of the price and pay standards to the performance of government contracts in accordance with fair procedures, as Executive Order 12092 calls upon you to do.

We have two primary concerns about the proposed "Wage and Price Standards for Federal Contractors." First, we believe that in imposing default termination and debarment from further government contracts and subcontracts the proposed regulations go beyond the authorization of Executive Order 12092 to the extent

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that they call for the imposition of those sanctions based on a firm's noncompliance with the price and pay standards in relation to the firm's nongovernment contract business. Secondly, the proposed regulations do not provide adequate standards and procedural safeguards in connection with noncompliance determinations and the imposition or waiver of sanctions based on such determinations.

Paragraph 1-103 of Executive Order 12092 states that "In order to insure economy and efficiency in government procurement," government procurement agencies "shall ensure that their contracts incorporate, on and after January 1, 1979, a clause which requires compliance by the contractor, and by his subcontractors and suppliers, with the standards set forth in Section 1-102 of this Order." Nothing in this language requires or suggests that the compliance called for is to extend beyond the price and pay standards applicable to the performance of the particular government contract or subcontract.

Executive Order 12092 is entitled "Prohibition Against Inflationary Procurement Practices." The preamble recites a purpose "to provide for the procurement by Executive agencies and Military Departments of personal property and services at prices and wage rates which are noninflationary." Here again there is no indication of a purpose to apply the price and pay standards beyond government procurement.

Executive Order 12092 cites two statutes as sources of authority: Sections 2(c) and 3(a) of the Council on Wage and Price Stability Act (12 U.S.C. 1904 note) and Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)). Neither statute authorizes the mandatory imposition of the price and pay standards beyond government procurement. The cited sections of the Council on Wage and Price Stability Act cover the duties of the Director and the Council. Another Section of this Act, Section 3(b), not cited in the Executive Order, states that "Nothing in this Act, (1) authorizes the continuation, imposition, or reimposition of any mandatory economic controls with respect to prices, rents, wages, salaries, corporate dividends, or any similar transfers."

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Section 205(a) of the Federal Property Act authorizes the President to "prescribe such policies and directives not inconsistent with the provisions of this Act, as he shall deem necessary to effectuate the provisions of said Act." In no way, we think, may the Federal Property Act be viewed as authority to impose price and pay standards beyond government procurement. While some courts have upheld the authority of the President to require nondiscrimination in employment and affirmative action programs by government contractors and by contractors under federally assisted construction programs,^{*/} it is important to recognize that all these requirements were and are limited in terms to the performance of the particular government contract or project and did and do not purport to compel application to the other business of government contractors.^{**/}

We know of no court decision that has recognized any nonstatutory power of the federal government to impose mandatory price and pay standards on industry and labor through the device of government contract sanctions for noncompliance beyond government procurement. Since we know of no authority for such a broad reach for the standards, we believe Executive Order

^{*/} See, e.g., Contractors Association of Eastern Pennsylvania v. Secretary of Labor, 442 F.2d 159, 170 (3rd Cir.), cert denied, 404 U.S. 854 (1971). Contra, Weber v. Kaiser Aluminum & Chemical Corporation, 503 F.2d 216, aff'd on reconsideration, 571 F.2d 337 (5th Cir. 1978), petition for certiorari filed 9/14/78, 47 L.W. 3284.

^{**/} Executive Order 11246 imposes the nondiscrimination and affirmative action requirements "During the performance of this contract." See also DAR 7-101.13. In addition, Executive Order 11246 further provides "for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract. See also 41 CFR § 60-1.5(d)(2). Further, the several "city" or "area" plans of the Department of Labor applicable to federal and federally assisted construction contracts and establishing specific goals of minority manpower utilization all provide (in Appendix A to the solicitation) that "A bidder who fails or refuses to complete such goals shall not be deemed a responsive bidder and may not be awarded the contract or subcontract, but such goals need be submitted only for those trades to be used in the performance of the federally involved contract." (Emphasis added.) 41 CFR §§ 60-6.530, p. 325 (Washington Plan); § 60-6.30, p. 338 (San Francisco Plan); § 60-7.30, p. 348 (St. Louis Plan); § 60-8.30, p. 359 (Atlanta Plan); § 60-10.30, p. 368 (Camden Plan); § 60-11.23, p. 379 (Chicago Plan).

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12092 is to be read as authorizing the mandatory application of the price and pay standards only to the price and pay applicable to the pricing and performance of government contracts and subcontracts. On its face, the text of the Executive Order does not call for mandatory application of the price and pay standards to all the business of government contractors.

Thus our position is that to the extent the proposed OFPP implementation goes beyond the application of the standards to the pricing and performance of government contracts, OFPP is acting beyond the authorization of Executive Order 12092 and beyond any other authority. See Contractors Association supra at 175, citing Peters v. Hobby, 349 U.S. 331 (1955).

Accordingly, we have redrafted the proposed OFPP implementation to limit the application of the standards to the pricing and performance of government contracts within the parameters of your proposal. At the same time we have added appropriate standards and procedural safeguards to insure fairness in the determination of noncompliance with the price and pay standards and in the imposition of sanctions and the waiver of sanctions for noncompliance.

Our redraft is enclosed herewith. What follows is an explanatory commentary.

Paragraph (a). We have narrowed "maximum practicable extent" to the extent provided in paragraphs (b)-(h) below to clarify that the application of the standards does not extend beyond the pricing and performance of government contracts above the \$5 million threshold. In addition, we suggest the use of "company" instead of "firm" to conform to the CWPS proposed definition of company which would permit some contractors to segregate their government contract business from their other business for purposes of compliance with the standards. Finally, we believe, in conformity with paragraph 1-101(c)* of the Executive Order 12092, that these implementing regulations and contract provisions must afford contractors notice and opportunity to be heard before they are found to be in violation of the price and pay standards applicable to the pricing and performance of government contracts in excess of

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\$5 million. Because of the punitive effect of termination for default and debarment in the event of such a determination of noncompliance, we strongly believe that the imposition of such sanctions should be based on a finding of noncompliance that is shown to be "wilfull."

(b) Solicitation Provision. Here we conform the solicitation provision to the basic concept that the certification of compliance with the standards applies only to "the price and pay applicable to any contract resulting from this solicitation."

(c) Contract Provision. We believe it to be fundamentally necessary for the contract provision to spell out the full scope of the obligations and remedies of the parties with respect to compliance with the price and pay standards. These obligations and remedies are further covered below.

(d) Compliance Determination. Here we require CWPS to make a specific determination as to "each company" that "was wilfully not in compliance with the price and pay standards with respect to the price and pay applicable to a designated Federal contract or subcontract as of the date of the compliance certification for such contract or subcontract or as of a later time for a designated Federal contract or subcontract containing the compliance certification required by paragraphs (b) and (c) above." We strongly oppose the application of any determination of noncompliance with the standards to any contractor who has not certified compliance for the particular contract found to be non-compliant. We see no reason why CWPS could not make the determination of wilfull noncompliance, after notice and opportunity to be heard, in the context of a particular government contract or subcontract as to which a certification of compliance was given.

(e) Effect on Prior Awards. For the reason just stated, we see no justification for debarment of firms for noncompliance as to contracts that do not contain the certification provision, as proposed (a) would do. Also we believe there should be a limit of one year

#/ "Publish, or cause to be published, in accordance with procedures designed to insure fairness and due process, the names of individuals or companies which are not in compliance with the standards."

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on debarment; with discretion in the agency head to debar for a lesser period. Finally, we suggest that debarment be subject to the same waiver provisions as termination for default. We have redrafted (e) accordingly.

(f) Application to Subcontractors. We have revised this paragraph to make it clear that only the first tier subcontractors are covered. We understand that this would accurately reflect the intention of the OFPP.

We further request that consideration be given to providing in this paragraph or elsewhere (i) that in the event a subcontract has to be terminated or adjusted because of the noncompliance of a subcontractor, there should be equitable adjustment(s) in the time and price of the prime contract, and (ii) that in the event a successful bidder or proposer is unable to award an intended subcontract because the bidder/proposer discovers after opening that the intended subcontractor is not in compliance, then the successful bidder or proposer should be allowed to withdraw his bid/proposal.

(g) Reduced Penalties. We suggest this be retitled "Waiver of Termination for Default and of Ineligibility for Federal Contracts and Subcontracts." We would not limit the application of "severe financial hardship" particularly to small and minority business firms. We recommend broadening of the price reduction basis of waiver to extend to cases where "the contractor or subcontractor agrees to come into compliance with the price and pay standards applicable to the contract or subcontract as of the date of willful noncompliance with such standards as determined by the Council on Wage and Price Stability and to make any reduction of the contract price that is equitable in the circumstances." Finally, we urge, as a matter of basic procedural fairness, that, as provided in redrafted (e)(2), before the sanctions of default termination or debarment are imposed, the contractor or subcontractor will be afforded the opportunity to apply for a waiver of either of these sanctions and to be heard in connection with that application.

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(h) Waiver of Certification. We urge that h(4) be narrowed, as we have redrafted it, to be clear that a contractor's refusal to accept the certification is not relevant to responsibility determinations involving that contractor for procurements not requiring the certification provision.

(i) Contract Pricing Actions. As drafted this paragraph tends to make policemen of the procuring agencies and their audit staffs. It is better to limit this function to reporting violations to CWPS rather than to apply the standards to the pricing of transactions not requiring the certification provision. We have redrafted (i) accordingly.

In conclusion, as stated above, we believe that the proposed OFPP implementation is not in accordance with this Executive Order. Our enclosed redraft of the OFPP implementation is one approach to carrying out Executive Order 12092 that we believe fully complies with the purpose and intent of that order and with the limitations on the President's authority to impose price and pay standards beyond the performance of government contracts.

We shall be pleased to discuss this with you or your staff and to be of whatever assistance we can to you in carrying out this important and difficult assignment.

Sincerely,

George M. Coburn

GE/jmc

Enclosure

DRAFT 12/2/78

[WAGE AND] PRICE AND PAY STANDARDS FOR FEDERAL CONTRACTORS */

(a) The Government will to the [maximum practicable] extent provided in paragraphs (b)-(h) below, purchase goods and services only from [those firms] companies, as defined by the published regulations of the Council on Wage and Price Stability (CWPS), in compliance with [wage and] price and pay standards promulgated by Executive Order 12092 of November 1, 1978. [Firms] Companies determined by CWPS, after notice and opportunity to be heard, to be in wilfull noncompliance with the standards will be ineligible for Federal contracts [or] and subcontracts [except in accordance with paragraph (h)], to the extent provided in paragraphs (e)-(h) below.

(b) Solicitation Provision. Subject to paragraph (h) below, solicitations issued on and after January 1, 1979 expected to result in new contracts, orders under existing contracts or supplemental agreements to existing contracts, in excess of \$5 million, will contain the following provision:

COMPLIANCE WITH PAY AND PRICE STANDARDS
OF EXECUTIVE ORDER 12092

The offeror hereby certifies that [he is] the price and pay applicable to any contract resulting from this solicitation are in compliance with the

*/ Bracketed material represents deletions and under-scored material represents additions to the OFPP proposed "Wage and Price Standards for Federal Contractors."

[wage and] price and pay standards [announced by the President on October 24, 1978] promulgated by Executive Order 12092 of November 1, 1978.

(c) Contract Provision. Subject to paragraph (h) below, all new contracts, orders under existing contracts, and supplemental agreements to existing contracts, in excess of \$5 million, resulting from solicitations issued on or after January 1, 1979, will contain the following provision:

COMPLIANCE WITH PRICE AND PAY
STANDARDS OF EXECUTIVE ORDER 12092

(a) The contractor hereby certifies that [he is] the price and pay applicable to this contract are in compliance with the [wage and] price and pay standards [announced by the President on October 24, 1978] promulgated by Executive Order 12092 of November 1, 1978.

(b) If it is later determined by the Council on Wage and Price Stability, after notice and opportunity to be heard, that the contractor was [in fact] wilfully not in compliance with such standards as applicable to this contract as of the date of this certification [action and knew or should have known that he was not in compliance], then this contract may be terminated in accordance with the provisions of the Termination for Default Clause.

[New]

(c) In the event of a determination by the Council on Wage and Price Stability, after notice and opportunity to be heard, of wilfull noncompliance by the contractor as of the date of this certification or as of a later time with respect to the price and pay applicable to this contract, the contractor shall be ineligible for Federal contracts and sub-contracts for a period not in excess of one year as determined by the agency head unless such ineligibility is waived by the agency head.

[New] (d) Prior to any termination for default under paragraph (b) hereof or determination of ineligibility for Federal contracts and subcontracts under paragraph (c), the contractor shall be notified in writing of such proposed action and the basis therefor and shall be afforded not less than 10 working days from the receipt of such notification within which to apply to the agency head for waiver of termination for default or of a determination of ineligibility for Federal contracts and subcontracts, or both. Any such application shall be promptly heard and shall be determined in accordance with standards and procedures prescribed by the Administrator for Federal Procurement Policy and published in the Federal Register.

(d) Compliance Determinations. For purposes of certification, companies will determine for themselves whether or not they are in compliance, unless they are listed as noncompliant. The Council on Wage and Price Stability (CWPS) has established procedures to monitor overall compliance with the Federal [Wage and] Price and Pay Standards. CWPS will from time to time publish a list of companies which it determines to be in non-compliance. Such list will separately identify each company that CWPS has determined, after notice and opportunity to be heard, was wilfully not in compliance with the price and pay standards with respect to the price and pay applicable to a designated Federal contract or subcontract as of the date of the compliance certification for such contract or subcontract or as of a later time

for a designated Federal contract or subcontract containing the compliance certification required by paragraphs (b) and (c) above. The Office of Federal Procurement Policy (OFPP) will disseminate such list to all procuring agencies [a current list of noncompliant companies] on a current basis.

(e) [Effect on Prior Awards.] Enforcement.
[Contractors] A contractor who has certified as provided in paragraphs (b) and (c) above and who [are] has been determined by CWPS, after notice and opportunity to be heard, [to be noncompliant,
but are already performing under Federal contracts will be treated as follows:] to have been wilfully not in compliance with the price and pay standards applicable to a designated Federal contract as of the date of the compliance certification, may be terminated for default in accordance with the contract provision in paragraph (c) above. Any such contractor, and any contractor as to whom such a determination of wilfull noncompliance has been made as of a time subsequent to the compliance certification with respect to the price and pay applicable to a designated contract, will be ineligible for any further Federal contracts and subcontracts for a period not in excess of one year as determined by the agency head

unless such ineligibility is waived by the agency head in accordance with paragraph (g) below.

[1. If their contracts do not contain the certification provision, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the noncompliance list.

[2. If they were awarded contracts with a compliance certification, but are later found by CWPS not to be in compliance, such contracts may be terminated for default in accordance with the contract provision in paragraph (c) above.

[3. If they were awarded contracts with a compliance certification, but it is determined that they become noncompliant after the award of such contracts, they will continue to perform those contracts, but will be ineligible for any further awards until they are removed from the noncompliance list.]

(f) Application to Subcontractors. Certification

requirements shall be included in all first-tier subcontracts over \$5 million; the same penalties provided with respect to prime contractors shall also apply to such first-tier subcontractors who are determined by CWPS not to be in compliance as to the price and pay applicable to such subcontracts. Any waiver or relaxation of these penalties with respect to such first-tier subcontractors can only be made by the agency head [of the procuring agency] involved.

(g) [Reduced Penalties.] Waiver of Termination for Default and of Ineligibility for Federal Contracts and Subcontracts. (1) Termination for default [of contractors or subcontractors who were not in compliance at the time of certification] or a determination of ineligibility for Federal contracts and subcontracts, as provided for in paragraphs (e) and (f) above, may be waived by the agency head if he determines in writing, and in accordance with the procedures of paragraph (g)(2) below, that:

a. The agency's need for the product or service is essential to National security or public safety, and there are no alternative sources of supply, or that seeking alternative sources is not feasible because of urgency of requirements, or disruption of essential program functions; or

b. [termination for default may also be waived by the agency head if he determines that] such action would result in severe financial hardship and threaten [particularly for small and minority business firms. Such waivers should be limited to those] the contractor's or subcontractor's [whose] ability to survive [if terminated for default, is in question.]; or

c. [In any case in which termination for default is determined to be feasible the agency shall consider negotiating a reduction in the contract price to ensure that the contractor does not profit from his failure to comply with the wage and price standards.] the contractor or subcontractor agrees to come into compliance with the price and pay standards applicable to the contract or subcontract as of the date of wilfull noncompliance with such standards as determined by the Council on Wage and Price Stability and to make any reduction of the contract price that is equitable in the circumstances.

(2) Prior to any termination for default or determination of ineligibility for Federal contracts and subcontracts, as provided for in paragraphs (e) and (f) above, the contractor shall be notified in writing of such proposed action and the basis therefor and shall be afforded not less than 10 working days within which to apply to the agency head for waiver of termination for default or of a determination of ineligibility for Federal contracts and subcontracts, or both. Any such application shall be promptly determined and the contractor or subcontractor shall be afforded the opportunity to be heard.

(3) The duration, not to exceed one year, of any determination of ineligibility for Federal contracts and subcontracts shall be based on consideration of any relevant factors developed under paragraph (g)(2).

(h) Waiver of Certification.

(1) Waiver of the contract certification should be considered only in situations where the Government cannot forgo or postpone a procurement because of an urgent National security or public safety and where there are no alternative sources.

(2) Such waivers will be granted only by the agency head [of the procuring agency] involved, and only after thoroughly exhausting all reasonable alternatives.

(3) Waivers shall be in writing, and a copy of such waiver shall be forwarded within 10 days to the Administrator for Federal Procurement Policy.

(4) A contractor's refusal to accept the certification provision shall not be considered in [future] determinations of responsibility [until such time as the contractor accepts the certification provision or is otherwise determined to be in compliance.] for contracts not covered by paragraph (c) above.

(i) Contract Pricing Actions. While determinations of noncompliance are the concern of CWPS, all procuring agencies

must be cognizant of the [wage and] price and pay standards and [make every effort to stay within these standards in pricing actions under negotiated contracts. Such pricing actions include cost and price analyses, forward pricing rate agreements, price negotiation objectives, and contract pricing structures."] should report suspected violations to the Council on Wage and Price Stability.

Mr. COBURN. Briefly, our position as a section on public contract law was that the Executive had no legal authority to go beyond the pricing and performance of Government contracts so far as the imposition of any requirements for compliance with the inflation program.

In other words, to the extent that the procurement implementation of the President's Executive order would deny contracts or provide for the termination of contracts for noncompliance with the price and wage guidelines in areas not relating to the performance of a particular Government contract, we said that we knew of no statutory authority for such a program, and to some extent it does appear that these sanctions could in theory be imposed on a contract or for price or wage behavior that was not related to a particular Government contract. So, to that extent, we have questioned the authority of the program.

And let me say, Mr. Chairman, too, that we felt that this is a good example of where the procurement power is used by the executive authority without any public consultation and we question that approach, not so much as a matter of authority but as a matter of judgment. And if the President wants industry and labor to comply on a voluntary basis we will applaud his doing everything he can to solicit that kind of cooperation, but to use the procurement power to compel compliance without a statutory mandate to do that, we think that even if there is technical legal authority we think it is a questionable exercise of his executive judgment, particularly when there is no public consultation, with such an approach.

Senator MATHIAS. Thank you, Mr. Chairman.

Mr. Evans, when I put a question to him a minute ago, about his agency being caught in conflict between the Department of Labor and the OFPP, said he would call for his lawyer, seek the opinion of the Attorney General. I thought it was providential that four lawyers should immediately follow him and that we could get the answer to this problem without bothering the Attorney General who is talking about other matters this morning.

You said the American Bar Association does not have a position on this question of conflict. So I am disappointed. My hopes were raised and they now have vanished. But, Mr. Hiestand, I would like to pursue this just one moment.

You say you think the original attention of OFPP should have overriding authority?

Mr. HIESTAND. Yes; that's my interpretation and understanding of what the Procurement Commission's recommendation would be.

Senator MATHIAS. That was their recommendation. What about the statutory authority to override the Secretary of the Treasury or other statutory officers who have certain statutory functions? Where is the authority to do that?

Mr. HIESTAND. Well, I think it comes out of the authorities delegated to OFPP by the statute, coupled with the legislative history of those authorities.

Senator MATHIAS. Could you point to the words?

Mr. HIESTAND. I think we start in two places. In section 6 of the act with the authorizations and statements of the functions that provide overall direction of procurement policy and this is where it becomes a matter of, I think, part of the dispute, what is procurement policy. The

argument is being made that the substantive aspects of the socioeconomic program are not procurement policies. Personally, I disagree with that. I think those programs are set up to be implemented through the procurement process and they have a direct and immediate impact on how the Government does its procurement, and the Government is using that process to carry out these policies. So you have to decide what is the right interpretation of the socioeconomic policy in order to get good procurement.

Senator MATHIAS. Let me ask you this: Would you carry it so far as to say that OFPP could set aside the minimum wage laws?

Mr. HEISTAND. No, sir; the statute clearly says that anything they do has to be consistent with existing laws so they have no authority to repeal or override the statute with respect to minimum wage.

Senator MATHIAS. Well, then, where do you make the distinction between minimum wage set by the statute and minimum wage set by a statutory process?

Mr. HEISTAND. I put it on the basis of what is the function involved, in deciding what is the going wage rate in the locality is what the Davis-Bacon Act says would be done.

Senator MATHIAS. I don't want to limit this to Davis-Bacon; that's just a convenient example.

Mr. HEISTAND. Yes. But there is a determination to be made and the appeal route for deciding. And now we are talking of whether the particular type of contract is a construction contract and now we are back to interpreting the statute of what did Congress mean when they said something was construction work. Before we had OFPP the only relief when you got into this problem at the Department of Labor was to go to the General Accounting Office. Because the type of contract involved the expenditure of funds, the GAO could make a decision and say, well, you are spending more money if you go the Davis-Bacon route, and if that's not a construction contract, I am not going to allow the payment. I am using that as a hypothetical case, but it was an actual case of going all the way through the Labor Department in a dispute with the contracting agency as to whether certain work was covered by what Congress intended to be covered as construction work. The Labor Department said it did. The agency still felt that it was wrong. GAO said Labor is wrong, you are right; we will not pay if you follow the Labor Department's decision. So in setting up the OFPP, I think it is a better route to get someone in the executive branch to resolve these kind of decisions rather than getting over into GAO and trying to take them up.

There ought to be a place within the executive branch to get a single focus on policy decisions of that type.

Senator MATHIAS. Well, in adopting your theory for a moment, you are talking about an agency with a relatively small staff.

Mr. HEISTAND. As OFPP, yes.

Senator MATHIAS. If you are going to give it the function that you have just described, that's a pretty big function, isn't it?

Mr. HEISTAND. Yes.

Senator MATHIAS. How do you propose, if they are going to become involved in this kind of function, that they are going to do the rest of the day-to-day work we have assigned to them?

Mr. HEISTAND. Well, we have to go back to the Procurement Commission's report that said, create this office, and I remember days on

end of discussion, well, what size should it be. There was never any kind of workload analysis made. It was our consensus that it ought to be kept small, and it will never even come into existence if the people come in and start talking about a huge agency. So I think conceptually it was right to create it and start it small and then we have got to look at what kind of functions have been assigned and are being assigned to it and adjust the size to meet that requirement.

Senator MATHIAS. But if we do as you have suggested for and refer questions to OFPP such as interpretation of the labor standards law, or the applicability of the Service Contract Act to such things as the overhaul of jet engines, which is something Mr. Evans might have to call his lawyers on—he says, no, he is shaking his head—could we continue to do this kind of thing with the existing staff, or the staff that is contemplated?

Mr. HIESTAND. No, I don't think so. But part of how you get at this particular question is to either decide that it is something within the executive branch that you can make your own decision on that might involve consultation with the President's advisers, as it did in this case, with the Attorney General. But you are still looking for one person to take the position. It may be big enough that they won't want to do that and they will say, well, let's send it back to Congress and get them to clarify it. I don't think there is a single answer that says this one office is to make every decision on its own without working with the rest of the executive branch.

Senator MATHIAS. The purpose of this office, as I understand it, was to streamline the procurement process.

Mr. HIESTAND. Yes, that was certainly one function.

Senator MATHIAS. The bottom line of my last question is, if you add on these questions of interpretation and conflict to the statutory officials executing statutory duties to streamline the procurement process, aren't you going to burden the office down to the point that you might lose that primary goal?

Mr. HIESTAND. I think there is a possibility. I would restate it in a different way, what is the primary goal, and I don't see how you can exclude this aspect of how you would determine the policy. There needs to be a place to coordinate all the decisions in the executive branch that impact on procurement.

Senator MATHIAS. For example, the Secretary of Energy has certain powers to affect the price of certain forms of energy. The Federal Government is a big user. Would you see OFPP getting into the price of oil, or the price of natural gas?

Mr. HIESTAND. I would say not, because that is being done society-wide. What we are talking to here—

Senator MATHIAS. I am not talking about society-wise. I am talking about specific authority of the Department of Energy in some cases.

Mr. HIESTAND. I am accepting that, but their allocation in pricing things is affecting the whole economy. We are talking here of how, when the Government is in the marketplace and buying, how does it go to that marketplace.

Senator MATHIAS. I keep hitting on Mr. Evans. I ought to go to somebody else, but his agency does buy some jet fuel.

Mr. HIESTAND. There are two things. One is, I don't think the policy office should ever be involved in a particular contract on what the price is on that contract.

Senator MATHIAS. But we are talking about the authority of the Secretary of Energy to set those prices.

Mr. HESTAND. I don't think that anything in the existing statute, nor do I think there should be, that gives OFPP any right to say that, Mr. Secretary of Energy, we tell you what price should be there for the Government purchase. I don't think that's the kind of function that the OFPP is involved in.

If you are talking about a management function here, of how does the Government go to the marketplace and what kind of policy, what kind of terms and conditions, and what kind of related policies which tie into that document that it sends out there and asks someone to sign and sell to the Government goods or services, we don't have that kind of—

Senator MATHIAS. So the OFPP is not going to interfere with the Secretary of Energy's powers to set rates on certain forms of energy, but you do think they have the authority to interfere with the Secretary of Labor's powers to make certain determinations as to the rate of labor?

Mr. HESTAND. Well, I think the statute gives OFPP a responsibility and authority that when it comes down to a difference of interpretation of the statute between two executive branches, Labor and the contracting agency, that, yes, OFPP was given responsibility to resolve that difference of views as to what is meant by that.

Senator MATHIAS. What I derive from your testimony then is that we ought to look very carefully at that list of agencies which the Administrator pointed to in his answer the other day, and make some value judgment as to the ones which Congress thinks the OFPP ought to have overriding authority and the ones in which they ought not.

Mr. HESTAND. I would think that, yes, the Congress should re-examine how they have written that legislation and make a policy decision of whether this is a proper role for OFPP or not.

Senator MATHIAS. Thank you.

Senator CHILES. Thank you very much.

Our next witnesses will be a panel representing aerospace, commercial, and small business.

Mr. Daniels is from the Small Business Association of New England. Mr. Henriques, is from a computer and business equipment manufacturers, association. And Mr. LeLauer, represents the aerospace industries.

Mr. Daniels, we will start off with you this morning, and we are delighted to have each of you here.

TESTIMONY OF ALFRED C. W. DANIELS, COCHAIRMAN, PROCUREMENT COMMITTEE, SMALL BUSINESS ASSOCIATION OF NEW ENGLAND

Mr. DANIELS. Mr. Chairman, Senator Mathias, staff, my name is Al Daniels and I am here representing the Small Business Association of New England. I am a member of that group which numbers 1,200 in its membership. I am a member of its board of directors and cochairman of its procurement committee.

SBANE, as we call ourselves, thanks the committee for this opportunity to come forward and to advocate the retention of the Office of

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Federal Procurement Policy in its current juxtaposition with the OMB beyond the "sunset" date of August 31 of this year. My procurement cochairman, Miss Lola Dickerman, says it well, that if there was not such an organization we would be trying to invent one such as OFPP. Our executive vice president, Lon Shattuck, goes further.

We had occasion to be part, that is SBANE had occasion to be a part of the Commission on Government Procurement. One of our members, now deceased, Mr. Don Barry, left his small business and spent a year with that Commission, and it is our belief that the OFPP arises out of that activity. Therefore, we feel we are not, so to speak, Johnny-come-latelies, but we have indeed helped to frame the organization and the issues.

Obviously we do not represent the policy. We understand well that that is in your hands. However, we did indeed advocate at that time, and clearly advocate very strongly now, the continuation of the organization.

We have given some thought to what are the most important items from the point of view of our membership for OFPP to utilize its somewhat unique locus and authority in the betterment of procurement, and in particular as it might affect small businesses such as ours.

The smaller businesses we represent and those who are also socially and economically disadvantaged would ask that the Office of Federal Procurement Policy proceed rapidly to promulgate the regulations for which they have asked comment. Those regulations are those that would implement section 211 and section 221J of Public Law 95-507. Those regulations were submitted for public comment in June and, as I am sure you know, do represent a follow-on to the minority subcontracting policy recommendations which were distributed for comment in April of 1978.

Likewise, the Small Business Association of New England would ask that a like detailed contract requirement be instituted as to R. & D. contracting. There is a gap, which should be talked about further, created because 211, 221J reach for both things under \$10,000 and regular procurement items in excess of \$500,000—construction more than \$1 million. Therefore, there is a gap between \$10,000 and \$500,000. Within that gap a number of R. & D. procurements occur and it is our belief that subcontracting requirements of the type contained in Public Law 95-507 should be made available for R. & D. procurements.

The last issue which we have chosen to raise in terms of the highest of our priorities is the need for prime contracting set-asides or goals for each of the departments and agencies in which R. & D. dollars might be made available to small business. As this committee well knows, more than half of the innovations occur within the milieu of small innovative companies. Yet, but 31½ percent of the procurement dollars make their way to that high-technology, intense area. It is the case that the dollars we are talking about here are some \$21.2 billion in size and we feel that it is critical that a prime contracting opportunity is made available much like our recommendations for subcontracting.

Thank you.

Senator CHILES. Thank you.

Mr. Henriques.

TESTIMONY OF VICO E. HENRIQUES, PRESIDENT, COMPUTER &
BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. HENRIQUES. Thank you, Mr. Chairman. As you know, I am Vico E. Henriques, president of the Computer and Business Equipment Manufacturers Association.

Our industry has had a history of significant interplay with the Office of Federal Procurement Policy since it was established. And as OFPP grows, there is even more interaction, the value of which increases both to the Government and to industry; however, before mentioning the positive accomplishments relative to OFPP, it may be well to cite some of the areas of shortcoming of this relatively new agency.

OFPP has been charged with the implementation and fostering of the recommendations of the Commission on Government Procurement. There remain unfinished a number of recommendations which need attention. We suggest that these recommendations should be reexamined to determine whether they should be completed, updated and then completed, or whether time has passed by the need for the recommendations and the recommendations simply should be cleared from the board. In this area OFPP should address the problem and deal with each of the recommendations so as to complete any required action on the products of the Commission on Government Procurement.

Second, the Federal acquisition regulations are a monumental undertaking. It appears to us, however, that the late start in the current authorized life of OFPP has forced them to concentrate their efforts on consolidation and smoothing of language, which we applaud, but does not permit the needed review and revision of policy on the basis of an intensive study of existing regulations and practice. We recommend that upon completion of the amalgamation effort, that OFPP immediately begin an examination of the policy aspects of a uniform set of Federal acquisition regulations.

Comment has been made to your committee concerning the lack of research and development on the part of OFPP. We agree that there needs to be within the current acquisition process, adequate market research about the industries and products with which contracting officers are dealing. We support the recent efforts by OFPP directed toward requiring agencies to do a more effective job of surveying the various products, distribution systems, and other factors of different industries before determining which will be the most cost-effective acquisition technique for the Government on a specific class of items. In future activities, OFPP should be encouraged to increase their effort in market research and to utilize the results of this research in the drafting of policy and regulations, and in the training of contracting officers. We feel that this will help preclude the abuses, or perceived abuses, which have been so widely publicized over the last few months.

The Federal Acquisition Institute is a much needed organization which will bring to bear the multitude of training activities, facilities, and knowledge within the Federal Establishment. We are concerned, however, that the concentration on Federal regulations and policy, solely, do not prepare many of the contracting officers to handle procurements for which assignments are made. In short, many of these

contracting officers are not trained in the technologies and products which they procure and, therefore, cannot be as effective as they ought to be in assuring that the overall best interests of the Government are being served when they conduct procurements. We hope that in the future OFPP can work to alleviate this problem.

Turning now toward the more positive side, I would like to make some more comments about the structuring of OFPP.

Questions have been raised regarding the statutory basis for OFPP. In reviewing its activity over the last 5 years there appears to be little that would commend itself to recommendation for change. The agency still appears to be valid and the framework within which it works, on a statutory basis, appear to be as sufficient today as they were when the law was written.

The location of the agency also appears to be well thought out and workable. We agree that OMB's clout is needed to make the policy pronouncements of the agency effective throughout the Government, but we also appreciate the necessity for OFPP to be a separately funded, and therefore, not easily discarded agency.

The current staffing level forces a discipline which is important in issue selection so that the mainstream of activities are channeled into those things which are of the greatest importance on a Government-wide basis in policy areas. There may be from time to time temporary resource supplements for large projects, such as the Federal acquisition regulations. These should be sought and supplied by the Congress on year-to-year appropriations. We do, however, have a concern that Congress may mandate responsibilities for issues without concomitant resources and we encourage your committee, and the corresponding committee in the House, to be sensitive to the potential overload which could be created for OFPP which could strain their resources and force a dilution in their activity level, such that it would become a bureaucratic farce.

A key strength of OFPP, from our perspective, has been the participation allowed and encouraged in the exploration and formulation of public policy. From the point of view of our industry, we are satisfied that the coverage of public participation is sufficient. Self-interest, however, enlightened, by itself could be injurious; but OFPP has sought out and received differing points of view on all issues with which we are familiar, and has drawn these together in assessing the final direction for policy regulation. The timing of this participation also seems to be quite acceptable since the interests that have been identified with policy issues are invited into the process early enough to be effective and to encourage thoughtful participation.

In the recent past, we have been exposed to the administration's anti-inflation program. The Government procurement aspects of this program have been explained to us by OFPP—while this is a program that our industry supports, but does not endorse, and upon which we can make no comment regarding its legality, we feel that OFPP has been a direct and effective means of communication so that industry is aware of, and a participant in, the administration's plans, policies, and actions regarding this major program. We congratulate OFPP for its efforts in this regard in spite of what may have been viewed as a probable adversary proceeding.

To speak generally of OFPP's value, from our industry's point of view, we believe that OFPP has fulfilled the objectives of section 2 of the enabling legislation. In particular, OFPP has served to highlight critical issues; for example, matters concerning the Service Contract and Davis-Bacon Acts, which need to be studied and for which recommendations need to be made for statutory, regulatory, and policy revision. OFPP provides a logical and convenient focal point for industry communication into Government, and for Government communication back to industry, regarding these key issues.

As I said in my opening remarks, we feel that the more OFPP works, the more valuable it will become in promoting understanding and cooperation between Government and industry.

As an example, we support OFPP's efforts in the promotion of private sector standards-setting organizations, rather than Government specifications. The use of such standards will promote governmental effectiveness and efficiency, without the stultifying effects of massive specification writing programs which generate "Government only" products. I have attached to my statement our position on the proposed OMB circular which was submitted to OFPP, for your consideration.

An area which we feel is critical to our industry and to the health of the country is the need for OFPP to recognize in its R. & D., in its training efforts, in its regulatory activities, and in its general management functions, the need to create incentives for the inspiration and introduction of innovative new technology into Government. We hope that this will be an initiative which OFPP will undertake and which will separate itself in technique, concern and activity from many of the mature and stable activities and products for which OFPP is responsible. We endorse the administration's suggested initiatives in this area and add our support and cooperation in working with OFPP to keep Government current and an active partner, through its acquisition activities, in the promotion of American industry.

In conclusion, Mr. Chairman, we believe that OFPP has done a good job in its first 4½ years. We applaud your wisdom in setting "sunset" provisions so that a thorough airing of the whole operation can be accomplished and the continued need of the Agency can be explored on a periodic basis. I think that 5 years is an appropriate period for such a review and recommend a simple revision in the initial legislation, in section 11, which would extend the life of OFPP for 5 more fiscal years.

Thank you, Mr. Chairman, for your kind attention. If you have any questions now or later, for the record, I will make every attempt to answer them fully.

Senator CHILES. Thank you, sir.

Mr. DeLauer.

**TESTIMONY OF RICHARD D. DeLAUER, EXECUTIVE VICE
PRESIDENT, TRW CO.**

Mr. DeLAUER. Thank you, Mr. Chairman. I am Dick DeLauer, executive vice president of TRW, and acting as spokesman for the Aerospace Industries Association, the National Security Industrial Association, and the Electronic Industries Association.

We have submitted statements in regard to our view about the continuation of OFPP. I personally sent you a letter the 23d of February stating our company's position, so I won't take your time to read all the Manhattan telephone directory that we submitted to you in support of continuing OFPP.

Simply stated, their job isn't finished and it ought to be finished.

There is one additional item that was not covered this morning that I think I ought to mention, and I think it goes to a point that Senator Mathias was talking about.

We have made a recommendation that in your consideration of the Cost Accounting Standards Board activity which should be transferred from GAO, we believe the CAS Board might well be placed in the Office of Federal Procurement Policy.

I will respond to questions. I think it is the best way to use our time.

Senator CHILES. Thank you.

One of the biggest complaints about the Government procurement system is the mass of paperwork that it produces. Now that hinders business participation in the system. One of OFPP's most important functions is to simplify regulations and forms, and certainly this should reduce paperwork.

What is the assessment of each of you of the Office of Federal Procurement Policy's efforts to reduce paperwork in the procurement system? Are there any specific examples of paperwork reduction that comes to mind? Do you think there is more they could do, or that they feel they are doing something or not doing something in that area?

Mr. DANIELS. Mr. Chairman, answering for SBANE, I would say SBANE has no position that has been formulated to date. However, it is clear that the paperwork that is required of smaller businesses is often a very difficult threshold for small businesses to get over either in continuing to do business with the Government via procurement or to enter into business with the Government. It is clear that the Government is attempting to reduce this paperwork. Our organization is participating with the Small Business Administration in order to poll its membership, and its membership has been asked to provide yet another set of forms to the SBA in order to describe the amount of paperwork that we are undertaking. However, we do recognize that there is an initiative in this direction.

There still is far too much paperwork. We think the paperwork is provided in an evenhanded fashion, which may not be appropriate for small businesses.

Senator CHILES. Mr. Henriques?

Mr. HENRIQUES. We have observed that in the prior effort there is a significant reduction in regulatory language that would be applied. Consistent with that, and perhaps stemming from other areas, certain of DOD's efforts, and GSA's efforts in the Federal procurement regulations, there have been significant simplifications both in the required documentation relative to contracts, and in supporting documentation relative to proof of commerciality, and we applaud both of these.

Mr. DELAUER. Mr. Chairman, there is no question that we should get on with the procurement uniformity with a bit more rational approach to throw out interagency procurements and help the paperwork. I will take the opportunity to tell you that the procurement system is not the problem.

Senator CHILES. Is not what?

Mr. DeLAUER. It is not the problem which causes the paperwork. We have more requirements, from the industry standpoint, from the SEC, FTC, and Office of Equal Opportunity, for example. The regulatory agencies are the ones that cause us the paperwork, not the procurement activities.

So if you are looking at OFPP to solve the avalanche of paper coming out of Washington, you are looking only at the tip of the iceberg and not the part that is under water.

Senator CHILES. Senator Mathias.

Senator MATHIAS. Thank you, Mr. Chairman. I have a question for Mr. Daniels.

I think it would be useful to hear your thoughts on the roles of the Office of Federal Procurement Policy and the Small Business Administration in the Government. Should there be a difference between OFPP's role and the Small Business Administration's role in encouraging small and minority business; for example, what effect has OFPP had on the Small Business Administration's responsibility to promote small business participation in Federal contracting? It is a little bit different from the question of conflict with other agencies, but rather than question what your conflict is, I am asking whether your role complements the work of other agencies.

Mr. DANIELS. The Small Business Association of New England feels that it is critical to have an Office of Federal Procurement Policy located just where it is in order to give us a spokesman, in order to give us a watchdog who can insure that the policies and the regulatory activities of that agency are followed through. It is a case that we do see complementary roles between the SBA and the Office of Federal Procurement Policy.

I think a case in point, Senator Mathias, would be the issuance by the Small Business Administration of its rules of engagement for 8(a) companies which appeared in the Register. Likewise and separately, the Office of Federal Procurement Policy submitted to the Register for review its implementation of 211 and 221J of 95-507. Those roles are indeed distinct, and we think complementary.

Moreover, we believe that OFPP to some extent took the lead and by their own example were helpful in getting the SBA to take its necessary action.

It would be possible to talk for about 4 hours on the issues that you have raised, re how helpful has the OFPP been to small business, how do we see the interrelationship with SBA.

One of the things that I think might be said, if I am only going to comment on one, would be the issue of the FAR. As you know, Senator Chiles has reintroduced what had been called the Federal Acquisition Act as the Federal Acquisition Reform Act, S. 5. It is the case that that is going to be the document which will be the basis for the promulgation of the FAR's. You have heard earlier today that the DAR is being adopted in some way to become the FAR.

I spent 1½ hours with Mr. Fettig in his offices about 3 weeks ago. He assures me that is not the case.

We are very much dependent that the DAR does not become the FAR. It is clear this suggestion made to you that possibly the CASB ought to be considered for movement under the OFPP is a thing we

ought to be talking about. You may know that, in fact, the Standards Board has taken a small business concern in releasing small business from a number of their standards. However, the ASPR and the DAR have, in a somewhat circuitous way, begun reintroducing some of these very same standards back into and made applicable to businesses even though, if just the standards were required, we would not have to deal with some of those clauses. We, moreover, note that the architects of FAR, and Mr. Fettig assures me of this, are attempting to take a somewhat lower threshold where smaller business is concerned.

There is, also, I might add, a very radical view on this that maybe you should be exposed to. Mainly, that instead of us consolidating the old ASPR, now DAR with FPR, and coming up with the FAR, that in fact we ought to be retaining something like the DAR and something like the FPR, and, of course, you may already see the thrust that since the Federal procurement regulations represent a much lower threshold for small businesses to engage in procurement with the Government, one might use a much less stringent set as a vehicle for small business, thank you.

Senator MATHIAS. As I understand it, you said we did need to resolve the questions of conflict?

Mr. DELAVER. Yes. Let's take the high technology area which was taken out of the Department of Labor into the Services Contract Act. In the high technology area you will find that we have had a considerable amount of problems in the procurement regulations between Department of Energy, NASA, and the Department of Defense. They each have different ways to attack particular problems. You will find that in many cases the terms and conditions are different. You will find that in many cases the resolution of contractual conflict is different and you have completely different organizational conflicts of interest.

OFPP has taken a very positive view in trying to resolve these differences in a more uniform manner so that when our contract people look into the Government procurement system, they are looking into at least a reasonably uniform set of requirements. I think OFPP is doing an excellent job in that area and should continue to do so.

Senator MATHIAS. What about situations where maybe the Congress ought to give them the power to do this but they can't be a self-starter?

Getting back to the Service Contract Act, are you familiar with the *Curtiss-Wright* case?

Mr. DELAVER. No; but I am familiar with my own.

Senator MATHIAS. The *Curtiss-Wright* case was tried in the Federal Court, District Court for New Jersey, and in that case Judge Coolahan determined that you could not tamper with the Department of Labor's determinations even judicially. How can you override a determination administratively if you can't reach it judicially?

Mr. DELAVER. You are talking to an engineer and not an attorney, Senator. You are not going to get me into that kind of interchange with you.

Senator MATHIAS. Well, you keep beating on Mr. Evans.

Mr. DELAVER. He is an ex-naval officer like I am. We are not going to court without our lawyer. I can't respond to that particular issue.

Senator MATHIAS. Thank you.

Senator CHILES. All right.

Mr. Henriques, I believe that commercial suppliers share my opinion that the use of detailed specifications inhibit competition for Federal contracts. The specification for grits is one that I constantly use as an example. It took us over 3 months to get only a part of that specification, and when we were able to get that, the stack approached about 1 foot, that's the one we were able to get for the detailed specification for grits.

We think that we need to move to simple purchasing descriptions for commercial purposes. The Office of Federal Procurement Policy has a project underway which stresses the use of commercial descriptions and commercial distribution channels. How effectively has the Office of Federal Procurement Policy implemented that program? Has the program brought about a reduction in detail of the Government's specifications, and what is your assessment of the procuring agencies' compliance with this program?

Mr. HENRIQUES. Well, to begin with, we agreed with the concept of increased use of commercial descriptions, particularly in high technology areas where the product cycle changes on an 18-month to 3-year basis. By the time the specifications are written, and by the time they have been smoothed and standardized within the Government, the product is obsolescent and, therefore, not serving the best needs of the Government in terms of its effective and efficient use.

There is a danger in some commercial specifications that it would tend to be toward the low end of the quality range on products, and we are working with OFPP and other procuring agencies on the particular kinds of commercial definitions that would be used for procurement.

I think it is a little early yet to assess the effectiveness of OFPP's program since it has not been fully implemented either through GSA, DOD, NASA, or the others, but we think it is a healthy direction in which to go, and more reliance on commercial products by commercial description rather than Government specification is something that we endorse heartily.

Senator CHILES. Thank you, each of you, for your appearance here today.

Our next witness is Mr. Robert A. Georgine, president of the Building and Trade Department of the AFL-CIO.

Mr. Georgine, we are delighted to have you with us today. Would introduce your people who are with you?

TESTIMONY OF ROBERT A. GEORGINE, PRESIDENT, BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO, ACCOMPANIED BY THOMAS DUNN, GENERAL COUNSEL; AND DAN MONDAY, LEGISLATIVE DIRECTOR

Mr. GEORGINE. Thank you very much, Mr. Chairman, Senator Mathias.

I have with me our general counsel, Tom Dunn, and our legislative director, Dan Monday.

Mr. Chairman, I realize that the hour is late, and I would like, with your permission, to make a very short statement and ask that my more formal position be made a part of the record.

Senator CITIES. Your statement in full will be made a part of the record. I will be delighted to have you proceed in any way you like.

Mr. GEORGINE. Thank you very much.

I am appearing today on behalf of the affiliated unions of the Building and Construction Trades Department which number in membership somewhere over 4 million workers. I am appearing today on behalf of these workers because of our deep concern about the incursion of the Office of Federal Procurement Policy into the Federal labor standards area in the name of the battle against inflation. These workers are some of the principal victims of inflation and support genuine efforts to bring it under control. Nonetheless, they oppose phony policies which invoke anti-inflation as the justification for undermining their hard-won labor standards.

On July 28, 1978, OFPP decided that \$910 million worth of contracts formerly covered by the Service Contract Act would now be covered by the Walsh-Healy Act. The effect is to substantially lower the minimum wages required to be paid to workers employed on these contracts. This decision overruled an earlier decision of the Secretary of Labor.

The Building Trades pointed out that OFPP does not have the authority to overrule decisions by the Secretary of Labor and that the Office of Procurement Policy contends that Congress delegated to it broad and sweeping authority which takes precedence over all executive agencies' authority with respect to procurement matters.

My concern is that OFPP believes that it has authority to overrule the Secretary of Labor concerning any questions relating to Federal labor standard requirement, including the Davis-Bacon Act.

I have reviewed the language of the OFPP Act, as well as the legislative history, and there is no support for OFPP's claim. On the contrary, the OFPP's authority was expressly limited to the procurement aspects of Federal labor standards requirements. Certainly questions relating to the applicability of the Service Contract Act or some other labor standard clause are not procurement questions. Questions such as this are for the Secretary of Labor to resolve. The language of each of these labor standards laws clearly delegates exclusive authority to the Secretary of Labor. Yet, the OFPP argues that its statute repealed or amended these provisions.

The OFPP Act is, however, silent concerning this alleged repeal. Our Legal Counsel advises us that the provisions of an existing law cannot be amended or repealed by a subsequent Act unless it is spelled out.

Nonetheless, OFPP insists that this was the effect of the OFPP Act. We believe that the intent of Congress is clear. It was our understanding when the OFPP Act was passed that Federal labor standards requirements would not be disturbed. Our expectations were wrong. This is the second time that OFPP has attempted to usurp the Secretary of Labor's authority.

In 1976 OFPP Administrator Hugh Witt, tried to do the same thing which Mr. Fettig is now trying to accomplish.

After that change of administrations, however, the proposed regulations which would have given OFPP authority over the Secretary of Labor were withdrawn with the understanding that OFPP lacked such authority.

Based on this experience we would like to clarify OFPP's authority once and for all and this can only be done if this committee conditions further authorization to OFPP on the understanding that it may not or should not meddle in matters relating to labor standards which are within the Secretary of Labor's exclusive authority, and that subsequently, Mr. Chairman, or in essence, really, is our major objection to the administration policies of OFPP at this time.

Senator CHILES. I understand that conflicts between the Department of Labor and other executive agencies, such as NASA, the Department of Defense, that those conflicts have occurred in some frequency over the years, especially in regard to the Service Contract Act. I know of a number of those conflicts myself with NASA having installations that they have in Florida, involving a number of those.

It seems to me that those problems often simply go unresolved. The conflicts escalate and the hostility just kind of mounts and there doesn't seem to be any forum in which those conflicts are ever solved.

It seems that it would be appropriate for some agency, whether it be OFPP or someone else, to be a focal point for deciding those particular conflicts. Would you all agree that that's necessary, that there needs to be some forum for deciding those conflicts?

Mr. GEORGINE. Well, Senator, we think that that form is the Department of Labor, and that the Department of Labor should be the final and binding decisionmaking authority.

Senator CHILES. But in fact it hasn't been. It has not been the final decisionmaking agency, if the Department of Labor decides that the Service Contract Act applies, but the procuring agency just fails to follow the Department of Labor's determination, and they have done that in a number of cases, they have done that in a couple of cases in which I wanted the Department of Labor's side to win.

I was concerned about some of our workers, the space workers, but NASA in this particular instance paid no attention to what they said, and went right ahead with the contract, and ultimately it ended up with some of the employees of the contractor suing, and the contractor suing, and that went to court. But the Department of Labor didn't get in the lawsuit or did not file the lawsuit. At the same time, NASA didn't file the lawsuit, and NASA just didn't pay attention to what the Department of Labor said.

It seems like to me if Government is going to work there has got to be at some stage some decision of Government which becomes a decision. Then you litigate that if you want to. But you shouldn't have two agencies, one saying one thing, and the other one saying the heck with you, I am not going to do it.

Mr. GEORGINE. Well, Mr. Chairman, let me say that in those cases those other agencies, we think, are violative of the law in not complying with the Labor Department's decision. And in those cases where we did have to go to court to get relief, the courts have upheld the workers' position, so basically I think I will let our General Counsel amplify that.

Mr. DUNN. Mr. Chairman, we have that trouble in those court cases because the agencies refuse to follow the statutory directions of the Department of Labor. That's where the trouble is. Even the Procurement Commission, when they came out with their reports years ago, they admitted that the reason why those social acts are not complied with is because the contracting officers of the agencies don't like the acts because they don't care for them. So what should be done is the Congress should tell these agencies to do what the law requires and that is to follow the statutory directives of the Department of Labor, the Secretary of Labor.

All these cases came about for that reason. You take the cases that you discussed with some people here previously, that employees have to sue for the imposition of wages which the Secretary of Labor has found to be determinative and they have to pay their own attorney's fees and yet it apparently is still going on that the procurement officer having the taxpayer pay his attorney's fees.

I have a case, I have not got it with me—

Senator CHILES. Yes; I noticed that.

Mr. DUNN. A case someplace in the Midwest 5 or 6 years ago where for 4 or 5 years a procurement contractor under the Service Contract Act was committing unfair labor practice after unfair labor practice. It was within the Board's jurisdiction for 2 or 3 years, and every penny of his attorney's fees, and those were not low priced attorneys, either, were being paid by the U.S. Government. There is something wrong with that.

So I would say that the answer to your question is that the Department of Labor has the statutory authority and only the Department of Labor, to impose these labor standards and to require the agencies to do so.

Now, they have had their directives even after the Davis-Bacon Act in 1931 and 1935 to do just that. President Truman told them in 1950 that these Federal Labor Standards Acts were not passed for the benefit of saving money for the taxpayers. It was passed for the enforcement of these acts and that's not being done by the contracting agencies.

Senator CHILES. Well, it seems that the issue involved here in regard to settlement of disputes also go beyond some of the socioeconomic aspects that we have tried to set forth, that the Congress has set forth. Many of them go into procurement disputes between two agencies and, again, I would like to know what your view would be in regard to whether there should be a focal point for the settlement of those kinds of disputes between two agencies.

We heard today, for example, a dispute between the Department of Energy and the Department of the Interior on procurement matters, contract matters.

Mr. DUNN. Well, I don't know whether we would ever get involved on the question of determination of wages either under the Davis-Bacon or Service Contract Act involving two agencies. Generally, and probably thankfully, we have only had disputes with one agency that has control of the procurement contract, but it seems to me that if it is a question involving the socioeconomic labor standards that my answer would still be that that is a matter for the Secretary of Labor to decide.

Senator CHILES. Senator Mathias?

Senator MATHIAS. Since we raised the question of cases, I would like to ask something in the light of the *Curtiss-Wright* case that I mentioned a minute ago. I don't know whether you happen to be familiar with it. It came out of the Federal court of New Jersey. The court said of the Secretary of Labor's determination, and I think this is a direct quotation, "That once made, his determination is not judicially reviewable."

Now, in light of that statement on the part of the court, and I am in ignorance as to whether it has been altered by any superior court ruling, but for the moment, in light of that determination, where is there any explicit authority within the OFPP Act to overrule a determination of the Secretary of Labor?

Mr. DUNN. Senator, there is not explicit authority or implicit authority in the OFPP Act that gives the Office of Federal Procurement Policy the authority to overrule the Secretary of Labor. And you are perfectly right about the case in New Jersey.

Senator MATHIAS. If the courts can't do it how can an administrator do it?

Mr. DUNN. All you have to do is go back to the U.S. Supreme Court case in 1953, and that's the case of *Binghampton v. The United States*, and in that case Chief Justice Warren said in a very short opinion getting rid of the issue that you have discussed, that the decisions of the application of the Davis-Bacon Act, concerning the Davis-Bacon Act, and any wage determinations made by the Secretary of Labor were not reviewable by the Court, and that was the intent of Congress. That was that case.

Senator MATHIAS. Well, now your concern, stated very succinctly by Mr. Georgine, relates to the Labor Standards statute. Our problem is a broader one.

Are you familiar with the response given by the Administrator, Mr. Fettig, in setting forth the list of statutes that he felt created conflicts of this sort?

Mr. DUNN. Yes.

Senator CHILES. Do you think that's comprehensive? Do you disagree with it? Is it too long or too short?

Mr. DUNN. I think it is fairly comprehensive.

Senator MATHIAS. In other words, you agree factually that the problem we are addressing here—

Mr. DUNN. If it is the same list that includes Service Contract and the Davis-Bacon Acts.

Senator MATHIAS. I might ask you to look at that.

Mr. DUNN. I will.

Senator MATHIAS. Get his statement and look at it, and if you have any additions or subtractions let us know. I won't put that burden on you right this minute.

Mr. DUNN. All right.

Senator MATHIAS. Can you determine from what source the Administrator is claiming this authority? As I read the testimony it is asserted under the general authority to promote efficiency and effectiveness in government procurement, and to deal with procurement aspects of these acts. Does that seem to you to be a sufficient foundation to alter statutory procedure?

Mr. DUNN. It is not. He has the right to do as you just stated with a little addition, "in accordance with applicable law," the applicable law here being the Davis-Bacon end of the Service Contract Act. That's what we are talking about, and he has no authority under either of those acts unless Congress gives him authority.

Senator MATHIAS. I don't want to stretch the analogy too far, but a case that went against Labor was the famous *Steel* case during the Truman administration.

Mr. DUNN. That's right.

Senator MATHIAS. In that case, the same rule basically was applied, that the executive agency can't act in the absence of clear constitutional and statutory authority.

Mr. DUNN. There is no supporting statutory authority as far as we know that gives the Administrator of the Office of Federal Procurement Policy the authority to do what he did in the airplane engine and jet engine cases, what he apparently might intend to do in the future with respect to regulations and policymaking decisions, and with respect to the Davis-Bacon and Service Contract acts.

Incidentally, one of the members of the American Bar group that appeared with respect to their particular committee of the American Bar, I am cochairman of the Federal Labor Standards Committee of the American Bar Association and, of course, I can't speak for that committee, as he suggested, nor can I speak for the American Bar Association, but I have my own personal individual opinion that the authority that the Administrator of OFPP is trying to exercise is without foundation. We have briefed it many times and, of course, our statement of Mr. Georgine indicates that.

Senator MATHIAS. I have just one more question to Mr. Georgine.

Lawyers can argue about what the law is, but the bottom line is how it ends up as dollars and cents. The Administrator has testified on what would be the effect on the Government, but what is going to be the effect on workers whose wages are impacted by this kind of a procedure?

Mr. GEORGINE. Well, Senator, I would submit that the largest cost in any process is certainly not workers' wages. There are many other cost factors where savings could be made and that is, I think, where the emphasis should be made. The only thing that can result from this kind of action is to reduce workers' wages, and workers are the ones that suffer most by inflationary impact.

And the fact of the matter is that if you were to ask a question, can you build a building, or can you repair a motor cheaper if you reduce someone's wages, the answer is obviously yes.

Senator MATHIAS. In other words, the contract is going to be smaller.

Mr. GEORGINE. That's right, presumably, but it may not be. That saving may not be given to the Government. But in any case, these laws were established to protect workers' wages and they are very honest and they are very fair, and all they really say is that workers cannot be paid less than the rate that is established by the Department of Labor and that is not inflationary. That doesn't increase the rate that exists in the period, it only maintains it.

And what the opponents of that would like to do is reduce those wage rates, reduce the amount of money that workers take home and, therefore, unjustifiably, hurt the working people of this country.

Senator MATHIAS. Now, it is my understanding that the purpose of OFPP when it was established was to streamline the procurement policies of Government which have become very burdensome. You have no objection to that?

Mr. GEORGINE. Absolutely not, Senator. I only object to unlawfully reducing wages of workers.

Senator MATHIAS. Which you see as coming about by extending the authority, or the assertion of authority, beyond streamlining procurement policy and into the activities of other statutory officials of Government.

Mr. GEORGINE. That's exactly right, sir.

Senator CHILES. My understanding, and I am trying to get this clear to understand a little bit, is that the Office of Federal Procurement Policy recognizes that the Department of Labor has sort of sole authority and responsibility to issue wage determinations and I understand the Labor Department recognizes that the Office of Federal Procurement Policy has the authority to issue directives regarding the procurement aspects of the Labor Standards Act, and it looks like, as I understand it, the dispute here is whether the determination on which a wage law applies, whether that's a procurement question or a labor standards question, and that's where the dispute lies. Am I correct up to there?

Mr. DUNN. Not as far as I am concerned, Mr. Chairman. I don't think the Secretary of Labor has changed his position that he alone has the authority to determine whether the service contract or Davis-Bacon Act applies in a particular instance. I don't think that they have abandoned their authority here.

Senator CHILES. Well, as I understand, again, if it is a service that you are talking about, then there is no question the service contract is going to apply. If it is a product that you are talking about, for example, in the overhaul of the jet aircraft engines, as I understand the dispute is, is that a service that you are talking about or is that a new product that you are talking about? If it is a product, then it could fall under OFPP. If it is a service, then it is part of the Service Contract Act and falls under the Department of Labor.

Mr. DUNN. Right.

Senator CHILES. Then, what you are saying is, whether it is a product or a service, it is up to the Department of Labor wholly to decide without some other agency being able to say, wait a minute, that's not a service, that's a product?

Mr. DUNN. That's right. As a matter of fact, Mr. Chairman, ever since the act was originally enacted—the Davis-Bacon Act—I can speak more intelligently on that, the service contract, since 1931 and again amended in 1935, the Solicitor of Labor, all these years have made such decisions saying that this is manufacturing and not covered by Davis-Bacon. Many, many decisions, and that has happened up until the present time. It was that dispute, of course, that caused the rift between the Department of Labor and the Office of Federal Procurement Policy. The Department of Labor said it had a right to determine that the jet airplane engines were covered by service contract rather than the Walsh-Healy. Of course, the Walsh-Healy is a dead act.

The Office of Federal Procurement policy was reducing people who are working on the repair and rehabilitation of aircraft engines under the minimum wage law. I doubt very much if I was a pilot of an aircraft I would like people getting \$1.50 or \$2 an hour to fix an airplane. That was the dispute there, Mr. Chairman, as I understand it.

Senator CHILES. Thank you very much.

Mr. GEORGINE. Thank you, Mr. Chairman.

[The prepared statement of Mr. Georgine follows:]

PREPARED STATEMENT OF ROBERT A. GEORGINE, PRESIDENT,
BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

My name is Robert A. Georgine, President of the Building and Construction Trades Department of the AFL-CIO. Membership in the International Unions which are affiliated with the Building Trades Department now number over four million. Frequently, these members perform work on construction projects subject to the Davis-Bacon Act and its related statutes. Hundreds of thousands of the members of these unions are engaged in work other than construction, much of which is covered by the McNamara-O'Hara Service Contract Act and the Walsh-Healey Public Contracts Act. Representatives of many of these International Unions have accompanied me today to demonstrate their concern about this issue.

I am appearing today on behalf of these workers because of our deep concern about the incursion of the Office of Federal Procurement Policy (OFPP) into the federal labor standards area in the name of the battle against inflation. These workers are some of the principal victims of inflation and support genuine efforts to bring it under control. Nonetheless, they oppose phony policies which invoke anti-inflation as the justification for undermining their hard-won labor standards.

This is exactly what the OFPP has attempted to do by ruling on July 28, 1978 that \$910 million worth of Air Force contracts involving the overhaul and maintenance of aircraft engines fall solely within the purview of the Walsh-Healey Act -- which only mandates payment of the minimum wage.

Since at least 1973, the Department of Labor has maintained that the performance of such work constitutes contracts for "services", and, therefore, are within the scope of the Service Contract Act -- which requires payment of a prevailing wage rate. OFPP Administrator Fettig's July 28 decision implicitly overruled Labor Secretary Marshall's continuation of the Department's policy.

Chairman Thompson of the House Labor Subcommittee, on Labor-Management Relations immediately held a special oversight hearing on the OFPP decision on August 10, 1978. Following that hearing and based on the testimony presented by a number of labor representatives, Chairman Williams of the Senate Human Resources Committee and Chairman Thompson asked the Office of Management and Budget (OMB) to delay Mr. Fettig's decision because OFPP had exceeded its statutory authority inasmuch as Congress has given the Secretary of Labor sole responsibility for administering the Walsh-Healey Act and the Service Contract Act. The OMB agreed to delay the ruling for 60 days -- until November 1, 1978.

Thereafter, on October 30, 1978, the Counsel to the President requested Attorney General Griffin Bell to determine whether OFPP has statutory authority to overrule decisions by the Secretary of Labor concerning the interpretation and application of the various Federal labor standards requirements including the Service Contract Act, Davis-Bacon Act and Walsh-Healey Act.

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In its memorandum for the Attorney General in support of its position, OFPP stated that the 1974 Federal Procurement Policy Act gave the Administrator of OFPP "broad and sweeping" authority to prescribe policies and regulations to be followed by executive branch agencies in the procurement of most goods and services. That authority is directive, not advisory, in nature, and takes precedence over all executive agencies' discretion with respect to laws affecting procurement, OFPP claims. It asserts:

"We believe that, in the case of the Walsh-Healey Act, the Davis-Bacon Act, the Service Contract Act, and Executive Order 11246 -- all of which are implemented solely through the procurement process -- there can be no aspects within the administrative discretion of the executive branch to interpret that are not 'procurement related.' Stated another way, we cannot imagine a discretionary action taken pursuant to any of those laws or E.O. 11246 that would not have an effect -- often profound -- on the procurement process."

OFPP advised the Attorney General that the express language and the legislative history of the OFPP Act indicates that OFPP is to be the final authority for procurement policy issues that involve more than one executive agency. OFPP concludes, therefore, that: "The dispute between several executive agencies and DOL over application of the prevailing wage laws is precisely the type of conflict OFPP was intended to resolve."

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The OFPP memorandum reviews the developments leading to the agency's creation within OMB in support of its argument that Congress intended that the OFPP Administrator could repeal, amend, or supersede the policies and regulations established by other agencies.

It is my view, however, that there is nothing in the Office of Federal Procurement Policy Act or its legislative history to support OFPP's position that its authority under the Act is so broad as to include the power to override the Secretary of Labor's interpretations of the labor standards requirements.

OFPP was established by the Office of Federal Procurement Policy Act, 41 U.S.C. 401, et seq., in order to promote economy, efficiency and effectiveness in Government procurement by coordinating the procurement policies and programs of the executive agencies, avoiding unnecessary requirements on contractors and procurement officials, and achieving greater uniformity and simplicity in procurement procedures.

The provisions of the Office of Federal Procurement Policy Act and its legislative history expressly limit OFPP's authority to the "procurement aspects" of the Service Contract Act and other socio-economic programs. Section 6 of the Act, 41 U.S.C. §405, states that the OFPP has the authority to provide overall direction of procurement policy by prescribing policies, regulations, procedures, and forms, which shall be

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followed by executive agencies in procurement of property (other than real property), services, and construction which must be "in accordance with applicable laws" and "with due regard to the program activities of the executive agencies."

OFPP contends that the Report of the Commission on Government Procurement, the language of the Office of Federal Procurement Policy Act, and its legislative history demonstrate that OFPP was intended to have, and was given, authority to overrule decisions by the Secretary of Labor whenever the former agency feels such decisions are inflationary or cost inefficient. Examination of these documents indicates, however, that there is no support for OFPP's position.

OFPP also relies upon language in the OFPP Act and its legislative history which authorizes the Administrator to provide overall direction of procurement policy. While there is no disagreement that the Administrator is authorized to "provide overall direction of procurement policy", the statute's legislative history does not support the Administrator's contention that there are no aspects of Federal labor standards requirements which are not "procurement related".

Social legislation, such as the Davis-Bacon Act and the Service Contract Act, admittedly is related to procurement in a broad sense. Nevertheless, regardless of the authority Congress may have conferred on OFPP in matters relating to conventional procurement questions, the interpretation and

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administration of socio-economic requirements which have been inserted over the years into the "clauseology" of modern government contracts is an entirely different matter.

There is no indication in the language of the OFPP Act or its legislative history which indicates that Congress intended to alter this well-established practice by delegating to OFPP preemptive authority over all socio-economic policies, regulations and procedures implemented through the procurement process. In fact, the most explicit statement in the statute's legislative history about OFPP's authority with regard to such programs recognized the distinction between their substantive requirements and their procurement aspects. The Senate Report on the OFPP Act states:

"The OFPP's cognizance of procurement policy would extend to the procurement aspects of regulations issued by the social and economic agencies such as the Small Business Administration, the Environmental Protection Agency, and the Department of Labor (Davis-Bacon, Walsh-Healey, contract safety standards, equal employment opportunity). The Commission [on Government Procurement] found that existing procedures for coordinating the procurement aspects of such socio-economic regulations range from virtually non-existent to barely satisfactory." [Emphasis added. S. Rep. No. 93-692, 93d Cong., 2d Sess., reprinted in [1974] U.S. Code Cong. & Admin. News 4600.]

In addition, Senator Chiles, co-sponsor of the Senate version of the OFPP bill and Chairman of this Subcommittee observed:

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"Senator Chiles. S. 2510 might give authority to [OFPP to] coordinate existing statutes, but it would not give the office any authority by rule or regulation making powers for them to go forward on their own on social objectives. I think we want to point this out and make sure that we are making legislative history. If it wants to make recommendations to the Congress, that is one thing. [Establishing Office of Federal Procurement Policy: Hearings on S. 2198 and S. 2510 Before the Ad Hoc Subcomm. on Federal Procurement of the Senate Comm. on Government Operations, 93d Cong., 1st Sess. 224 (1973).]

I believe that the intent of Congress is clear. Obviously, OFPP disagrees. It was our understanding when the OFPP Act was passed that Federal labor standards requirements would not be disturbed. Our expectations were wrong. This is the second time that OFPP has attempted to usurp the Secretary of Labor's authority. In 1976, OFPP Administrator Hugh Witt tried to do the same thing which Mr. Fettig is now trying to accomplish. After the change of Administrations, however, the proposed regulations, which would have given OFPP authority over the Secretary of Labor, were summarily withdrawn with the understanding that OFPP lacked such authority.

Based on this experience, we want to clarify OFPP's authority once and for all. This can only be done if this Committee conditions further appropriation of funds to OFPP on the understanding that it may not meddle in matters relating to labor standards which are within the Secretary of Labor's exclusive authority.

Thank you.

Senator CHILES. Our next witness is the director of research of AFL-CIO, Mr. Rudy Oswald.

TESTIMONY OF RUDY OSWALD, DIRECTOR, RESEARCH DEPARTMENT, AFL-CIO, ACCOMPANIED BY KENNETH A. MEIKLEJOHN, LEGISLATIVE REPRESENTATIVE AND JOHN ZALUSKY, ECONOMIST, AFL-CIO

Mr. OSWALD. Mr. Chairman, accompanying me is John Zalusky, economist, and Kenneth Meiklejohn, legislative representative of the AFL-CIO.

Mr. MEIKLEJOHN. Mr. Chairman and Senator Mathias, I would like, before we start our testimony, to submit for the record the statement that Mr. Kenneth Blaylock, national president of the AFGE would have submitted if he had been able to be here. He was here, but was, unfortunately, unavoidably called away. I would like to ask that his statement be included in the record.

Senator CHILES. Certainly, the statement will be put in the record. We are sorry that he was unable to stay.

Mr. MEIKLEJOHN. He was very sorry that he had to go, but it was unavoidable, and he asked me to advise you that if there are questions based on that testimony he would be very glad to answer them.

Senator CHILES. Thank you. We did have some questions for him and we will submit those to him and ask if he can answer those for our record.

Mr. MEIKLEJOHN. Thank you very much.

Mr. OSWALD. Mr. Chairman, I would also ask that my entire statement be made a part of the record.

Senator CHILES. I appreciate that, and I am sorry that our hour is running so late. Your statement will be placed in the record following your oral testimony.

Mr. OSWALD. Basically, the AFL-CIO is in support of the extension of the Office of Federal Procurement Policy and the issue we would like to raise today is one that you have talked about earlier, I would like to give some additional background on that issue, and that is specifically the issue of the question of the authority of OFPP to act in areas that deal with labor standards.

We feel that the current act in section 3B specifically refers to actions, "in accordance with existing laws," and "with due regard to the program activities of the executive agencies," both quotations I think clearly indicate that the current law gives the authority to the Secretary of Labor in terms of labor standards legislation, and the controversy is because the Air Force has gone out forum shopping rather than in terms of trying to find a final arbitrator, as your question seems to imply. We believe that the Air Force, if it hadn't gotten a happy decision at OFPP would have gone someplace else, as they had gone before to the courts through the contractor. We feel that it is necessary for Congress to reaffirm and strengthen this mandate that existing standards be administered by the agencies designated by the Congress without the interference of the Administrator of the Office of Federal Procurement Policy.

Congress assigned the responsibility to the Secretary of Labor, as it considered his expertise in labor issues and made the specific assignment for labor standards to him.

Reference was made before by Senator Mathias to the list of agencies and various laws that are at the end of Mr. Fettig's testimony. I think that's only a partial list of many of the laws that apply in various ways to the whole range of things that the Congress has enacted affecting particular social and economic issues. Clearly those issues are assigned by Congress to specific agencies, not to the Office of Federal Procurement Policy.

When this law was first passed we didn't think that this question was even an issue, and we were very shocked when two years later the previous Administrator, Hugh Witt, had proposed that he would have the authority on regulations issued by any executive agency, including regulations implementing the Service Contract Act or pertaining to small business, equal employment opportunity, clean air, or contract safety standards issued by any agencies, as Department of Labor, Small Business Administration, Environmental Protection Agency. That is the statement that he put in the Federal Register on August 13 as the proposed regulation.

They held hearings on that proposal on September 21, 1976. The AFL-CIO and other labor organizations appeared in opposition, and we were concerned about the broad issues, labor standards as well as issues applying to the equal opportunity employment issue. Environmental Protection Agency, the ones that he listed.

Senator MATHIAS. I don't want to interrupt your statement, but are you prepared to supplement his list?

Mr. OSWALD. Well, as I went through the list there were a couple that automatically came to mind. There is no reference to the Occupational Safety and Health Administration, which does apply. There are other acts; the Civil Rights Act is not listed.

Senator MATHIAS. If we are going to settle this issue we ought to settle the whole thing and not have it come back to us piecemeal in another year or two.

Mr. OSWALD. Well, I think that it should be clear that where other agencies are given primary responsibility there is nothing in the intent of this legislation to take away that responsibility and I think maybe the way of clearing it up would be just in the report language itself. We think that the legislation is clear, and new legislative history in the report itself might strengthen this portion. However, if you feel that legislation might do it better, we are not opposed to a legislative change but we think that the existing legislation is clear. We think that there is no such authority currently for the OFPP Administrator.

Senator MATHIAS. You wouldn't raise any question of legislative interpretation?

Mr. OSWALD. No. But we don't think sending it to the Attorney General necessarily solves that. The Air Force has shown that it is quite capable of forum shopping. If it is not happy with the Attorney General's opinion it will devise some other method of having the issue adjudicated, either by itself again or by some surrogate for the Air Force, as we feel the *Curtiss-Wright* decision was really a surrogate

for those to particular agencies. I don't believe that it was ever the decision.

But we think that continuously Congress passes legislation that affects all sorts of social and economic issues and assigns responsibility for those to particular agencies. I don't believe that it was ever the intent in setting up a central procurement responsibility in the Office of Federal Procurement Policy to establish a new superagency that had authority over all other agencies. Senator CHILES, before you raised the question in terms of whether OFPP now has the authority to make a decision as to whether a contract is a service contract or a contract for a product. That determination has been made for years by the Secretary of Labor as it applies to its particular labor standards responsibilities under three particular laws that have been passed by Congress to deal with labor standards.

The original act was the Davis-Bacon Act in 1931 which governed construction work. The act of 1936, Walsh-Healy, covered manufactured products, and the Service Contract Act was intended to cover the final full range of Government procurement of all types of issues. It was passed in 1965 and subsequently amended in 1972.

Those determinations had been made prior to the enactment of the Federal Procurement Act in 1974 and I believe will continue to be made by the Secretary of Labor.

Senator CHILES. Well, as I read 93-400, in section 9 it says, "The authority of any executive agency under any other law to prescribe policies, regulations, procedures and forms for procurement is subject to the authority conferred in section 6 of this Act." And section 6 sets forth the duties and responsibilities as long as it is not contrary to existing law.

Now, contrary to existing law, would seem to say that where the law clearly says what anybody has authority to do, is fine. When you get into all the regulations of the agencies, but again, in this list that you went over, part of which you added to and part of which were enunciated by Mr. Hugh Witt, it seems to me that if the other agencies can say any dispute that they have with any other agency is not procurement, because we say it is not; therefore, they always can say it is an environmental dispute, or an OSHA dispute, or a wage dispute, and if they are the sole determiner of that then whoever stands up for the fact, wait a minute, that's not it.

The heavy end of that is procurement and what we are trying to do is bring some uniformity to procurement. So how do we ever decide any of those, or we would never decide, and so it seems like as long as you call the animal a cat, whether it has any of the characteristics of a cat or not, you are the sole determiner of whether it is a cat or not.

Mr. OSWALD. I don't think that's really what is happening, Senator. Congress clearly did assign to the Secretary of Labor certain aspects of enforcement of labor standards.

Senator CHILES. I have no argument with that.

Mr. OSWALD. And section 6A does say that the authority of the OFPP Administrator is limited to be in accordance with applicable laws, and those applicable laws do give authority to interpret the labor

standards and how they apply to the Secretary of Labor. It does not give those to the Administrator of the Office of Federal Procurement Policy. That's what the court said directly in the *Curtiss-Wright* decision which Senator Mathias referred to.

Senator MATHIAS. If the chairman would yield for a second.

Senator CHILES. Yes.

Senator MATHIAS. Isn't that a case where the Administrator is guilty of some arbitrary and capricious judgment? If he says that an elephant is a cat, then you have a constitutional right to question his judgment. But short of that, in accordance with the *Curtiss-Wright* decision, the right to review his judgment is not really there. And if the courts can't review it, I don't understand how another administrator can review it.

If we open up this bucket of worms I don't know where you can go. The bureaucratic morass of this country is bad enough to start with, but if administrators can assume the right to review each other's decisions and alter them there is no end to it. I shudder to think of the results of that.

Mr. OSWALD. Well, in one sense you can say that since the OFPP is lodged in the OMB theoretically one might question whether the OFPP Administrator might be overridden by the Director of OMB.

Senator MATHIAS. Of course, the beauty of the situation from a bureaucratic point of view is that bureaucrats can write regulations that take you into anywhere you want to go. I am not being frivolous about it. I think it really is a serious precedent. We have depressed economic activity in this country already because of bureaucratic activity. I am not anxious to see too much more of it.

Mr. OSWALD. Senator, we are even more disturbed there if they act without any regulatory authority. We found it interesting that the earlier proposal to assume this authority was promulgated, and was stated to be operative the day that a new administration took office, and that by an outgoing administrator of OFPP. Then those regulations were rescinded by the new Administrator. Now an action takes place which does one of the listed items in the earlier proposal without any authority that is obvious or by regulations or by anything else. It is just done.

We don't need additional regulations in this area, nor do we need additional authority. I believe it is already existing with the Secretary of Labor.

Senator MATHIAS. Thank you. I didn't mean to interrupt for such an extensive interview.

Mr. OSWALD. I think there is one paragraph that I would like to read which summarizes basically where we believe we would like this committee in its deliberations to move, and that is that the AFL-CIO supports continued funding of OFPP because we want a coordinated Federal Procurement Policy within existing applicable statutes. It is regrettable that up to this time OFPP has exceeded its authority causing conflict and confusion and losing sight of its mission.

Many agencies have been assigned specific responsibilities for specific socio-economic issues and clearly it was not the intent of Congress to rescind these assignments.

We urge this committee to clarify Public Law 93-400 insuring that OFPP limits its activities to those areas where it has expertise. It should not assert or attempt to assert authority assigned by Congress to other authorities within the executive branch. That is basically the import of our testimony.

Senator CHILES. We thank you very much for your testimony, and for your appearance here. Thank you.

Mr. OSWALD. Thank you.

[The prepared statements of Messrs. Blaylock and Mr. Oswald follows:]

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
Affiliated with AFL-CIO
1325 Massachusetts Avenue, N.W., Washington, D. C. 20005

STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, BEFORE THE SENATE
SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT

March 9, 1979

Mr. Chairman and members of the committee, I appreciate this opportunity to present the views of the American Federation of Government Employees on the matter of the need for continuing the existence of the Office of Federal Procurement Policy.

That Office was established by statute within the Office of Management and Budget to improve the economy, efficiency, and effectiveness of Federal procurement processes. It was to do this by providing overall direction of Federal procurement policies, regulations, procedures, and forms.

Its authority covers the procurement of property (other than real estate), of services (including research and development), and of construction and maintenance of real property.

The primary concern of AFGE is in the area of the procurement, or as we usually call it, the "contracting-out" of government services.

Our experience over the past two or three years has been that OFPP, on balance, has brought about some real and needed improvements in this area.

First of all, the existence of OFPP gives us someone to whom we can conveniently present AFGE views, at any time and in any degree of detail, on the matter of "contracting-out" of services.

Our experience has been that our views have been listened to and considered carefully, even though they are not always fully accepted. This was definitely not the case when some of these responsibilities were formerly handled by other OMB offices. Also, the OFPP gives full time attention to these matters and has developed the needed knowledges and expertise to deal with these very complex and controversial problems.

Second, the operations of OFPP are much more open than those of OMB had tended to be. OMB has had a tradition of making decisions without too much public discussion and input, whereas OFPP does published important, planned decisions in the Federal Register. This gives unions, contractors, and other affected parties the opportunity to participate in the decision-making process.

Finally, to be more specific from our standpoint, we think the Office has made a good start on developing a badly-needed data system which will eventually provide the President and the Congress with essential, hard data on the scope, magnitude, and configuration of the Federal government's contracting-out activities. No one has ever known, for example, how many contractor employees were providing services to the government, although that number might well equal or exceed the number of regular civilian Federal employees in some agencies.

Obviously, it is impossible to manage Federal manpower efficiently and economically if you know only the numbers and trends of Civil Service and military personnel and lack complete and reliable data on the third large component of Federal manpower - i.e., contractor employees performing Government work.

Another specific example of an improvement in this area is the fact that the revised OMB Circular A-76, which provides detailed guidance to agencies on contracting-out, was developed with a great deal of input from AFGE and other unions, as well as from contractors, and as a result is somewhat more even-handed than in the past. This is not to say that we are entirely satisfied with it, but we do feel that OFPP, unlike past practices, does not have an especially cozy relationship with contractor organizations, while paying only token attention to union views. In other words, we do have a fair chance to argue our views, win or lose, and this is important to us.

I must make clear that our experience with this Office has not been totally good. It is a mixed bag.

For example, we have had strong disagreement with the way government in-house costs have been compared with contractor costs under A-76. One example is in the area of comparing Federal retirement costs vs. contractor pension and social security costs. Another example is our belief that government units should be given the opportunity to reduce their costs before it is decided that a contractor can do the job for less. We know that government supervisory overhead can be reduced; that plant, equipment, and technology can be brought up-to-date; that management procedures can be improved and so on. We will continue to carry on our fight until we believe that cost comparisons are made as fairly and realistically as possible.

We have also strongly disagreed with OFPP on the degree to which that Office has seemed to want to take away from the Secretary of Labor primary policy control over decisions under the Service Contract Act, Walsh-Healey Act, and Davis-Bacon Act. We believe the purposes of these statutes are such that the Secretary of Labor, not the Director of either OMB or OFPP, is the right person to administer them. We will continue to oppose OFPP efforts in this direction.

Finally, we have also felt that OMB and OFPP sometimes push the concept of contracting-out primarily for political purposes rather than because it is in the public interest. For example, it makes the President look good if he seems to be holding down the size of government even if, unknown to the taxpayer, contracting-out results in higher costs and poorer work.

Nevertheless, and on balance, we think OFPP has done a pretty good job from our standpoint, and we favor its continuation.

A final word on the bigger picture. It seems clear to us, with the present emphasis on government efficiency and economy, that there is a real need for a centralized staff office to monitor and coordinate the tremendous government procurement effort - not only for services, but for goods and for construction-- both because of the tens of billions of dollars and the hundreds of thousands of people involved and because of the impact of such procurement on the national economy, on the government budget, and on government mission accomplishment.

STATEMENT OF RUDY OSWALD, DIRECTOR, RESEARCH DEPARTMENT
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES AND OPEN GOVERNMENT
OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

"SUI/SET" HEARINGS ON THE OFFICE OF FEDERAL PROCUREMENT POLICY

MARCH 9, 1979

The AFL-CIO appreciates this opportunity to present to the Subcommittee on Federal Spending Practices and Open Government our views on the programs of the Office of Federal Procurement Policy.

In 1974 when the Office of Federal Procurement Policy (OFPP) was established by Public Law 93-400, the AFL-CIO was in agreement with its stated purpose of coordinating overall federal procurement policy, procedures and forms because we understood the program was to be administered "in accordance with applicable laws." Unfortunately, this expectation has not been fulfilled. Rather, there has been conflict and confusion.

Under the terms of Section 11 of the "Office of Federal Procurement Policy Act," funding to carry out the provisions of the Act was authorized for the fiscal year ending June 30, 1975 and for each of the four succeeding years. New authorizing legislation will be needed this year if the Office of Federal Procurement Policy is to have the necessary funding to carry out its functions under this Act in the future.

We believe that such additional funding should be provided. The Office of Federal Procurement Policy is required to carry out an important function. It is essential, however, that the functions be carried out, as the Office of Federal Procurement Policy Act expressly states in Section 3(b) thereof, "in accordance with existing law" and "with due regard to the program activities of the executive agencies" as specified in Section 6(a). Controversy has arisen in the past concerning the scope of authority of the Administrator of the Office of Federal Procurement Policy to superimpose his views on the proper exercise of the powers and function of other agencies, specifically including the Secretary of Labor under the Service Contract Act. We strongly urge that the Congress reaffirm and strengthen its mandate that existing labor standards be administered by the agencies designated by the Congress without the interference of the Administrator of the Office of Federal Procurement Policy. Congress considered the expertise of specific agencies and made assignments accordingly.

At the outset, we did not dream that the OFPP would claim authority to override the decisions of cabinet officers specifically authorized by Congress to interpret and enforce particular statutes. In short, we believed that the phrase at the end of Section 3(b), "...in accordance with applicable laws" (§ 405(a)), meant just what it said: that OFPP was to operate within existing laws while making federal procurement more efficient.

Only two years after the passage of P. L. 93-400, the first OFPP Administrator Hugh Witt proposed to claim authority over "...the procurement aspects of regulations issued by any executive agency." These include, he said, "regulations implementing the Service Contract Act, or

pertaining to small business, equal employment opportunity, clean air or contract safety standards, issued by any agencies as the Department of Labor, Small Business Administration and the Environmental Protection Agency." (Federal Register, Volume 41, Number 158, August 13, 1976.)

OFFPP held public hearings on this proposal on September 21, 1976. The AFL-CIO and other labor organizations appeared in opposition as did the Department of Labor. We pointed out that Congress placed responsibility for labor standards with the Secretary of Labor because of that Department's expertise. The issue is much broader than labor standards, applying equally to the authority of other agencies, the Equal Employment Opportunity Commission, the Environmental Protection Agency, and others. Each of these agencies is charged by Congress with special functions based on expertise of that agency. Nowhere in the congressional history is there any evidence of intent to interfere with the mandates of these agencies as previously provided by Congress. While labor's immediate concern is with the protective labor standards and other authorities vested in the Secretary of Labor, the AFL-CIO vigorously disputes the OFFPP's claimed authority to overrule the decisions of any agency acting within its mandate as prescribed by Congress.

On January 21, 1977, as President Carter was taking office, Administrator Witt issued the disputed regulations. The new Administration withdrew the proposed regulations on February 7, 1977, and Administrator Witt left government.

On July 28, 1978, OFFPP Administrator Fettig notified Representative Jack Brooks, Chairman, Government Operations Committee, of his decision to overrule the Secretary of Labor's determination of Service Contract Act coverage of aircraft engine overhaul and maintenance contracts.

The result is the assumption of authority claimed by his predecessor, but this time without even promulgating regulations or holding hearings. In short, an action based on no legislative authority and devoid of democratic procedure. Administrator Fettig simply overturned, by executive fiat, a decision of the Secretary of Labor as to whether aircraft engine overhaul and maintenance contracts were covered by the Service Contract Act.

It is important to note that Administrator Fettig made this decision on the sole representation of the Air Force although this very issue had already been adjudicated in formal court procedures. In finding against the Air Force position, (Curtiss-Wright Corp. v. McLucas, 364 F Supp. 750, D.N.J., 1973) District Judge Coolahan stated: "Whether or not a particular government contract is subject to the Service Contract Act is a determination ultimately to be made by the Secretary of Labor on the basis of his regulations and statutory expertise. Once made, his determination is not judicially reviewable." It is in defiance of this court decision and the ruling of the Secretary of Labor that the Administrator of OFPP is now attempting to reverse these proper authorities -- the Court and the Secretary of Labor.

OFPP is charged to act "in accordance with applicable law." There is nothing in the legislative history of P. L. 93-400 giving the Administrator of OFPP the authority to overturn a decision of the Secretary of Labor in respect to the Service Contract Act, Walsh-Healey Act, Davis-Bacon Act, or any other acts that contain labor standards.

The Attorney General is studying the issue because of the conflict of authority within the Executive Branch. This study and resulting opinion may or may not resolve the issue.

Given this long history of confused authority, the AFL-CIO calls upon Congress to restate clearly the limits of OFPP's authority.

In conclusion, the AFL-CIO supports continued funding of OFPP because we want a coordinated, consistent, and efficient federal procurement policy within existing applicable statutes. It is regrettable that up to this time OFPP has exceeded its authority, causing conflict and confusion and losing sight of its mission. Many agencies have been assigned specific responsibilities for certain socio-economic issues, and clearly it was not the intent of Congress to rescind these assignments. We urge this committee to clarify P. L. 93-400 ensuring that OFPP limit its activities to those areas where it has expertise. It should not assert or attempt to assert authority assigned by Congress to other authorities within the Executive Branch.

Senator CHILES. We will keep the hearing record open for the next 14 days. There are some other people who want to put some statements in, I think.

At this time we will recess our hearing.

[Whereupon, at 1:05 p.m., the hearing was adjourned.]

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DEPARTMENTAL RESPONSES AND COMMENTS

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON WAGE AND PRICE STABILITY
726 JACKSON PLACE, N.W.
WASHINGTON, D.C. 20506

MAR 5 1979

Honorable Lawton Chiles
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

I am writing in response to your letter of January 29, 1979, asking for our comments on reauthorization legislation for the Office of Federal Procurement Policy.

As you know, Executive Order 12092, on Federal anti-inflationary procurement practices, directs government agencies to require contractors to comply with the voluntary pay and price standards, insofar as possible without disrupting competitive bidding or jeopardizing national security. This Executive Order also places overall responsibility for implementation of the procurement policy in the hands of the OFPP. Hence, the responsibilities of the OFPP are central to the objectives of the President's anti-inflation policy, and this itself provides justification for reauthorization.

Contact between the staffs of the CWPS and the OFPP have been minimal because the procurement policy and the monitoring of compliance with the pay/price standards are separate activities. However, the working relationship between the CWPS and the OFPP have been entirely satisfactory, and I believe that it is a competently and efficiently run operation.

If I can be of further assistance, please do not hesitate to call on me.

Sincerely,

Barry Bosworth
Barry Bosworth
Director

BW
MAR 08 1979



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

March 12 1979

Honorable Lawton Chiles
Chairman, Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Your January 29 letter asked for our comments on performance of the Office of Federal Procurement Policy (OFPP) over the last four and one-half years. You are soliciting these comments in connection with the "sunset" review provisions of P.L. 93-400 which created OFPP and which require periodic reauthorization of appropriations for that office.

The Office of Federal Procurement Policy has accomplished much in the last four and one-half years and has substantial work in progress that will lead to more orderly and open conduct of the Federal Procurement process. While we in this Department have not always agreed with proposed OFPP initiatives, we have had satisfactory opportunities to present our case and the resulting issuances have been fair.

Projects currently in progress under OFPP guidance, such as the issuance of a single procurement regulation of Government-wide applicability, development of implementing regulations for the Grants and Cooperative Agreements Act, and overseeing implementation of the Federal Procurement Data System, promise increased efficiency and improved operations for all Federal procurement systems.

The Office of Federal Procurement Policy has proven to be an effective and productive organization.

Sincerely,

LARRY MEYERS
Deputy Director
Congressional Affairs

BW
MAR 13 1979



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington, D.C. 20230

February 16, 1979

Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We are happy to provide you with our comments on the performance of the Office of Federal Procurement Policy (OFPP) in response to your letter of January 29, 1979.

In our judgment, the OFPP performs a vital function for the Executive Branch and the acquisition community. It should be continued, because while much has been accomplished, much remains to be done.

OFPP has provided effective government-wide leadership in carrying out the reforms recommended by the Commission on Government Procurement. The General Services Administration does not command the authority and prestige to guide to completion the many projects that were started, and the Office of Management and Budget (OMB) does not have the time, resources or focused direction which OFPP brings to bear on acquisition problems and programs.

A cogent factor in the success of OFPP has been the outstanding performance of its Director, Lester Fettig. Mr. Fettig brings to the position the right combination of enthusiasm and executive and political skills which have enhanced the reputation of the organization.

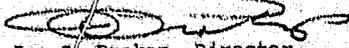
The only shortcomings of OFPP derive from its meager resources. It has neither the funds nor the personnel for efficiently accomplishing some major projects e.g. the development of the Federal Procurement Data System (FPDS) and the Federal Acquisition Regulations (FAR). While we

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FEB 28 1979

recognize the desirability of keeping OFPP lean and free of narrow gauge bureaucratic functions, the organization could do a much better job of managing major projects such as the development of FPDS and FAR if it had sufficient appropriations to reimburse agencies for the extended detail of their most competent professionals to expedite the completion of those major projects for which their is a crucial need.

We appreciate the opportunity to provide you with our comments.

Sincerely,



Jan S. Prokop, Director
Office of Procurement and
ADP Management



Department of Energy
Washington, D.C. 20545

FEB 28 1979

Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

The Department of Energy (DOE) is pleased to respond to your January 29, 1979, request for comments concerning the performance of the Office of Federal Procurement Policy (OFPP). We have enjoyed a very good working relationship with OFPP. They have been responsive to our needs and have thoughtfully considered our position in their various proposals. We are actively engaged with them in the development of the Federal Acquisition Regulation (FAR).

OFPP has taken on and tried to resolve some very controversial and longstanding procurement issues (Government-wide profit policy, Major Systems Acquisition, Contracting-Out, the Service Contract Act, etc.) and current problems such as the anti-inflation activities. Their success rate is high. Of the many accomplishments of OFPP during the past four and a half years perhaps one of the most significant is the establishment of the Federal Acquisition Institute (FAI). The FAI's mission, briefly stated, is to improve the procurement process through increased professionalism and procurement research. The only way the Federal Government can hope to meet the challenges of the future is through well trained, professional men and women using the results of procurement research.

More important than their track record, OFPP represents our best hope of achieving real consistency in the way the Federal Government, as a whole, goes about its contracting business. Without OFPP or something like it, it is back to the jungle of every agency on its own.

Industry, the university community, state and local governments and the public will be the principal beneficiaries of the professionalism and consistency which are being so ably fostered by OFPP.

We strongly urge you to support reauthorization legislation.

Sincerely,

M. J. Tashjian
M. J. Tashjian, Director
Procurement and Contracts
Management Directorate

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MAR 05 1979



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

FEB 27 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open
Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am responding to your letter of January 29, 1979, regarding the Department of Health, Education, and Welfare's position relative to the performance and "sunset" provision of the Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

It has been our experience that the Office of Federal Procurement Policy has initiated policies and programs which are beneficial to the Federal procurement community and to the private sector and should be accorded the opportunity to fully implement these initiatives and to continue their work in other areas.

The Department favors the introduction of reauthorization legislation for the Office of Federal Procurement Policy.

Sincerely yours,

Frederick M. Bohlen

for Frederick M. Bohlen
Assistant Secretary for
Management and Budget

BW
MAR 05 1979



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Honorable Lawton Chiles
Chairman, Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

MAR 6 1979

Dear Senator Chiles:

Thank you for your letter of January 29, 1979, concerning the Office of Federal Procurement Policy (OFPP). We strongly endorse the introduction of reauthorization legislation.

Since its creation under Public Law 93-400, OFPP has dealt with numerous acquisition issues and complex problem areas which had gone unresolved for many years. Because of the controversial nature of many of these problem areas, progress has been slow despite some significant accomplishments. In order to allow corrective action to be taken in these areas and insure that the intent of Congress is fulfilled with respect to recommendations of the Commission on Government Procurement, we believe it is essential that OFPP be authorized to continue its functions under the OFPP Act.

In addition, we feel it is imperative that OFPP continue to exhibit a strong leadership role as the single focal point for all acquisition policy. Maintenance of such a role is of vital importance with the many legislatively mandated socioeconomic programs which impact the acquisition process as well as the advent of a new federal acquisition statute.

We would like to take this opportunity to compliment Les Fettig for the fine job he has done. Although faced with numerous challenging issues and working under pressures from many sources, he always performs most responsibly.

We look forward to an aggressive future for OFPP and an overall improvement in the economy, efficiency, and effectiveness of the federal acquisition process.

If I can be of further assistance to you, please let me know.

Sincerely,

Gary R. Catron

Gary R. Catron
Assistant to the Secretary
and Director of Congressional
and Legislative Affairs

cc: OFPP

BW
MAR 08 1979

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

MAR 08 1979

Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Chairman Chiles:

This is in response to your request for the comments and observations of the Department of Justice regarding the performance of the Office of Federal Procurement Policy over the last four and a half years.

The Office of Federal Procurement Policy (OFPP) was created as a result of a recommendation by the Commission on Government Procurement. Many of the deficiencies reported by the Commission as to status of procurement within organizational structures, quality of the procurement work force and procurement policies and procedures still exist. The recommendations of the Commission are still valid. OFPP provides a central, high level management organization necessary to implement the Commission's recommendations to improve the acquisition function.

The establishment of the Federal Acquisition Institute under the OFPP has been of particular value to the Department of Justice. The following initiatives undertaken by the Institute are especially appropriate to this Department:

- Personnel recruiting procedures including intern programs;
- Executive development and educational programs;
- Specific training policy and minimum training requirements;
- Certification and qualification standards; and
- Contracting and procurement officer job standards.

The Department of Justice is not an agency whose mission is heavily involved in the procurement process. Nevertheless, the products and services required are often of a complex

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MAR 12 1979

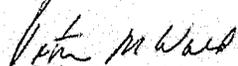
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nature and are of high dollar value. In a sense we require contracting personnel with a wider range of expertise than those agencies whose programs require a procurement work force large enough to be split into specialties. Individuals in our procurement work force must be generalists and yet be able to properly accomplish efficient and effective specialized procurements.

It has been our experience and observation that the OFPP has met its responsibilities with respect to the activities of this Department as specified in Section 2 of Public Law 93-400. We recommend its continuance.

Thank you for this opportunity to comment.

Sincerely,



Patricia M. Wald
Assistant Attorney General



DEPARTMENT OF STATE

Washington, D.C. 20520

MAR 2 1979

Dear Mr. Chairman:

This is in response to your letter of January 29 in which you asked for comments concerning the performance of the Office of Federal Procurement Policy (OFPP) for consideration in your review of the OFPP reauthorization legislation.

As you know, the Commission on Government Procurement placed creation of the OFPP first among its recommendations to the Congress as they considered OFPP's establishment to be of overall importance in achieving improvements they proposed in the procurement process. It was the Commission's vision that OFPP would be high in competence, small in size, responsive to Congress, and placed at a level in the Executive branch where it could provide leadership and oversee the development and application of procurement policy. Public Law 93-400 permitted the achievement of this first and most important goal.

Those involved in the procurement process have quickly grasped the concept of looking to a single authority for procurement policy pronouncements. Change has been evolutionary and well-planned. A revision of the procurement regulations is progressing rapidly and efficiently.

Much more remains to be done and a central policy voice is essential.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations

The Honorable
Lawton Chiles, Chairman,
Subcommittee on Federal Spending,
Practices and Open Government,
Committee on Governmental Affairs,
United States Senate.

BW
MAR 06 1979



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

FEB 28 1979

ASSISTANT SECRETARY

Dear Mr. Chairman:

I am responding to your January 29, 1979 letter in which you have asked for our comments concerning the performance of the Office of Federal Procurement Policy (OFPP).

Since we do not have a grants program, our greatest involvement with OFPP is in the procurement management area. Specifically, we have seen great benefits arising in OFPP's Federal Acquisition Institute, and its several projects to increase the level of procurement professionalism.

We are encouraged by OFPP's recent progress in developing a single unified body of Government procurement regulations; this project will bring greater simplicity to the contracting process for the public.

OFPP has taken the initiative in the Executive Branch to promote several new Government policies and procedures, such as the revised Labor Surplus Area set-aside program, the Federal Procurement Data System, cross-servicing in contract administration, etc. We see benefits in having a single source for controlling programs such as these and for issuing uniform instructions to procuring agencies.

Efforts of OFPP to formulate a proposal for a National Supply System, to promote procurement research and to establish controls on the use of consultant services should result in savings in agencies' operational costs.

In summary, from our viewpoint, we find advantages in having OFPP as a centralized procurement authority. If such an organization did not exist, we believe that many of OFPP's worthwhile functions would either not be performed at all or would be performed in varying ways by the many Executive agencies.

Thank you for the opportunity to present our comments.

Sincerely,

Gene E. Godley
Assistant Secretary
(Legislative Affairs)

The Honorable
Lawton Chiles, Chairman
Subcommittee on Federal Spending Practices
and Open Government
United States Senate
Washington, D.C. 20510



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
2 6 MAR 1979

OFFICE OF
PLANNING AND MANAGEMENT

Honorable Lawton Chiles
Chairman, Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your letter of January 29, 1979, to the Environmental Protection Agency's (EPA) Congressional Liaison Officer, which requested EPA's comments regarding the performance of the Office of Federal Procurement Policy (OFPP). I apologize for the delay in our response.

EPA officials have worked with OFPP regarding direct Federal procurement, as well as procurement under grants. With respect to direct Federal procurement, we are pleased with the progress which OFPP has made toward the issuance of the Federal Acquisition Regulation. However, there are two other policy issues about which we have some concern.

One is the proposed organizational conflict of interest regulations; we believe that this sensitive issue must be quickly resolved by a firm policy statement and issuance of final regulations by OFPP. Potential contractors are uncertain as to the rules which will apply and this has added time to the contract negotiation process. We believe that OFPP has allowed sufficient time for comment on the proposed rules, and that the Administrator should now promulgate a final rule without delay.

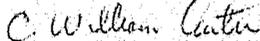
The second area of concern is the application of Office of Management and Budget (OMB) Circular A-109 (Major System Acquisitions). We believe that the strict implementation of the A-109 procedure under conditions where the requirement is fully known to the Agency will cause large expenditures

of resources without commensurate benefits. We support the A-109 policy for new major acquisitions; however, rigid imposition of this approach to acquisitions which are continuing requirements can be disruptive and wasteful.

With regard to procurement under grants, we have worked closely with the OFPP in their efforts to revise Attachment O to OMB Circular A-102. Although we have had significant differences of opinion on some issues, we appreciate the cooperation we have received from OFPP staff. As we fully support the objective of achieving uniformity and simplification in Federal grant programs, we will continue to work with OFPP to ensure that individual program objectives are considered in this context.

Thank you for providing us the opportunity to participate in the "sunset review" of OFPP.

Sincerely yours,



C. William Carter
Associate Assistant Administrator
for Planning and Management



Federal Maritime Commission
Washington, D. C. 20573

Office of the Chairman

March 15, 1979

Honorable Lawton Chiles
Chairman, Senate Committee
on Governmental Affairs
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request for the views of the Federal Maritime Commission (FMC) regarding the performance of the Office of Federal Procurement Policy (OFPP) in connection with your "sunset" review of that agency pursuant to P.L. 93-400.

This Commission's contact with OFPP has been limited to responding to requests for information and observing applicable OFPP procurement guidelines. While OFPP has prescribed some policies, it has not issued regulations, procedures or forms pursuant to the authority provided in section 6 of P.L. 400. Since most of the procurement of supplies and services for the FMC is handled through the General Services Administration in accordance with their guidelines, OFPP has had minor impact on the FMC. Dissolution of the agency, therefore, would have no negative effects on our activities here.

Since the operations of OFPP have little impact on this Commission, we do not wish to comment substantively on the performance of OFPP and thus we defer to other agencies which have had a closer working relationship with OFPP.

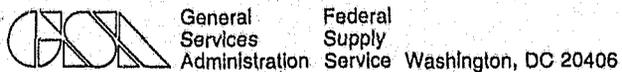
Should you require further information or assistance with regard to this matter, do not hesitate to contact us.

Sincerely,

Richard J. Daschbach
Chairman

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MAR 22 1979



February 2, 1979

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending Practices
and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

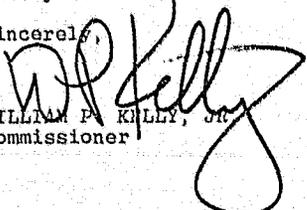
As a principal official in the Government purchasing area I strongly believe that the Office of Federal Procurement Policy (OFPP) should be reauthorized and continued beyond the period provided in Public Law 93-400.

It is clear that this office has performed a number of valuable functions for the Executive Department. It has been the focal point for the development of acquisition policy. It must continue to coordinate this important activity. It is also the central coordinating point for a National Supply System. This must be carried on. The monitoring of A-109 and A-76 activities within the Government is a vital function which falls within OFPP's responsibility. I am fearful that if the authorization for OFPP is allowed to expire all of the above activities will cease or be interrupted or suffer a discontinuity. This would not be in the best interest of the Executive Department, or for that matter, the nation.

The people who've been brought together within the OFPP possess professional excellence and competence. They have pursued desirable national objectives in a sane and sound manner.

I hope these comments have been useful and that the "sunset" provisions governing the OFPP will be extended for at least five years.

Sincerely,



WILLIAM P. KELLY, JR.
Commissioner

FEB 08 1979

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NATIONAL SCIENCE FOUNDATION

WASHINGTON, D.C. 20550

February 15, 1979



OFFICE OF THE
ASSISTANT DIRECTOR
FOR ADMINISTRATION

Honorable Lawton Chiles
Chairman, Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

I am responding on behalf of the National Science Foundation to your letter of January 29, 1979, in which you requested our comments on the performance of the Office of Federal Procurement Policy (OFPP) over the last four and a half years.

We believe that OFPP, particularly under Les Fettig's leadership, has made an important beginning in making procurement policy and its formulation more effective. The push to develop a single Federal procurement regulation is bound to have long term favorable effects in reducing the number of points from which procurement policy emanate. The OFPP initiative to clarify its role vis a vis the Department of Labor should be helpful. In our view, OFPP should be reauthorized.

Thank you for the opportunity to comment on this subject.

Sincerely,

A handwritten signature in cursive script that reads "Eldon D. Taylor".

Eldon D. Taylor
Assistant Director
for Administration

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FEB 22 1979

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

OFFICE OF FEDERAL
PROCUREMENT POLICY

APR 20 1978

Honorable Lawton Chiles
Chairman, Committee on Governmental
Affairs
Subcommittee on Federal Spending Practices
and Open Government
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

Reference is made to your letter of March 26, 1979, requesting data and the views of the Office of Federal Procurement Policy on a number of questions. These data are to be included in the hearings of our recent "Sunset review".

Enclosed is the information compiled by OFPP for this purpose.

Thank you for your continued support and interest in OFPP.

Sincerely,

A handwritten signature in cursive script, appearing to read "LeRoy J. Haugh".

LeRoy J. Haugh
Associate Administrator
for Regulations and Procedures

Enclosure

ADDITIONAL DATA FOR SUNSET HEARINGS
ON THE OFFICE OF FEDERAL PROCUREMENT POLICY

Staffing and Size

Question: How many persons work for OFPP?

Answer: OFPP's ceiling after the reorganization of the Executive Office of the President in 1977 is 25 people.

Question: How many persons from other agencies are currently detailed to OFPP?

Answer: Currently, 4 professionals are detailed to OFPP from other agencies.

Question: Is the size of your staff adequate to carry out the responsibilities assigned to OFPP under Public Law 93-400?

Answer: Yes.

Question: How and to what extent do you draw on the resources of other agencies?

Answer: As special projects arise which require additional assistance, we request resources from the agencies. An example of this is the FAR project where we have approximately 40 Defense employees engaged full time in the project and 12 from General Services Administration. We also set up advisory boards or inter-agency committees to assist with specific projects such as: 1) the review of the Commission on Government Procurement's Study Group 13 C (Construction) recommendations; 2) anti-inflation measures in procurement; and 3) the National Supply System. Some long-term projects which require particular expertise, such as the Federal Procurement Data System, are assigned to an agency as Executive agent for OFPP.

Question: Statutes enacted since the creation of OFPP have given OFPP new authority. Has the size of your staff been an impediment to carrying out these new responsibilities?

Answer: These new responsibilities have caused us to adjust our priorities, but our size has not been an impediment.

Question: If assignments are delegated to other agencies, what kind of control does OFPP maintain over the work being done?

Answer: Whenever assignments are delegated to other agencies, OFPP monitors progress in completion of the project. The amount of our monitoring and the application of OFPP staff resources to this effort will vary depending on the project. In the case of the FAR project, we assigned an Assistant Administrator, his Deputy, three additional professionals and support staff full time until completion. On the construction review project, our monitoring was sporadic, amounting to only a few hours a month until completion of the project.

Question: Should the authorization level for OFPP be changed?

Answer: We believe Congress intended that the OFPP staff should be a small highly professional cadre of procurement experts. This is a good concept and we would not recommend a change in the authorization level at this time.

Paperwork

Question: Can you point to specific forms and regulations which OFPP has simplified and standardized in order to reduce paperwork?

Answer: The OFPP's forms and regulations simplification project is embodied in the Federal Acquisition Regulation (FAR) project. There are more than 160 Defense Department and standard forms being reviewed for simplification. Some have already been published for private sector and agency comment. Approximately 500 pages of regulations have already been simplified and published for comment. These cover a wide range of subjects including formal advertising, negotiations, contractor qualifications, taxes, insurance, special contracting

methods, required sources of supply, environmental protection, foreign acquisition, labor surplus area concerns, publicizing contract actions, ethics, Freedom of Information and Privacy Acts, multi-year contracting, and subcontracting policies and procedures. All first draft FAR material will be published for comment this spring and a final regulation will be laid before Congress later this year.

Question: Has OFPP tried to make special simplified forms for small business?

Answer: One of the primary purposes of the FAR project is to simplify Government forms and regulations to make it easier to do business with the Federal Government, especially for small and minority businesses. We are also placing special emphasis on the small purchase (under \$10,000) regulations to make them as simple and administratively efficient as possible. We see tremendous potential savings here because there are over 10 million transactions under \$10,000 compared to less than 1/2 million over \$10,000.

Question: How does OFPP assess the paperwork impact of its regulations before it issues them?

Answer: The original charter of the FAR project has as one of its primary objectives the reduction of the paperwork burden associated with doing contract business with the Federal Government. Each draft segment of the FAR must be reviewed at several stages including a final OFPP review before it is published for comment. The purpose of these reviews is to assure that each segment meets the objectives of the FAR project, including reduction of the paperwork impact. An example in another OFPP project of reducing the paperwork impact can be seen in the Federal Procurement Data System. There were many data elements specifically excluded from the data system because they represented new information that would have to be requested of prospective Government contractors thus increasing the burden of doing business with the Government.

Question: What has OFPP done to implement the procurement-related recommendations of the Paperwork Commission?

Answer: OFPP reviewed the 32 procurement-related recommendations of the Paperwork Commission and decided to reject a number, assign project officers to monitor implementation

of some, and continue to review others. As of December 31, 1978, 8 of the 32 recommendations were already implemented, 15 additional were accepted and are being monitored for implementation, 7 were rejected, and 2 are still under review. The detailed status of each recommendation is portrayed in the December 31, 1978 report, as follows:

OFFICE OF FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGET

STATUS
OF

FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
AS OF DECEMBER 31, 1978

Total Recommendations		32
I. Recommendations Accepted for OFPP Action	15	
II. Recommendations Accepted and Implemented	8	
III. Recommendations Rejected	7	
IV. Recommendations Under Review	2	

December 31, 1978

I. RECOMMENDATIONS ACCEPTED FOR OFPP ACTION

- P-1 Small Purchase Procedures Training.
 P-2 Use of Imprest Funds.
 P-3 Uniform Small Purchase Regulations.
 P-4 Small Purchase Implementing Directive.
 P-5 Review of Small Purchase Forms.
 P-6 Raise to \$10,000 the level of which certain statutes become applicable to the procurement process.
 P-7 & 8 Pre-Award Surveys.
 P-9 Modify Attachment O of OMB Circular A-102 to provide for minimum Federal involvement with control based on procurement dollar values.
 P-24 Modernization of the Commerce Business Daily.
 P-27 Consolidated Procurement Statute.
 P-28 Procurement Reform Legislation should be drawn so as to reduce paperwork and administrative burden.
 P-29 Consolidation of ASPR & FPR.
 P-30 Paperwork consideration in ASPR/FPR consolidation.
 P-31 Control of Subsidiary Regulations.

Total Accepted: 15II. RECOMMENDATIONS ACCEPTED AND IMPLEMENTED

- P-11 Interagency Support Services.
 thru 15
 P-22 Distribution of DOD Advisory Audit Reports on indirect costs.
 P-26 Federal Procurement Data System.
 P-32 Coordination of Simplification Training by FAI.

Total Implemented: 8III. RECOMMENDATIONS REJECTED

- P-10 Interagency Review of implementing directives and periodic revision of Attachment O.
 P-16 Elimination of Progress Payment Form 1195.
 P-17 Elimination of DOD Quarterly Progress Payment Status Report.
 P-18 & 19 Simplification of use of DD Form 250
 P-23 DOD prohibition on delegation of responsibility for selection of support items to contractors.
 P-25 Publish Commerce Business Daily on a weekly basis by product line.

Total Rejected: 7IV. POSITION UNDER REVIEW

- P-20 Standardization of Material Inspection and Receiving Reports.
 P-21 Use of commercial type invoices and less detailed data on interim vouchers.

Total Under Review: 2

FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
I - STATUS OF RECOMMENDATIONS ACCEPTED FOR OFPP ACTION

Date DEC 31 1978
Page 1

Recommendation	Assignment in OFPP	Status
P-1. Small Purchase Procedures Training.	Labor Affairs & Personnel	A portion of the OFPP/DOJ/GSC project is currently being specifically devoted to development of innovative job performance aids to guide procurement personnel in making the proper discriminations when choosing between alternative small purchase procedures.
P-2. Use of Imprest Funds.	Regulations	Implementation began in August 1977 with the assignment to GSA of a Small Purchases Procedures Study. The initial phase of the GSA study, data collection, is completed. The final report was completed on July 12, 1978. Coverage in the proposed Federal Acquisition Regulation (FAR) will be the vehicle for implementing study recommendations.
P-3. Uniform Small Purchase Regulations.	Regulations	Results of the GSA Small Purchase Study will be used in drafting the small purchase section of the FAR which will be, by definition, uniform for all executive agencies. The study was completed on July 12, 1978, and this draft FAR section is due in January 1979. The FAR will be submitted to Congress in the Fall, 1979 and final FAR publication is scheduled for early 1980.
P-4. Small Purchase Implementing Directive.	Regulations	Implementation will be through the FAR system which is an interagency mechanism to develop regulations and procedures applicable Government-wide. To the extent that implementing procedures (directives) can be uniform Government-wide, they will be in the FAR. First draft scheduled for January 1979 and final by early 1980.
P-5. Review of Small Purchase Forms.	Regulations	Agency-designed small purchase forms should be reviewed and justified periodically; just as all other agency-generated special procurement regulations or procedures should be reviewed and justified. The FAR System will contain control mechanisms to keep agency procurement regulations and procedures to the minimum necessary to accommodate unique requirements of individual agency missions. Such unique requirements and specialized procedures will be reviewed by the OFPP.

FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
I - STATUS OF RECOMMENDATIONS ACCEPTED FOR OFPP ACTION

Date DEC 31 1978
Page 2

Recommendation	Assignment in OFPP	Status
<p>P-6. Raise to \$10,000 the level of which certain statutes become applicable to the procurement process.</p>	Acquisition Law	<p>Proposal has been sent to agencies and comments received. Legislative proposal in final draft stage and will be submitted to Congress in 1979. P.L. 95-585, enacted November 2, 1978, already amended the Miller Act, (49 Stat. 793; 40 USC 270(n)) by raising the dollar amount of contracts to which such Act applies from \$2,000 to \$25,000.</p>
<p>P-7 & 8. Pre-Award Surveys.</p>	Regulations & Procedures	<p>Accepted with exception of P-7(c) and P-7(d) which would impose written justification and approval requirements prior to requesting certain pre-award surveys. This added paperwork is not considered warranted. FAR will provide uniform coverage and forms.</p>
<p>P-9. Modify Attachment O of OMB Circular A-102 to provide for minimum Federal involvement with control based on procurement dollar values.</p>	Regulations & Procedures	<p>The recommendation for minimum involvement is accepted. The draft proposed revision to Attachment O provides for limited Federal involvement. The recommendation, however, proposes that involvement be based on dollar value. This recommendation is accepted in part and rejected in part. The proposed Attachment O provides for a small purchase procedure for procurements under \$10,000 with little involvement by the Federal Government. In addition, sole source contracts under \$10,000 need not be reviewed by grantor agencies. However, some statutory pass-through requirements; i.e., Davis-Bacon, and Fair Labor Standards Act are applicable at \$2,000. Reform in this area would require legislation.</p> <p>For contracts over \$10,000, Federal involvement, we believe should not be keyed to dollar value but to types of procurement actions; e.g., sole source contracts over \$10,000 or brand name type contracts may be reviewed by grantor agencies. However, preaward review of other contracts are prohibited.</p> <p>Implementation - a revision to Attachment O has been drafted. Agencies and State and local government organizations have made comments. A draft was published in the <u>Federal Register</u> (December 6, 1978) for official comment with a public hearing scheduled for January 17, 1979. Final publication of revision scheduled for issuance in February 1979.</p>

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FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
I - STATUS OF RECOMMENDATIONS ACCEPTED FOR OFPP ACTION

Date DEC 31 1978
Page 3

Recommendation	Assignment in OFPP	Status
P-24. Modernization of Commerce Business Daily.	Logistics	OFPP established an interagency committee to review methods to improve the CB. Recommendations furnished to OFPP 2/28/78; some were implemented immediately. Some require legislation and SBA assigned to draft such in its 1979 program. Commerce, in coordination with major procurement agencies, assigned the task of developing a simplified and uniform format for synopsis preparation which will be included in the FAR.
P-27. Consolidated Procurement Statute.	Regulations & Procedures	S. 1264 or similar legislation when enacted will fully implement the recommendation.
P-28. Procurement Reform Legislation should be drawn so as to reduce paperwork & administrative burden.	Regulations & Procedures	S. 1264 was approved by the Senate Governmental Affairs Committee, but failed enactment by the 95th Congress. It is anticipated that a consolidated procurement statute will be introduced in the next Congress.
P-29. Consolidation of ASPR & FPR.	Regulations	S. 1264 or similar legislation meets the objective of this recommendation. See P-27.
P-30. Paperwork Consideration in ASPR/FPR Consolidation.	Regulations	The OFPP Administrator has made the development of the Federal Acquisition Regulation (FAR) a high priority project. A special task force has been assembled in the OFPP to initiate and assure the progress of the FAR project.
		Official initiation of the project on January 31, 1978. Last segments of the first draft are scheduled for completion by February 1979. Final regulation targeted for submission to Congress September 1, 1979.
		Implementation will be through written guidelines issued by the OFPP and through OFPP review of FAR during initial phase of development.
		The process will be continuous until September 1979.

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FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
I - STATUS OF RECOMMENDATIONS ACCEPTED FOR OFPP ACTION

Date DEC 31 1978

Page 4

Recommendation	Assignment in OFPP	Status
P-31. Control of Subsidiary Regulations.	Regulations	Implementation will be in the FAR system. The OFPP has conducted a survey of all executive agencies to determine the extent of and analyze existing subsidiary and implementing procurement regulations. Control of subsidiary and implementing regulations will apply to all executive agencies; not only to GSA and DOD. FAR final publication by early 1980.

FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
 II - RECOMMENDATIONS ACCEPTED AND IMPLEMENTED

Date DEC 31 1978
 Page 1

Recommendation	Assignment in OFPP	Status
P-11 thru 15. Interagency Support Services.	Regulations & Procedures	Implemented by OFPP Policy Letter 78-4 (8/8/78).
P-22. Distribution of DOD Advisory Audit Reports on Indirect Costs.	Regulations & Procedures	Implemented by Defense Contract Audit Agency letter to field offices dated 10/28/77. Defense Contract Audit Manual paragraph 10-406 being modified by CAM Revision 99 to formalize implementation.
P-26. Federal Procurement Data System.	Regulations	Memo to heads of all executive departments and agencies dated January 31, 1978 established the Federal Procurement Data System (FPDS) and advised that DOD will implement the FPDS and run the Federal Procurement Data Center. The FPDS became operational on October 1, 1978.
P-32. Coordination of Simplification Training by FAI.	Labor Affairs & Personnel	The Director of the Federal Acquisition Institute was directed by OFPP to address paperwork and red tape problems in Federal procurement continually in its training, education, and research activities. (December 1978)

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FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
 111 - RECOMMENDATIONS REJECTED

Date DEC 31 1978
 Page 1

Recommendation	Assignment in OFPP	Status
<p>P-10. Interagency Review of Implementing Directives and periodic Revision of Attachment O.</p>	<p>Regulations & Procedures</p>	<p>This recommendation is rejected. Implementing regulations will be reviewed by OFPP and the Financial Management Branch of OMB for compliance with Attachment O standards. OFPP and OMB will also periodically review Attachment O as required after agency input. We do not believe that an interagency task group is an effective tool to monitor implementation or revise the Circular.</p>
<p>P-16. Elimination of Progress Payment Form 1195.</p>	<p>Logistics</p>	<p>Form is needed to maintain control of outlay of Government funds. Form revised and simplified to meet the objection raised by the Commission. It will be part of the FAR forms simplification project.</p>
<p>P-17. Elimination of DOD Quarterly Progress Payment Status Report.</p>	<p>Logistics</p>	<p>Report not eliminated by DOD as it is the major control for cost and expenditure funding. However, efforts have been completed to simplify the form. Will be part of the FAR forms simplification project.</p>
<p>P-18 & 19. Simplification of Use of DD Form 250.</p>	<p>Logistics</p>	<p>A DOD study shows that the alleged simplification actually would result in more paperwork and would be less efficient. This effort is related to P-20, Standardization of Material Inspection and Receiving Reports. Will be part of the FAR forms simplification project.</p>
<p>P-23. DOD Prohibition on Delegation of Responsibility for Selection of Support Items to Contractors.</p>	<p>Logistics</p>	<p>We concur in the DOD rejection of this recommendation. The appropriate role for a contractor in this regard is to recommend--but the <u>final</u> selection of support items is the responsibility of the procuring agency. Retention of this function by the procuring agency permits an additional check to assure against over procurement of support items.</p>
<p>P-25. Publish Commerce Business Daily on a weekly basis by product line.</p>	<p>Logistics</p>	<p>This would be more costly and less efficient. It does not have the support of Commerce or the Federal agencies.</p>

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FEDERAL PAPERWORK COMMISSION PROCUREMENT RECOMMENDATIONS
 IV - POSITION UNDER REVIEW

Date DEC 31 1978
 Page 1

Recommendation	Assignment in OFPP	Status
<p>P-20. Standardization of Material Inspection and Receiving Reports.</p>	<p>logistics</p>	<p>The OMB Cash Management Study will address this issue. Position will be taken upon completion of study (due: Spring '79), in conjunction with FAR forms simplification project.</p>
<p>P-21. Use of commercial type in- voices and less detailed data on interim vouchers.</p>	<p>logistics</p>	<p>The OMB Cash Management Study will address this issue. Position will be upon completion of study (due: Spring '79), in conjunction with FAR forms simplification project.</p>

Public Participation

Question: Do you think that publishing all proposed major rules and regulations in the Federal Register, and allowing for public comment, is appropriate and beneficial to the development of sound acquisition policy?

Answer: The procedure of first publishing rules in the Federal Register for comment may in some cases delay expeditious accomplishment of our objectives, but there is no question that it is appropriate and beneficial to the development of sound acquisition policy. This procedure permits all interested and affected parties to bring problems and obstacles to our attention, and to suggest changes or improvements that enable us to develop better, more effective regulations.

Question: The Administrative Procedure Act specifically exempts procurement regulations from its requirements (see 5 U.S.C. s 553 (a)(b)). In light of your experience with publishing proposed regulations in the Federal Register, what are your thoughts on amending the Administrative Procedure Act to subject significant procurement regulations to its "notice and comment" requirements?

Answer: I believe that Public Law 93-400 as presently written adequately treats the requirement for public participation and comment in the development of acquisition regulations. Section 6(d)(2) requires that OFPP establish criteria and procedures for effective solicitation of the viewpoints of interested parties in the development of policies, regulations, procedures and forms. The Federal Acquisition Regulation will require that all agencies publish their significant regulations for public comment. However, to include a requirement that all acquisition regulations regardless of their degree of importance be published under 93-400 or APA proceedings would impose an unnecessary burden on the system. For example, there are now approximately 22,000 new or revised pages of acquisition regulations being issued each year. While the advent of the Federal Acquisition Regulatory System will cut down on the volume of regulations being issued, there will still be many subsidiary implementing regulations which do not materially affect the public. Seeking public comment on these would be unnecessary and impracticable.

FAR Project

The FAR System, the creation of a single system of procurement regulations, is designed to eliminate much of the inconsistencies and paperwork which characterize

today's procurement regulations. You have asserted that the FAR will control the proliferation of additional forms by agencies.

- GAO testified that the FAR may not control the proliferation of agency regulations because it is not clear about what kinds of additional regulations individual agencies have the authority to issue.
- Will the final version of the FAR clarify this confusion?

Answer: The GAO testimony was based upon the draft FAR coverage in Subpart 1.3 - Agency Acquisition Regulations, released for agency and private sector comment in August of 1978. The language has been substantially revised and improved based upon the comments received, including those of the GAO. Our objectives in developing this coverage are to force the agencies to issue whatever implementing and supplementing coverage is essential through the FAR System, following the FAR format and numbering system with publication in the CFR; while at the same time strictly prohibiting restatement or paraphrasing of higher level coverage. The revised language limits the content of agency acquisition regulations to:

"(1) Those internal policies and procedures considered essential to implement the FAR within the agency; and

(2) Additional policies and procedures necessary to satisfy peculiar needs or statutory requirements which are not adequately covered in the FAR or in higher level agency acquisition regulations."

Our recently completed survey of executive agency procurement regulations shows that the bulk of the regulatory paper in the procurement process is issued internally within the agencies in forms such as directives, circulars, bulletins, orders, memoranda, etc. Our objective is to eliminate these forms of regulations in favor of a single published system of regulations open to public view. Only by requiring that all agency acquisition regulations be "on the record" can we effectively oversee compliance with FAR provisions, including those designed to control proliferation.

Agencies are required to establish formal procedures to assure compliance with the FAR provisions governing implementing and supplementing regulations. Copies of these procedures must be provided to the FAR Council, an interagency policy board which presides over the FAR System. The FAR Executive Staff, reporting to the Council, has specific responsibility for overseeing executive agency acquisition regulations including periodic reviews for compliance.

A-109

Question: Defense Department representatives testified that OFPP reviews of agency compliance with A-109 is a peripheral activity and should be given low priority. The Defense Department felt that OFPP was spending too much time reviewing agency programs.

- Could you please review the actions OFPP took to monitor the Defense Department compliance with A-109?

Answer: Since A-109 was issued in April 1976, OFPP has conducted two one day program compliance reviews in conjunction with OMB's overall Defense budget reviews and monitored a third review conducted by the Office of the Secretary of Defense. In each case OFPP provided in advance a list of programs to be reviewed and a list of questions. The following seven questions were asked of 58 programs in the FY 1980 Defense budget review.

QUESTIONS REGARDING MAJOR SYSTEM ACQUISITIONS
FOR USE IN FY 1980 BUDGET REVIEW

1. Has a Mission Need Statement (MNS) been approved by the agency head?
 - If so, what is the date of approval?
 - If not, when is the MNS expected to be submitted to the agency head? What is the current status of the MNS?
2. Has a Program Manager been designated?
3. Has an Acquisition Strategy been developed?
 - Is it available for review?
 - If not, when will it be developed?

4. Will system design concepts be solicited from industry?
 - When?
 - + Will a mission oriented solicitation be used giving free latitude to industry to propose system concepts, technological approaches and design features?
 - Will parallel short term contracts be issued?
5. Is the program structured to maintain the independent integrity of each alternative system design concept and not dictate or meld system design features into a system baseline requirement?
6. Is the program structured to permit sustained, incremental development competition in order to test, evaluate, and eliminate less attractive alternatives?
7. Has the shortening of the acquisition cycle and the elimination of gaps been given a prime consideration in the development of the acquisition strategy?

Our review of the answers to these questions on a program by program basis resulted in agreement with OSD as to the categorization of programs. The categorization is summarized in the following letter.



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

OFFICE OF FEDERAL
PROCUREMENT POLICY

NOV 21 1978

Mr. Dale W. Church
Deputy Under Secretary of Defense
for Research and Engineering
3E-144, Pentagon
Washington, D. C. 20301

Dear Dale

The Office of Management and Budget appreciates the review of fifty-eight Defense programs for compliance with OMB Circular No. A-109 on major system acquisition arranged by Mr. Trimble. The review was held on November 17, 1978.

The following is a summary of the results of that review organized under appropriate headings.

ONGOING PROGRAMS WHICH ARE COMPLIANT

- 63612A Advanced Multi-purpose Missile System
- 63370F/N Advanced Medium Air-to-Air Missile (AMRAAM)
- 63611M Landing Vehicle, Assault

PROGRAMS PLANNED TO BE COMPLIANT

These programs need continued management attention to assure that the planned compliance is realized. Special attention should be given to the requirement for parallel contracts for competitive exploration of alternative system design concepts solicited through a mission oriented RFP. A number of potential problems are cited with the applicable program.

- 63307A Air Defense Suppression Missile (FY 1981 new start)
- 63612F Defense Meteorological Satellite Program (gaps in planned contract activity were noted)
- 63238F/64231F Cruise Missile Carrier Aircraft
- 63251F New Manned Bomber
- 63230F/64221F Enhanced Tactical Fighter (both the ETF and the Combat Aircraft Technology are funded in the same PE - 63230F)
- 63228F/___N Air Force and Navy Trainers (OSD resolution of whether there are one or two needs)
- 63527N SSBN Survivable Support
- 63504N (Project No. S-0970-AS) SSN Federated Combat System
- 63562N (Project No. S-0972-AS) Submarine Air Defense
- 63367N Sub-launched ASW Standoff Weapon
- 63311N Long Range Dual Mission Missile
- 63601N (Project No. S-0266-MW) Intermediate Water Depth Mine
- 63516N Radar Surveillance Equipment

ONGOING PROGRAMS WHICH ARE NON-COMPLIANT

The programs were found to be non-compliant because parallel contracts for competitive exploration of alternative system design concepts before DSARC I were not planned. Other problems are cited with the applicable program. We believe these programs can be brought into compliance and request that the appropriate actions be taken to assure compliance.

64730A	Remote Piloted Vehicle (FY 1979 New start, moving directly from technology base to full-scale development)
63314F/64313F	Advanced Strategic Air Launched Missiles (subsystem rather than system concepts being considered)
63317F	Medium Range Ballistic Missile
63502N	(Project No. S-0260-MW) Advanced Surface Ship Mine Hunting
63502N	(Project No. S-0262-MW) P-A-M Minesweeping System
63610N	Advanced Lightweight Torpedo (technical transfusion planned to be directed at start of full-scale development)
63564N	Landing Craft Air Cushion Program
63369N	Air-to-Ground Standoff Weapons (gaps in planned contract activity were noted)
63215N	Maritime Patrol Aircraft (subsystem rather than system concepts being considered)

NEW STARTS PLANNED TO BE NON-COMPLIANT

63722A/64750A	Corps Tactical Operations System
64316A	Fire and Forget Seeker for Hellfire
64230F	Forward Air Controller FAC-X
27215F	TR-1 Squadron
63503N	Acoustic Communications (Advanced)
63534N	Surface Effect Ship
63529N	(Project No. S-0968) Advanced ASW Mobile Target (Note: P.E. 63610N also includes a target)

NOT IN FY 1980 BUDGET

64312A	Anti-Radiation Projectile
63380F/N	Within Visual Range Air-to-Air Missile
63309N	SIRCS
62543N	SEAMODS

NOT MAJOR SYSTEMS

These programs were reported to be non-major systems. However, P.E.'s 63561N, 63562N, and 63601N exceed the RDT&E dollar thresholds of the current DOD Directive 5000.1 for major systems. Additionally, these programs were found to be non-compliant and therefore not following 5000.1 which states, "the management of system programs not designated as major system acquisitions will be guided

by the provisions of this Directive."

64624A	High Mobility Weapons Carrier
63561N	(Project No. S-0923-56) Improved Performance Machinery in Submarines
63562N	(Project No. S-0311) Torpedo Advanced Development
63601N	(Project No. S-0257-MW) Cargo Aircraft Minelaying
64261N	Acoustic Search Sensors

TECHNOLOGY BASE PROGRAMS

63314A	High Energy Laser
33602F	General Purpose Satellite Communications System
63230F	Combat Aircraft Technology (except for Enhanced Tactical Fighter)
63249F	Night Attack Air Capability
63306N	Advanced Air-Launched Air-to-Surface Missile Systems
63257N	V/STOL (6.3B funds are being used in this P.E.)
63530N	Over-the-Horizon Targeting
62332N	Strike Warfare Weapons Technology

ONGOING PROGRAMS - NO ACTION

While some of these programs have or are following certain provisions of A-109, retroactive application is not required.

63303A	General Support Rocket System
63301A	Division Air Defense Gun
64749A	Division Tactical Operations System
64203A	Aerial Scout
64406F	Space Defense
63609F/64607F	Wide Area Anti-Armor Munitions
63371N	Trident-II Missile System
63504N	(Project S-0222-AS) Rapid Passive Localization Sonar
64226N	Advanced Self-Protection Jammer

OTHER ACTIONS REQUESTED

As a result of this program review the following actions are requested:

1. Provide the answers to the seven questions used in the review for P.E. 63582N, Surface Warfare, which we understand to be a FY 1980 new start major system.
2. Arrange a meeting by mid-December 1978 for OMB to review the Navy's Combat System Architecture effort, to determine how the SIRCS and SEAMODS efforts have been incorporated, and to review planned A-109 compliance.

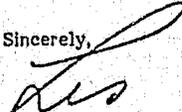
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Additionally, we would appreciate the opportunity to review the revised DOD Directive 5000.1 before it is finalized.

As a result of this review, it appears essential that additional management attention must be addressed to the effective implementation of A-109 and 5000.1. Therefore, we recommend that a knowledgeable senior-middle management individual be detailed from each of the Military Departments to your office to assist, on a full time basis, this implementation.

Let me convey my sincere thanks again for the outstanding cooperation we continue to receive from you, Bob Calaway and Bill Perry on A-109 and other matters of mutual interest.

Sincerely,



Lester A. Fettig
Administrator

Question: Circular A-109 was issued on April 5, 1976.

- Could you review the executive agencies' responsiveness regarding A-109 implementation?
- Could you tell us by agency, for the major procuring agencies, how many new starts there have been, and whether these acquisitions are in compliance with A-109?

Seventeen agencies are in various states of implementing A-109. Approximately 43 major system acquisition programs started in FY 1978 through FY 1980 are being planned or conducted in accord with A-109.

<u>Agency</u>	<u>Implementing Instruction</u>	<u>Program Application</u>
Agriculture	Issued	None
Commerce	Issued	5
Defense	Issued (being revised)	26
Energy	Issued (being revised)	1
HEW	Being developed	1
HUD	Issued	None
Interior	Application to be resolved	None
Justice	Issued	None
Labor	Issued	None
State	Application to be resolved	None
Transportation	Issued	4
Treasury	Issued	None
GSA	Being developed	None
EPA	Issued	1
NASA	Issued	4
VA	Being developed	1
Corps of Engineers	Application to be resolved	None

OFPP has worked closely with the budget examiners in OMB in reviewing agency compliance with A-109 as a part of the normal budget review process. OFPP has not recommended program deletion from the budget for non-compliance but has provided an evaluation of compliance and indicated needed corrective actions. OMB has strongly supported having the necessary corrective actions effected in the agencies on programs which remained in the President's budget.

An example of OMB support for assuring compliance with A-109 is the following letter to Defense Secretary Brown.

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JAN 2 1979

Honorable Harold Brown
Secretary of Defense
Washington, D.C. 20301

Dear Secretary Brown:

As part of the FY 1980 Defense budget review a number of major system acquisitions were reviewed to determine if the programs were proceeding in accordance with OMB Circular A-109, "Major Systems Acquisitions". The results of that joint review with OSD, OMB and service staffs were forwarded to the Department by the enclosed letter. They indicate that a significant number of ongoing programs and planned new starts were non-compliant and that corrective actions can and should be taken.

As you may know, the House Armed Services Committee held extensive hearings on A-109 last year. The Senate Appropriations Committee is on record that they will take A-109 compliance into account in passing on program funds. It will be difficult for us to support FY 1980 funds for those programs unless the necessary corrective actions are taken.

I wanted to call this situation to your attention so that we can do everything possible to assist you and Bill Perry in improving the system acquisition process. Bill and his staff have worked hard to implement and support A-109 policies. In order to strengthen his position as Acquisition Executive and to gain increased attention for these management issues, we would like to gauge A-109 compliance explicitly in this year's OMB budget review as one factor in making our recommendations on which programs warrant funding.

Please let us know what else we might do to be helpful.

Sincerely,

(Signed) James T. McIntyre, Jr.

James T. McIntyre, Jr.
Director

Enclosure

The following is Secretary Brown's response.

THE SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

APR 3 1979

Mr. James T. McIntyre, Jr.
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. McIntyre:

Your recent letter expressed concern about the Department of Defense implementation of OMB Circular A-109, "Major System Acquisitions."

My staff has analyzed the results of the joint OMB/DoD review of 58 defense systems as reported on by the Office of Federal Procurement Policy (OFPP). We were particularly concerned about the 16 programs OFPP categorized as noncompliant and have carefully re-examined the acquisition plans for each of them. A small task force made up of members of my staff and the representatives from the Military Departments who have been designated as focal points for A-109 implementation conducted the review.

After looking at the status of the 16 programs and the particular circumstances unique to each, we found further management guidance to the Departments was necessary to assure that our intent and directives were clear. In retrospect, part of the problem resulting in criticism of DoD management of these programs may have resulted from some misunderstandings regarding the extent of work that has already been accomplished. A summary of our analysis of all 16 programs is attached for your information.

I share your desire to improve the acquisition process and to implement the policies of Circular A-109. I believe we can best achieve these goals by tailoring our management approach for each acquisition as we have done for the 16 programs. Each must then be supported based on a careful assessment of its worth.

Thank you for communicating your concern to me and for your continued support.

Sincerely,

William J. Brown
DEPUTY

Attachment

PROGRAMS OFPP CONCLUDED
WERE NON-COMPLIANT WITH OMB CIRCULAR A-109

FY 80 New Starts (as classified by OFPP)

Corps Tactical Operations System - Not an acquisition new start.
Category 6.5 funding only for mission analysis to
determine if need exists.

Fire and Forget Seeker for Hellfire - This is a subsystem for Hellfire,
not a major system.

Forward Air Controller (FAC-X) - Program being realigned to comply
with A-109.

TR-1 Squadron - Single system design concept authorized which will permit
utilization of existing system to fill urgent need.
(FY 79 Start)

Acoustic Communications (Advanced) - Program being realigned to comply
with A-109.

Surface Effects Ship - Technology prototype program being pursued in
accordance with 1976 SecDef direction. No funding in
FY 80 was requested. (Has been conducted in general
accordance with A-109 intent since initiation.)

Advanced Mobile Target - Program will be pursued in accordance with
A-109 principles.

On-Going Programs (as classified by OFPP)

Remote Piloted Vehicle - Retroactive application of A-109 impractical because of advanced stage of development.

Advanced Strategic Air Launched Missiles - Program will be pursued in accordance with A-109 principles from Milestone I forward.

Medium Range Ballistic Missile - Not truly an acquisition new start. Efforts to date have been to determine if need exists. If program start is authorized it will be pursued in accordance with A-109 principles.

Advanced Surface Ship Minehunting - The project includes two subsystems, neither of which is a major system.

P-A-M Minesweeping System - Consists of NATO program with foreign lead and U.S. technology demonstration of possible alternative concept. Both in very early stages.

Advanced Lightweight Torpedo - Program being pursued in accordance with A-109 principles. DoD does not plan to direct technical transfusion.

Landing Craft Air Cushion Program - Has been conducted in general accordance with A-109, intent despite initiation in mid-60's. Full scale development phase, if authorized, will be pursued in accordance with A-109 principles.

Air-to-Ground Standoff Weapons - Program being realigned to comply with A-109.

Maritime Patrol Aircraft - Program being realigned to comply with A-109.

Commercial Products

The Procurement Commission felt that Government supply operations could be more efficient and less costly if greater reliance were placed on using commercial products and commercial distribution channels.

GAO feels that OFPP has only made a partial response to the Commission's recommendations in this area.

Question: What successes and savings have been made as a result of the applications of OFPP's commercial products policy?

Answer: Under the Acquisition and Distribution of Commercial Products (ADCoP) policy many common use items such as clothing, textiles, chemicals, construction equipment, and food have been acquired. Most acquisitions have been at savings over prior buys of similar items.

Examples of such ADCoP buys are:

- A half-page purchase description instead of a 20-page specification to solicit offers for military undershirts. The resulting purchase in July 1978 cut \$797,000 off the price paid only two months earlier for comparable quantities.
- Lengthy specifications for military boxer shorts and bed sheets were scrapped in favor of short purchase descriptions for a savings of \$65,000.
- Radiologists obtained preferred x-ray film when DOD bought their film from four companies using a three-line purchase description. By buying in large quantities under master contracts, \$2 million was saved.
- A test buy of 51 million gallons of gasoline at a cost of about \$25 million used a commercial specification. The gasoline is being tested and, if successful, DOD will apply the commercial standard in filling its annual requirements of more than 375 million gallons.

Other items purchased under ADCoP include ice cream makers, electrical fuses, bath towels, plumbing fixtures, Worcestershire sauce, salad dressing, salt, chain saws, and cotter pins. In all cases simplified purchase descriptions were used in lieu of Federal specifications and savings have resulted in many instances.

In addition to the direct savings achieved from the purchase of specific items, substantial administrative savings are expected from ADCoP as a result of increasing Government reliance on commercial distribution systems and the elimination of unnecessary Government specifications.

- **Use of Commercial Distribution Systems.** ADCoP emphasizes that the Government should be able to use commercial items in the same manner as other institutional and industrial consumers. Where commercial distribution channels are available, commercial products should be purchased for direct delivery to Government users and the "middleman" (the Government depot) should be eliminated. Estimates vary but it sometimes costs us up to \$1 to deliver \$1 worth of merchandise through the depot system. We are not saying in ADCoP that the "depot system" should be eliminated. For some items, where commercial channels are not available or for critical mobilization items, the depots are essential. What we are advocating is to unclog the depot pipeline by removing items that can be readily obtained through commercial systems.

- **Elimination of Unnecessary Government Specifications.** In December 1977, OFPP directed DOD and GSA (the two major Government spec preparing activities) to develop a Government-wide specs and standards management system favoring functional over detailed specifications. An interagency working group, chaired by the GSA, was convened in April 1978 to accomplish this task. The working group, with OFPP's participation, has developed a new Federal Property Management Regulation. The new regulation (signed by GSA on February 16, 1979) directs that Commercial Item Descriptions (simple functional descriptions) be used in ADCoP procurement packages to describe commercial products in lieu of detailed Federal or military specifications. To date, GSA has achieved a net reduction of approximately 696 Federal specifications and standards and has an additional 875 in coordination for possible cancellation. The Department of Defense, which manages some 40,000 specs and standards, has tentatively identified some 8,000 to 10,000 detailed specifications for possible cancellation or conversion to CID's. This program is just getting underway and is expected to substantially reduce paperwork and result in savings for both Government purchasing activities and industry suppliers.

Question: How cooperative have the agencies been in carrying out the commercial products policy?

Answer: The main agencies involved in implementation of ADCoP are the Veterans Administration (VA); Department of Health, Education, and Welfare (DHEW); Food and Drug Administration (FDA); Department of Agriculture (USDA); Department of Commerce (USDC); Department of Defense (DOD); and the General Services Administration (GSA). All of these agencies have been cooperative but achievements in some have been greater than in others. Examples of implementation activities within these agencies include:

- Project to Establish a Government-Wide System for the Acquisition of Drugs and Medical Devices. DOD and VA signed an agreement in mid-1978 to share acquisition of drugs and medical devices without duplication. To implement the agreement a joint DOD/VA task force was established to deal with differences in:

- Contract Clauses
- Acquisition Assignments
- Specification Unification
- Quality Assurance (with FDA participation)
- Item Entry and Commonality
- Systems Compatibility

During the first week in January 1979 the first solicitations were issued for single offeror drugs by DOD and VA. The estimated amount of the two solicitations is \$8 million. So far 30 manufacturers of single offeror drugs have been assigned to DOD and VA for acquisition without duplication. This accounts for 75 percent of the \$400 million annual volume of all drugs acquired. In addition, an agreement will be signed shortly by DOD, VA, and FDA which will enable FDA to begin assuring quality for medical devices. By the end of FY 79 the new system will be in place and the acquisition and inspection assignments will afford numerous opportunities for the elimination of today's costly duplications with resulting savings.

- Project to Establish a Government-Wide System for Food Specifications and Inspection under USDA Leadership.

USDA has been assigned Government-wide management responsibility for food specifications and inspection. The Food Quality Assurance Division in the Food Safety and Quality Service has been established to manage this responsibility. The division, which is not fully staffed, is reviewing Government food specifications for possible conversion to commercial specifications and it has established and chairs an Interagency Food Quality Assurance Implementing Committee. This Committee has:

- Developed a Federal In-Plant Quality Assurance Manual and has sent it to the concerned agencies for formal approval. These agencies (USDA, DOD, VA, DHEW, and Commerce) have approved the manual. The manual establishes policies and provides instruction for conducting inspection and acceptance for food procured with appropriated funds. It contains a provision for the development of comprehensive procedures for grading and inspection personnel to follow in reporting without recrimination, suspected fraudulent, abusive, or inefficient practices.
- Accepted a Subcommittee Specification Task Force Report which will be the basis for USDA's management of the Government's food specs under ADCoP guidelines. The report includes a memorandum of understanding (MOU) in which GSA delegates to USDA the management of Federal specifications for food. The MOU has been sent to the concerned agencies for approval. The Specification Task Force has been charged with the rapid completion of the manual for food specification management and development.

- Project for the Assumption by USDA and USDC of the Origin Inspection of Meat and Seafood Purchased by DOD.

USDA has assumed 70 percent of the responsibility for origin inspecting of meat for DOD. The balance will be assumed by October 1979. USDC(NMFS) has assumed 100 percent of origin inspection of seafood for DOD. In both cases commercial specs are being used in lieu of Government specs. A report of January 18, 1979, from Defense Personnel Support Center shows that the USDC inspections to U.S. grade standards have resulted in a \$3 million saving during 1977 and 1978 over previous DOD procurements. In meat inspections from April 3, 1978, to December 31, 1978, less than 7/100 of one percent of the items had product-related deficiencies. In seafood there were no deficiencies.

- Department of Defense's Commercial Commodity Acquisition Program (CCAP).

DOD's CCAP program has resulted in the buys noted in Question 1 above. The experience gained under CCAP served as the basis for a policy directive (5000.37) issued by the Deputy Secretary of Defense in September 1978. The policy directive institutionalized the ADCoP program throughout DOD. The full implementation of ADCoP, however, has not materialized. Implementation has been delayed pending the issuance of an instruction to appropriate DOD field elements. This instruction, when issued, is expected to result in the carrying out of the policy.

- GSA's ADCoP Program.

GSA has not totally implemented the ADCoP policy. Their main accomplishments have been in the specifications area including the issuance of a Temporary Federal Property Management Regulation E-59. This regulation was issued in February 1979 and requires GSA to use simplified purchase descriptions in buying commercial products. GSA, however, has not made any purchases to date using the new procedure.

Question: What role is OFPP playing in GSA's efforts to reexamine multiple award schedules?

Answer: OFPP, to date, has served primarily in an "advisory role" regarding GSA's efforts to improve the multiple award schedules. In carrying out this role, OFPP in December 1977 requested GSA to develop a management system for multiple awards that would satisfy customer needs, reach the total competitive marketplace, and eliminate uncontrolled Federal agency open market buying. In concert with developing specification management and market research and analysis policy and procedures, GSA was to accomplish the following:

- Develop procedures to ensure that best prices/discounts are obtained from marketplace competition.
- Develop simplified schedules to enable users to make intelligent selections of products; i.e., (1) provide users with sufficient market research data so that effective comparison of products can be made for total cost, warranties, service, quality, etc; and (2) detail points to cover when justifying other than lowest cost items.

- Publish a customer operating guide that contains all acquisition procedures for multiple award schedule techniques; consolidate all internal and external instructions to refine the entire process for managing the technique.
- Energize the schedule contract improvement program (SCIP).
- Establish a workable data system to measure customer purchases to determine whether volume non-stock purchasing is more cost effective; also, via market research activity seek out data on open market purchases which can be placed on schedule.
- Analyze socio-economic impact (small business, minority business, 8A contracting, prison made, blind made, etc.)
- Develop program to educate users, acquisition personnel, executives, and others on multiple award contracting as a credible technique, among others. This should be done as a coordinated effort with the market research and specification projects and the Federal Acquisition Institute.
- Establish a system of periodic reviews to determine whether the process is working, weaknesses, improvements needed, etc.

In December 1978 the Commissioner, Federal Supply Service, advised the Administrator of General Services of FSS's plan for improving the schedule program. This plan, FSS Service Objective 22, however, has not been totally implemented, and in January 1979 OFPP wrote to the Administrator of General Services regarding the schedules. At that time OFPP noted:

FSS has made several attempts to improve award schedules. Most of these efforts have been directed at improving the structure or mechanics of the schedule system rather than improving the management of the system. Matrices have been developed for some schedules to enable users to more easily compare salient characteristics of similar products; a new schedule program guide has been issued; advertisements have been placed in the Commerce Business Daily on a new Item Introductory procedures; and an educational course designed for schedule users has reportedly been improved. These efforts will improve the schedule program, but additional attention must be given to overall management concerns. Specifically, policies should be issued to limit the use of schedules to those situations where market research indicates they are the best technique for the particular commodity.

As a result of the January 1979 letter, GSA's new Office of Acquisition Policy was designated to work with OFPP in all acquisition matters. We are now working with that office and the Office of the GSA Administrator on the schedules and other acquisition improvements. An example of our efforts to bring about the needed improvements is illustrated by the enclosed letter of March 30, 1979.

MAR 30 1979

Mr. Paul E. Goulding
Acting Administrator
General Services Administration
Washington, DC 20405

Dear Mr. Goulding:

This refers to your letter of March 8, 1979, regarding GSA's review of the Federal Supply Schedule program and your plans for developing a pilot test to determine the impact on agency acquisition practices of Section 303(e) of S.5, the proposed Federal Acquisition Reform Act.

Section 303(e) of S.5 authorizes the use of multiple award schedules under the conditions noted in your letter. The authorizing conditions limit the schedules, in terms of the number of items covered, to those which meet minimum essential needs and are offered at the lowest competitive prices. Section 303(e) will preclude contracting for duplicative items, items which exceed minimal needs, or ones which are not offered at the lowest competitive prices. While 303(e) will serve to reduce the size of schedules, it is not intended to prevent agencies from obtaining needed requirements.

Multiple award schedules contain commercial off-the-shelf products. These products are subject to our Acquisition and Distribution of Commercial Products (ADCoP) policy. Basic to the ADCoP policy is its requirement for conducting market research and analysis prior to establishing an acquisition strategy and developing Commercial Item Descriptions. If the required market research is properly performed, it will validate user needs, identify those commercial products that meet the needs, and indicate the most cost effective method of contracting for them. Accordingly, effective market research and analysis will stave off most legitimate customer concerns.

Your plan to develop test procedures for implementing Section 303(e) of S.5 is a good idea. The provisions of 303(e) appear workable when coupled with our ADCOP policy. Further provisions for increasing responsiveness to users can be developed, if required, by improving the waiver procedures of the existing schedule program. These procedures could be structured to permit timely approval of agencies' requests to make off-schedule purchases.

We are anxious for you to proceed in improving the schedule program, and appreciate your advising us of your plans. Please keep us informed as you progress, and let us know how we can help.

Sincerely,


Lester A. Fettig
Administrator



General
Services
Administration Washington, DC 20405

12 MAR 1979

MAR 8 1979

Honorable Lester A. Fettig
Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC 20503

Dear Mr. Fettig:

One of GSA's highest priorities in recent months has been an exhaustive review of the GSA schedule program. The review covers such areas as whether the program is a reasonable acquisition method, if so, what items should be acquired by schedule, what type of discounting should be used, how the program should be managed, and what kind of oversight or audit procedures should be used. The objective of the review is to identify the most cost effective and efficient mechanism of acquiring commodities.

The new language in Section 303(e) of Senator Chiles' proposed Federal Acquisition Reform Act requires when multiple award schedules are utilized that competitive methods be used (a) to limit the number of items on such schedules which meet the same needs and (b) to obtain the lowest competitively priced items which meet the minimum essential needs of the Government. I believe that the intent of this provision is to reduce the number of items available to agencies by fostering direct price competition within each of a number of quality ranges for given groups of items. If this is the intent, I am in complete accord with it. I am concerned only that there will be instances where use of the method will not be the most cost effective method of acquiring needed items. We must have the flexibility to permit a waiver at an appropriate management level in those instances where its use is not cost effective. This would be where (a) the Federal agencies' choices cannot reasonably be limited, or (b) suitable purchase descriptions cannot be developed, or (c) the dollar volume is insufficient to warrant the effort.

Therefore, I plan to expand the scope of the review to include a test program necessary to develop procedures to comply with the intent of Section 303(e) and to develop guidelines to identify those areas where its use would not be cost effective. High dollar volume groups of items currently on multiple awards schedules will be identified to be used in developing procedures and guidelines for evaluating the feasibility of such an approach to the procurement of widely differing types of items.

CONTINUED

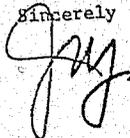
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Simple purchase descriptions for two or more ranges of quality for each group will be developed. If this can be done, it is my intention, after coordination with the using agencies, the Office of Management and Budget, the Office of Federal Procurement Policy, and the General Accounting Office, to obtain direct price competition within each quality range so that an award may be made to the lowest responsive and responsible offeror.

I am concerned that our customer agencies will not be in favor of this last because it will severely reduce the number of items available to them on schedules. I would appreciate any advice or assistance you could provide in obtaining the support and acceptance of the agencies for this concept. If you feel that a meeting would be useful to discuss how best to deal with the agencies, I am available at your convenience.

Sincerely



Jay Solomon
Administrator

DATA System

One of the specific responsibilities Public Law 93-400 assigned to OFPP was the creation of a procurement data system. Evidently, that system was put into place recently.

It seems to me that the information coming out of that system, if used properly, would be an invaluable management tool. I would be interested in what kinds of information we will be able to extract from the system.

Question: Will it identify the number and size of sole source contracts being awarded by each agency?

Answer: Yes. Under the data element titled "Procurement Method" each contract will be assigned one of the following six codes:

<u>CODE</u>	<u>MEANING</u>
1	Two-step Formal Advertising
2	Other Formal Advertising
3	Negotiated Competitive
*4	Negotiated Noncompetitive
5	Directed Procurement for Foreign Government
6	Tariff or Regulated Procurements

*Code 4 will reveal sole source contracts.

Question: Will it clearly separate procurements of commercial products from procurements based on detailed specifications?

Answer: No. Because of the long lead time for implementation of a Government-wide data system, the system design was frozen more than a year ago, January 1973. An interagency task group has been working to consider improvements to the data system for implementation beginning with the next fiscal year. The OFPP has assigned high priority to the inclusion of a new data element to distinguish commercial items.

Question: Will it identify the size and number of contracts being awarded to small businesses? To Minority owned businesses?

Answer: Yes, in both cases. Page 30 of the FPDS Reporting Manual describes the data element titled "Type of Business" as follows:

<u>CODE</u>	<u>MEANING</u>
	<u>Small Business</u>
A1	Disadvantaged Business - 8(a)
A2	Small Business Owned by Minority Group
A3	Other Small Business
	<u>Large Business</u>
B1	Minority Business
B2	Other Large Business
	<u>Non-Profit and Not For Profit Institutions</u>
C1	Private Educational Organization
C2	Hospital
C3	Research Institutions, Foundations, and Laboratories
C4	Other Non-Profit and Not For Profit Institutions
	<u>State/Local Government Agency</u>
D1	Educational Institution
D2	Hospital
D3	Research Organization
D4	Other State/Local

Outside U.S.

- E1 Procured and used outside U.S.
 E2 Procured outside but used inside U.S.

Wage and Price Program

GAO is deeply concerned over the way the President's anti-inflation program is being applied to Federal contractors. OFPP is involved in the application of that program.

Question: What role do other Government agencies have in the creation and application of that program?

Answer: We consulted with a number of other Government agencies, including DOD, GSA, DOE and NASA, in the creation and application of the program.

Question: Are your concerns over the substance of the requirements, over the authority to impose the requirements, or over OFPP's role in the program?

Answer: We have no major concerns over the program or OFPP's role in it. We believe the program is absolutely necessary at this time and must be made to work.

Question: If OFPP did not exist, what would be the effect on the legality of the Federal contracts provisions of the anti-inflation program?

Answer: The legality of the Federal contract provisions of the program is not based on OFPP authority. It is based on the procurement statutes and executive order.

Question: Do you consider that the regulations promulgated on December 27th by your office are consistent with the requirement in law that the lowest responsible bidder be awarded the contract in a sealed bid procurement?

Answer: The law does not say that the lowest responsible bidder must be awarded the contract in a sealed bid procurement. The law says that the Government should take into account "price and other factors" in making the award. This view has been upheld by the courts.

Question: Deputy Secretary of Defense Duncan has asserted that the anti-inflation program is expected to reduce defense acquisition costs. Isn't it possible that, since a low bidder could be disqualified in some situations, the overall result of this program could be increased cost to the taxpayer? The bidder who complies with the wage-price guidelines may not necessarily perform the contract for the lowest overall cost, isn't that true?

Answer: It is true in the short run a contract may be awarded in a particular instance to someone other than the contractor offering the lowest price. However, over the long haul, the inflationary pressure on the procurement budget will be eased because the Government will be dealing only with those firms that intend to moderate their price; specifically, only those firms whose products are on the low end of the price spectrum.

Question: Since defense contracts are performed over a period of years will it not be disruptive to debar a contractor some years later because he is no longer in compliance with the guidelines?

Answer: A contract will not be terminated because a contractor falls out of compliance with the guidelines. The program only provides that the contractor will not be eligible for further contracts while not in compliance. Even if the contractor is not in compliance, however, a waiver may be granted by the agency head for national security reasons if no feasible alternative is available.

Question: Our experience with these guidelines programs has suggested that it is not always easy for a company to know whether it is in compliance. Doesn't this raise an additional problem for a company which may, despite its efforts to comply, be found to violate the guidelines and thus be debarred?

Answer: We believe that as experience with the guidelines grows, companies will more easily understand them and thus those that wish to stay in compliance will be able to. In addition, the staff at COWPS will be available to assist companies in this regard.

Question: Given the position that GAO has taken on the validity of this policy, can't we expect numerous bid protests where one bidder has been disqualified for noncompliance? Won't this be disruptive?

Answer: It is not unlikely that there will be bid protests in view of the GAO position. However, the GAO bid protest opinions are only advisory on the executive branch, and since the Attorney General has ruled that the program has a sound legal foundation, agencies will be instructed to disregard adverse GAO decisions. Thus, we expect a minimum of disruption until the question is settled in court.

Question: Do you agree with the Justice Department's position that this policy is analogous to the Government's equal opportunity policies? That policy was strongly supported by the Congress whereas your policy is specifically not authorized and has been opposed by the Senate Resolution, is that not true? Can't it also be argued that the equal opportunity program rests on a constitutional basis, unlike this policy? Finally, the equal opportunity programs that have been upheld by the courts did not include disqualification from bidding, isn't that correct?

Answer: It is true that the equal opportunity policies have enjoyed years of acquiescence by the Congress and have some constitutional basis; however, in the case of the wage-price program, the procurement policies have a basis in the procurement statutes and are, we believe, much more closely attuned to the major thrust of those statutes than are the wage price guidelines -- namely, to achieve economies and efficiencies in procurement. It is not true that the equal opportunity program does not include disqualification from bidding. Failure to establish a satisfactory affirmative action plan in Government business or commercial business can effectively debar a bidder from receiving Government contracts.

Question: The Justice Department's memorandum seems to rest largely on a provision of the Federal Property and Administrative Services Act of 1949. It is true that that Act does not cover Department of Defense procurement. What then is the legal justification for extending the program to defense procurement?

Answer: The provision referred to 40 U.S.C. 486, is a general grant of power that may be applied to any procurement activities in executive branch agencies.

Question: Do you see any limits on the power of the Executive Branch to place conditions on Federal procurement which are not authorized by the procurement statutes and are intended to fulfill other economic goals?

Answer: The Executive Branch has no power to place conditions on Federal procurement that are not authorized by the procurement statutes. The point is that the procurement policies under the wage-price program are authorized by the procurement statutes.

Kickbacks - GAO Report

In a report to Congress in November 1975, on the basis of an actual case of kickback payments at the subcontractor level, GAO recommended that an anti-kickback clause be incorporated in Government contracts. That clause would prohibit payments of gratuities by subcontractors to higher tier Government contractors. In response to the report, OFPP drafted a model clause, but 3 years later the clause still has not been put into use.

Question: Can you give us the reason for this delay and the current status of the OFPP action on the model clause?

Answer: In the Federal Register of September 13, 1976 (41 F.R. 178, p. 38833), OFPP published for comment two proposed contract clauses, a "Standards of Ethical Conduct" clause, prohibiting gratuities from prime contractors to Government employees, and a "Subcontractor Gratuities" clause, prohibiting gratuities from subcontractors to higher tier subcontractor or prime contractor employees.

We have concluded that the proposed "Subcontractor Gratuities" clause would improperly intrude into standard acceptable business practices. Many prime contractors and subcontractors have extensive commercial business in addition to their Government work. The legality of entertainment expenses and gifts associated with the active conduct of a company's trade or business is recognized by the tax laws, which allow, within limits, deductions for such expenses (26 U.S.C. 274 (a)(1) and 274(b)). The only gifts and entertainment we should concern ourselves with - except for matters of cost allowability under cost-reimbursement type contracts - are those given or accepted as inducement or acknowledgment of a subcontract award. Penalties for such gratuities are already provided by the Anti-Kickback Act (41 U.S.C. 51).

The GAO report pointed out that it is usually difficult to prove that gratuities are given to influence the award of a subcontract, and recommended a clause prohibiting gratuities regardless of whether a direct relationship can be established between a gratuity and a subcontract award. However, in view of long established policy on business gifts and entertainment, it would not be appropriate for this Office to prohibit all such private transactions by those involved in performing a Government contract just because it might be difficult to prove intent as required by the Anti-Kickback Act.

Since the recovery and criminal provisions of the Anti-Kickback Act are available, we find no need for a contract clause governing subcontractor gratuities. Although, as the GAO report states, the Anti-Kickback Act does not expressly provide for contract termination, the Supreme Court has held that the Government may cancel a contract if it is shown that employees of the contractor accepted payments from subcontractors in violation of the Act (United States v. Acme Process Equipment Co., 385 U.S. 138 (1966)).

Our originally proposed "Standards of Ethical Conduct" clause has been revised. The new clause, entitled "Gratuities", may be found in Part 3 of the proposed Federal Acquisition Regulation (FAR) now being developed. Notice of its availability for review and comment was published in the Federal Register on March 9, 1979 (44 F.R. 48, p. 13053). A copy of the FAR Part 3 proposed is attached.

FEDERAL ACQUISITION REGULATION (FAR)
PART 3 - ETHICS

Comments Due May 3, 1979

Column 2 Codes

- V DAR and FPR language identical (verbatim).
- AV Language almost verbatim (only minor grammatical or sequential variances between DAR and FPR).
- SS Language substantially the same, with no substantive difference between DAR and FPR treatment.
- D Corresponding language in DAR and FPR different in intent or effect.
- NAE No DAR equivalent for FPR coverage.
- NFE No FPR equivalent for DAR coverage.

Column 2 or 4 Codes

- OS To be omitted from FAR (recommend including in agency implementing or supplementing publications).
- OU To be omitted from FAR as unnecessary.
- MR Material to be relocated in FAR (cite new location).

Column 4 Codes

- R Current DAR/FPR language substantially rewritten to conform to OFPP guidelines.
- NM New material not in DAR or FPR.
- BA Basically DAR language.
- BF Basically FPR language.
- AF Combination of DAR and FPR language.

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-112 Standards of Conduct</p> <p>1-112.1 Government Personnel</p> <p>1-112.2 Organizational Conflicts of Interest</p> <p>1-112.4 Contractor Gratuities to Government Personnel</p> <p>1-113 Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities</p> <p>1-113.1 Reporting Procedures</p> <p>1-113.2 Noncompetitive Practices</p> <p>1-114 Reporting of Identical Bids</p> <p>1-115 Subcontractor Kickbacks</p> <p>1-116 Noncollusive Bids and Proposals</p>	<p>1-11</p> <p>1-11</p> <p>1-11</p> <p>1-10</p> <p>1-9</p> <p>1-9</p> <p>1-12</p> <p>1-10</p> <p>1-14</p>	<p>1-101 General</p> <p>1-102 Solicitation and acceptance of gratuities by Government personnel.</p> <p>1-103 Agency regulations.</p> <p>1-201 Applicability.</p> <p>1-202 General.</p> <p>1-203 Suspected violations of the gratuities clause.</p> <p>1-204</p> <p>1-301 General.</p> <p>1-302 Definitions.</p> <p>1-303 Reporting suspected antitrust violations to the Attorney General.</p> <p>1-303-1 Identical bids reports.</p> <p>1-303-2 Other antitrust violation reports.</p> <p>1-304 Subcontractor kickbacks.</p> <p>1-101 General</p> <p>1-102 Definitions</p> <p>1-103 Reporting requirements</p> <p>1-104 Claims to be reported</p> <p>1-104-1 Preparation of reports</p> <p>1-104-2 Submission of reports by Attorney General</p> <p>1-104-3 Subcontractor reports to be obtained from bidans</p> <p>1-104-4 Information to be provided</p> <p>1-105 Subcontractor gifts and kickbacks</p> <p>1-106 Noncollusive bids and proposals</p>	<p>1-100</p> <p>1-101</p> <p>1-102</p> <p>1-103</p> <p>1-201</p> <p>1-202</p> <p>1-203</p> <p>1-204</p> <p>1-301</p> <p>1-302</p> <p>1-303-1</p> <p>1-303-2</p> <p>1-304</p>	<p>TABLE OF CONTENTS</p> <p>PART 3--ETHICS</p> <p>3.000 Scope of part.</p> <p>SUBPART 3.1--STANDARDS OF CONDUCT</p> <p>3.101 General.</p> <p>3.102 Solicitation and acceptance of gratuities by Government personnel.</p> <p>3.103 Agency regulations.</p> <p>SUBPART 3.2--CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL</p> <p>3.201 Applicability.</p> <p>3.202 General.</p> <p>3.203 Suspected violations of the gratuities clause.</p> <p>3.204</p> <p>SUBPART 3.3--REPORTS OF SUSPECTED ANTITRUST VIOLATIONS AND OTHER NONCOMPETITIVE PRACTICES</p> <p>3.301 General.</p> <p>3.302 Definitions.</p> <p>3.303 Reporting suspected antitrust violations to the Attorney General.</p> <p>3.303-1 Identical bids reports.</p> <p>3.303-2 Other antitrust violation reports.</p> <p>3.304 Subcontractor kickbacks.</p>
COMPLEMENTARY:				1

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
Part 5--Contingent or Other Fees				
1-500 Scope of Part 5	1.85	Subject to Subpart 3.4		
1-501 Reserved	1.85	3.400 Scope of subpart.		
1-502 Applicability	1.85	3.401 Definitions.		
1-503 Covenant Against Contingent Fees Clause	1.85	3.402 Statutory requirements.		
1-504 Improper Influence	1.85	3.403 Applicability.		
1-505 General Principles and Standards Applicable to the Covenant	1.85	3.404 Solicitation provision and contract clause.		
1-505.1 Contingent Character of the Fee	1.85	3.405 Review of Contingent Fee Representation and Agreement.		
1-505.2 Exceptions to the Prohibition of the Covenant	1.85	3.406 Award before receipt of SF 119.		
1-505.3 Bond Fide Employee	1.85	3.407 Failure or refusal to furnish SF 119.		
1-505.4 Bond Fide Established Commercial or Selling Agency Maintained by the Contractor for the Purpose of Securing Business	1.85	3.408 Evaluation of SF 119.		
1-505.5 Fee for Information	1.85	3.408-1 Responsibilities.		
1-506 Representation and Agreement Required From Prospective Contractors	1.87	3.408-2 Evaluation criteria.		
1-506.1 General	1.87	3.409 Misrepresentations or violations of Covenant Against Contingent Fees.		
1-506.2 Interpretation of the Representation	1.87	3.410 Records.		
1-506.3 Exceptions	1.87			
1-507 Retained	1.88			
1-508 Enforcement	1.88			
1-508.1 General	1.88			
1-508.2 Failure or Refusal to Furnish Standard Form 119	1.88			
1-508.3 Misrepresentations or Violations of the Covenant Against Contingent Fees	1.88			
1-508.4 Reports	1.88			
1-509 Preservation of Records	1.89			
1-311 Buying In	1.90			
COMMENTARY:				
(1) The OFPP is deleting "Organizational Conflicts of Interest" from Part 3, FPR and will suitably relocate it in the FAR.				
(2) Coverage relocated from FAR 2.206 to subpart 3.5 since it relates to ethics.				

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1. DEFENSE ACQUISITION REGULATION (DAR/ASDR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p><u>1-113 Standards of Conduct.</u> <u>1-113.1 Government Personnel.</u> All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditures of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reluctance about making a full public disclosure thereof. See AR600-50, for the Army; SECNAV Instr. 5370.2H of 27 November 1967, for the Navy; AFR 20-30, for the Air Force; DSAR 3500.1, for the Defense Supply Agency; DCA Inst. 210-50-1, for the Defense Communications Agency; DNA Inst. 5100.7A, for the Defense Nuclear Agency, and DNA Inst. 5100.1, for the Defense Mapping Agency.</p>	NFC		NM NM DA NM	<p style="text-align: center;">PART 1--ETHICS</p> <p>1.000 Scope of part.</p> <p>This part prescribes policies and procedures for maintaining high ethical standards in the Government acquisition process through--</p> <p>(a) Standards of conduct for Government personnel;</p> <p>(b) Reporting suspected antitrust violations and other noncompetitive practices;</p> <p>(c) Use of a covenant against contingent fees; and</p> <p>(d) Preventing recovery of buying-in losses.</p> <p style="text-align: center;">SUBPART 1.1--STANDARDS OF CONDUCT</p> <p>1.101 General.</p> <p>Government business shall be conducted in a manner above reproach, with complete impartiality, and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.</p> <p>1.102 Solicitation and acceptance of gratuities by Government personnel.</p> <p>All Government personnel are prohibited from soliciting or accepting, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone conducting or seeking Government business. Certain limited exceptions are authorized in agency regulations.</p> <p>1.103 Agency regulations.</p> <p>(a) Agencies are required by Executive Order 11222, May 6, 1965 and implementing part 735 of Title 5 (Office of Personnel Management Code of Federal Regulations) to prescribe "Standards of Conduct". These agency standards contain--</p>
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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
			↑ NM ↓	<p>(3.103 continued)</p> <p>(1) Agency authorized exceptions to 3.102;</p> <p>(2) Disciplinary measures for persons violating the standards of conduct;</p> <p>(3) A requirement that all personnel annually certify that they have read and are familiar with the standards.</p> <p>(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing P.L. 95-521, amending 18 U.S.C. 207.</p>
<u>COMMENTARY:</u>				4

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p><u>1-111.4 Contractor Gratuities to Government Personnel.</u></p> <p>(a) The right of a contractor to proceed under the contract may be terminated if it is found, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the Government to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract.</p> <p>(b) To constitute a violation under the Gratuities clause (7-104.16) three elements must be present:</p> <p>(i) the contractor must have a contract which contains the Gratuities clause;</p> <p>(ii) the contractor, his agent, or other representative must have offered or given a gratuity to an officer, official, or employee of the Government; and</p> <p>(iii) the gratuity must have been offered or given with the intent to obtain a contract or favorable treatment in the awarding or amending, or the making of determinations concerning the performance, of a contract (in this respect, intent generally must be inferred because an admission is rarely obtainable).</p> <p>A lack of any of these elements will cause an action taken by the Government pursuant to the Gratuities clause to fail. Procedural requirements for gratuities hearings are set out in Appendix D.</p>	NFE		<p>NM</p> <p>X</p> <p>R</p> <p>NM</p> <p>BA</p>	<p><u>5. FEDERAL ACQUISITION REGULATION (FAR)</u></p> <p><u>SUBPART 3.2--CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL</u></p> <p><u>3.201 Applicability.</u></p> <p>This subpart implements 10 U.S.C. 2207 for the Department of Defense. Except for assessment of exemplary damages the provisions of 10 U.S.C. 2207 are as a matter of policy extended to all executive agencies.</p> <p><u>3.202 General.</u></p> <p>(a) The cognizant Board of Contract Appeals shall determine after notice and hearing (see 3.203), if a contractor, its agent, or other representative, under a contract containing the gratuities clause--</p> <p>(1) Offered or gave a gratuity; e.g., entertainment or gift, to an officer, official, or employee of the Government; and</p> <p>(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract (intent generally must be inferred).</p> <p>(b) When the Board determines that a violation has occurred the Government may--</p> <p>(1) Terminate a contractor's right to proceed;</p> <p>(2) Initiate debarment or suspension measures (see Subpart 9.8); and</p> <p>(3) Assess exemplary damages only under contracts that use money appropriated to the Department of Defense.</p> <p><u>3.203 Suspected violations of the Gratuities clause.</u></p> <p>Agency personnel shall report suspected violations to the contracting officer or other designated official for transmittal through the head of the agency to the cognizant Board of Contract Appeals. Reports shall comply with the reporting requirements of that Board.</p> <p><u>3.204 clause.</u></p> <p>Insert the clause in 52.104-16X in all contracts and purchase orders, except those for personal services.</p>
<u>COMMENTARY:</u>				<p>5</p> <p>(page 33 following)</p>

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>D-4. Notice and Contents</p> <p>Whenever information coming to the attention of the Department indicates that the procedures provided herein may be properly involved, the Department may cause a written notice to be served upon the contractor in the manner hereinafter provided. The notice shall be signed by the Secretary or his designee and dated and shall include the following items:</p> <p>(1) A statement of the time, place, and purpose of the hearing, and the authority and jurisdiction under which it will be held. The statement as to purpose need only identify the contract clause, the contract or contracts involved, and the ultimate facts to be determined. The time of the hearing shall not be less than 10 days after service of the notice.</p> <p>(2) Brief allegations setting forth the circumstances surrounding the offering or giving of the gratuity, including a description of the alleged gratuity itself and its estimated cost to the contractor; an identification of the offeror or donor and of the offeror or donor and the latter's relationship to the contractor; and the approximate date and place of the alleged offer or gift. Such allegations need only be sufficient to apprise the contractor reasonably of the issues involved in the hearing.</p> <p>(3) A request that the contractor answer in writing the allegations of the notice, including in his answer such facts or arguments as he may wish, and that he attend the hearing to address such evidence with respect to the alleged offer or gift as he may desire.</p> <p>A suggested form of notice is set out as an appendix to these rules.</p>	<p>↑</p> <p>NFE</p> <p>↓</p>			
<p>COMMENTS:</p> <p style="text-align: right;">7</p>				

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>D-4. Continuances and Delays The authority to grant continuances or to adjourn the hearing shall rest with the person presiding at the hearing. Continuances will only be allowed for the most compelling reasons.</p> <p>D-7. Parties The parties to the hearing will be the contractor concerned and the Government. No intervention by other persons shall be permitted.</p> <p>D-8. Representation and Hearing Assistants The parties may be represented at the hearing and proceedings incident thereto by legal counsel. Upon the appearance of record of legal counsel of the contractor in the proceedings, service of papers as may thereafter be required may be made upon such legal counsel. The Department will make available such technical assistance, including a reporter, secretary or stenographer as may be required.</p> <p>D-9. Transcript Testimony and argument shall be reported verbatim. The reporter or stenographer shall make available to the contractor and to the Government transcripts of the proceedings, including all testimony and copies of all documentary exhibits upon the payment of the reasonable costs thereof as the Department may by order fix.</p> <p>D-10. Hearings Hearings shall be conducted by the Secretary or his designee. Hearings will be as informal as may be reasonably appropriate under all the circumstances. Evidence and testimony, although not ordinarily admissible under legal rules of evidence, may be received subject to the discretion of the person presiding at the hearing. Immaterial, irrelevant, or unduly repetitious evidence shall be excluded. The parties may stipulate as to any facts or testimony. The testimony of witnesses shall be under oath and witnesses shall be subject to cross examination. The hearing officer shall make such rulings with respect to the conduct of hearings as circumstances may require to ensure the orderly and expeditious presentation of evidence in a manner fair to the parties and consistent with these Rules and requirements of due process of law.</p>	NFE			
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1. DEFENSE ACQUISITION REGULATION (DAR/ABPRI)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>D-11. Depositions Following service of the notice of hearing, a deposition may be taken as herein provided, and placed in evidence whenever the ends of justice will be served thereby.</p> <p>(a) Notice to Take. When either party desires to take a deposition, unless the parties stipulate as to the time when, and place where, the deposition is to be taken, the name of the officer before whom it is to be taken, and the names and addresses of the witnesses, the moving party shall give to the opposite party at least ten days' notice of the time when and the place where such deposition will be taken, the name and address and official title of the officer before whom it is proposed to take the deposition, and the names of the witnesses. A deposition may be taken either upon written interrogatories or upon oral examination, as may be specified in the notice. If the deposition is to be taken upon written interrogatories, copies thereof must accompany the notice to take depositions; if the opposite party desires to submit cross interrogatories, written cross interrogatories should be served upon the party giving the notice within 5 days from the receipt of his notice to take the deposition. Notices may be served upon the contractor as provided by Rule 4 or upon his legal counsel. Service by the Government may be made upon the person signing the notice of hearing or the Government representative of record, if service is made by mail, such mail shall be registered and service will be complete upon mailing.</p> <p>(b) Taking Depositions. Depositions may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken, to administer oaths. Witnesses shall be under oath and shall be examined or cross-examined as at the hearing. Objections will be reserved for determination at the hearing, provided, however, objections as to the form of questions shall be made and noted in the deposition. Each deposition shall show the caption of the proceeding, the place and date of taking, the names of the witnesses, and the party by whom called. The officer taking a deposition shall enclose the original deposition and exhibits, in a sealed packet, with postage or other transportation prepaid, and forward the same to the Secretary or his designee.</p> <p>(c) Use of Depositions. Testimony taken by deposition will not be considered until offered in whole or in part and received in evidence. A deposition taken by one party may be offered by the opposite party.</p> <p>D-12. Submittals Without Appearance. Absence of Parties. If the contractor fails or refuses to appear or to make a written admission without appearing at the hearing, the hearing shall proceed upon such evidence as the Government may offer. The unexcused absence of any party shall not be a reason for delay of the hearing. Notwithstanding the nonappearance of the contractor at the hearing, proposed findings, conclusions, and argument may be submitted in writing on the contractor's behalf as provided in Rule 13.</p>	HR 23261 ↑ HR 23261 ↓			
<p>COMMENTARY:</p>				0

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>D-13. Argument and Request for Findings Within the discretion of the person presiding at the hearing, limited oral argument may be presented by the parties upon the completion of the hearing. Within ten days after the hearing is completed, both parties may file in writing with the person or board conducting the hearing proposed findings and conclusions with reasons and argument in support thereof. Copies will be provided to the opposite party.</p> <p>D-14. Findings and Decisions As soon as practicable after completion of the hearing and the timely submission of proposed findings and conclusions, the person or board that conducted the hearing shall make a written findings and conclusions with respect to all material issues; reasons for the findings will be included at such length as may be appropriate. The findings where adverse to the contractor will include, in addition to other appropriate items, the following: (i) a description of the gratuity that was offered or given; (ii) a statement of the costs incurred by the contractor in providing the gratuity; (iii) the name and relationship to the contractor of the person by whom the gratuity was offered or given on the contractor's behalf; (iv) the name and position of the officer or employee of the Government to whom the gratuity was offered or given; (v) a description of the contract which the Contractor sought to secure by the offering or giving of the gratuity, or a statement as to the nature of the favorable treatment sought with respect to the awarding or awarding, or the making of any determinations with respect to the performing of a contract. When the findings are made by a designee they shall be forwarded to the Secretary with recommendations as to whether the right of the contractor to proceed under any contract mentioned in the notice of hearing shall be terminated, and as to the exemplary damages to be imposed against the contractor, which shall be in an amount which shall not be less than three nor more than ten times the costs incurred in providing the gratuity.</p> <p>Approved this 5th day of July 1952. (Signed) Earl D. JOHNSON, <i>Assistant Secretary of the Army.</i> (Signed) H. R. ASKINS, <i>Assistant Secretary of the Navy.</i> (Signed) Russell L. GILPATRICK, <i>Under Secretary of the Air Force.</i></p>	NFE OU			
COMMENTARY 10				

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-111 Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.</p> <p>1-111.1 Reporting Procedures: Reports of suspected criminal conduct, non-competitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in Part 6 of this Section.</p> <p>1-111.2 Noncompetitive Practices.</p> <p>(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Secretary concerned or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General for appropriate action. Similarly, evidence of such violations in negotiated procurements should be referred to the Attorney General. Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, etc.</p> <p>(b) Reports of identical or equal bids of proposals should not be submitted automatically, but only where there is some reason to believe that those bids or proposals may not have been arrived at independently. (Continued in column 1 on next page)</p> <p>(c) The reports required by this paragraph do not satisfy the reporting requirement contained in 1-114.</p>	<p>②</p> <p>MR</p> <p>SS</p> <p>SS</p> <p>MR</p> <p>MR</p> <p>MAE</p> <p>MR</p> <p>②</p>	<p>Subpart 3.3--Reporting Possible Antitrust Violations</p> <p>1-1.1601 General.</p> <p>(a) Section 302(d) of the Federal Property and Administrative Services Act of 1949 requires, with respect to advertised procurement, that bids be referred to the Attorney General for appropriate action when in the opinion of the agency head there evidence any violation of the antitrust laws. The referral of such bids shall be in accordance with this Subpart 1-1.3.</p> <p>(b) Where proposals received in competitive procurement evidence violations of the antitrust laws, the procedure in this Subpart 1-1.3 may be used in referring such proposals to the Attorney General.</p> <p>(1-1.1602 (Continued))</p> <p>The expression "suspect bids" or variations thereof, as used in this Subpart 1-1.3, shall be deemed to include any bids which indicate practices which may evidence possible violations of the antitrust laws including collusive bidding, follow-the-leader pricing, rotated low bids, identical bids, or any other bid device intended to deprive the Government of the benefit of full and free competition! (See page 42)</p> <p>Where identical bids are filed by dealers, distributors, or jobbers representing the same manufacturer or supplier, they frequently indicate adherence to the supplier's list or suggested price in the Government. Where the procurement Agency has some evidence that such identical bids resulted from collusion or concert of action among the bidders they need not be reported to the Attorney General.</p> <p>(c) The reports required by this subpart are in addition to and are not to be considered as satisfying the requirements of Subpart 1-1.14 for reporting identical bids to the Attorney General.</p> <p>1-1.1602 Documents to be transmitted.</p> <p>In reporting cases of possible violations of the antitrust laws to the Attorney General, each agency shall transmit, in addition to a copy of each suspect bid, the documents and statements enumerated below (see continuing sheet and also on next page)</p>	<p>R</p> <p>AF</p> <p>②</p> <p>R</p> <p>④</p>	<p>5. FEDERAL ACQUISITION REGULATION (FAR)</p> <p>SUBPART 3.3--REPORTS OF SUSPECTED ANTITRUST VIOLATIONS AND OTHER NONCOMPETITIVE PRACTICES</p> <p>3.301 General.</p> <p>Practices that eliminate competition or restrain trade lead to excessive prices and may warrant criminal, civil or administrative action against the participants. These practices include collusive bidding, follow-the-leader pricing, identical bids, subcontractor kickbacks, rotated low bids, uniform estimating systems, and sharing of the business. Agency personnel shall report suspected noncompetitive practices to the contracting officer for (a) referral to the Attorney General by the head of the agency (see 3.303-1 and -2) and (b) initiation of contractor debarment or suspension measures (see Subpart 9.4).</p> <p>3.302 Definition.</p> <p>"Identical bids" means bids that are determined to be identical as to unit price or total amount with or without the application of evaluation factors; e.g., discount or transportation cost.</p>
<p>COMMENTARY:</p> <p>(1) Subpart 3.3 is a consolidation of DAR 1-111, 1-114, and 1-115 with FPR 1-19.9, 1-1.16, 1-1.320, and 1-1.317. This is broad enough to include the related subjects of identical bids and certification of independent price determination.</p> <p>(2) Coverage in DAR 1-111.1 is recognized by reference to Subpart 9.4 at end of 3.301 coverage in DAR 1-111.2 was in 3.303-2 (a).</p> <p>(3) New language regarding reporting and referral of suspected violations depicts the true chain of events. Also, references clarify that there are three separate reporting requirements: i.e., identical bids, other antitrust violations and debarment/suspension reports. Reporting of suspected</p>	<p>155</p> <p>MR</p> <p>SS</p> <p>MR</p> <p>MAE</p> <p>MR</p> <p>②</p>	<p>other antitrust (see 3.303-2) violation in negotiated acquisition is now mandatory.</p> <p>(4) Relocation of DAR 1-114 (a) (partial) and FPR 1-1.1602. Relocation was necessary based on inclusion of identical bids coverage in this subpart (see 3.303-1). Reference to 4.8 is due to relocation of the definition "line item" in 4.4.</p> <p>(5) This material has been relocated in 3.303-1(c).</p> <p>(6) This material has been relocated in 3.303-2(a).</p> <p>(7) This material has been relocated in 3.303-2 (b).</p>		

This is from the last sentence of 1-1.1602(b)(2).

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<p><i>(Continuation of 1-111.2 (b))</i></p> <p>Such reports should be accompanied by conformed copies of the bid or proposal, other contract document, and supporting data. The report should set forth:</p> <p>(1) the noncompetitive pattern or situation under consideration;</p> <p>(2) purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstract of bid;</p> <p>(3) community of financial interest among bidders, insofar as it is known;</p> <p>(4) the extent, if any, to which specification requirements or patents restrict competition;</p> <p>(5) information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and</p> <p>(6) any other information deemed pertinent.</p>	D O S	<p><i>(1-1502 continued)</i></p> <p>(1) One copy of the invitation for bids and any amendments thereto.</p> <p>(2) An abstract of all bids received for each item covered by the bid invitation for which suspect bids were received, showing for each such item—</p> <p>(i) The unit and total price bid.</p> <p>(ii) The net price to the Government after discounts and allowances for transportation, or other costs, are absorbed by the bidder.</p> <p>(iii) The name of the manufacturer of the item or the source of supply if the bidder is a dealer or distributor, and the location of the plant from which shipment will be made.</p> <p><i>(see specific identified items in column 3 on previous page)</i></p> <p>(4) The destination of shipments, and whether the price quoted includes or excludes the cost of transportation to destination.</p> <p>(5) The identity of the successful bidder, and, where identical low bids were submitted by several bidders, an indication of how the award was made.</p> <p>(6) Copies of documents filed by suspect bidders as part of the bid submission as obtained by the procuring agency such as the following—</p> <p>(i) Contracts with contingent fee representatives who acted on behalf of one or more of the bidders who submitted identical bids or advised them in the preparation of their bids.</p> <p>(ii) Correspondence or other evidence of patent rights owned or licensed by bidders quoting identical prices.</p> <p>(3) Evidence of the existence of financial or other ties between bidders submitting suspect bids as revealed by Dun and Bradstreet or other reliable financial reports.</p> <p>(4) Any pertinent financial or corporate information concerning the suspect bids as may be contained in financial statements or annual reports to stockholders.</p> <p>(5) Copies of reports containing the findings of any special investigations conducted by the procurement agency concerning the bids reported.</p> <p>(6) Copies of any correspondence between the procurement agency and the suspect bidders, revealing the factors responsible for the filing of suspect bids, or explaining the price bid.</p> <p>§ 1-1503 Additional Information.</p> <p>In addition to the documentary matter described above, the following information must be submitted, or appropriate remarks made, in the degree available, with respect to each suspected anti-trust violation:</p> <p>(a) Where there is a prior pattern of procurement of the item for which suspect bids were received, indicate the procurement agency's annual dollar value of purchases of the item in each</p>		12.
<p>COMMENTARY:</p> <p>(1) The Department of Justice has approved a reduction in report content (see 1.302-2 (b)). Hence, the existing coverage as written in DAR 1-111.2 (b) and FPR 1-1502 is no longer necessary.</p>				

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<p style="text-align: center;">See note on page 12 ←</p>	NAE QU	<p>(81-1,203 continued)</p> <p>of the three calendar years preceding the year in which the suspect bids were received.</p> <p>(b) With respect to purchases of the item in prior years, submit an abstract of all subject bids received in response to each invitation for bids issued in the preceding three-year period, setting forth in such abstract the information described in § 1-1.702. If this information was submitted with a prior release of identical bids to the Attorney General it will be necessary only to state that the information was submitted with a suspect bid reference of a specified date.</p> <p>(c) Indicate whether the pattern of bidding in the three-year period preceding the receipt of the suspect bids reported appears to indicate such practices as bid rotation, sharing of the business, collusive bidding, or any other form of bid action. If such practices are indicated, explain in detail.</p> <p>(d) If there are any known financial, personal, or other than personal relationships among any of the suspect bidders, describe them.</p> <p>(e) Indicate if the Government's specifications for the item are so drawn that only a limited number of potential bidders are capable of meeting these specifications.</p> <p>(f) Indicate whether the item is covered by active patents and if such patents are owned or controlled by any of the suspect bidders. If information is available, submit full details, including any evidence that patent control may have a bearing on price identity.</p> <p>(g) If there are any known manufacturers or suppliers of the item who consistently avoid bidding on Government contracts, identify such suppliers or manufacturers and indicate whether the procurement officer has any knowledge as to the reasons why these firms avoid seeking Government business.</p> <p>(h) Indicate if the prices bid by the suspect bidders are their published list prices or if they are prices applicable only to the particular bid. If the prices quoted by the suspect bidders are not their published list prices, state whether they appear to have been arrived at by the application of a uniform Government discount from list prices or by some other method of computation. If available, furnish photostatic copies of suspect bidders' and other bidders' price lists.</p> <p>(i) Indicate whether it is known to be the general practice of the manufacturers of the item to adhere to pricing systems which may be characterized as delivered pricing, home pricing, or basing point pricing. If the answer is in the affirmative, describe the nature of the pricing system used.</p> <p>(j) Indicate whether, in the opinion of the procurement officer, the suspect or the bids submitted appear to stem from collusion or conspiracy on the part of the suspect bidders. If so, explain the basis for this opinion.</p>		
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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-114 Reporting of Identical Bids.</p> <p>(a) General, Executive Order 10936 dated 24 April 1961, as implemented by the Department of Justice, requires a report to be submitted to the Attorney General on each formally advertised procurement (including small business restricted advertising) over \$10,000 which involves identical bids.</p> <p>reports required by 1-111.2. This reporting requirement is in addition to the identical bids</p> <p>are two or more bids for the same line item which:</p> <p>(1) are identical on their face (regardless of evaluation factors such as discount, transportation, etc.) either as to unit price or total line item amount; or</p> <p>(2) are identical as evaluated either as to unit price or total line item amount.</p> <p>A line item is an item of supply or service which independently can be made the subject of an award by the Government. However, the reporting requirements herein established for line items shall be applicable in invitations calling for line item bidding even though the invitations or bids contained qualifying or restrictive limitations on award (e.g., all or none bids or award on one item being conditioned on award of other items).</p>	<p>D</p> <p>OU</p> <p>NAE (3)</p> <p>SS (4)</p> <p>OU (4)</p> <p>AV (5)</p> <p>MR (5)</p> <p>SS (6)</p> <p>NEC (6)</p> <p>NAF (6)</p> <p>OU (6)</p>	<p>3. FEDERAL PROCUREMENT REGULATIONS (FPR)</p> <p>Subpart 1-1.16—Reports of Identical Bids</p> <p>§ 1-1.1601 General</p> <p>(a) This Subpart 1-1.16, developed cooperatively with the Department of Justice, prescribes procedure for submitting reports to the Attorney General in accordance with Executive Order No. 10936 of April 24, 1961 (3 CFR, 1961 Supp., pp. 100-102) when identical bids are received in connection with the procurement of personal property or non-personal services (including construction).</p> <p>(b) The purpose of the Executive order is to encourage identical bidding to reduce the costs of the Government, to aid in the attainment of the anti-trust laws and the maintenance of a competitive economy; and to provide the Attorney General such information as may tend to establish the presence of a conspiracy in restraint of trade and which may warrant further investigation with a view to preferred suit or criminal charges.</p> <p>(c) The reports required by this subpart are in addition to and are not to be considered as satisfying the requirements of Subpart 1-1.8 for reporting cases of possible antitrust law violations to the Attorney General.</p> <p>§ 1-1.1602 Definitions</p> <p>As used in this Subpart 1-1.16, the following terms shall have the meanings set forth:</p> <p>(1) "Identical bids" means two or more bids for the same line item which:</p> <p>(i) Are identical on their face (including the application of evaluation factors such as discount and transportation) as to unit price or total line item amount; or</p> <p>(ii) Are found, in the normal process of evaluating bids for award, to be identical as to unit price or total line item amount. Line item evaluation computations beyond those normally made to determine the low acceptable bidder are not required.</p> <p>(2) "Line item" means a procurement item as defined in § 1-1.2201 specified in an invitation for bids which, under the terms of the invitation, is susceptible to a separate contract award.</p> <p>(3) "Bid value" means the dollar amount computed by multiplying the line item quantity specified in the invitation for bids by the lowest unit price bid for the line item. Where a line item quantity is not specified in the invitation, as in the case of requirements type or indefinite quantity type contracts, the bid value of the line item is the dollar amount computed by multiplying the estimated line item quantity by the lowest unit price bid for the line item.</p>	<p>↑</p> <p>(2)</p> <p>R</p> <p>(6)</p> <p>↓</p>	<p>3. FEDERAL ACQUISITION REGULATION (FAR)</p> <p>3.303 Reporting suspected antitrust violations to the Attorney General.</p> <p>3.303-1 Identical bids reports.</p> <p>(a) Executive Order 10936, April 24, 1961 (3 CFR Supp.) requires submission of a report to the Attorney General when identical bids over \$10,000 are received.</p> <p>(b) Reports are required regardless of the—</p> <p>(1) Disposition of the solicitation; e.g., award or cancellation;</p> <p>(2) Fact that the identical bids were not the low bids; or</p> <p>(3) Fact that the bids contain qualifying or restrictive limitations; e.g., all or none bids, or award on one item being conditioned on award of other items.</p>
<p>COMMENTARY:</p> <p>(1) The term "procurement item" was deleted under FAR Project 403, "Definitions".</p> <p>(2) All Attorney General antitrust violation reporting requirements have been consolidated in 3.303. Reporting requirements for debarment/suspension purposes are specified in Subpart 9.4 (see 3.301).</p> <p>(3) Essence of this paragraph is addressed in 3.301.</p>		<p>(4) This statement is unnecessary in view of last sentence in 3.303-2(a).</p> <p>(5) This definition was relocated in 3.302.</p> <p>(6) Formerly the last sentence in column 1 this page.</p>		

1. DEFENSE ACQUISITION REGULATION (DAR/ADPR) (1-114 continued)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR) (3.203-1 continued)
<p>(b) <i>See bottom of this page.</i></p> <p>(c) <i>Identical bid.</i> An identical bid report shall be submitted when identical bids are received and the bid value of all line items covered by the invitation for bids exceeds \$10,000 (based on the apparent low bid for each line item) except that reports will not be submitted when:</p> <p>(1) bids are received only from foreign sources on invitations involving delivery and performance outside the United States, its possessions, or Puerto Rico;</p> <p>(2) there is no line item on which the apparent low bid exceeds \$2,500 (line item evaluation computations beyond those normally made to determine the low bidder are not required); or</p> <p>(3) no identical bids are discovered in the normal process of evaluating bids for award and no identical bids are apparent on the face of the bid.</p> <p>Reports are required on reportable identical bids regardless of whether an award is made on the line item, the invitation is cancelled, or any other disposition is made subsequent to the public opening of the invitation.</p> <p>(d) <i>Submission of Reports.</i> Identical bid reports shall be submitted for all reportable bids on Department of Justice Form DJ-1500 (National Stock No. 7540-113-7810), available from General Services Administration stores deposit instructions for filling out this form are printed as the cover sheet of each pad of these forms.</p> <p>(e) <i>Completion of Reports.</i> All bids for each line item on which reportable identical bids have been disclosed shall be reported regardless of whether the identical bid were the low bid.</p> <p>Reports shall be made within 20 days following the disposition of all of one or more contracts or other action. Two completed copies of the report, a copy of the invitation for bids and a copy of the completed abstract of bids shall be sent to the Attorney General, Rm. AT-100, Washington, D.C. 20530. The abstract of bids need not be furnished when the number of line items on an invitation exceeds 100; in which event, the identical bid report shall be annotated to indicate (1) the number of line items and (2) the number of bidders on the invitation. A copy of the identical bid report shall be retained by the purchasing activity.</p> <p>1-114 (continued)</p> <p>(b) <i>Information to be Obtained from Bidders.</i> If a bidder fails to provide the information required by paragraph (c) of the DF 19-B or paragraph 3 on the reverse of the DF 33, and if identical bids are involved, one inquiry will be made in an effort to obtain the information. Failure to provide information concerning the parent company or the employer's identification number is not a basis for rejection of bids.</p>	<p>OU (1) AV (2) MR (3) AV (4) AV (5) AV (6)</p>	<p>1-1.1601 <i>Identical bid report.</i></p> <p>1-1.1601-1 <i>Cases to be reported.</i></p> <p>(a) A report shall be submitted by any bidder appearing on the Attorney General's list in the 1-1.1601-1, whenever:</p> <p>(1) the total bid value of all line items covered by an invitation for bids issued under formal advertising procedure, or under small business restricted advertising procedure (see 1-1.1601-1), exceeds \$10,000; and (2) identical bids have been received on at least one line item having a bid value of more than \$10,000.</p> <p>However, a report will not be submitted where bids are received only from foreign sources in response to invitations for bids requiring delivery and performance outside the United States, its possessions, and the Commonwealth of Puerto Rico.</p> <p>(b) Reports are required on reportable identical bids regardless of whether an award is made on the line item, the invitation is cancelled, or any other disposition is made after bid opening. Line items on which identical bids are received are not reportable if the bid value of the line item is \$2,500 or less. Likewise, line items on which no identical bids are received are not reportable.</p> <p>1-1.1601-2 <i>Preparation of reports.</i></p> <p>(a) Identical bid reports shall be made on D.J. Department of Justice Form DJ-1500, Identical Bid Report for Procurement (for information of the form, see 1-1.1601-2.1100). Form DJ-1500 is available in pads of 500 at General Services Administration stores deposit instructions for filling out this form are printed on the cover of each pad of forms.</p> <p>(b) All bids on each line item on which reportable identical bids are received shall be shown on the report whether or not the identical bids were the low bid.</p> <p>1-1.1601-3 <i>Submission of reports.</i></p> <p>(a) Identical bid reports shall be sent to the Attorney General within 20 days following the disposition of all bids received in response to the invitation for bids, whether by the awarding of one or more contracts or other action.</p> <p>(b) Two completed copies of each identical bid report, together with one copy of the invitation for bids and one copy of the completed abstract of bids, shall be sent to the Attorney General, Rm. AT-100, Washington, D.C. 20530. When the number of line items on an invitation exceeds 100, a copy of the abstract of bids need not be furnished. In such case, however, the identical bid report shall be annotated to indicate the number of line items and the number of bidders on the invitation. A copy of each identical bid report shall be retained by the purchasing activity.</p> <p>1-1.1601-4 <i>Failure to provide information.</i></p> <p>(a) If a bid does not contain the information required by the invitation for bids provision in 1-1.1601-1 and an identical bid report is received under 1-1.1601-1, one inquiry will be made of the bidder, in an effort to obtain the information. (1) The information is not available after inquiry, the identical bid report shall be annotated as indicated.</p> <p>(b) Failure to provide information concerning the parent company identification number or employer's identification number is not a basis for rejection of bids.</p>	<p>BF BF BA MR Lc Sc (c) AF</p>	<p>(c) Agencies shall submit reports to the Attorney General on U.S. Department of Justice Form DJ 1500, Identical Bids Report for Procurement (see 53.XXX). Preparation and distribution instructions are printed on the reverse of this form. Reports are due within 20 days following disposition of all bids.</p> <p>(d) Reports to the Attorney General are unnecessary when--</p> <p>(1) Dealers, distributors, or jobbers representing the same supplier bid the manufacturer's or supplier's list or suggested price to the Government, unless there is evidence of collusion.</p> <p>(2) Bids are received only from foreign sources with delivery and performance outside the United States, its possessions, and the Commonwealth of Puerto Rico.</p> <p>(e) If a bidder fails to provide the information required by paragraph 7 of DF 19-B or paragraph 6 on page 2 of DF 33 and identical bids are involved, the contracting officer shall make one inquiry to obtain the information. If the bidder still does not provide it, annotate the identical bid report to so indicate. However, failure to furnish information concerning the parent company relationship or the employer's identification number is not a basis for the rejection of bids.</p>
<p>(1) FPR 1-1.1603-1(4) (2) is inconsistent with (4) (1).</p> <p>(2) This coverage relocated in 3.303-1(b).</p> <p>(3) This figure should be \$2,000 v/s \$10,000.</p>				<p>(4) FAR Part 53 will address availability of forms.</p> <p>(5) Substance relocated in 3.303-1(b).</p> <p>(6) These instructions are on the reverse of DJ 1500 form.</p>

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATION (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
			↑ ⊕ ↓ ⊗ R ↓	<p>3.303-2 Other antitrust violation reports.</p> <p>(a) Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (e.g., collusive bidding, follow-the-leader pricing, identical bids, uniform estimating systems, and sharing of the business) to the Attorney General, U.S. Department of Justice, Antitrust Division, Washington, DC 20530. These reports are in addition to those required by 3.101-1 and Subpart 9.4.</p> <p>(b) Reports shall include--</p> <p>(1) A copy of each suspect offer;</p> <p>(2) An abstract of all suspect offers showing the name and address of each offeror and for each line item--</p> <p>(i) An identification or description;</p> <p>(ii) The unit and total prices offered; and</p> <p>(iii) The net prices to the Government after discounts and allowances, if any, are applied;</p> <p>(3) The dollar volume, actual or estimated, of purchases for each suspect item for the last three years;</p> <p>(4) A statement describing the suspect practices;</p> <p>(5) The name, address, and telephone number of an individual in the agency who can be contacted for additional information; and</p> <p>(6) Other pertinent information.</p>
<p><u>COMMENTARY:</u></p> <p>(1) The first sentence is relocated from DAR 1-111.</p> <p>(2) FAR 3.303-2(b) reflects reduced Department of Justice reporting requirements (see note 1 on page 5) and relocation of DAR 1-111.2(b) and FPR 1-1.902.</p>				16

1. DEFENSE ACQUISITION REGULATION (DAR/ADPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-111.3 Subcontractor Kickbacks. The Anti-Kickback Act (41 U.S.C. 311) prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor, of any higher tier subcontractor, as an inducement or acknowledgment for the award of a subcontract or order. The Act further provides that the amount of any such fee, commission, or compensation, or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. It also creates a conclusive presumption that the cost of any such prohibited payment has been included in the price of the subcontract or order and ultimately borne by the Government. The Act provides for the recovery on behalf of the United States of money, or by set-off of moneys otherwise owing to the subcontractor either by the United States directly or by the prime contractor. The Act imposes criminal penalties on any person who knowingly makes or receives, directly or indirectly, any such prohibited payment.</p>	<p>Y D</p>	<p>1-1.310 Subcontractor gifts and kickbacks. Public Law 84-245, September 2, 1966 (41 U.S.C. 311-314), prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor, of any higher tier subcontractor, as an inducement or acknowledgment for the award of a subcontract or order. The Act further provides that the amount of any such fee, commission, or compensation, or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. It also creates a conclusive presumption that the cost of any such prohibited payment has been included in the price of the subcontract or order and ultimately borne by the Government. The Act provides for the recovery on behalf of the United States of money, or by set-off of moneys otherwise owing to the subcontractor either by the United States directly or by the prime contractor. The Act imposes criminal penalties on any person who knowingly makes or receives, directly or indirectly, any such prohibited payment.</p>	<p>↑ R ↓</p>	<p>3.304 Subcontractor kickbacks.</p> <p>(a) The Anti-Kickback Act (41 U.S.C. 311-314) was passed to deter subcontractors from making payments to influence the award of subcontracts. The Act--</p> <p>(1) Prohibits payments, by or on behalf of a subcontractor in any tier under any Government negotiated contract, as an inducement or acknowledgment for the award of a subcontract or order. A payment includes a fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor or any higher tier subcontractor;</p> <p>(2) Prohibits the subcontractor from charging these payments to the prime contractor or higher tier subcontractor;</p> <p>(3) Creates a conclusive presumption that the payments have been included in the price of the subcontract or order and borne by the Government;</p> <p>(4) Provides for the recovery of these payments from the subcontractor or recipient, by court action, or by set-off of moneys otherwise due the subcontractor. (This may be accomplished either by the Government directly or by the prime contractor); and</p> <p>(5) Imposes criminal penalties on any person who knowingly makes or receives these payments.</p> <p>(b) Agencies shall report suspected violations of the Act as provided in 3.301-2 and Subpart 3.4.</p>
<p>COMMENTARY:</p> <p>(1) Apparently the printer omitted the bracketed words from the 76 Edition of ADPR.</p>				<p>17</p>

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-115 Noncollusive Bids and Proposals. (a) In order to promote full and free competition for Government contracts, the certification appearing in 7-2003.1 shall be included in all (1) invitations for bids and (2) requests for proposals or quotations (other than for small purchases made in accordance with Section II, Part 6, other than for solicitations issued by overseas purchasing offices which will result in contracts performed overseas by foreign suppliers) and other than requests for technical proposals in connection with two-step formal advertising involving firm fixed-price contracts and fixed-price contracts with economic price adjustment provisions. The certification is included in SF 18, 19-A, and SF 33, and therefore need not be added to solicitations utilizing these forms. When the solicitation authorizes the submission of oral offers and requires that such offers be confirmed in writing, it shall require that the certification be included with or be expressly incorporated by reference in and thereby made a part of the confirmation.</p>	<p>AV D NFE</p>	<p>11-1.117 Noncollusive bids and proposals. (a) In order to promote full and free competition for Government contracts, the certification described in this section shall be included in all (1) invitations for bids and (2) requests for proposals or quotations. Exceptions to this requirement include the following: small purchases in accordance with Subpart 1-4.1 requests for technical proposals in connection with two-step formal advertising involving firm fixed-price contracts and fixed-price contracts with economic price adjustment provisions. When the solicitation authorizes the submission of oral offers and requires that such offers be confirmed in writing, it shall require that the certification be included with or be expressly incorporated by reference in and thereby made a part of the confirmation.</p> <p>(Continued on next page)</p>	<p>OU O</p>	
<p>COMMENTARY</p>				<p>18</p>
<p>(1) Deleted pending final decision by OPRP on the need for retaining this coverage.</p>				

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>(1-115 continued.)</p> <p>(b) The fact that a firm (1) has published price lists, rates, or tariffs covering items being procured by the Government, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to commercial customers at the same prices being offered the Government does not constitute, without more, a disclosure within the meaning of paragraph 64(2) of the Certificate.</p> <p>(c) It is not required that a separate written authorization be given to the signer of the bid or proposal for each procurement involved where the signer makes the certification provided in paragraph 64(1) of the Certificate, provided that with respect to any blanket authorization given, (1) the procurement to which the Certificate applies is clearly within the scope of such authorization, and (2) the person giving such authorization is the person responsible within the bidder's or offeror's organization for the decision as to the prices being bid or offered at the time the Certificate is made in a particular procurement.</p> <p>(d) After the execution of an initial certificate and the award of a contract in connection therewith, the contractor need not submit additional certificates in connection with proposals submitted on "work orders" or similar ordering instruments issued pursuant to the terms of that contract, where the Government's requirements cannot be met from another source.</p> <p>(e) The Chief of the Purchasing Office shall make the determination described in paragraph (d) of the above certification.</p> <p>(f) When a certification is suspected of being false or there is indication of collusion, the matter shall be processed in accordance with 1-111. For rejection of bids which are suspected of being collusive and for the negotiation of procurements subsequent to such rejection, see 2-404.1 (b)(vii) and 3-215.</p>	<p>↑</p> <p>↓</p> <p>OU</p> <p>D</p> <p>↓</p>	<p>(1-117 continued.)</p> <p>(b) The fact that a firm (1) has published price lists, rates, or tariffs covering items being procured by the Government, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to commercial customers at the same prices being offered the Government does not constitute, without more, a disclosure within the meaning of paragraph 64(2) of the Certificate.</p> <p>(c) It is not required that a separate written authorization be given to the signer of the bid or proposal for each procurement involved where the signer makes the certification provided in paragraph 64(1) of the Certificate. Provided, That with respect to any blanket authorization given, (1) the procurement to which the Certificate applies is clearly within the scope of such authorization, and (2) the person giving such authorization is the person responsible within the bidder's or offeror's organization for the decision as to the prices being bid or offered at the time the Certificate is made in a particular procurement.</p> <p>(d) After the execution of an initial certificate and the award of a contract in connection therewith, the contractor need not submit additional certificates in connection with proposals submitted on "work orders" or similar ordering instruments issued pursuant to the terms of that contract, where the Government's requirements cannot be met from another source.</p> <p>(e) The authority to make the determination described in paragraph 64(d) of the above certification shall not be regarded as an official activity of the contractor.</p> <p>(f) Where a certification is suspected of being false or there is indication of collusion, the matter shall be processed in accordance with Subpart 1-11 and appropriate agency procedure. For rejection of bids which are suspected of being collusive and for the negotiation of procurements subsequent to such rejection, see 11-1-215-1(b)(7) and 1-215.</p>		
<p>COMMENTARY:</p>				19
<p>(1) Verbatim except for citations.</p> <p>(2) Deleted pending final decision by DPPP on the need for retaining this coverage.</p>				

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1. DEFENSE ACQUISITION REGULATION (DAR/ABPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-503.3 <i>Bona Fide Employee.</i> The term "bona fide employee", for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in 1-503.4, except (d) thereof, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.</p> <p>(a) A person may be a bona fide employee whether his compensation is on a fixed salary basis, or when customary in the trade, on a percentage, commission or other contingent basis or a combination of the foregoing.</p> <p>(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.</p> <p>(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.</p>	<p>AV</p>	<p>1-1-503.4 <i>Bona Fide Employee.</i></p> <p>(a) The term "bona fide employee," for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in 1-503.4(b), except (d) thereof, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.</p> <p>(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.</p> <p>(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.</p> <p>(d) A person may be a bona fide employee whether his compensation is on a fixed salary basis or, when customary in the trade, on a percentage, commission or other contingent basis, or a combination of the foregoing.</p>	<p>MR 1-1-503 1-1-503 1-1-503 R</p>	<p>(See FAR 3.401, pg 20)</p> <p>(See FAR 3.408-2, pg 24)</p>
<p>COMMENTARY</p>				<p>22</p>

1. DEFENSE ACQUISITION REGULATION (DAR/ASPH)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-503-4 <i>How FAR Established Commercial or Selling Agency Assumed by the Contractor for the Purpose of Securing Business.</i> In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth below shall be considered. They are necessarily incapable of exact measurement or precise definition and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.</p> <p>(a) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation as for example, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, material, or subcontractors for performance of the contract.</p> <p>(b) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.</p> <p>(c) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agent relationships where a continuing relationship is contemplated by the parties.</p>	<p>AV 444/46 444/47 444/48 V</p>	<p>§ 1-503-4. How FAR established commercial or selling agency maintained by the contractor for the purpose of securing business.</p> <p>(a) An agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.</p> <p>(b) In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth below shall be considered. They are necessarily incapable of exact measurement or precise definition and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.</p> <p>(c) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation, as for example, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, material, or subcontractors for performance of the contract.</p> <p>(d) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.</p> <p>(e) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agent relationships where a continuing relationship is contemplated by the parties.</p>	<p>NR NR NR</p>	<p>(See FAR 3.408-2(a), pg 27)</p> <p>(See FAR 3.408-2(c), pg 30)</p>
<p>COMBINARY</p> <p style="text-align: right;">23</p>				

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>(d) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.</p> <p>(e) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized. However, any agency or agent is not "bone fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.</p>	<p>Y</p> <p>AV FPR 1-650-4 60 P-23</p>	<p>(d) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.</p> <p>(e) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized.</p>	<p>MR R</p>	<p>(See FAR 3.408-2(c), pg 30)</p>
COMMENTARY:				24

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-505.3 <i>Fees for Information.</i> Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee of a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.</p> <p>1-506 Representation and Agreement Required From Prospective Contractors.</p> <p>1-506.1 <i>General.</i> Except as provided in 1-506.3, each Department shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer. When the SF 33 is not used, the clause in 1-2002.1 shall be included in the solicitation. The Contractor's Statement of Contingent or Other Fees (Standard Form 119) shall be used without deviation when either part of the inquiry provided in 1-2002.1 is answered in the affirmative. The form shall not be used without deviation in any other case when a Department desires to obtain such information. When further information is required, it may be obtained in any appropriate manner. Normally, submission of the form shall be required only of successful bidders and offerors, and contractors. (However, for Foreign Military Sales, see 6-1105.4.)</p> <p style="text-align: right;">(DAR 7-2022.1, pg 36)</p>	<p>AV</p> <p>SS</p> <p>SEC FPR 1-505-1 pg 21</p> <p>AV MR 1-503-1 pg 36</p>	<p>1-1.804-6 <i>Fees for "Information."</i> Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee of a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.</p> <p>1-1.505 Representation and Agreement Required From Prospective Contractors.</p> <p>Except as provided in 1-1.505-2, each executive agency shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer. Where an invitation for bids is issued, this inquiry shall be made (and written representation and agreement secured) by requiring the bidder (or contractor) to check the appropriate box in the following statement (which appears on Standard Form 31, Bid Form (Construction Contracts), Standard Form 29, Invitation and Bid (Supply Contracts), and Standard Form 33, Invitation, Bid and Award (Supply Contracts)) to be included in the invitation or bid form:</p> <p>The bidder represents: (1) that he or she <input type="checkbox"/> has not employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure the contract, and <input type="checkbox"/> that he or she <input type="checkbox"/> has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder) for the solicitation, preparation or brokerage fee, contingent upon or resulting from the award of this contract; and (2) those so required by the Contracting Officer. (Note: For interpretation of the representations, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Chapter 1, Subpart 1-1.2.)</p>	<p>MR R</p> <p>R</p> <p>MR 1-503-1 pg 27</p> <p>R</p> <p>MR 1-503-1 pg 20</p> <p>BA</p>	<p>(See FAR 3.405 (a), pg 24)</p> <p>1.404 Solicitation provision and contract clause.</p> <p>(a) Prospective contractors are generally required to disclose contingent fee arrangements, other than those with full-time bona fide employees working solely for the prospective contractor, in order to permit the Government to evaluate the arrangements before award. The Contingent Fee Representation and Agreement at 52.203-X shall be included in all solicitations except those that are--</p> <ol style="list-style-type: none"> (1) Formally advertised and estimated at less than \$25,000; (2) Negotiated and estimated at less than \$10,000; (3) For perishable subsistence supplies estimated at less than \$25,000; (4) For personal services to be paid for on a time basis; (5) For utility services, at rates regulated by Federal, State, or other regulatory bodies, from a public utility company that is the sole source; or (6) Issued in a foreign country. <p>(b) The Covenant Against Contingent Fees at 52.203-X shall be included in all contracts.</p>
COMMENTARY:				25

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-304.2 Interpretation of the Representation.</p> <p>(a) For the purpose of the representation and agreement required from the prospective contractor, as described in 1-306.1, the definition of "bona fide employee" is as specified in 1-305.3.</p> <p>(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment or retention.</p> <p>(c) If the representation would otherwise be answered in the affirmative the fact that the person employed or retained by the bidder or offeror or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answering in the negative.</p> <p style="text-align: center;">(DAR 1-506.1, pg 25)</p> <p style="text-align: center;">(DAR 2-2002.1, pg 36, last sentence)</p>	<p>AV OU V MR pg 29 V SS</p>	<p>§ 1-1.206 Interpretation of the representation.</p> <p>(a) For the purpose of the representation and agreement required from the prospective contractor, as described in 1-1.205, the definition of "bona fide employee" is as specified in 1-1.204-4.</p> <p>(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment or retention.</p> <p>(c) If the representation would otherwise be answered in the affirmative, the fact that the person employed or retained by the bidder or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answer in the negative.</p> <p>§ 1-1.207 Use of Standard Form 119, § 1-1.207-1 Form prescribed.</p> <p>Pursuant to the Act and in furtherance of the objectives stated in 1-1.205, Standard Form 119 (December 1951), Contractor's Statement of Contingent or Other Fees for Bidding or Securing or Resulting from Award of Contract, is hereby prescribed and shall be used in accordance with the provisions of this subpart. Except as provided in 1-1.207-2, this form shall be used without deviation by executive agencies whenever either part of the inquiry provided for in 1-1.203 is answered in the affirmative. The form shall be used also, without deviation, in any other case where an executive agency desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Submission of the form shall be required, normally, only of successful bidders and contractors.</p> <p>§ 1-1.207-2 Statement in lieu of form.</p> <p>Any bidder or proposed contractor who has previously furnished a Standard Form 119 to the office issuing the invitation or proposing the contract may be permitted to accompany his bid, or submit in connection with the proposed contract, a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous invitation or contract in connection with which such form was submitted, and (c) representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required.</p>	<p>R MR pg 25 R MR R OU MR R</p>	<p>3.405 Review of Contingent Fee Representation and Agreement.</p> <p>(a) Prospective contractors may not use any claimed professional or special relationship (other than that of a full-time bona fide employee working solely for the prospective contractor) as a basis for non-disclosure of contingent fee arrangements. The fact that a fee is for information does not exclude it from the definition of contingent fee.</p> <p style="text-align: center;">(See FAR 3.405 (b)(5), pg 28)</p> <p style="text-align: center;">(See FAR 3.405 (b)(5), pg 28 and 302.205-2, pg 36)</p>
<p>COMMENTARY</p>			<p>26</p>	

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR/F)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-506.3 Exceptions. The inquiry and agreement specified in 1-506.1 need not be made and submission of Standard Form 119 need not be requested in connection with the following:</p> <p>(i) any advertised contract in which the aggregate amount involved does not exceed \$25,000;</p> <p>(ii) any negotiated contract in which the aggregate amount involved does not exceed \$10,000;</p> <p>(iii) any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed \$25,000;</p> <p>(iv) any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis;</p> <p>(v) any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply;</p> <p>(vi) contracts to be made in foreign countries; and</p> <p>(vii) any other contracts, individually or by class, designated by the Secretary. (Reports of any such exceptions shall be filed promptly with the Administrator of General Services.)</p>	<p>AV</p> <p>V</p> <p>D</p> <p>V</p> <p>AV</p>	<p>§ 1-507-3 Exceptions.</p> <p>The inquiry and agreement specified in 1-507 need not be made and submission of Standard Form 119 need not be requested in connection with the following:</p> <p>(i) Any advertised contract in which the aggregate amount involved does not exceed \$5,000;</p> <p>(ii) Any negotiated contract in which the aggregate amount involved does not exceed, in the case of the Department of Defense, \$5,000; in all other cases, \$150;</p> <p>(iii) Any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed \$25,000;</p> <p>(iv) Any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis;</p> <p>(v) Any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply;</p> <p>(vi) Contracts to be made in foreign countries;</p> <p>(vii) Any other contracts, individually or by class, of the Department of Defense, designated by the Secretary. Reports of any such exceptions shall be filed promptly with the Administrator of General Services.</p>	<p>MR</p> <p>R</p> <p>DU</p> <p>(C)</p>	<p>(See FAR 3.409 (a), pg 25)</p>
<p>COMMENTARY:</p> <p>4. Agency heads have authority under FAR Subpart 1.4, Deviations from the FAR, to make any necessary additional exceptions.</p>				27

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-507 Sales Commissions and Contingent Fees on Foreign Military Sales. See 6-1105.</p> <p>1-508 Enforcement.</p> <p>1-508.1 General. Each Department shall take the necessary steps to assure that the indicated proposed contractor has furnished a representation (negative or affirmative) and agreement required by 1-506.1.</p> <p>(a) If the indicated proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted.</p> <p>(b) If the indicated proposed contractor makes such representation in the affirmative, a completed Standard Form 119, in duplicate, shall be requested from him. In the case of formal advertising, the making of an award in accordance with established procedure of the Department concerned need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119, or the statement in lieu of the form, prior to acceptance of the offer or execution of the contract, unless the Chief of the Purchasing Office considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.</p> <p>(c) If the indicated proposed contractor fails to furnish the representation and agreement as required by 1-506.1, such failure shall be considered a minor informality and, prior to award, he shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish the representation and agreement after such opportunity has been afforded shall require rejection of the bid or offer.</p>	<p>AV</p> <p>AV</p>	<p>1-1208 Enforcement.</p> <p>1-1208-1 Failure or refusal to furnish representation and agreement.</p> <p>Each executive agency shall take the necessary steps to assure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as described in 1-1206.</p> <p>(a) If the indicated successful bidder or proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted in accordance with established procedure.</p> <p>(b) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with established procedure need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 prior to acceptance of the offer or execution of the contract unless the head of the executive agency concerned, or his authorized representative, considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.</p> <p>(c) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement as described in 1-1206, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement after such opportunity has been afforded, shall require rejection of the bid or offer.</p>	<p>R</p>	<p>(b) Contracting officers shall review the offer or quotation of the prospective contractor(s) and take the following actions:</p> <p>(1) Ensure that the prospective contractor has completed both paragraphs (a)(1) and (a)(2) of the Representation (see 52.203-K).</p> <p>(2) Consider failure to complete the Representation a minor informality and afford the prospective contractor another opportunity to comply.</p> <p>(3) If the prospective contractor still does not furnish the Representation, reject the offer or quotation.</p> <p>(4) If the prospective contractor answered both paragraph (a)(1) and (a)(2) of the Representation negatively, accept the representation, unless there is a reason to question its accuracy, and proceed with the contractual action.</p> <p>(5) If the prospective contractor has answered paragraph (a)(1) or (a)(2) affirmatively, secure a completed Standard Form 119, Contractor's Statement of Contingent or Other Fees (see 53.NX), or the statement authorized by the Representation and Agreement.</p>
<p>COMMENTARY</p>				<p>28</p>

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1. DEFENSE ACQUISITION REGULATION (DAR/ABPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-308.2 Failure or Refusal to Furnish Standard Form 119. If the successful bidder or offeror of the contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof, as provided in 1-306.1 the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:</p> <p>(1) If an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;</p> <p>(2) If the contract has been awarded or bid or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor.</p> <p>(DAR 1-505.3 (a), pg 22 and 1-505.4 (a), pg 24)</p> <p>(DAR 1-505.3, pg 22)</p>	AY	<p>1-152C.2 Failure or refusal to furnish Standard Form 119. If the successful bidder or contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in 1-152C.1, the executive agency concerned shall take one or more of the following actions, or other action, as may be appropriate:</p> <p>(a) If an award has not been made or offer accepted, determine whether the bid or offer should be rejected;</p> <p>(b) If the contract has been awarded or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with established procedure.</p> <p>(FPR 1-1504-4 (a), pg 22 and 1-1504-5 (a), pg 23)</p> <p>(FPR 1-1504-4, pg 22)</p>	<p>MR 1-505.10 R MR R MR R</p>	<p>3.406 Award before receipt of SF 119. Contracting Officers may award formally advertised contracts before receipt of SF 119 or the statement. Negotiated contracts may not be awarded before receipt and evaluation of the SF 119 or statement, unless specifically approved by the chief of the contracting office.</p> <p>3.407 Failure or refusal to furnish SF 119. If the prospective contractor fails or refuses to furnish SF 119 or the statement in response to the contracting officer's request, the chief of the contracting office shall determine whether to make further efforts to secure the SF 119 or statement or to initiate appropriate actions under 3.409.</p> <p>3.408 Evaluation of SF 119.</p> <p>3.408-1 Responsibilities. (a) The contracting officer shall evaluate the SF 119 and all related information to determine--</p> <p>(1) Whether a contingent fee arrangement exists between the prospective contractor and a person other than a full-time bona fide employee working solely for the prospective contractor; and</p> <p>(2) When such a contingent fee arrangement does exist, whether it meets the statutory exception permitting contingent fee arrangements with bona fide employees or agencies.</p> <p>(b) The contracting officer's evaluation, conclusion, and any proposed actions shall be reviewed at a level above the contracting officer.</p> <p>3.408-2 Evaluation criteria.</p> <p>(a) Improper influence. By definition (see 3.401), a bona fide employee or bona fide agency neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts. If the contracting officer decides that there is a reasonable basis to conclude that improper influence has been or will be exerted or proposed, the employee or agency shall not be considered bona fide.</p> <p>(b) Bona fide employee. An employee may be bona fide, but not work on a full-time basis solely for the contractor; e.g., small business concerns may need to employ persons who also represent other concerns. Prospective contractors must disclose such arrangements in the Representation and Agreement and submit SF 119 or the statement. However, contingent compensation arrangements with bona fide employees, customary in the trade, are within the statutory exception and are not prohibited. In determining whether an employee is bona fide, the contracting officer shall--</p>
<p>COMMENTARY: 5. PAR 3.408-1(a) has been added to state clearly the contracting officer's responsibilities for evaluating SF 119 and determining whether a contingent fee arrangement meets the statutory exceptions. Review above the contracting officer is required by 3.408-1(b) because difficult judgments may be required and the contracting officer may be the person at whom any attempts at improper influences are directed.</p>				

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>(DAR 1-505.3, pg 22)</p> <p>(DAR 1-505.4, pgs 23 and 24)</p>		<p>(FPR 1-1.504-4, pg 22)</p> <p>(FPR 1-1.501-5, pgs 23 and 24)</p>	<p>MR</p> <p>R</p> <p>MR</p> <p>R</p>	<p>(1) Compare the employment arrangement to the definition of bona fide employee in 3.401;</p> <p>(2) Consider the criteria in subparagraphs (c)(1), (2), and (5) below, as appropriate; and</p> <p>(3) Consider the continuity of employment. The employment must contemplate some continuity and not be solely for obtaining one or more Government contracts.</p> <p>(c) Bona fide agency. In determining whether an agency is bona fide, the contracting officer shall compare the arrangement, in its totality, to the definition of bona fide agency in 3.401. In interpreting the words "established commercial or selling agency maintained by a contractor for the purpose of securing business," the contracting officer shall consider the following factors, but must recognize that no single factor or combination dictates a particular overall conclusion:</p> <p>(1) The fee should not be inequitable or exorbitant when compared to the services performed or to customary fees for similar services related to commercial business.</p> <p>(2) The selling agency should have adequate knowledge of the contractor's products and business, as well as other qualifications necessary to sell the products or services on their merits.</p> <p>(3) The contractor and the agency should have a continuing relationship or, in newly established relationships, should contemplate future continuity.</p> <p>(4) The agency should be an established concern that has existed for a considerable period, or be a newly established going concern likely to continue in the future.</p> <p>(5) While an agency that confines its selling activities to Government contracts is not disqualified, the fact that an agency represents the contractor in both Government and commercial sales should receive favorable consideration.</p>
COMMENTARY:				30

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL ACQUISITION REGULATIONS (FAR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-308.3 <u>Misrepresentations or Violations of the Covenant Against Contingent Fees.</u> In case of misrepresentation concerning contingent fees, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:</p> <p>(i) If an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;</p> <p>(ii) If an award has been made or bid or offer has been accepted, take action to enforce the covenant in accordance with its terms, i.e., as the best interest of the Government may appear, annul the contract without liability or recover the amount of the fee involved;</p> <p>(iii) Consider the bidder's or offeror's future eligibility as a contractor; or</p> <p>(iv) Consider referring the case to the Department of Justice.</p> <p>1-308.4 <u>Reports.</u> A report shall be made in accordance with 1-602 when the Chief of the Purchasing Office recommends referral to the Department of Justice under 1-308.3(v).</p> <p>1-309 <u>Preservation of Records.</u></p> <p>(a) Each Department shall preserve as a permanent record for enforcement or report purposes the original executed copy of any representation and completed Standard Form 119, or statement in lieu of form, together with a record of any other pertinent data, including data as to action taken. There shall be no regular retirement of any Standard Form 119 maintained in this record by any procuring activity. However, in any case where the receipt of a new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed.</p> <p>(b) The second copy of Standard Form 119, or statement in lieu of form, shall be filed with and shall remain a part of the contract file.</p>	<p>SS</p> <p>NFE 05</p> <p>D</p>	<p>11-303-2 <u>Misrepresentations or Violations of the Covenant Against Contingent Fees.</u></p> <p>In case of misrepresentation, or violation or breach of the covenant against contingent fees, or some other relevant impropriety, the executive agency concerned shall take one or more of the following actions, or other action, as may be appropriate:</p> <p>(a) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected;</p> <p>(b) If an award has been made or offer has been accepted, take action to enforce the covenant in accordance with its terms; that is, as the best interest of the Government may appear, annul the contract without liability or recover the amount of the fee involved;</p> <p>(c) Consider the future eligibility as a contractor of the bidder or contractor in accordance with established procedure.</p> <p>(d) Determine whether the case should be referred to the Department of Justice in accordance with established procedure with respect to determining matters of fraud or criminal conduct.</p> <p>11-309 <u>Preservation of records.</u></p> <p>Executive agencies shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed Standard Form 119 (or statement in lieu of form) together with a record of any other pertinent data, including data as to action taken.</p>	<p>NFE 05</p> <p>R</p> <p>R</p>	<p>3.409 <u>Misrepresentations or Violations of the Covenant Against Contingent Fees.</u></p> <p>(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees shall report the matter promptly to the contracting officer or appropriate higher authority.</p> <p>(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) above, the chief of the contracting office shall review the facts and, if appropriate, take or direct one or more of the following actions:</p> <p>(1) If before award, reject the offer or quotation.</p> <p>(2) If after award, enforce the Government's right to annul the contract or to recover the fee.</p> <p>(3) Initiate suspension or debarment action under Subpart 9.4.</p> <p>(4) Refer suspected fraudulent or criminal matters to the Department of Justice as prescribed in agency regulations.</p> <p>3.410 <u>Records.</u></p> <p>Agencies shall preserve the original SF 119 or statement, together with all other pertinent data, for enforcement purposes. Contracting offices shall not retire or destroy these records until it is certain that no further need for enforcement purposes exists. If the original record is maintained in a central file, a copy must be retained in the contract file.</p>
<p><u>COMMENTARY:</u> 5. FAR 3.409(a) has been added to guide Government personnel in reporting known or suspected violations.</p>				

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>1-311 Buying in.</p> <p>(a) "Buying in" refers to the practice of attempting to obtain a contract award by knowingly offering a price or cost estimate less than anticipated cost with the expectation of either (i) increasing the contract price or estimated cost during the period of performance (through change orders or other means, or (ii) receiving future "follow-on" contracts at prices high enough to recover any losses on the original "buy-in" contract. Such a practice is not favored by the Department of Defense since its long term effects may diminish competition and it may result in poor contract performance. Where there is reason to believe that "buying in" has occurred, contracting officers shall assure that amounts thereby recovered in the development of the original contract price are not recovered in the pricing of change orders or of follow-on procurements subject to cost analysis.</p> <p>(b) To avoid or minimize the opportunity for "buying in" on a procurement which is likely to be succeeded by one or more "follow-on" procurements, the Government should obtain from the contractor a binding price commitment covering as much of the entire program concerned as is practicable. Such a commitment may be secured through employment of one of the following procurement techniques:</p> <p>(i) multi-year procurement, with a provision in the solicitation that a price may be submitted only for the total multi-year quantity (see 1-322.2); or</p> <p>(ii) priced options for additional quantities which together with the quantities being firmly contracted for, equal the anticipated total program requirements (see 1-3204).</p> <p>(c) In addition to the use of the techniques noted in (b) above, it is important that other safeguards be provided against the contractor's recovering, through subsequent overpricing, from any initial loss situation due to "buying in." For example, see 15.813 with respect to the amortization of nonrecurring costs, and 3-801.2(c) concerning price quotations which the contracting officer considers unreasonable.</p>	NFE		↑ R ↓	<p>5. FEDERAL ACQUISITION REGULATION (FAR)</p> <p>SUBPART 3.5--BUYING-IN</p> <p>3.501 Definition.</p> <p>"Buying-in" means submitting an offer below anticipated costs, expecting to--</p> <p>(a) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or</p> <p>(b) Receive "follow-on" contracts at artificially high prices to recover losses incurred on the buy-in contract.</p> <p>3.502 General.</p> <p>(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of (1) change orders; or (2) follow-on contracts subject to cost analysis.</p> <p>(b) The Government should minimize the opportunity for buying-in by seeking a price commitment for the entire program (if practical) by using--</p> <p>(1) Multi-year contracting, with a solicitation provision that a price may be submitted only for the total multi-year quantity (see 17.103X);</p> <p>(2) Priced options for additional quantities which together with the firm contract quantity equal the program requirements (see Subpart 17.2); or</p> <p>(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses; e.g., amortization of nonrecurring costs (see 15.813X) and treatment of unreasonable price quotations (see 15.801-2(c)X).</p>
COMMENTARY:				32

1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>7-104.14 Gratuities. Insert the following clause in all fixed-price supply contracts and purchase orders, except contracts and purchase orders with foreign governments obligating solely funds other than those contained in Department of Defense appropriation acts.</p> <p>GRATUITIES (1912 MAR)</p> <p>(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or awarding, or the making of any determination with respect to the performance of such contract; provided, that the existence of the facts upon which the Secretary or his duly authorized representative makes such findings shall be in issue and may be determined in any competent court.</p> <p>(b) In the event this contract is terminated as provided in paragraph (a) herein, the Government shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.</p> <p>(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.</p>	<p>NFE DU O</p>		<p>⓪ ↑ R ↓ ⓪</p>	<p>52.XXX Gratuities. Insert the following clause as prescribed in 3.204.</p> <p style="text-align: center;">GRATUITIES</p> <p>(a) The right of the contractor to proceed may be terminated by written notice if, after notice and hearing, the cognizant Board of Contract Appeals determines that the contractor, or its agent or other representative--</p> <p>(1) Offered or gave a gratuity; e.g., entertainment or gift, to an officer, or employee of the Government; and</p> <p>(2) Intended by the gratuity to obtain a contract or favorable treatment under a contract.</p> <p>(b) The facts supporting this determination may be reviewed in any competent court.</p> <p>(c) If this contract is terminated under (a) the Government is entitled--</p> <p>(1) To pursue the same remedies as in a breach of the contract; and</p> <p>(2) In addition to any other damages provided by law to exemplary damages of not less than three nor more than ten times the costs of the gratuity as determined by the head of the agency or his designee. (This paragraph (c) (2) is applicable only if this contract uses money appropriated to the Department of Defense).</p> <p>(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.</p> <p style="text-align: right;">(2nd of Clause)</p>
COMMENTARY:				33
(1) This clause should appear on Standard Forms 19, 23a, 32, 147 and 253.				

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p><u>7-103.20 Covenant Against Contingent Fees.</u></p> <p>COVENANT AGAINST CONTINGENT FEES (1958 JAN)</p> <p>The Contractor warrants that no person or selling agency has been employed or retained in whole or in part on this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, receiving bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.</p>	<p>V</p>	<p><u>§ 1-7102.18 Covenant against contingent fees.</u></p> <p>Insert the clause set forth in § 1-3.404 under the conditions contained in § 1-1.801.</p> <p>COVENANT AGAINST CONTINGENT FEES</p> <p>The Contractor warrants that no person or selling agency has been employed or retained in whole or in part on this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, receiving bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.</p>	<p>R (2)</p>	<p>52.203-X Covenant Against Contingent Fees.</p> <p>Insert the following clause in all contracts in accordance with 3.404(b):</p> <p>COVENANT AGAINST CONTINGENT FEES (DATE)</p> <p>(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.</p> <p>(b) As used in this clause--</p> <p>"Bona fide agency" means an established commercial or selling agency maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts;</p> <p>"Bona fide employee" means a person employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts;</p> <p>"Contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the degree of success that a person or concern has in securing a Government contract; and</p> <p>"Improper influence" means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.</p> <p>(End of clause)</p> <p>(R 7-103.20 1958 JAN) (R 1-7.102-18)</p>
<p>COMMENTARY: 7. Paragraph (a) of the Covenant Against Contingent Fees has been revised to rely on the definitions added in paragraph (b). The definitions have been included for consistency with the text of Subpart 3.4 and to clarify the terms for the contractor as an integral part of the Covenant.</p>				<p>35</p>

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1. DEFENSE ACQUISITION REGULATION (DAR/ASPR)	2. Code	3. FEDERAL PROCUREMENT REGULATIONS (FPR)	4. Code	5. FEDERAL ACQUISITION REGULATION (FAR)
<p>7-2002.1 Contingent Fee. In accordance with 1-306.1, insert the following clause.</p> <p>CONTINGENT FEE (1974 AFPR) The Offeror/Quoter represents and certifies as part of his proposal/question that: (Check all appropriate boxes as listed.) (a) He (1) has, (2) has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, and (3) he (1) has, (2) has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror/quoter) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (1) and (2) above, as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee", see Code of Federal Regulations, Title 41, Chapter 101-1.1.) If the offeror/quoter, (1) checking the appropriate box provided therefor, has represented that he has employed or retained a company or person (other than a full-time bona fide employee working solely for the offeror/quoter) to solicit or secure this contract, or that he has paid or agreed to pay any fee, commission, percentage, or brokerage fee to any company or person contingent upon or resulting from the award of this contract, he shall furnish, to the degree, a completed Standard Form 119, Contracting Statement of Contingent or Other Fees. If offeror/quoter has previously furnished a completed Standard Form 119 to the office issuing this solicitation, he may retransmit his proposal/question with a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous submission or contract, if any, to which this form was submitted, and (c) representing that the statement in such form is applicable to this proposal/question. (End of clause)</p>	<p>AV</p> <p>NFE</p>	<p>The Offeror/Quoter (a) that he (2) has, (3) has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) that he (1) has, (2) has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (For interpretation of the representation, including the term "bona fide employee", see Code of Federal Regulations, Title 41, Chapter 101-1.1.)</p>	<p>R</p>	<p>52.203-X Contingent Fee Representation and Agreement.</p> <p>Insert the following provision in solicitations as prescribed in 3.404(a):</p> <p>CONTINGENT FEE REPRESENTATION AND AGREEMENT (DATE)</p> <p>(a) Representation. The prospective contractor represents that (EXCEPT FOR FULL-TIME BONA FIDE EMPLOYEES WORKING SOLELY FOR THE PROSPECTIVE CONTRACTOR) the prospective contractor--</p> <p>(1) / / has, / / has not employed or retained any person or company to solicit or obtain this contract; and</p> <p>(2) / / has, / / has not paid or agreed to pay any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.</p> <p>(Complete both (1) and (2) above).</p> <p>(b) Agreement. The prospective contractor agrees to provide information relating to the above Representation as the Contracting Officer requests and when (a)(1) or (a)(2) are answered affirmatively to promptly submit to the Contracting Officer--</p> <p>(1) A completed SF 119; or</p> <p>(2) A signed statement indicating that SF 119 was previously submitted to same Contracting Office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.</p> <p>(End of provision) (R 7-2002.1 1974 APR) (R 1-1.505)</p>
<p>COMPLEMENTARY:</p>				<p>36</p>

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<p>1. REVISIONS:</p> <p>a. Revised (check box): For use when additional conditions and/or clarifying actions (for revision or deletion) have been made.</p> <p>b. Revision (check box): For use when the contract is being revised.</p>	<p>2. BY WHOM:</p> <p>a. By the Contractor: For use when the contractor is the one who prepared the statement.</p> <p>b. By the Government: For use when the government is the one who prepared the statement.</p>	<p>3. BY WHOM:</p> <p>a. By the Contractor: For use when the contractor is the one who prepared the statement.</p> <p>b. By the Government: For use when the government is the one who prepared the statement.</p>
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<p>CONTRACTOR'S STATEMENT OF CONTINGENT OR OTHER FEES FOR SOLUTION OR SERVICE, OR RESIGNATION FROM AGENCY OF CONTRACT</p> <p>Standard Form 118-1 (a) Page 1 of Standard Form 118</p> <p>CONTRACTOR'S STATEMENT OF CONTINGENT OR OTHER FEES FOR SOLUTION OR SERVICE, OR RESIGNATION FROM AGENCY OF CONTRACT</p> <p>The following information is furnished by the undersigned contractor concerning any company or person employed or retained by such or before the above identified contract, or concerning any company or person for whom the contractor has paid or agreed to pay any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of that contract.</p> <p>1. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>2. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>3. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>4. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>5. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p>	<p>FEDERAL ACQUISITION REGULATION (FAR)</p> <p>53.XXX Standard Form 118, Contractor's Statement of Contingent or Other Fees (a) Page 1 of Standard Form 118</p> <p>CONTRACTOR'S STATEMENT OF CONTINGENT OR OTHER FEES FOR SOLUTION OR SERVICE, OR RESIGNATION FROM AGENCY OF CONTRACT</p> <p>The following information is furnished by the undersigned contractor concerning any company or person employed or retained by such or before the above identified contract, or concerning any company or person for whom the contractor has paid or agreed to pay any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of that contract.</p> <p>1. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>2. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>3. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>4. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p> <p>5. Name and address of each company or person for whom such fee, commission, percentage, or brokerage fee, contingent upon or resulting from the award of that contract, has been paid or agreed to be paid.</p>
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<p>CONTINUE ON OTHER SIDE</p> <p>If additional space is required, attach separate sheet which must also be signed.</p>	<p>STANDARD FORM 118-1 PRESCRIBED BY GPO, FAR (48 CFR 53.XXX)</p>
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Organizational Conflicts of Interest

In 1977 OFPP began to issue regulations pertaining to organizational conflicts of interest. Proposed regulations were issued on September 14, 1977.

I understand that Federal regulations have not been issued yet.

Question: Why has there been an 18 month delay, and when can we expect to see final regulations issued?

Answer: OFPP is developing a Government-wide policy and regulations on Organizational Conflicts of Interest (OCI). The regulations would 1) avoid contractual relationships which might encourage contractors to give biased advice and 2) reduce opportunities for contractors to gain an unfair competitive advantage. The difficulty that OFPP has faced is how to accomplish this end without limiting Government's access to the best available talent, expertise and experience to accomplish its mission.

One problem is that what would appear to be bias to one party may appear to another party to be the best solution to a problem, and what may appear to one party to be unfair competitive advantage is viewed by another as experience gained from prior work. In addition, we have attempted to develop this proposed regulation without inflicting unnecessary paperwork or administrative burden on contractors or the Government. A third problem is to develop a regulation which would be effective in a variety of contracting relationships. An oversimplified solution to OCI problems might avoid OCI in filling one Government procurement requirement and be counterproductive when applied to another procurement. Finally, we have a responsibility to ensure that we do not dictate to business and industry their market position or shares, but rather accept the market as it now exists and avoid the possibility that a class of contractors would develop who limit their business to serving Government needs.

To accomplish these ends we published proposed OCI regulations twice in the Federal Register and held a public hearing. We received hundreds of written comments and held meetings with dozens of interested parties and organizations in order to be apprised of a wide range of views and interests on this sensitive matter. The number of inputs and the divergent views by responsible parties has delayed the issuance of a final Government-wide regulation.

In the meantime, OCI problems continue to be addressed under existing regulations of the major procuring activities such as the Department of Defense, the Department of Energy, and National Aeronautics and Space Administration. Other independent agencies which have OCI regulations have in general become more vigilant in exercising good judgement in this subject area. Our solicitation of views on the proposed policy from all agencies that have procuring functions has heightened their concern. In addition, we have worked closely with the Department of Energy which issued a temporary regulation some time ago, to study the results and impact of that regulation. The implementation of their new regulation is to some degree based on coordination with OFPP.

Another cause of the delay in getting out a Government-wide policy was the change of policy position from DOD and GSA. This required a reevaluation of OFPP's second proposed draft, issued October 13, 1978.

The one major policy issue yet to be resolved is to reconcile the differences between the DOD and GSA view and that of OFPP and the Department of Energy. The resolution of that issue is in process and a Government-wide regulation could be issued within sixty days.

GAO Recommendations

The legislative history of the OFPP Act makes it clear that one of the most important duties of OFPP is, to follow up on the recommendations of the procurement commission.

Question: GAO has some serious problems with your accounting of the status of these recommendations. Your most recent annual report devotes all of half a page to the status of the recommendations. GAO also pointed to premature assessments of completion, moving target dates, and undefined responsibilities.

Could you comment on GAO's criticisms and tell us what plans you have to improve your annual report in this area?

Answer: We believe that GAO's criticisms of our progress in accounting for the status of COGP recommendations are honestly and sincerely presented. We do not agree with our auditor, however, in every detail or in the GAO total appraisal.

As to the first criticism that our latest annual report was incomplete in reporting the status of recommendations, this is a valid criticism. We have a more detailed report that we make available to the General Accounting Office and to all the Federal agencies, as well as individuals who specifically request such data. We regret that we did not include the complete report in our latest annual report. For the record, enclosed is a detailed report of our status on the COGP recommendations as of January 31, 1979.

GAO has criticized OFPP for changing target dates for achieving our objectives. This is a fair criticism in some cases. However, GAO fails to note that there are valid reasons for many of the changed target dates. In some cases, we have taken a second and third look at recommendations that were first rejected, but today seem to merit reconsideration. In some cases the change in political command of the executive departments brings a new approach to an old problem -- and we change both the target date and sought after solutions. Some targets were slipped as a result of new priorities; e.g., the anti-inflation program, where OFPP has had a heavy role, or new legislation, such as P.L. 95-507 and 95-563, which mandate new assignments for OFPP.

We do not always agree with GAO's assessment as to what constitutes an implemented recommendation. We believe that when the objective of a recommendation is achieved, it is implemented -- even if the implementation may be in modified form, or may require more follow-up. GAO adheres to the strict letter of the recommendations.

We are trying to improve our report as you can see from the January 31, 1979 report enclosed. We will continue with these efforts. However, there is one GAO recommendation we object to which concerns accountability for recommendations. We do not agree that specific individuals should be accountable for reporting purposes. Our present report makes segments of the organization accountable for specific recommendations.

OFFICE OF FEDERAL PROCUREMENT POLICY
OFFICE OF MANAGEMENT AND BUDGETSTATUS
OF

COMMISSION ON GOVERNMENT PROCUREMENT (COGP) RECOMMENDATIONS

January 31, 1979

Total COGP Recommendations	149
A. Executive Branch Positions Established	131
1. Accepted-Implementations completed	31
2. Accepted-Implementation in process	88
A. Legislation required	18
b. Implementations being developed	70
3. Recommendations Rejected	12
B. Executive Branch Positions in Process	18

COGP RECOMMENDATIONS ACCEPTED (IMPLEMENTATION COMPLETED)

A-1 Creating the OFPP.
 A-7 Raising negotiation authority ceiling to \$10,000 for use of simplified purchase procedures.
 A-21 Establishing Federal Procurement Institute.
 A-27 Timely financing of procurement.
 A-29 Single final overhead settlement.
 A-35 Stimulating contractor acquisition of production facilities.
 A-39 Interagency field contractor support services.
 A-40 Transfer of plant cognizance to Defense Contract Administration Service.
 A-49 Initiate review to enhance Small Business participation.
 B-6 OMB monitor National Science Foundation and National Bureau of Standards R&D Incentive Program.
 B-11 Use of master agreements.
 D-1 Federal Procurement Data System.
 D-4 Assigning OFPP specifications policy responsibility.
 D-5 Training decentralized purchasing activities.
 D-7 Direct procurement of U.S. products overseas.
 D-14 Benchmarks for evaluating ADPE proposals.
 D-15 Amending ADPE late proposal clause.
 D-16&17 Coordinating food acquisition policy, quality assurance.
 D-19 Using innovative transportation procurement techniques.
 F-1 Clarifying procurement assistance relationships.
 G-3 thru G-8, Improved contract disputes remedies.
 G-10
 G-11 Allowing interest on claims.
 G-17 Termination for Government convenience.
 G-21 Make P. L. 85-80 permanent authority.

Total implementations completed: 31

Note: A-49 D-1, G-3 thru 8 and G-10 completed this period. F-2 removed.

COGP RECOMMENDATIONS ACCEPTED (LEGISLATION REQUIRED)

A-2 Thru 6, 8&9 Enacting modern, consolidated statutory framework.
 A-43 thru 45 Reassessing socio-economic programs applied to procurement process.
 A-46 Uniform debarment policies re violations of socio-economic requirements.
 D-13 Authorizing multi-year ADPE leasing.
 E-1, 4 Competing A-E services.
 J-1 Consolidating, recodifying procurement statutes.
 J-2 Extending "Truth-In-Negotiations" Act.
 J-3 & 5 Modifying Renegotiation Act.

Total requiring legislation: 18

COGP RECOMMENDATIONS ACCEPTED (IMPLEMENTATION IN PROCESS)

A-10 & 11 Establish Government-wide procurement regulatory system and private sector participation.
 A-12 thru 17 Improving procurement work force.
 A-18 thru 20 Establish proper procurement grade levels.
 A-28 Government-wide contract cost principles.
 A-30 & 31 Establishing Government-wide profit policy.
 A-33 & 34 Product data and management systems.
 A-36 Negotiated sale of Government heavy equipment.
 A-37 Contractor procurement system reviews/approvals.
 A-38 Procurement of professional services.
 A-48 Test mandatory small business participation.
 B-5 Continue optional use of Federally Funded Research and Development Centers.
 B-7 Eliminate constraints to R&D unsolicited proposals.
 B-12 Organizational conflicts of interest.
 C-1 thru 12 Major systems acquisition.
 D-2 Consideration of user satisfaction with supply support systems.
 D-3 Limit new Federal specifications.
 D-6 Using commercially available products and distribution systems.
 D-11 Reevaluate ADPE acquisition procedures.
 D-12 Require GSA to delegate preplanning of ADPE requirements.

D-18 Utility procurement.
 E-2, 3 A-E, life cycle cost and proposal reimbursement.
 F-2 Study of Federal assistance relationships.
 G-1 Clarifying contracting officer authority.
 G-2 Informal conference on adverse contracting officer decisions.
 G-13 thru Bid protest procedures.
 16, 19
 G-18 Improve agency debriefing procedures.
 G-20 General Accounting Office review of agency bid protest procedures.
 H-1 thru 3 Selected issues of liability.
 I-1 thru 3, Revising patents, technical data, and
 5 thru 7, copyright policies.
 9 thru 16

Total implementations in process: 70

A-32 Establish regional contract payment offices.
 A-41 thru 42 Remove Defense Contract Administration Services (DCAS) from Defense Logistics Agency; combine DCAS and the Defense Contract Audit Agency.
 A-47 New performance standards for measuring use of small business.
 B-9 Recoupment of R&D costs.
 D-8 thru 10 Grantee use of Federal sources of supplies and services.
 G-9 Allow reviewing court to take additional evidence.
 G-12 Pay judgement on contract claims from agency appropriations.
 J-4 Extend coverage of Renegotiation Act to all agencies.
 J-6 Expanding and clarifying profit criteria used by Renegotiation Board.

Total Rejected: 12

EXECUTIVE BRANCH POSITIONS IN PROCESS

A-22 thru 26	Reliance on the private sector.
B-1 thru 4	Research and development objectives, organization and performance.
B-8	R&D Cost Sharing.
B-10	Policy concerning independent research and development costs.
G-22 thru 24	P.L. 85-804 extension.
H-4 and 5	Catastrophic accidents.
I-4 & I-8	Patent Policy.

Total positions in process: 18

COMMISSION ON GOVERNMENT PROCUREMENT
PART I - RECOMMENDATIONS ACCEPTED (IMPLEMENTATION COMPLETED)

Date: January 31, 1979
Page: 1

RECOMMENDATIONS ACCEPTED AND IMPLEMENTED	IMPLEMENTATION ACTION AND/OR REASONS CONSIDERED COMPLETED
A-1 Creating the OFPP	P.L. 93-400
A-7 Raising negotiating authority ceiling to \$10,000 for use of simplified purchase procedures.	P.L. 93-356 8/74; ASPR 3-203; FPR 1-3.203
A-21 Establishing Federal Procurement Institute	FPI (now FAI) established by OFPP 7/14/76
A-27 Timely financing of procurement	P.L. 93-344
A-29 Single final overhead settlement.	OFPP Policy Letter 78-4, 8/8/78 implemented A-29 and A-39. See A-39.
A-35 Stimulating contractor acquisition of production facilities.	A-35 directed at DOD implemented by DAC 76-16, Item III, 8/1/78
A-39 Interagency field contractor support services.	A-29 and A-39 combined for implementation. Letter to agencies 12/13/77 initiated program. Formalized program by OFPP Policy Letter 78-4, 8/8/78.
A-40 Transfer of plant cognizance to Defense Contract Administration Services	Recommendation accepted with modification. Federal Register Notice May 1976.
A-49 Initiate review to enhance small business participation.	The White House initiated a review with full OFPP participation in 1978 which will conclude with a conference in 1980.
B-6 OMB monitor National Science Foundation and National Bureau of Science R&D Incentive Program.	Completed and in operation. Monitored by OMB Budget Review & Apportionment Process.
B-11 Use of master agreements.	Implemented by ASPR4-118.5 & FPR 1-3.410-2 (June 1976)

COMMISSION ON GOVERNMENT PROCUREMENT
PART I - RECOMMENDATIONS ACCEPTED (IMPLEMENTATION COMPLETED)

Date: January 31, 1979Page: 2

RECOMMENDATIONS ACCEPTED AND IMPLEMENTED	IMPLEMENTATION ACTION AND/OR REASONS CONSIDERED COMPLETED
D-1 Federal Procurement Data System	Federal Procurement Data System became operational October 1, 1978, beginning with FY 1979 data.
D-4 Assigning OFPP specifications policy responsibility.	OFPP has assumed responsibility under authority of P.L. 93-400. Federal Register Notice May 1975.
D-5 Encourage headquarters staff to train field procurement personnel on the job in implementing techniques and identifying innovations related to needs.	FMC 74-6, August 1974, makes heads of agencies with decentralized procurement activities responsible for establishing a continuing program aimed at removing impediments to improved operational effectiveness of these activities. GSA's OFMP was to monitor program. The Federal Acquisition Institute has been assigned responsibility for further implementation.
D-7 Require direct procurement of US made commercial products overseas from sources available to overseas activities when cost effective.	Adopted with the modification that such overseas procurements be limited to items designated for decentralized management in the supply system. Position published in Federal Register August 1974 noting that supply/procurement regulations and operating practice provided for this.
D-14 Benchmarks for evaluating ADPE proposals.	Assigned to NBS/ICST for implementation on 5/17/76. Federal Register Notice May 1976.
D-15 Amending ADPE late proposal clause.	Implemented in ASPR 7-200, 5/73; in FPR 1-3.802, 9/73; and in FPMR 101-32, 12/73.

COMMISSION ON GOVERNMENT PROCUREMENT
PART I - RECOMMENDATIONS ACCEPTED (IMPLEMENTATION COMPLETED)

Date: January 31, 1979
Page: 3

RECOMMENDATIONS ACCEPTED AND IMPLEMENTED	IMPLEMENTATION ACTION AND/OR REASONS CONSIDERED COMPLETED
D-16 & D-17 Legislative authority for coordinating food acquisition policy & quality assurance.	OFFPP considers it has authority in P.L. 93-400. OFFPP assigned coordination role to USDA.
D-19 Innovative transportation procurement techniques.	This recommendation is being implemented as part of continual, on-going transportation programs.
F-1 Clarifying procurement/Federal assistance relationships, by legislation.	P.L. 95-224 enacted 2/3/78.
G-3 Improved contract disputes thru remedies. G-8 G-10	These recommendations were implemented through enactment of the Contract Disputes Act of 1978, P.L. 95-563, November 1, 1978.
G-11 Allowing interest on claims	ASPR 7-104.82, 5/72 and FPR 1-1.322, 8/72.
G-17 Have GAO continue to recommend terminations for Government convenience of improperly awarded contracts.	Notice of adoption of this recommendation published in Federal Register in July 1974. Further implementation not required as this is part of GAO's present practice.
G-21 Make P.L. 85-804 permanent authority.	P.L. 94-412, enacted 9/14/76, effectively makes P.L. 85-804 permanent.

CONTINUED

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COMMISSION ON GOVERNMENT PROCUREMENT
 PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

Date: January 31, 1979
 Page: 1

53-985 O 80 - 22

Recommendations Accepted by the Executive Branch	Assignment Within OPPP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
A-2. Consolidated procurement statute.	Regulations and Procedures	Legislation FAR	S. 1264 introduced in 95th Congress by Sen. Chiles; approved by Senate Governmental Affairs Committee, but did not reach Senate floor. (Similar legislation, S-5 introduced in 96th Congress by Sen. Chiles on 1/15/79).			
A-3. Statutory changes to formal advertising and competitive negotiation.	Regulations and Procedures	Legislation FAR	(See A-2).			
A-4. Solicitation and discussions in competitive negotiation.	Regulations and Procedures	Legislation	(See A-2).			
A-5. Notification to unsuccessful offerors	Regulations and Procedures	Legislation FAR	(See A-2).			
A-6. Statutory authority for sole-source procurement.	Regulations and Procedures	Legislation FAR	(See A-2).			
A-8. Multi-year procurement.	Regulations and Procedures	Legislation	(See A-2).			

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

Date: January 31, 1979
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Recommendations Accepted by the Executive Branch	Assignment Within OFFP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
A-9. Repeal statutory authority for advance notification of certain subcontracts.	Regulations and Procedures	Legislation	(See A-2).			
A-10, 11. Establish Government-wide procurement regulatory system and solicit private sector views.	Regulations and Procedures	Establishment of new Federal Acquisition Regulation (FAR) System	Organizations established in GSA and DOD, assisted by other agencies, to draft the FAR which will be applicable to all agencies. Several segments have been made available for agencies and private sector comments, which are being received and evaluated.	10/79		
A-12. Reevaluate organizational placement of procurement.	Labor Affairs and Personnel	Agency directives	The Federal Procurement Institute (FPI) will work on a research project to develop procurement organization models for use by the agencies as guidelines in reorganization efforts.	6/79	Partial thru A-109	
A-13, 14. Role and Authority of contracting officer.	Regulations	FAR	OFFP developing implementing policies for inclusion in the Government-wide uniform procurement regulations (FAR).	10/79	In Fed. Register 7/78 for comment	
A-15 thru A-17, A-19, A-20. Improve procurement work force.	Labor Affairs and Personnel	FPI and Agency programs.	On-going FPI programs and efforts in career management and development.	Cont. effort	OFFP Memorandum to heads of agencies 7/14/76	

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

Date: January 31, 1979
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Recommendations Accepted by the Executive Branch	Assignment Within OFPP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
A-18. Establish Proper Procurement Grade Levels.	Labor Affairs and Personnel	Issuance of new CSC Classification and Qualification Standards. Agency position management and classification programs.	OFPP requested that CSC undertake classification and qualification standards study of GS-1102 Contract and Procurement Series in FY 79. CSC has agreed to initiate the study in January 1979. FAI forming interagency group to provide acquisition/contracting input and support for CSC study. Estimated date of completion of study is 7/80 Issuance of new standards 9/80.	9/80	OFPP letter to CSC Oct. 31, 1978	
A-28. Government-wide Cost Principles.	Regulations and Procedures	FAR	Being addressed by FAR. See. A-10.			
A-30, 31. Develop and evaluate Government-wide profit guidelines.	Regulations and Procedures	FAR	Recommendation accepted in principle 9/76. LMI profit study completed 12/78. Being reviewed by OFPP.	Effective date of FAR		
A-33, 34 Product data and management systems.	Systems and Technology	FAR	Draft FAR provision to be distributed for agency comments 3/79.	7/79		
A-36. Negotiated sale of heavy equipment excess to Government ownership.	Logistics	DAR/PPR/PPHR	Need for legislation being reviewed.	7/79		

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COMMISSION ON GOVERNMENT PROCUREMENT
 PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

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Recommendations Accepted by the Executive Branch	Assignment Within OPPP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
A-37. Contractor procurement system reviews/ approvals.	Regulations and Procedures	DAR/FPR/FAR	Partially implemented in FPR. Remaining aspects will be addressed in FAR.	Effective date of FAR	FPR Amendment #180 2/75.	
A-38. Procurement of professional services.	Regulations and Procedures	FAR	Discussions between DOD and GSA on uniform coverage continuing. Policy will be included in FAR.	10/79		
A-43, 44, 45. Reassess socio-economic programs applied through procurement process.	Acquisition Law	Legislation OPPP Letter	Continuous OPPP actions to gain support to raise statutory dollar thresholds in appropriate socio-economic programs. P.L. 95-585, enacted 11/2/78, already amended the Miller Act by raising the Act's threshold from \$2,000 to \$15,000. Objective to submit legislation by 7/79 and admin. initiatives for changes in 1979. New approaches being made to Congress.			
A-46. Provide uniform debarment policies for comparable violations of socio-economic requirements.	Acquisition Law	Legislation OPPP Letter	An interagency task group has developed administrative proposals. These proposals and administrative actions being evaluated by OPPP.	6/79		
A-48. Test mandatory small business subcontracting on selected basis.	Acquisition Law		Test nearing completion. At OPPP request, GAO is reviewing test. GAO evaluation almost completed.	6/79	Underway in six agencies.	

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

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Recommendations Accepted by the Executive Branch	Assignment Within OFPP	Type of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
A-49. Initiate review to make small business participation more effective and assure full opportunity to compete.	Acquisition Law		Small Business Master Plan for Presidential approval prepared. Contains over 20 new initiatives. Work on the Master Plan will be included in OFPP's participation in a White House Review which will conclude in a conference to be held in 1980.	12/78		OFPP considers full participation in White House Review in 1978 to fully implement A-49.
B-5. Continue optional use of Federally-Funded Research and Development Centers (FFRDC).	Systems and Technology	FAR	Draft FAR provision will be distributed for comment by March 1, 1979.	6/79		
B-7. RFD eliminate constraints to unsolicited proposals.	Systems and Technology	FAR	Draft FAR provision will be distributed for comment by March 3, 1979.	6/79		
B-12. Organizational Conflicts of Interest.	Regulations and Procedures	OFPP Policy Memo DAR/PPR	Draft policy memorandum published in Federal Register 9/20/77 for comment. Published revised draft for further public comment 10/15/78. Public hearing held 12/13/78. Final issuance scheduled 6/79.	6/79		
C-1 thru 12. Major Systems Acquisition	Systems and Technology	OMB Circular A-109 and agency policies and procedures.	See Attachment A.	9/79	OMB Circular A-109 4/5/76. OFPP Pamphlet Aug. 1976.	

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

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Recommendations Accepted by the Executive Branch	Assignment Within OPPP	Type Or Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
D-1. Federal Procurement data system.	Regulations	FPR/DAR FAR	OPPP established the Federal Procurement Data System by Memo to Heads of Executive Departments & Agencies on Feb. 3, 1978. DOD has been designated as executive agent to run the Federal Procurement Data Center. The system became operational beginning with FY 1979, Oct. 1, 1978.	10/78		System Operational 10/1/78.
D-2. Consideration of user satisfaction with supply support systems.	Logistics	FMC OPPP Policy FPHR	Preliminary definition of a user responsive National Supply System approved on 7/16/78 by National Supply System Advisory Board. Action underway to fully define and describe that system.	1/80	FMC 75-1 2/7/75	
D-3. Limit new Federal specifications.	Commercial Products	DAR/FPR, FPFR FAR	Actions and objectives to be consistent with D-6 and S. 5 baseline.	See D-6.		

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

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Recommendations Accepted by the Executive Branch	Assignment Within OPPP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
D-6. Using commercially available products and distribution systems.	Commercial Products	OPPP Memos to Selected Agencies DAR/FPR, FAR, FPMR Handbook	OPPP Policy 5/28/76; Guidelines 12/6/76 to DOD/VA/GSA for implementation; program expanded 12/27/77 to USDA, HEW (FDA), DOC (NIPS/ETIP), DOD's Commercial Commodity Acqn. PROC. (CCAP) replaced by DOD Directive 5000.37 Institutionalizing ADCoP Program; Commercial Item Support Program (CISP) under revision; DOD Instruction on ADCoP in coordination; DAR/FPR Interim Regs target 3/79; FAR 3/79; Interim FPMR in final coordination to control specs for commercial products Gov't-wide, 2/79 compl. (Food Spec. Manual 3/79); 5-year spec review and scrub started; Food Inspection & Acceptance Manual, 1-79; USDA Food Market Information system under revision; Med/NPS project - DOD/VA agreement signed 6/78, first solicitation issued 1/79 for non-duplicative acquisition. Additional assignments in process. FDA medical devices Inspect/Accept approach in coordination, 3/79; other management improvements (multiple award, market research) underway as are Audiovisual, Food Service, and Office Furniture projects; GSA developing acquisition plan for tires in coordination with DOD, DOT, USPS, 3/79; DOD/GSA	6/79 (development of techniques procedures, regulations). 7/79 (fully implementational Commercial Products Acquisition System).		

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROGRESS

Date: January 31, 1979
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Recommendations Accepted by the Executive Branch	Assignment Within OPPP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
D-11. Reevaluate ADPE acquisition procedures.	Systems and Technology		econometric models for method of purchasing/supply still under consideration. This recommendation was assumed by President's Reorganization Project on ADP in November 1977.			Upon completion and approval of PRP on ADP.
D-12. Require GSA to delegate preplanning of ADPE requirements	Systems and Technology		This recommendation was assumed by President's Reorganization Project on ADP in November 1977.			Upon completion and approval of PRP on ADP.
D-13. Authorize multi-year leasing for ADPE.	Regulations and Procedures	Legislation	S. 1490 introduced by Sens. Chiles, Percy, Heinz. Hearings not held. S. 1264, Sec. 504 provided authority. Neither S. 1490 or S. 1264 enacted. (S-1, 96th Congress contains authority, see A-2).			
D-18. Utility Procurement.	Regulations and Procedures	FAR	Draft standard form to enable use of company forms under special contracts developed. Comments on draft received and being evaluated by FPR staff. Results of evaluation will be reviewed with OPPP.	12/79		PPR Amend. #159 12/75
E-1. A-E services through competitive procedures.	Regulations and Procedures	Legislation FPR/DAR	Was in S. 2309 of 94th Congress - no hearings held. Not included in S. 1264 of 95th Congress or S.3 of 96th Congress. (May be pursued separate from uniform statute.)			

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PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

Date: January 31, 1979
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Recommendations Accepted by the Executive Branch	Assignment Within OFPP	Type of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
E-2, J. A-E, Life Cycle Cost and Proposal Reimbursement.	Regulations and Procedures	FPR/DAR FAR	Recommendations accepted with minor modifications by major Federal agencies procuring A-E services. DOD & GSA instructed to implement in DAR/FPR on 4/17/78. Will be implemented in FAR.			
E-4. Repeal statutory 5% limitation.	Regulations and Procedures	Legislation	S-5, 95th Congress would repeal limitations applicable to the Federal Property and Administrative Services Act and the Armed Services Procurement Act, but does not repeal specific limitations applicable to the Secretaries of Army, Navy and Air Force in 10 USC 4540, 7212, and 9540. Appropriate amendments to accomplish this may be recommended.			
F-2. Study of Federal Assistance Relationships	Regulations and Procedures	Administrative Action	OMB chaired interagency study in fall of 1975. Development of policy guidance for assistance programs is an OMB continuing function. Initiatives are undertaken as specific needs are identified. The Federal Grant and Cooperative Agreement Act of 1977, P.L. 95-224 required OMB to complete a new study. Plans for the Study of Federal Assistance Programs were published in the Federal Register 1/3/79. A report will be made to Congress by 2/3/80. OFPP is participating in the review.	2/80		

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

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Recommendations Accepted by the Executive Branch	Assignment Within OFFP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
G-1. Contracting officer identification and authority.	Acquisition Law	FPR/DAR/FAR	Federal Register notice, 7/17/76. Appropriate provisions will be incorporated in FPR/DAR and FAR.	9/79		
G-2. Informal conference on adverse contracting officer decisions.	Acquisition Law	FPR/DAR/FAR	Recommendation accepted with modifications. Federal Register notice, 7/17/76. OFFP position changed to accept without modification 11/10/77. Draft regulations implementing P.L. 95-563 enacted 11/1/78 incorporates provisions of this recommendation.	3/79		
G-3. Retain multi-agency contract appeals boards; add subpoena and discovery powers.	Acquisition Law	Legislation	Recommendation completed through enactment of P.L. 95-563, the "Contract Disputes Act of 1978," 11/1/78.			P.L. 95-563 enacted 11/1/78.
G-4. Establish a regional small claims boards system to resolve disputes involving \$25,000 or less.	Acquisition Law	Legislation	Objective of recommendation accomplished in modified form through a provision of P.L. 95-563, the "Contract Dispute Act," enacted 11/1/78.			P.L. 95-563 enacted 11/1/78
G-5. Empower agencies to decide, settle, and pay all contract claims or disputes.	Acquisition Law	Legislation	Recommendation completed through enactment of P.L. 95-563, the "Contract Disputes Act of 1978," 11/1/78.			P.L. 95-563 enacted 11/1/78
G-6. Allow contractor direct access to Court of Claims and district courts.	Acquisition Law	Legislation	Recommendation implemented through enactment 11/1/78 of P.L. 95-563, the "Contract Disputes Act."			P.L. 95-563, 11/1/78

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COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

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Recommendations Accepted by the Executive Branch	Assignment Within OFFP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
G-7. Grant both Government and contractors judicial review of adverse board decisions.	Acquisition Law	Legislation	Recommendation implemented through enactment 11/1/78 of P.L. 95-563, the "Contract Disputes Act."			P.L. 95-563, 11/1/78
G-8. Establish uniform and relatively short time periods within which parties may seek judicial review of adverse decisions of administrative forums.	Acquisition Law	Legislation	Recommendation implemented through enactment 11/1/78 of P.L. 95-563, the "Contract Disputes Act."			P.L. 95-563, 11/1/78
G-10. Increase the monetary jurisdictional limit of the district courts to \$100,000.	Acquisition Law	Legislation	Objective of recommendation accomplished in modified form through a provision of P.L. 95-563, the "Contract Disputes Act," enacted 11/1/78.			P.L. 95-563, 11/1/78
G-13 thru 16 and G-19. Bid protest procedures.	Acquisition Law	FMC FAR	OFFP rewrite of proposed ASPR/FPR reviewed by Dept. of Justice. Reply received 3/77. Also, bid protest procedures included in S. 5, 96th Congress.			
G-18. Improve agency debriefing procedures.	Acquisition Law	FAR	FPR draft completed 10/76. To be included in the FAR.	1/80		
G-20. GAO review of agency award protest procedures.	Acquisition Law		GAO responsible. GAO review suspended pending ASPR/FPR implementation of FMC 74-3.			

COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

Date: January 31, 1979
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Recommendations Accepted by the Executive Branch	Assignment Within OFPP	Type Of Implementation Required	STATUS	Implementation		
				Target Date	Intermediate Level	Completed
H-1 thru 3. Selected issues of liability.	Acquisition Law	Legislation	Reviewing report received from interagency task force. Decision to take action will be made. Legislation to be submitted by June 1979.			
I-1 thru 3, I-6 and I-7. Patents.	Acquisition Law	Legislation	Proposed implementations developed by Office of Science and Technology Policy (OSTP). Presidential option paper being prepared with OFPP participating. Legislation introduced in 95th Congress (H.R. 8536), but failed enactment. Expect a legislative proposal in 96th Congress.			
I-5. Amend regulations and clauses on contractual warranties against patent infringement.	Acquisition Law	DAR/FPR, FAR	OSTP draft clauses submitted for OFPP approval 12/77. To be included in the FAR.	1/80		
I-9 thru 13. Technical Data.	Acquisition Law	OFPP Policy FAR	To be included in the FAR.	1/80		
I-14, 15, 16 Copyrights.	Acquisition Law	DAR/FPR/FAR	Regulations to implement the Copyrights Act will be drafted for inclusion in DAR/FPR and ultimately in the FAR.	1/80		
J-1. Consolidation of procurement statutes	Acquisition Law	Legislation	OFPP has accepted responsibility for implementation, and will consider in relation to other priorities. Support of S. 5, 96th Congress is a major step in accomplishing this recommendation.			

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COMMISSION ON GOVERNMENT PROCUREMENT
 PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

Date: January 31, 1979
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Recommendations Accepted by the Executive Branch	Assignment Within OFPP	Type Of Implementation Required	STATUS	Target Date	Implementation	
					Intermediate Level	Completed
J-2. Extension of Truth-In-Negotiation Act to all agencies. (P.L. 87-653)	Acquisition Law	Legislation DAR FPR FAR	P.L. 87-653 requirements have been applied administratively to civilian agencies by FPR. Regulations will become uniform with issuance of FAR 1/80. Need for legislation will be determined at that time.			
J-3 & 5. Modifying Renegotiation Act.	Acquisition Law	Legislation	Administration now supports simple extension of Renegotiation Act.			

COMMISSION ON GOVERNMENT PROCUREMENT
PART II - ACCEPTED RECOMMENDATIONS - IMPLEMENTATION IN PROCESS

ATTACHMENT A
Date: January 31, 1979
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Recommendations Accepted by the Executive Branch	Assignment Within OIGPP	Type Of Implementation Required	STATUS	Implementation	
				Target Date	Intermediate Level Completed
C-1 thru 12. Major Systems.			<p>DOD - Implementation of A-105 is continuing to emphasize the necessity for a clear decision on mission need and competitive exploration of alternative concepts leading to competitive development, full scale development, and production key decisions. Revised DOD Directives (DDO,) and 5000.2 are currently in process along with new policies relating to (less) Element Head Statements (MENS) and this approval becoming an integrated action within the PPBS process.</p> <p>DOC, DOE, DOT, NASA, HUD, EOE, DEL, TREASURY, EPA, GSA, USDA, Corps of Engrs, and VA. Implementation of A-105 is continuing.</p> <p>Many departments/agencies have formally issued or revised their top documents and the others are in various stages of coordination.</p> <p>DOI and DHEW. Resolution of the question of applicability to those agencies is expected in FY 1979.</p>		

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COMMISSION ON GOVERNMENT PROCUREMENT RECOMMENDATIONS
PART III - EXECUTIVE BRANCH POSITIONS IN PROCESS

Date January 31, 1979
Page 1

Recommendations In Process	Assignment Within OFPP	STATUS	Target Date For Executive Branch Position	REMARKS
A-22 thru A-26. Reliance on the Private Sector.	Logistics	OFPP made a comprehensive review of OMB Circular A-76 and its implementation. Proposed changes were published for public review/comment on 11/21/77, and a draft revision of the Circular was published for review on 8/22/78, with comments due by 10/23/78. A draft cost comparison handbook has been published for review. The revised Circular and handbook are expected to be issued early in 1979.	3/79	In P.L. 93-400, Congress reflected its consideration of recommendations A-22 thru A-26 by underscoring reliance on the private sector and assigning to OFPP the role of monitoring and revising policies and procedures relating to this policy. Congress expressly refrained from suggesting the direction of subsequent revision of A-76, but emphasized the need for effective implementation. OFPP has made a comprehensive review of the Circular and its implementation. A revised A-76 is about ready for issuance along with a Cost Comparison Handbook. The revision includes changes that relate to subject areas covered by most of the Commission recommendations.
B-1, thru 4. Research and development objectives, organization and performance	Systems and Technology	In as much as these recommendations deal with in-house Government technical capabilities, planned implementation will be by an R&D supplement to OMB Circular No. A-76. An interagency ad hoc subcommittee of FOCSET sponsored by OSPP and OFPP is developing criteria to define in-house "core capabilities" and to clarify the role of Government laboratories. Subcommittee final report is due July 1979.	12/79	With respect to major systems acquisition the intent of these recommendations is included in OMB Circular No. A-109.
B-8. R&D Cost Sharing	Systems and Technology	Draft R&D section of FAR to be distributed for agency comments 2/79.	6/79	
B-10. Policy concerning independent research and development costs.	Systems and Technology	Draft Cost Principles section of FAR to be distributed for agency comments 2/79.	4/80	
G-22 thru G-24. P.L. 85-804 extension.	Acquisition Law	In suspense pending legislative positions and implementation of G-1 thru 12 and H-5.	9/79	Low priority. Implementation would require legislation. Decision on whether to seek and what type of legislation will be made after G-1 thru 12 and H-5 are resolved.

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COMMISSION ON GOVERNMENT PROCUREMENT RECOMMENDATIONS
PART III - EXECUTIVE BRANCH POSITIONS IN PROCESS

Date January 31, 1979
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Recommendations In Process	Assignment Within OPPP	STATUS	Target Date For Executive Branch Position	REMARKS
H-4 and H-5. Catastrophic Accidents.	Acquisition Law	Task group report, including proposed legislation, submitted to OPPP 12/76. Agency comments on legislation being studied by OPPP.	3/79	Legislation drafted by interagency task force.
I-4 and I-8. Patent Policy	Acquisition Law	I-4 and I-8 which deal with authorization and consent and district court jurisdic- tion of patents previously were re- jected by the executive branch. This Administration is reviewing the total patent policy and therefore is review- ing its position relative to these recommendations.		Impractical to establish a target date in view of the diverse posi- tions of several major agencies on this matter.

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GENERAL COUNSEL

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 27 1979

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending,
Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

This is in response to your request for the views of the Department of Transportation with regard to your Subcommittee's review of the Office of Federal Procurement Policy (OFPP).

The Department of Transportation firmly supports the objective of improvement and modernization of the Federal procurement process. A focal point for such improvement is certainly needed, and the OFPP has served that function well. We feel that the office should continue. We support the introduction of legislation to reauthorize the Office of Federal Procurement Policy.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Subcommittee.

Sincerely,

Linda Heller Kauff

Acty General Counsel



It's a law we
can live with.

OFFICE OF THE SPECIAL REPRESENTATIVE
FOR TRADE NEGOTIATIONS
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

February 12, 1979

Dear Chairman Chiles:

This is in response to your letter of January 29 addressed to our Congressional Liaison Officer. We very much appreciate the opportunity to provide our comments to your review of the Office of Federal Procurement Policy (OFPP).

By the nature of our program interests, our contacts with OFPP have been limited to matters related to the proposed International Code on Government Procurement which is about to become a part of the overall Tokyo Round trade package being completed in Geneva. In this connection the OFPP has played exactly the role envisaged for it in P.L. 93-400.

More specifically, as the director and coordinator of federal procurement policy, OFPP has participated actively in the interagency formulation of our positions in the negotiation of the code, bringing to that exercise, most importantly, indispensable counsel as to the interplay between proposed code rules and the existing U.S. procurement system.

One of the problems in the negotiation of the code has been the poor state of existing data with regard to U.S. Government procurement. Thanks to the drive of OFPP, a Federal Procurement Data System has recently become operative. We have worked with OFPP to develop inputs into this system which will better enable us to survey and monitor what will be happening in the U.S. under the code. It will also provide our inputs into an internationally agreed exchange of information which will provide a basis for our monitoring other signatory government actions under the code. Our only regret is that other

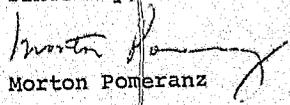
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federal agencies were not able to assist OFPP to implement the data system at an earlier date.

We, on this basis, would clearly not want the sun to set on OFPP.

Sincerely,


Morton Pomeranz

TRIAL DIVISION

United States Court of Claims
717 MADISON PLACE, N.W.
WASHINGTON, D.C. 20005

February 26, 1979

Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
Senate Office Building
Washington, D.C. 20510

Dear Senator Chiles:

Thank you for the opportunity to comment on the performance of OFPP in connection with a forthcoming "sunset review" to determine if reauthorization legislation should be introduced.

As we know, the OFPP grew out of a primary recommendation of the Procurement Commission which saw the need for uniform, Government-wide procurement policy in those instances (and only those instances) where Government-wide uniformity was essential, or served a clearly useful purpose. The Commission did not envision centralized procurement for all agencies, or a central group involved in procurement agency business decisions. The OFPP has fulfilled the need for an elite unit, "high in competence and small in size," and has refrained from intruding upon the procurement mission of the various acquisition agencies, departments and bureaus. It has served a most useful purpose and deserves to be reauthorized.

I would like to add a caution on excessive centralization. Centralization of function to achieve cost savings is worthwhile, but only in those instances where it does not nullify the distinct advantages of decentralization within the various procurement agencies. By way of example, the OFPP Report to the Congress under the heading "Contract Disputes and Remedies," accurately states that it has supported legislative initiatives (implementing recommendations of the Commission on Government Procurement) to provide

COURT OF CLAIMS

Honorable Lawton Chiles

February 26, 1979
Page Two -

a statutory basis "for swifter, fairer, and more streamlined and economical procedures for resolving contract disputes and providing remedies." Due to the pressure of adjournment, the Contract Disputes Act of 1978 unfortunately failed to adopt some important Commission recommendations, and instituted other procedures not recommended by the Commission. In implementing the Act by regulation, therefore, I would submit that contract disputes procedures are not rendered "swifter, fairer and more streamlined and economical" by centralizing them any more than absolutely required by the Act itself.

Procedures for the settlement and resolution of contract disputes are an integral part of the procurement mission of each procurement agency. If fairly and efficiently resolved, that agency will enjoy maximum competition and lowest prices for its contracts. Fair and efficient resolution of claims is also an integral part (in my opinion the most important part) of good contract administration. To remove these important responsibilities from one procurement agency and vest them in another unrelated agency is to render the first agency unaccountable for an important segment of its contract administration responsibilities. There is thereafter no incentive for claims prevention or settlement in the agency where the claims originated because the responsibility for their disposition lies elsewhere. The temptation is to abdicate in this most important area of contract administration, and to "pass the buck."

Centralization of disputes-resolving and settlement procedures is not required in order to achieve a uniform policy on claims resolution. Uniform procedures are achieved by adopting uniform rules. And relatively uniform results (all one can hope for) are achieved by the publication and citation of decisions on claims, as in any quasi-judicial or judicial process. The creation of a central "court" within the Executive Department is absolutely the wrong approach. It intrudes upon the procurement missions of the respective agencies, which are thereby divested of their claims-settlement function, and this in turn erodes responsibility and accountability for an important segment of their

COURT OF CLAIMS

Honorable Lawton Chiles

February 26, 1979
Page Three -

procurement programs. OFPP should be alert to the dangers inherent in that type of centralization. I do not believe that would be consistent with the Commission findings and recommendations.

Another example is illustrated by Appendix K to the OFPP Report. This is a further extension of the practice of fragmenting the contracting officer function, and assigning it across agency lines. The contracting officer is the Government's representative in administering each particular contract. A contractor is awarded a contract by a contracting officer in one agency. He thereafter finds that it is being administered in its various aspects by a multiplicity of individuals in other agencies. Pushed beyond the point of reasonableness, this concept also carries the disadvantage of eroding the responsibility and accountability of a particular agency for its contracts and their administration.

In short, as the Commission stated, it did not contemplate centralized procurement, or a central group involved in agency business decisions, and OFPP should continue to exercise due restraint in that respect.

Finally, the Congress should continue to provide oversight to insure that OFPP, which is structured within the Executive Branch, continues to formulate procurement policy in the national interest, and not solely in the interest of the executive agencies. It is excellently positioned to serve as a clearing house for the best developments in procurement policy, wherever they are developed.

Sincerely,


Louis Spector

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VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420

MARCH 16 1979

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending Practices
and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am pleased to respond to your invitation of January 29, 1979, to submit our views on the performance of the Office of Federal Procurement Policy over the last four and one-half years.

The establishment of this office, for which much credit must be given you, has had a substantial impact upon Federal executive agencies with major procurement programs. The Office of Federal Procurement Policy has been instrumental in initiating a number of programs which will result in suitable improvements in the economy and efficiency of government operations and will be of benefit to the public in dealing with Federal procuring agencies. The establishment of the Office of Federal Procurement Policy tended to focus attention upon the vast scope and importance and potential contribution to either efficiency or inefficiency of Federal procurement actions. OFPP has raised the consciousness level of government executives generally of the role procurement plays in support of their basic missions and its significance in determining the outcome of mission performance.

In establishing the Federal Acquisition Institute, OFPP has begun a process which can only contribute significantly to the upgrading and improved performance of Federal procurement personnel. This Institute's establishment is perhaps one of the most significant contributions OFPP has made during its life history. While the Federal Acquisition Institute is not completely operational, the beginnings made bode well for the future.

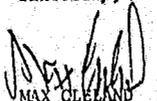
Actions to consolidate government procurement regulations into a single body, although far from complete, also should simplify the process of the public in dealing with the government and could have the simultaneous effect of making regulations clearer and easier to execute for Federal procurement personnel.

Honorable Lawton Chiles

On the negative side, the Office of Federal Procurement Policy has tended to go beyond its clearly defined charter in the Federal Acquisition Act and perhaps unconsciously assume operational roles and, in some instances, attempt to exercise line authority. An example of this is in an OFPP proposal relating to the National Supply System in which they requested the President's delegation of authority over executive actions involved in implementing the National Supply System. They asked that the Administrator of OFPP be empowered to establish in concert with executive agencies the numbers of agency personnel to be assigned to the interagency task groups necessary to meet program milestones. The actions of OFPP in this and in several other instances in initiating a large number of projects without regard to the capacities of the executive agencies to react to them is one of their most significant failures to date. They have tended to proliferate improvement actions without distinguishing among them the priorities for government improvement that could result, have tended to issue a number of directives and policies, often at the least contradictory and without due weight being given to their relative importance or order of priority. This has vitiated the successes that might have been achieved in executing some of these policies by diffusing the manpower efforts of the agencies that carry out actual operational details and implement policies. This diffusion of effort has in some instances hampered the performance of this agency's procurement and supply program by creating some confusion as to which programs were to be executed as the highest priority, and in some instances threatened to impair some of our program improvements.

It is my recommendation that the Office of Federal Procurement Policy should be continued. I do recommend, however, that its charter be further refined to make certain that those who implement the successor law to the Federal Procurement Act of 1974 remain within the constraints of that act as a policy making body and not be permitted under the guise of monitoring policies to attempt to assume directive or authoritative roles over Federal agencies. The authority and functions area of the act should clearly limit OFPP's role to the basic purposes for which it was established which was the policy area on behalf of the government, and should restrain the OFPP from impinging upon operating authorities of Federal agencies.

Sincerely,



MAX CLELAND
Administrator

PRIVATE SECTOR COMMENTS

AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.

1728 DE SALES STREET, N.W., WASHINGTON, D.C. 20036 TEL. 347-2315

OFFICE OF THE PRESIDENT

February 28, 1979

Senator Lawton Chiles
 Chairman, Subcommittee on Federal
 Spending Practices and Open
 Government
 Committee on Governmental Affairs
 U.S. Senate
 Washington, DC 20510

Dear Mr. Chairman:

This is in response to your letter of February 2, 1979 inviting the Association to comment in connection with the "Sunset Review" of the Office of Federal Procurement Policy (OFPP). Our Association supports reauthorization legislation.

The OFPP in its short existence has demonstrated that it has the capability and intends to fulfill the purpose for which it was created by Congress, i.e. "...to provide overall direction of procurement policies, regulations, procedures and forms for executive agencies...". The OFPP report which you furnished us accurately describes its accomplishments, and while we may differ on some of the provisions of its directives and the priorities they have established, we remain gratified that we supported the enabling legislation.

The following are a few of the more significant OFPP projects which we applaud.

- a. OMB Circular A-109, Major Systems Acquisition. This was a significant first step in establishing a good foundation in the complex field of acquisition.
- b. OMB Circular A-76, Revised Policies for Acquiring Commercial or Industrial Products for Government Uses. While the final product is not available to us at this writing, we anticipate that a reasonably good directive will be forthcoming.
- c. The Federal Acquisition Regulation System. While most of what we've seen so far has not involved substantive issues, we do find significant accomplishments in simplifying regulations and making them clearer and more concise. We hope pressures to complete the project will not lead to any lack of deliberation on substantive matters where current regulations can be improved.

One area within the current OFPP Charter that we believe might be given greater emphasis is the overall monitoring by OFPP of the regulations or subregulations of the various Federal Agencies. Since, however, this matter is under consideration in developing the FAR, it seems advisable to await the outcome of that development.

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Senator Lawton Chiles

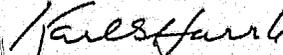
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February 28, 1979

We have only one recommendation as to change in the OFPP Charter, and it involves the further administration of Cost Accounting Standards (CAS). The Board has promulgated standards on most, if not all, matters of significant concern. Further implementation and revision could best be handled by expert procurement people knowledgeable as to the experience gained with existing standards. We submit that the function can and should be placed in, or under the supervision of the OFPP.

The OFPP has been given tremendous responsibility and faces imposing challenges. We believe the office is off to a good start and support its continuance.

Yours very truly,

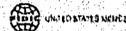

Karl G. Harr, Jr.

357

#707.17



american
consulting engineers
council



1155 FIFTEENTH STREET, N.W., WASHINGTON, D.C. 20005 (202) 296-6390

March 9, 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on
Federal Spending Practices
and Open Government
United States Senate
443 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Chiles:

The American Consulting Engineers Council wishes to go on record as strongly urging the reauthorization of the Office of Federal Procurement Policy (OFPP), Public Law 93-400, which created OFPP, contains a "sunset" provision which requires the dismantling of this office by August 31, 1979, unless reauthorized by the Congress.

OFPP has proved itself to be of inestimable value to the public, to the government and to those seeking to do business with the government. We highly complement Mr. Lester A. Fetting, Director of OFPP, and his staff for their accessibility to the public, their understanding, their patience and their fairness.

The agency's emphasis on regulatory reform, particularly the standardization of over 800 separate procurement regulations, is a laudable goal. In addition to taking on this impressive chore, OFPP has also dealt with a number of very difficult and controversial problems, including several which, but for OFPP action, would have required legislation. In our opinion, if an issue can be satisfactorily resolved administratively, it should be so handled. Solution by statute often creates new problems through too broad an application to an industry or a procedure.

Although we have not always agreed with OFPP's approach, it is only fair to say that we have received a thorough hearing

BW

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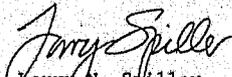
The Honorable Lawton Chiles
March 9, 1979
Page two

and a complete discussion of such issues as: OMB Circular A-76; OMB Circular A-102; Conflicts of Interest; Service Contracts; the Davis-Bacon Act; and many other difficult subject areas.

In summary, Mr. Chairman, I quote from Mr. Fettig's testimony before your committee, "OFPP has tried to serve as a positive and responsible spokesman for the acquisition community" We feel OFPP has served as a positive and responsible spokesman.

We heartily endorse the reauthorization of the Office of Federal Procurement Policy and hope that the Congress will move expeditiously to accomplish that end.

Sincerely yours,



Larry N. Spiller
Executive Vice President

LNS:tr

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AEA
Formerly WEMA

American Electronics Association
2600 El Camino Real, Palo Alto, CA 94306 (415) 327-9300

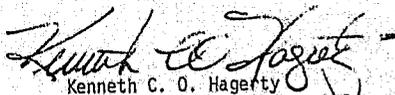
March 9, 1979

Mr. J. Brian Walsh
Professional Staff Member
Subcommittee on Spending Practices
and Open Government
Senate Committee on Governmental Affairs
Washington, D.C. 20510

Dear Brian:

Enclosed is AEA's statement supporting the reauthorization of OFPP. We hope it will be of assistance to you, and that it may be incorporated into the record on this subject.

Sincerely,


Kenneth C. O. Hagerty
Vice President, Government Operations

KH/sdr
Enclosure

Statement of the
American Electronics Association (AEA)
to the
Subcommittee on Federal Spending Practices and Open Government
Senate Committee on Governmental Affairs
Concerning Reauthorization
of the
Office of Federal Procurement Policy

Mr. Chairman, the American Electronics Association (AEA) appreciates your invitation to present its views on the possible extension of the Office of Federal Procurement Policy (OFPP). AEA represents more than 1,000 high-technology electronics companies located in 39 states. Our members manufacture components and equipment or supply products and services in the information processing industries. While our members employ more than 1,000,000 Americans and include some of the nation's largest companies, a majority are small businesses employing fewer than 200 people.

These companies individually and as a class are uniquely able to help our country solve a number of its most urgent problems. Studies show they generate new jobs at a phenomenal rate. They are one of the few bright spots in our nation's balance of payments situation. And, of specific concern to this Committee today, they are the most important source of the critical technological innovations upon which our national security rests. Nearly three-quarters of AEA's membership are involved in federal procurement directly or as suppliers to contractors.

Given the small size of so many of our companies, our industries are especially affected by conflicting, duplicative, and unnecessarily burdensome procurement procedures. We worked actively with the Holifield Commission, of which you were a member, in its landmark survey of the field, and we strongly backed your recommendations. We believe the dedication that you have shown, Mr. Chairman, to the tedious task of implementing those recommendations is a model of responsible legislating in the national interest.

One of the most significant innovations to come from the Commission's work was establishment in the Executive Office of the President of a central procurement

staff with the clout to finally bring some cohesion to this otherwise fragmented activity. Our Association testified in favor of OFPP's creation, and we believe strongly that the need for it continues.

The concept of a single voice and final authority for procurement policy is sound. Without it responsible Congressional oversight would not be possible. You have given OFPP the combination of authority and accountability you need to perform your legislative responsibilities. They have performed their role effectively, and we suggest Congress itself needs OFPP to continue.

You have created an agency with the difficult task of both resolving day-to-day conflicts among the agencies and still spending significant time thinking and acting on long term policy directions. We believe OFPP has performed that role admirably.

Given the time and energy most agencies are willing to invest protecting and expanding their own turf, we hate to think how much harder it would have been to deal with the government over the last five years without an outside authority that could enforce the uniform procurement policies both Congress and the President want.

Given the increasing reliance of the Defense Department on privately developed technology, we think it is vital to erect and enforce procurement policies that encourage maximum participation in the government market by both defense and commercially oriented companies. OFPP recognizes that need as one of its central goals, and we need them to persist.

Finally, it is interesting to note the change in OMB's attitude toward OFPP. After an excellent working relationship under both Republican and Democratic Presidents, OMB now agrees with your earlier judgement and supports continuation of this office within their lean and elite organization.

Mr. Chairman, AEA supports a sunset review of every federal agency. We also support extending the Office of Federal Procurement Policy.

March 1, 1979

American Dental Trade Association



February 26, 1979

Honorable Lawton Chiles
Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

We received with interest your request of February 2, 1979, requesting comments concerning the performance of the Office of Federal Procurement Practice in the OMB. Although our knowledge is necessarily limited to those areas where the OFPP's practices have touched upon the dental industry, we are happy to respond.

We feel that several policies of the OFPP promulgated during the last few years show great promise for the efficiency and cost savings for the government. These include the eventual consolidation of Federal Procurement of drug, surgical, medical and dental products by the principle user agencies (VA and DOD), use of commercial products and elimination of unnecessary uniquely-federal specifications, and more purchase in the open or local commercial market of these types of products. We feel, too, that the rewriting of the Federal Acquisition Regulation and their consolidation may result in a massive acquisition regulation, but one which, in the long run, would prove beneficial. We feel the OFPP should be continued in order to see through to conclusion these and other projects currently underway.

In summary, we feel the OFPP has done a creditable job and should be continued. If there is any additional information we can provide, please feel free to call upon us.

Sincerely yours,

A handwritten signature in cursive script that reads "David A. Ellis".

David A. Ellis, Director
Management Information Services

DAE:cm

1140 Connecticut Avenue, N.W. Washington, D.C. 20036 Telephone 202-659-1630



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

AFFILIATED WITH THE AFL-CIO

KENNETH T. BLAYLOCK
NATIONAL PRESIDENT

JOSEPH D. OLEASON
EXECUTIVE VICE PRESIDENT

NICHOLAS J. NOLAN
NATIONAL SECRETARY

1325 MASSACHUSETTS AVE., N.W. • WASHINGTON, D. C. 20005
Telephone: (202) 737-8700



IN REPLY PLEASE REFER TO:

80/

April 16, 1979

Honorable Lawton Chiles
United States Senate
Russell Senate Office Building
Room 443
Washington, D. C. 20510

Dear Senator Chiles:

Thank you for your letter of March 26, 1979. I, too, was sorry that I did not get the chance to testify during your "Sunset" hearings on March 9, but I appreciated your accepting my prepared statement for incorporation in the hearing record.

In your letter, you said that there were several issues which you had hoped to discuss with me at the hearings, and you outlined the issues, in the form of questions, in an attachment to the letter. You requested that I provide the Subcommittee with written responses to the questions in order to make the hearing record more comprehensive.

I have provided such written responses in the attachment to this letter and I hope they will be useful to your subcommittee.

I appreciate your thoughtfulness in giving us this opportunity.

Sincerely,

Kenneth T. Blaylock
Kenneth T. Blaylock
National President

Attachment

Attachment

Question: What is your assessment of agency compliance with A-76 over the years?

Response: Our experience and impression are that most Federal agencies tend to interpret A-76 pretty much to suit themselves. At least in the area of contracting for services, as compared to manufactured products, they interpret A-76 to permit or justify whatever they have already decided to do for other reasons, good or bad, rather than using A-76 itself as a decision-making tool.

By "other reasons", mostly bad ones, we mean that:

- some Federal agencies are inclined to contract-out government services at a volume or a degree that other, better managed and more responsible, agencies would regard as weak, foolish, or irresponsible (because of the resulting loss of desirable in-house capability; the loss of flexible, immediate management control over the scheduling or priorities of essential services; and the loss of control over the eventual frequently escalating costs and deteriorating quality of the services provided, despite the agency's best effort at contract specifications and administration).
- some Federal agencies contract out to profit-oriented private companies services which are of a kind that other Federal agencies seem to be-

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lieve are properly or inherently "government" or "agency" functions that the public or the Congress expect the agency itself to perform and be accountable for (because they are part of the agency's primary mission or functions or because they are recognizably "governmental" to the public and should be conducted objectively and equitably and not influenced by the profit motive).

- some Federal agencies' managers seem merely to want to avoid management responsibility for functions they find either difficult and controversial, on the one hand, or tedious and uninteresting, on the other hand - and wash their hands of them by turning the work and the headaches over to a private profit contractor.

- some agency managers seem little, if at all, concerned about the harm that excessive, improper, and irresponsible contracting-out of government functions and services to profit-making private companies will do to the long-range health, strength, morale, and competence of the agency's own in-house career civil service staff and of

- 3 -

the Federal government's personnel system itself.

- some Federal agencies also seem unconcerned with the immediate and severe adverse effects of the contracting-out of government services on loyal, long-service, and competent agency civil service employees, including war veterans, handicapped workers and minority group workers. These adverse effects include loss of jobs, loss of pay, reductions in grade levels, the need to move to other locations, and psychological damage and even bitterness at being treated as if without importance to the Federal government agency they served so long and loyally.
- some Federal agencies obviously are little concerned with making honest cost or quality comparisons, but, regarding such comparisons as an unnecessary nuisance, go through them as a charade.
- some agencies show little or no concern for the general public interest or the agency mission, and more concern for the partisan political interests of the administration or the interests

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of political friends and allies of the administration.

- some agencies seem to have much-less-than-arm's-length dealings with some of the private companies with which they contract, e.g., some companies seem to be favored, to have an inside track, and to be treated with special consideration.

- most Federal agencies, and this is very important, will contract-out functions to evade civilian manpower ceilings, hiring freezes, Federal pay limits, Federal personnel laws, etc., even if A-76 and other Presidential, OMB, or OPM directives prohibit such evasions. A very high percentage of contracting-out of government functions and services, we believe, is due to the desire of agencies to evade the arbitrary, year-end civilian employee manpower ceilings, which are the curse of government and are scorned by private industry.

Thus, because of the influence of the above-listed and similar factors, we do not believe that there is satisfactory compliance by Federal agencies with A-76, at least in the area of contracting for services.

We say this on the assumption that A-76 does

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attempt to bring about agency contracting-out decisions that are in the general public interest, that are sound from an agency mission management standpoint, that are honest and above-board, and that take into decent and compassionate account the impact of such decisions on career Federal employees and on the health and vigor of the Federal government system itself. Our experience is that most agency contracting-out decisions meet these excellent criteria only accidentally, if ever. We wish we could say otherwise. (Perhaps this sad record is partly because the Bureau of the Budget, and later OMB, insisted for many years that A-76 was only "guidance" to the agencies and was not a "regulation". AFGE well remembers our long fight with OMB before we forced them to concede that A-76 was, indeed, a "regulation").

AFGE is prepared to submit to your Subcommittee a whole book of examples of agency contracting-out activities that illustrate the points made above. (We call it our "book of contracting-out horrors").

Many of these abuses, indeed, must be already very well-known to the subcommittee, because S.5, introduced by Senator Chiles, is specifically directed at some, but by no means all, of such abuses.

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The prevalence of such abuses may be indicated by the simple facts that:

- The Washington Star of Sat., April 7, 1979, under the heading "'78 Consultants Cost HEW \$10 Million", reported that: (1) HEW officials told Congress they paid only 12 consultants more than \$25,000 each, but investigators found the department actually paid 102 people more than \$25,000 each for consulting work in the fiscal year that ended last Oct. 1; (2) the Senate Appropriations Committee charged that HEW has used dozens of consultants improperly; (3) many consultants apparently were brought in as a way of getting around President Carter's hiring freeze; (4) private experts were hired to circumvent civil service rules; (5) HEW officials admitted that consultants were improperly hired to perform work that should have been done by permanent HEW employees; (6) HEW also admitted that persons hired as consultants were later converted to permanent career HEW appointees performing precisely the same duties; and (7) that a review of the files of some 29 HEW consultants showed that 23 were misused, many of them to fill permanent jobs.
- The Washington Post of the very same day, Sat. April 7, 1979, in a column headed "Billions

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are Wasted" and written by Paul J. Andrews, former assistant general counsel for contracts of the Federal Housing Administration, said that billions of the Federal government's total expenditure for research and development are wasted by Federal agencies and grantees because their research products are useless or are not mission-oriented and are, therefore, put in file drawers and never used.

I quote certain pertinent parts from the article:

"The principal fault, however, lies with the research and procurement departments of the agencies and the grant recipients and with their propensity for planning expenditures only after the funds are available. Consequently, within the last two or three months of each fiscal year there is a concentration of procurement activity - the goal being to spend all of the available funds by midnight on Sept. 30, when the fiscal year ends. Inability to spend the money would reflect on a recipient's budget needs for research in the coming fiscal year. A trusting Congress continues to appropriate research funds in ever-increasing amounts simply because an agency can, on Sept. 30 of each year, balance its research expenditures with appropriated funds.

"Private industry is well aware of this dilemma. Unsolicited proposals flood government offices. Although competitive negotiation in research procurement is mandated by law and regulation, many unsolicited proposals are negotiated finally with the firm that submitted them. That is because proprietary capability of a particular firm is cranked into the proposal, and the short fuse on the procurement process does not permit the government time to revise the proposal so competition can be sought."

- 8 -

* * *

"The Federal research departments should be masters of their own destinies, not victims of an enterprising private industry."

These two stories appearing on one day cover only two of the major kinds of contracts for government services - i.e., consultant services and research and development. It doesn't take much to imagine, therefore, what is happening every day, day after day, in all the many federal agencies across the whole broad spectrum of contracting-for-government services, involving tens of billions of dollars every year.

The image is inevitably that of some fat and happy government agencies at the mercy of hungry and ruthless private industry.

It bears mention that AFGE has frequently pointed out that it is in this vast and growing area of contracting-out of government functions, especially that caused by arbitrary year-end civilian manpower ceilings, that billions of dollars of the taxpayer could be saved while performing the functions involved much better. This is the place for real savings, not by the imposition of manpower ceilings unrelated to workload or elimination of pay comparability for Federal workers, or arbitrary reduction in retirement benefits, which bring about tremendous long range costs because of workforce turnover, new training costs, lowered productivity, decrease in quality of work, and so on.

We are not naive, of course. We recognize that the private contractors, their government friends, and their lobbies are powerful and are difficult to tackle. Among other things, they are very heavy political contributors. On the other hand, Federal civilian employees are prohibited from taking part in practically all the political activities available to the average American citizen. It makes it a very uneven contest.

Therefore, until such time as there is public financing of Congressional campaigns and there are revisions in certain of the unfair Hatch Act restrictions on political activities of Federal employees, we do not expect to see very much change in the present domination of the procurement processes of the Federal government by profit-making private contributors.

Meanwhile, AFGE continues the rather lonely fight in the general public interest, as well as trying to get a fair shake for the Federal employees we represent. In that fight, certainly the passage of laws like S. 5^{1/} by the Congress; oversight hearings on contracting-out by House and Senate committees; and actions by OMB to obtain greater compliance with A-76 by Federal agencies would all be significantly helpful.

1/ With certain changes reflecting the above comments and those in response to the following questions.

-10-

Question: Has the Office of Federal Procurement Policy been helpful in clarifying the policy of reliance on the private sector?

Response: No. There is no way that the Office of Federal Procurement Policy, which is not at the policy-making level of the Congress or the President, can clarify a non-policy or a hit-and-run policy presumably, but never actually, established at those higher levels. Examine the so-called policy of "reliance on the private sector". Ask yourself the question: "Reliance for what?"

- Is the reliance the same for government services as it is for commercial products? We know as reasonable, experienced people that it can't be the same - but there it is, i.e., a non-policy on this point.
- Is it the same for all kinds of government services - consultant, research and development, "governmental" functions, basic agency functions, secondary functions, support services, operations, professional, commercial, etc. We know that it can't be - but there it still is, i.e., a non-policy on these points.
- Is it the same for services traditionally carried out by government agencies for themselves as for services they never carried out for themselves but always relied for on the private sector? We know it can't be.

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- Is it the same regardless of relative appropriations available for in-house or contractual services and operations? Or regardless of arbitrary manpower ceilings? Or of political influences and pressures, or personal friendships, or hopes for future job offers? Or regardless of relative costs and quality of in-house or contractual performance?
- Is there a counterbalancing policy of an agency relying on itself (or on other government agencies) for those functions for which it must accept full management accountability to the public and the Congress? Or for those functions which the public assumes are performed by the government itself, like food inspection? For those functions where objectivity and fairness to all are paramount? For those functions and services which are essential to accomplishment of the agency's primary mission and, therefore, must be under close agency management control as to responsiveness, flexibility, timing, level, quality, and so on?
In brief, a "policy" is simply not a policy unless it can be used to establish clear policy objectives and to establish programs and plans to reach such objectives in the best interest of the organization concerned.

If the President and/or the Congress, want to establish a policy of "relying on the private sector", let them face up to their responsibility for also spelling out what the government should rely on the private sector for and what the government should rely on itself for (i.e., for what must and should it accept direct accountability to the public and the Congress).
Until then, we have a "non-policy".

Question: What are your thoughts on the policy of relying on the private sector?

Response: We have no objection to the general policy of the Federal government relying on the private sector for most normal commercial products, rather than manufacturing them itself. (We do not believe that the government should make its own desks, typewriters, trucks, and so on).

If the government has been manufacturing a commercially-available product, we think adequate provisions should be made for the Federal employees engaged in that work before it is contracted-out.

(We are not discussing the special subject of manufacturing ammunition, guns, and other munitions - which raises special issues).

With regard to services, however, we think the issue is much more complex, as indicated in our above responses to earlier questions.

When it comes to a function for which a government agency is held responsible, we believe that the primary requirement is that such function be carried out in accordance with the Constitution and the statutes; in such a way as to aid the agency itself in the successful accomplishment of its primary missions; in such a way as to best serve the public; in an accountable, prudent, effective, objective, fair, economical, efficient fashion; in such a way as to strengthen and enhance the Federal merit

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- 14 -

personnel system. We don't believe that the primary requirement placed on Federal agency managers should be to enhance the profits of private companies which care little or nothing for the success of the agency missions.

The agency head's first duty is to make the programs of the agency succeed as the Congress intended them to succeed when it enacted them.

(Please see our earlier responses for additional considerations).

Question: What are your thoughts on having an agency like the Office of Federal Procurement Policy charged with implementing this policy?

Response: There are, of course, obvious conflict-of-interest problems.

The OFPP and OMB may become overly partisan advocates of the political policy of contracting-out as much as possible of government work to the private profit sector. Also, since OMB sets Federal civilian manpower ceilings, and often sets them at unrealistically low levels to advance the President's political image as an economy-minded manager, it may often be inclined to close its eyes when agencies evade them by contracting-out their work - rather than getting into a fight over ceilings with an agency.

On the other hand, OMB has an overriding concern with good government organization and management and with sound budget management, and this concern may somewhat counterbalance its more narrow, special interests first mentioned.

Until a better agency is suggested or becomes available, we do not object to OFPP and OMB having this function so long as it is conducted publicly and openly.

Question: What are the strong features of the proposed new directive?

What are its most troublesome features?

Response: The strong feature is that it is a "single, comprehensive, coherent document which provides a basis for eventually developing a wise government policy on contracting for government functions and services, even though it may take years to bring the general public interest in competent government into some kind of balance with the political interest of any Administration in currying favor with powerful private contractors. The principal hope is that A-76 is now, largely at AFGE's pioneering insistence, put through the Federal Register public notice and comment procedure of the Administrative Procedures Act, whereas before BoB and OMB had insisted on developing it in great secrecy.

The weak features include:

- inadequate criteria for determining when government work should be done by the government itself for the variety of reasons stated earlier in this "attachment".
- inadequate criteria for fair cost comparisons, covering all relevant cost factors and based on equal quality of work.

- inadequate protection of adversely affected Federal employees and requirements for agency to alleviate such adverse impacts.
- inadequate requirement for management consultations and negotiations with exclusive employee representatives (1) before contracting-out decisions are made; and (2) after such decisions are made and their impact is being felt.

Question: How has the Office of Federal Procurement Policy responded to the two concerns expressed by AFGE in 1973 when it testified in support of establishing such an office: the first involved actions which violated veterans preference laws; and the second was the fragmented policy responsibility for A-76?

Response: So far as we know, OFPP has given no special attention to the matter of evasions, ignoring of, or violations of veterans preference laws.

The second concern has been alleviated to the extent that the policy responsibility for A-76 is no longer fragmented. (For reasons given in earlier responses however, A-76 is still far from satisfactory.)



THE AMERICAN INSTITUTE OF ARCHITECTS

Ehrman B. Mitchell, Jr., FAIA
President

February 9, 1979

Senator Lawton Chiles, Chairman
Subcommittee on Federal Spending
Practices
Senate Committee on Government Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

Thank you for your letter of February 2, 1979, requesting our comments on the performance of the Office of Federal Procurement Policy.

It is our opinion that Mr. Lester A. Fettig has been largely responsible for the many accomplishments enjoyed by OFPP. Mr. Fettig's role in the anti-inflation program has been one of leadership and firm administration in related regulatory activity. Mr. Fettig is conscious of a great many procurement problems and has taken steps to resolve them in a manner which is consistent with the goals and policies of the Carter administration.

Since the enactment of Public Law 93-400, the AIA has had many opportunities to meet with representatives from OFPP on specific regulatory issues. Happily, we have found a high level of technical competence on the OFPP staff which allows for detailed debate on A/E procurement problems. Mr. Fettig is very much aware of the special nature of A/E services and the need to carefully outline a procurement system which is clear, concise, and supportive of open competition. The Institute commends the fine effort that OFPP has made toward streamlining procurement regu-

BW
FEB 21 1979

Senator Lawton Chiles
February 9, 1979
Page Two

lations and reducing cumbersome paperwork. We hope that Mr. Fettig and his staff will be encouraged by your subcommittee to continue their efforts to bring consistency to federal spending practices.

Thank you for forwarding the OFPP's September 1978 Report to Congress. The Institute recommends the reauthorization of OFPP as a vital part of the government's network of monetary controls.

Thank you for your interest.

Sincerely yours,



Ehrman B. Mitchell, Jr., FAIA
President

AICPA

American Institute of Certified Public Accountants
 1620 Eye Street, N.W., Washington, D.C. 20006 (202) 872-8190

February 26, 1979

The Honorable Lawton Chiles
 Chairman
 Subcommittee on Federal Spending
 Practices and Open Government
 Committee on Governmental Affairs
 United States Senate
 Washington, D.C. 20510

Dear Chairman Chiles:

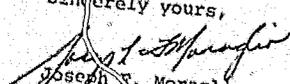
The American Institute of Certified Public Accountants (AICPA) was pleased to receive your letter requesting comments relevant to a review of the Office of Federal Procurement Policy (OFPP) which the Senate Subcommittee on Federal Spending Practices and Open Government is beginning.

In general, the AICPA believes that "sunset" provisions are beneficial and essential to an effective and efficient government. Such reviews assist in streamlining the bureaucracy and eliminating ineffective or useless expenditures.

Based upon our review of the Report to the Congress January 1977 through September 1978 Office of Federal Procurement Policy and our direct dealings with OFPP, we find no valid cause for eliminating the Office of Federal Procurement Policy. We also believe that there currently exists a need for a central policy office to insure uniformity in federal acquisitions and to handle and resolve problems.

We appreciate the opportunity to comment on this worthwhile review and if we can be of any further assistance to you on this or any other legislative matter please do not hesitate to contact my office.

Sincerely yours,


 Joseph F. Moraqlio
 Director
 Federal Government Division

JFM:tlc



815 15th Street, N.W. Suite 502
 Washington, D.C. 20005
 202/783-1881

March 1, 1979

The Honorable Lawton Chiles
 United States Senate
 Washington, D.C. 20510

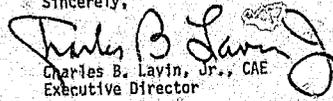
Dear Senator Chiles:

In answer to your letter of February 2, 1979, ASA has worked closely with the Office of Federal Procurement Policy over the last four years and have found their performance to be outstanding. In my personal dealings with the Director as well as several staff people, I have found OFPP to be well managed, responsive and creative personnel, are most accessible and fair in their evaluations and rulings.

Presently, ASA is working with OFPP in drafting the Federal Acquisition System (FAR). This uniform regulatory system is badly needed in our industry and will be finalized in the next few months. If OFPP is not funded, this most necessary action will again be delayed, causing continued confusion to the construction industry and additional financial burdens to the federal government.

I strongly urge you and the Committee on Government Affairs to introduce and pass reauthorization legislation for OFPP.

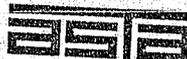
Sincerely,


 Charles B. Lavin, Jr., CAE
 Executive Director

CBL/dg

BW
 MAR 05 1979

RECEIVED: FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE, WASHINGTON, D.C. 20535
 MAR 1 1979



AMERICAN SURGICAL TRADE ASSOCIATION

ELEVEN EAST ADAMS STREET CHICAGO, ILLINOIS 60603

Office of Director of Government Relations • ASTA Washington Office, 1101 Connecticut Ave., NW • Washington, DC 20036

February 22, 1979

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1978-79

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Robert E. Anderson, III
Powers & Anderson, Inc.

President-Elect
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Executive Secretary
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Director of Government Relations
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ASTA Washington Office

Director of Membership Services
Senford J. Hill
Association Headquarters

The Honorable Lawton Chiles
Chairman, Committee on Governmental Affairs
and Open Government
United States Senate
437 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Chiles:

We appreciate your inviting our comments on the performance of the Office of Federal Procurement Policy over the last four and a half years.

The American Surgical Trade Association represents 700 suppliers of medical and surgical products to civilian and government hospitals and physicians. Our experience with the Office of Federal Procurement Policy has concerned the evolving directives concerning the acquisition and distribution of commercial products (ADOOP) which has been aggressively encouraged and implemented by Mr. Lester Fettig and his staff.

This policy was the outgrowth of recommendations of the Commission on Government Procurement. The Commission specifically targeted medical supplies as an area in which the costs of procurement through the government's depot system were far higher than through a commercial distribution system. In response, the Office of Federal Procurement Policy has made great strides towards developing and implementing a policy for the acquisition of commercial medical supplies and their distribution through commercial channels. This program is already producing savings to the government which will, in this area alone, far outweigh the expenses of this office.

The shift from government spec products and distribution channels to commercial products and distribution channels has not progressed as rapidly as either we, or undoubtedly, the Office of Federal Procurement Policy, would hope. The forces of inertia in the procurement agencies are hard to overcome. However, the delays in full implementation of this policy are in no way the fault of ORPP; on the contrary, without ORPP, the established purchasing patterns would undoubtedly persist forever. ORPP is the good

BW
FEB 27 1979

Established 1902

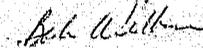
The Honorable Lawton Chiles
February 22, 1979
Page 2

for reassessment and change in federal procurement policies, and the progress they have made to date fully justifies the introduction of legislation to reauthorize appropriations for the office.

The Office of Federal Procurement Policy has in addition, done an outstanding job of seeking ideas and input from various sectors of the business and consuming publics. We would hope that the Office would be extended for at least another four years so that it may complete the very important assignments which are now before it.

We would be glad to consult with you and your staff or to provide further details on the progress which we have seen OFPP make to date in rationalizing and economizing on the government's acquisition and distribution of commercial medical supplies.

Sincerely,



Robert H. Wilbur
Director of Government Relations

RHW:cb



THE AMERICAN UNIVERSITY

WASHINGTON, DISTRICT OF COLUMBIA 20016

School of Business Administration

OFFICE OF THE DEAN

(202) 686-2149

February 26, 1979

Senator Lawton Chiles, Chairman
Subcommittee on Federal Spending Practices
and Open Government
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

With reference to your letter of February 2, 1979, regarding the reauthorization of funds for the Office of Federal Procurement Policy (OFPP), I am pleased to comment as you requested.

I have been indirectly associated with OFPP activities because the School of Business Administration has a contract with the Federal Acquisition Institute (FAI) to develop a Model Undergraduate Program in Procurement and Grants Management and to provide other educational services.

As Chairman of the American Association of Collegiate Schools of Business (AACSB) Committee on procurement/acquisition education, I have great interest in achieving better procurement/acquisition functions in government through education and training. Recently I have been working to obtain AACSB acknowledgment of procurement/acquisition and grants management as worthwhile subjects for university programs. The prospects for achieving this goal appear to be quite good.

The two areas of OFPP activity I will comment on are education and research. Recommendation 21 of the Report of the Commission on Government Procurement (1972) suggested the establishment of a "Federal Procurement Institute" which would encourage and support academic programs in procurement. One of the objectives of the institute was to "Assist universities that wish to develop bachelor degree programs in the field of procurement."

The OFPP and the institute have successfully carried out this recommendation by a joint effort with The American University to develop a Model Undergraduate Program in Procurement, Acquisition, and Grants Management. The program was initiated here in September 1978, and has been growing very rapidly. Course registrations jumped from 78 in the Fall of 1978 to 104 in the Spring of 1979, a 33% increase. Seven courses in this field are now being taught by six professors. I see no reason why the program should not develop into one of our major academic concentrations.

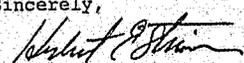
BN
MAR 05 1979

Other universities, noting the success of our program, are considering similar programs. We have discussed our program with at least four other universities, and have provided them guidance. I believe that the recommendations of the commission report will be achieved as more universities establish their own procurement programs.

Recommendation 21 of the referenced report suggests the encouragement of procurement research. GAO Report B-160725, "An Organizational Approach to Improving Federal Procurement and Acquisition Practices" (September 30, 1977) also makes a strong argument for more procurement research. The Federal Acquisition Institute, under the leadership of Mr. William Hunter, is making good progress in this area. It has sponsored a study by Dr. Richard Lourette, a respected academician and practical procurement/acquisition professional, to identify procurement/acquisition problems common to government agencies with a view to joint funding of research in these areas. This is a necessary first step to more research in procurement/acquisition, and should produce far-reaching results. OFPP and the FAI are to be congratulated for this effort, which should be continued and strengthened.

I would be happy to have Dr. Robert M. Springer, who is the Director of our Procurement, Acquisition and Grants Management Program, available to testify at any hearings the Senate may have on the subjects I have covered. I am enclosing pamphlets and other material concerning our program.

Sincerely,


Herbert E. Striner
Dean

HES:bjh

Encls.


**Government Procurement
Newsletter SUPPLEMENT**

December, 1978

PROCUREMENT AND GRANTS EDUCATION

By Dr. Robert M. Springer

The professionalization of contracting and grants management is apparent from the rapid growth of academic educational programs in these areas. The Federal Acquisition Institute (FAI), under the leadership of Dr. John J. Bennett, is largely responsible for the development of these programs through its stimulation, encouragement and assistance to educators and educational institutions. Since its inception two years ago, the FAI has actively pushed for procurement education in a number of academic areas, such as undergraduate and graduate degree programs, cooperative education, individual credentialing, work-study, presidential management interns, educational and case study materials, and course evaluation.

Soon, at least partly because of FAI initiatives, it may be possible to obtain a procurement and/or grants degree at a number of universities. The University of the District of Columbia, for example, for a number of years has had an excellent undergraduate program in procurement, while George Washington University has been a leader in graduate education in procurement. Other schools, such as the Bowling Green State University, offer degrees primarily in purchasing, but also cover government procurement.

The School of Business Administration of The American University, in Washington, D. C., in September 1978 initiated an undergraduate degree program in *Procurement, Acquisition, and Grants Management*. This is a "model" program, done with the support of the FAI, which emphasizes both government procurement and federal assistance management. This program is designed to develop and test new ideas on procedures in the teaching of these subjects. Courses include Principles of Procurement and Federal Assistance Management, Government Contract Law, Contract Cost and Price Analysis, Contract Administration, and the Management of Federal Assistance. The Management of Federal Assistance is being presented with the cooperation of the National Assistance Management Association.

The program at The American University requires the normal business administration subjects, such as accounting, finance, and marketing, plus five or six courses which cover procurement and federal assistance subjects. The University also is offering a specialized Certificate Program of eight procurement and federal assistance courses for those who already have degrees.

The demand for graduates of these programs seems to be excellent. Graduates are well prepared for employment in procurement and federal assistance positions both in government and industry. A U. S. Civil Service Commission "Employment Outlook" forecast last year listed procurement as one of the eight professions with "best employment opportunities." Experience in the programs already underway tends to bear this out. Dr. Chan Hahn, who is director of the procurement program at Bowling Green State University, says that he has approximately forty graduates a year, and that most usually find employment well before graduation.

Government Procurement Newsletter SUPPLEMENT

The American University program, although too young to have graduates, has been experiencing a good demand for its procurement students in part-time procurement jobs in industry and government, and major industries are already discussing the employment of its graduates.

Dr. Springer is the Director of the Procurement, Acquisition and Grants Management Program at The American University School of Business Administration in Washington, D.C.

Following is a directory of selected colleges, universities, and graduate schools of business and public administration which offer, or are developing, intensive programs in procurement and grants management. Various programs include BS, MPA and MPA degrees, certification of competence, and courses developed in conjunction with specific needs of business, industry, and government agencies. For more information, contact the Registrar of the school nearest you.

The American University
School of Business Administration
Washington, D. C. 20016

Arizona State University
Center for Public Affairs
Tempe, Arizona 85281

Bowling Green State University
Bowling Green
Ohio 43402

University of California at Los Angeles
Los Angeles
California 90024

Carnegie-Mellon University
School of Urban and Public Affairs
Pittsburgh, Pennsylvania 15213

University of Colorado
College of Business
Fort Collins, Colorado 80523

Columbia University
Graduate School of Business
New York, New York 10027

University of the District of Columbia
(Federal City College) 1025 Vermont Ave. N.W.
Washington, D. C.

Florida State University
Department of Public Administration
Tallahassee, Florida 32306

The George Washington University
School of Government and Business Admin.
Washington, D. C. 20051

Harvard University - JFK School of Gov't.
Littauer Center
Cambridge, Massachusetts 02138

Indiana Univ. - School of Public and
Environmental Affairs, 400 E. Seventh St.
Bloomington, Indiana 47401

Lehigh University
College of Business and Economics
Bethlehem, Pennsylvania 18015

Miami University
School of Business Administration
Oxford, Ohio 45056

Michigan State University
The Graduate School of Business Admin.
East Lansing, Michigan 48824

Ohio State University - School of Public
Administration, 1775 College Road
Columbus, Ohio 43210

University of Oklahoma - College of
Business Admin., 307 West Brooks
Norman, Oklahoma 73019

Pacific Lutheran University
School of Business Administration
Tacoma, Washington 98447

 **Government Procurement
Newsletter SUPPLEMENT**

December, 1978

University of Southern California
School of Public Administration
VKC 368, University Park
Los Angeles, California 90007

Syracuse University
200 Maxwell Hall
Syracuse, New York 13210

University of Virginia
Colgate Darden Graduate Business School
P. O. Box 6550
Charlottesville, Virginia 22906

University of Virginia
Falls Church Regional Center
Division of Continuing Education
400 North Washington Street
Falls Church, Virginia 22046

Virginia Polytechnic Institute
College of Business
Blacksburg, Virginia 24061

PROCUREMENT AND GRANTS MANAGEMENT

11.481 Government Contract Law	11.482 Int. to Acquisition & Logistics Manag.	11.483 Principles of Procurement & Fed. Assistance	11.484 Cost & Price Analysis	11.485 Contract Admin.	11.486 Management of Federal Assist.
The law as applied to procurement and federal assistance programs	Significance of purchasing & materials management relationship with other functions of the agency of firm	The management of acquisition, procurement and federal assistance by both the government and private sector	Principles governing the determination of allowable, allocable, & reasonable contract costs	The legal basis for contract oversight	History and growth of federal assistance programs
Derivation of contract & federal assistance law from the constitution, statutes, executive orders, regulations, court decisions and admin. rulings	Production and Operation	Organization and Procedures	Contractor cost and price consideration	Quality assurance	Federal/non federal relations as seen from perspective of inter-governmental relations
Application of law to each step of the federal procurement and federal assistance process	Forecasting and market analysis	Requirements	Cost considerations of federal assistance recipients	Reliability and maintainability	Methods and techniques of federal assistance
	Procurement and Purchasing	Budgeting	Case studies	Production control	The issue of federal management
	Physical supply	Negotiations		Financing	Requesting federal assistance
	Inventory Control	Proposal Preparation		Cost Control	Procurement under federal assistance
	Inventory valuation	Types of Contracts & federal assistance		Value Engineering	
	Transportation & physical distribution	Public Environment		Contract termination and disputes	
		Special Considerations			



PROCUREMENT, ACQUISITION & GRANTS MANAGEMENT COURSES - SPRING 1979*

- 11.481 Government Contract Law - Professor John Rankin
Room Assignment - To be Announced
Tuesday 5:30 - 8:00 PM
- 11.483.01 Principles of Procurement and Federal Assistance
Professor Barry Brown
The American University - Ward 7
Wednesday 5:30 - 8:00 PM
- 11.483.02 Principles of Procurement and Federal Assistance
Professor Barry Brown
The American University - Room To Be Announced
Wednesday 8:10 - 10:40 PM
- 11.485 Contract Administration - Professor Richard Sapp
The American University - Ward 220
Thursday 5:30 - 8:00 PM

Courses at the Division of Continuing Education Regional Center,
The Internal Revenue Service Building, 12th & Constitution Ave.
Room G042

- 11.482 Introduction to Acquisition and Logistics Management
Professor Randall Vick
Monday 6:00 - 8:30 PM
- 11.483 Principles of Procurement and Federal Assistance Management
Professor Don Hurta
Tuesday 6:00 - 8:30 PM
- 11.484 Cost and Price Analysis
Professor To be Announced
Wednesday 6:00 - 8:30 PM

ALL COURSES 2 1/2 HOURS - JANUARY 15 - MAY 5

NOTE:

The American University offers a Bachelors Degree concentration in Procurement, Acquisition, and Grants. For information, call 686-2728 or 686-6803

The American University also offers a Certificate in Procurement, Acquisition, and Grants. For information call The American University Division of Continuing Education at 686-2504

* Registration for the Spring Semester - January 10-13.

395



associated builders and contractors, inc.

SUITE 409 • 444 NORTH CAPITOL STREET N.W. • WASHINGTON, D.C. 20001 • PHONE Area Code 202-637-8800

February 26, 1979

Senator Lawton Chiles
Committee on Governmental Affairs
Subcommittee on Federal Spending Practices
Washington, D. C. 20510

Dear Senator Chiles:

The Associated Builders and Contractors, Inc. (ABC) would like to thank you for providing us with the opportunity to comment on the performance of the Office of Federal Procurement Policy (OFPP) for consideration in determining if reauthorization legislation should be introduced. ABC is a national association of over 12,500 construction contractors, subcontractors, suppliers and associates who promote the Merit Shop philosophy, a concept which calls for an open competitive marketplace where contracts are awarded to the lowest responsible bidder.

Because of the large number of ABC members involved in federally funded or assisted construction projects throughout the country, ABC is particularly interested in matters concerning the federal procurement process and supports the efforts of the OFPP to improve that process. ABC believes the performance of the OFPP to date has been very good and urges this Subcommittee to introduce reauthorization legislation so it may continue those efforts.

Perhaps the greatest costs incurred by our members in bidding and performing federal contracts results from the maze of federal regulations with which they must comply. Procurement regulations often needlessly vary from agency to agency thereby increasing the cost of compliance, since contractors must change procedures from contract to contract. The current work of the OFPP to establish a single Federal Acquisition Regulation to replace these redundant and sometimes conflicting regulations, and the OFPP efforts to establish uniform governmental procurement policies, will therefore lead to a substantial reduction of the current administrative burden to federal contractors. ABC believes this reduction will result in cost savings to the federal government which will more than offset future appropriations.

ABC would like to suggest however, that the authority of the OFPP in the federal procurement process be clarified and strengthened. As you are no doubt aware, there is presently a dispute between the Department of Labor and OFPP over who has final authority in decisions regarding the proper prevailing wage law provisions which should be included in various agency procurement contracts. This dispute has been referred to the Justice Department for resolution. Hopefully justice will decide to vest final authority for such decisions with the OFPP. If such a decision is not forthcoming, ABC would urge the Subcommittee to amend the reauthorization legislation to establish OFPP as the final

Merit Shop Builds Best

BW
FEB 28 1979

OFFICERS: Robert A. Turner, President • Norman A. Ebe, Executive Vice President • John P. Trimmer, Assistant to the President • Ted Kennedy, 1st Vice President • Bruce Osterink, 2nd Vice President • Frank June, 3rd Vice President • Gary Furlong, Secretary • Harry Leaf, Assistant Secretary • Donald Ball, Treasurer • John Fielder, Assistant Treasurer

53-985 Q - 80 - 26

Senator Lawton Chiles

- 2 -

February 26, 1979

authority. As the office responsible for establishing overall federal procurement policy, clearly the OFPP is best suited for assuring consistent, non-partial application of prevailing wage laws.

ABC would also like to suggest that any reauthorizing legislation direct the OFPP to expand its current directory of minority owned media outlets, production companies and advertising agencies compiled and published last year in the Federal Register, to include other types of minority business enterprises. This would greatly enhance the Executive and Congressional mandates to increase minority participation in government procurement, by providing agencies and contractors with names of such firms. One of the greatest problems our membership encounters in attempting to comply with minority subcontracting provisions in federally funded or assisted construction contracts is locating qualified minority firms. Directing the OFPP to compile a source list of such contractors for use by procuring agencies would greatly augment the amount of minority contracting with the federal government.

Again, ABC appreciates this opportunity to comment on the upcoming evaluation of the OFPP, and hopes our thoughts are useful to the Subcommittee.

Sincerely,



John H. Reed
Director
Government Relations

JR/jt

cc: Mr. Lester Fettig
Administrator, OFPP



THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

1957 E Street, N.W. • Washington, D.C. 20006 • (202) 393-2040

LAURENCE F. ROONEY, *President* PAUL N. HOWARD, JR., *Senior Vice President* IVAL R. CIANCHETTE, *Vice President*
 JOSEPH A. SETA, *Treasurer* JAMES M. SPROUSE, *Executive Vice President* HUBERT BEATTY, *Executive Director*

March 1, 1979

The Honorable Lawton Chiles
 United States Senate
 Washington, D. C. 20510

Dear Senator Chiles:

Thank you for your letter of February 2nd in which you asked for any comments we might care to make concerning the performance of the Office of Federal Procurement (OFPP) over the last four and one half years. The Associated General Contractors of America and its 113 chapters nationwide is comprised of approximately 30,000 firms, including more than 8,000 of the nation's leading general contracting companies that perform more than \$100 billion of construction annually. AGC certainly has an interest in the Office of Federal Procurement Policy and we appreciate this opportunity to present our views to you.

Included in the "Declaration of Policy" contained in Public Law 93-400 which established the Office of Federal Procurement Policy were statements that it was the policy of Congress to: utilize competitive procurement methods to the maximum extent practicable; avoid or eliminate unnecessary or redundant requirements placed on contractor and Federal procurement officials; achieve greater uniformity and simplicity, whenever appropriate, in procurement procedures; coordinate procurement practices and programs of the several departments and agencies; minimize possible disruptive effects of Government procurement on particular industries, areas, or occupations; promote fair dealing and equitable relationships among the parties in Government contracting; and to otherwise promote economy, efficiency, and effectiveness in Government procurement organizations and operations.

As the key trade organization in the construction industry, which is the number one industry in the United States accounting

The Honorable Lawton Chiles
 March 1, 1979
 Page Two

for more than 10 percent of the Gross National Product and from which the Federal government, directly and indirectly, purchased in excess of \$20 billion last year, the Associated General Contractors of America applauded the establishment of the OFPP and the purpose for which it was created.

We were pleased to see the creation of an entity which would be staffed with specialists in procurement who would not have preconceived biases when reviewing procurement policies or problems. Our experience in trying to resolve difficulties in procurement procedures with the various agencies and departments is their inherent reluctance to change any rule or regulation which that particular agency or department has developed. We believe that OFPP has brought a breath of fresh air to the procurement process.

During the four and one half years the OFPP has been in existence we have seen a number of recommendations and regulations issued by the OFPP which we believe have resulted in an improvement of the procurement of construction by the Federal government. Among these improvements are:

- 1) The work begun on the "Federal Acquisition Regulation," a single set of contracting regulations to replace the more than 800 sets currently in use;
- 2) The revision of OMB Circular A-76 relative to greater implementation of the Federal government's reliance on the private sector for goods and services. The revisions provide for a more effective and equitable implementation of the policy with a more realistic recognition of the "overhead" costs charged against the work done by in-house Federal workers when being compared to estimates secured from the private sector for the same work, and;
- 3) The securing of more equitable provisions in Public Law 95-563, the Contract Disputes Act of 1978.

However, much remains to be achieved before the declarations of the policy as contained in PL 93-400 are realized. Included in this category are some of the proposals contained in the Recommendations of Study Group 13-C (Construction) of the Commission on Government Procurement.

We commend the OFPP for the progress that has been made in implementing a number of recommendations of the Study Group but we urge that OFPP take steps to affect the following numbered recommendations:

5. Performance and Payment Bond Premiums -- that the government pay performance and payment bond premiums to the contractor on his submission of a receipted invoice.

The Honorable Lawton Chiles
March 1, 1979
Page Three

6. Mobilization Payments -- that agencies' regulations be altered to require mobilization payments to contractors in all Federal construction contracts requiring more than one construction season for accomplishment.
8. Two-part Change Orders -- that the Federal Procurement Regulations and the Armed Services Procurement Regulations be amended to make use of the two-part change order mandatory when requested by the contractor to enable partial payment for ordered changes.
9. Availability of Professional Opinions on Sub-Surface Conditions -- that Federal Procurement Regulations be modified to provide for the disclosure of such professional opinions regarding the subsurface conditions as the contracting officer deems to be relevant.
10. Limitation of Warranty -- that a standard Federal warranty be used which would (a) limit the construction contractor's liability to one year from the time the government takes possession of the work, (b) eliminate liability for consequential damages and (c) spell out that there is no warranty of government designs.
12. Labor Recommendations -- that the Davis-Bacon Act be repealed. If not repealed, amend the Act to facilitate reasonable administration.
13. Environmental Requirements -- that a full definition of known environmental protection requirements be included in the bidding documents by specification or reference for construction contracts.
14. Listing of Subcontractors -- that no action be taken through Federal law or regulations to require listing of subcontractors at the time of bidding.
15. Truth in Negotiations Act -- that the appropriate section of Federal Procurement Regulations be revised by substituting instructions applicable to the construction industry.
16. Elimination of Construction from the Set-Aside Program -- that Federal construction be excluded from the Small Business Set-Aside Program.
18. Publishing the Engineer's Estimate -- that Federal agencies publish the lump sum total of the engineer's estimate at the time of publicly advertising competitively bid construction work over \$5 million.

The Honorable Lawton Chiles
 March 1, 1979
 Page Four

20. **Establishing the Cost of Changes** -- that the appropriate sections of the FPR's and ASPR's be amended to require that the cost of changes include all allocable indirect costs, the allocations being made according to generally accepted accounting principles.

AGC recognizes, however, in calling for the implementation of the above recommendations of Study Group 13-C that we cannot expect the OFPP to drop everything else it is doing to concentrate on the construction industry.

It is readily apparent that in making such requests we believe adequate funds should be authorized to enable the OFPP to proceed with its good work. There is a continuing need for an Office which specializes in improving the procurement policies of the Federal government, not only from the government's view but from the contractor's view as well. We believe that the OFPP has responded to the needs of government, the contractor and the taxpayer fairly and with respect to the individual concerns of each.

In addition to urging the continuation of the OFPP for implementation of the Study Group's recommendations, we urge the further funding of OFPP to enable it to carry out the functions it has recently been assigned by Congress, namely:

- 1) in PL 95-563, the Contract Disputes Act, to draw up uniform rules and procedures, and;
- 2) in PL 95-507, the Small Business Act, to draw up uniform subcontracting procedures.

In speaking for the continuation of the OFPP, however, we urge that proper consideration be given to the size and importance of the construction industry and the importance of the procurement of construction by the Federal government. Currently, less than one half of one staff member's time is devoted to construction procurement matters. We respectfully request that the Committee recommend adequate financing of the Office of Federal Procurement Policy to allow for appropriate staff priority consideration of the construction industry.

We appreciate the opportunity to provide you with our views on the Office of Federal Procurement Policy.

Sincerely,

Hubert Beatty
 HUBERT BEATTY
 Executive Director

401

BOEING AEROSPACE COMPANY
SEATTLE, WASHINGTON 98124

O. C. BOILEAU
PRESIDENT

February 28, 1979

Dear Senator Chiles,

I appreciate the opportunity afforded by your letter of February 2 to comment on the performance of the Office of Federal Procurement Policy. As a Company which participated actively in the work of the Commission on Government Procurement, we are well aware that the establishment of OFPP was its number one recommendation.

Considering the scope and complexity of its charter, I think OFPP has made a significant contribution to the procurement activities of the federal government. Especially noteworthy from my point of view is its work on major systems acquisition policy, reliance on the private sector, the Service Contract Act and the Federal Acquisition Institute. The impact of these efforts is only beginning to be felt but the trend is good and without OFPP would probably not have begun.

On other matters, including the major effort to revamp the varying acquisition regulations into one new system and devising ways to expedite payments under government contracts, actual accomplishments have been less evident. Action is known to be underway and these efforts will be productive.

In addition to improved coordination within the Executive Branch and with the Congress, it is worth noting that OFPP has proven to be helpful in the exchange of views on acquisition policy between the government and the private sector. Assuming that the size and caliber of the staff are maintained at present levels, it can make a contribution to improved relationships between the government and its suppliers.

Sincerely,



Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending Practices
and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

BW
MAR 06 1979

A DIVISION OF THE BOEING COMPANY

**COFPAES
COMMITTEE ON
FEDERAL PROCUREMENT OF
ARCHITECTURAL/ENGINEERING
SERVICES**

Reply to: 475 L'Enfant Plaza, S.W.
Suite 2450
Washington, D.C. 20024

February 27, 1979

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending
Practices and Open Government
United States Senate
Washington, D. C. 20510

RE: Office of Federal Procurement Policy

Dear Senator Chiles:

In anticipation of your forthcoming hearings to consider the future of the Office of Federal Procurement Policy, we welcome the opportunity to comment.

The Committee on Federal Procurement of Architectural/Engineering Services (COFPAES), representing the American Consulting Engineers Council, American Institute of Architects, American Society of Civil Engineers, ARTBA Planning and Design Division and the National Society of Professional Engineers, participated in the work of the Commission on Government Procurement and the various Congressional hearings which led to the establishment of OFPP. We supported the concept of a central procurement office with policy authority in accordance with applicable laws.

We believe the OFPP is doing a fine job and its work should be encouraged. From the outset, groups such as ours have been invited to participate in OFPP deliberations on a broad range of procurement issues. While our recommendations have not always been accepted we have always received a fair hearing.

While your purpose in seeking our views relates primarily to the future of OFPP, we would like to comment briefly on the performance of Les Fetting, the OFPP Administrator. We think he is doing an outstanding job in providing leadership and direction for procurement reform.

We urge you to renew OFPP's legislative authorization and to support the capable leadership of Administrator Les Fetting.

Sincerely,

Richard H. Stanley

Richard H. Stanley
Chairman

American Consulting Engineers Council
American Institute of Architects
American Society of Civil Engineers
ARTBA Planning & Design Division
National Society of Professional Engineers



BW
MAR 01 1979

8100-34th Avenue South
Mailing Address/Box O
Minneapolis, Minnesota 55440

William C. Norris
Chairman of the Board &
Chief Executive Officer



The Honorable Lawton Chiles
Chairman, Senate Subcommittee
on Federal Spending Practices
and Open Government
United States Senate
Washington, DC 20510

Reference: OFPP

Dear Senator Chiles:

I am responding to your Subcommittee letter, which sought our views regarding the performance of the Office of Federal Procurement Policy [OFPP]. Aside from my personal views, the following comments reflect the judgments of company executives that have dealt with OFPP either directly or through trade association activity.

We believe that OFPP has an important, continuing mission to fulfill. Aside from its specific accomplishments, detailed in OFPP's report to Congress, the Office has addressed two significant and continuing needs. First, by its charter OFPP is a focal point for Federal procurement policy. This has provided industry access to a professional cadre, dedicated to addressing major questions [e.g. reliance on the private sector, major acquisition policy] with a broader perspective. Prior to OFPP's existence all too often a significant policy question received differing treatment based on each Department's parochial interests.

The second attended need has been OFPP's focus on the cost/benefit question prior to adopting a certain solution. This is a paramount consideration that must be addressed before additional [or expanded] burdens are placed on the private sector through the procurement process. To cite one example, compared to the Dept. of Labor, in our opinion OFPP has consistently displayed a more practical and cost-effective approach in implementing the Service Contract Act and solving the "wage-busting" problem. An organization, such as OFPP, is needed as a continuing counter-balance to other departments that affect procurement policy.

It is our recommendation that the life of OFPP be extended an additional five years; it has been an effective arm of OMB in the procurement field. Aside from the continuing, beneficial

Seri. Chiles
February 28, 1979
Page 2.

factors noted earlier, there are major tasks requiring OFPP's existence; to cite a few, implementing and/or monitoring [i] the Contract Disputes Act, [ii] the FAR System, and [iii] OMB Circular A-76 on private sector reliance. In addition an organization, such as OFPP, would be needed to provide an effective transition should the Federal Acquisition Reform Bill become law.

In closing, we believe the "sunset" concept gives Congress a valuable management tool when judiciously applied and implemented. It is regrettable this concept was not applied to other organizations that impact the procurement process [E.G. Cost Accounting Standards Board]. Control Data appreciates the opportunity to submit our views.

Very truly yours,

CONTROL DATA CORPORATION

W. C. Norris

ms



DON SOWLE ASSOCIATES, INC.

CONSULTANTS TO MANAGEMENT

February 27, 1979

The Honorable Lawton Chiles
 Chairman
 Senate Subcommittee on Federal
 Spending Practices and Open
 Government
 437 Russell Senate Office Building
 Washington, D.C. 20510

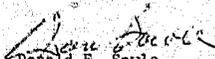
Dear Chairman Chiles:

Thank you for the opportunity to comment on reauthorization legislation for the Office of Federal Procurement Policy. In my judgment, this office has passed the test of need as envisioned by the Commission on Government Procurement.

Without the OFPP the Government would not have acquisition policies on major systems and commercial products and no action would have been taken toward development of a single regulatory system. These are major accomplishments of the OFPP along with a plethora of other actions. The OFPP has filled the need for a single focal point within the Executive Branch that can and will tackle any issue and come up with policy that is most advantageous to Government, industry, and the taxpayers.

I strongly endorse reauthorization of the OFPP. They have not yet completed all the assignments specified in Public Law 93-400 but their performance to date is admirable. It must be recognized that many of the issues they are working with have been with us a long time and are not easy to resolve. One example of an important area on which OFPP action has been delayed because of other more critical issues is the National Supply System. This program is directly related to policy on acquisition and distribution of commercial products that is now moving ahead rapidly. But if the OFPP is not continued, it is not likely that we will ever have a creditable Government-wide system of acquisition and distribution of commercial products.

Sincerely,


 Donald E. Sowle
 President

BN
 MAR 05 1979

Directors Guild  of America, Inc.

7950 SUNSET BOULEVARD • HOLLYWOOD 90046 • 656-1220
 110 WEST 57th STREET • NEW YORK 10019 • 581-0370
 40 EAST OAK STREET • CHICAGO 60611 • 944-6040

Please address reply to New York office
 28 February 1979

The Honorable Lawton Chiles, Chairman
 United States Senate
 Subcommittee on Federal Spending Practices
 and Open Government
 Washington, D.C. 20510.
 Dear Senator Chiles,

Reference is made to your letter of 2 February
 re the Office of Federal Procurement Policy 'sunset'
 review.

As background, let me state that through the
 initiatives of the Directors Guild of America (DGA) and
 the National Conference of Motion Picture and Television
 Unions (NACOMPTU) as well as various individual producers
 and production management organizations within the nation's
 private sector audio-visual communications industry, we
 have expressed concern, in our area of cognizance, of the
 Federal Government's waste of taxpayer monies due to
 lack of planning and the acceptance of sub-standard
 product from less-than-qualified contractors who have
 been selected on a low-bid rather than a quality basis.

As Chairman of the Government Audio-Visual
 Committee, DGA, I have held continuing dialogue with
 the Administrators of OFPP since July 1975.

I can only judge OFPP's actions within this
 framework. The following remarks represent not only
 my opinions but those of a cross-section of this nation's
 responsible private sector audio-visual communications
 industry.

The Office of Management and Budget has made
 major revisions, under OFPP supervision, of Management
 Circular A-76. Originally published in 1967 and with
 minor revisions in ensuing years, this Circular, although
 never fully implemented, stated a position which we believe
 is an important one for the Federal Government, namely:

Senator Lawton Chiles/ Faichney, DGA (2)

namely:

" the fundamental concept that Government should generally perform only those functions which are governmental in nature and should utilize the competitive incentives of the private enterprise system to provide the products and services which are necessary to support governmental functions".

The new revision of A-76, in our opinion, completely emasculates this position. We are in complete agreement with the Comptroller General of the United States who, in a report to the Congress, has stated: "the future for this program will be a repetition of the past -- confusion, controversy, and ineffective implementation".

If A-76 had been implemented, there would have been no need for the issuance, in 1978, of Management Circular A-114 with reference to Federal management of production and procurement of audio-visual materials. A-114 has not brushed away the concerns of our industry. In fact, in some instances, we now have greater concern than before. We know that A-114 was prepared, based on industry input over the past years to the White House, to the Vice Presidential offices, to OMB, OFPP and to the Congress, BUT many important points based in those recommendations for a viable, professional Federal audio-visual operation, have received little or no consideration. To go into detail here would take much too much time and be repetitive since our industry position is known in the many documents on file within the Administration and contained in H.R. 9657 (95th Congress) and in testimony before the House Subcommittee on Governmental Affairs last September 21st.

OFPP has been, primarily, a mail drop where our letters and documents and recommendations have been received or referred by the Administration. But OFPP was not established by the Congress to be a mail drop or an 'in-box' for the receipt of letters that no one else wanted to handle. OFPP has not fulfilled its tasks, in our opinion, for it has not implemented Circular A-76. Although it has published Circular A-114, we do not believe this is an answer to the audio-visual problems within the Federal Government nor the questions raised by the private sector.

We do not believe OFPP can be successful as long as it is staffed by those whose first objective is to protect theirs and their peers employment.

Senator Lawton Chiles/ Faichney, DGA (3)

It has been said, in a letter to President Carter, that: "Waste and inefficiency will not be cleared away as long as the entrenched bureaucrats determine their own destiny"...and to us in the private sector, this is what appears to be happening.

Thank you for the opportunity to forward this statement and these opinions to you. I sincerely hope that they, along with the two enclosures, may be of value in your 'sunset' review.

Very truly yours,

James B. Faichney
Chairman
Government Audio-Visual Committee
Directors Guild of America.

Encl; June 23, 1978 Joint Management-Labor Committee brochure;
September 21, 1978 Testimony before the House Subcommittee
on Government Activities plus 42 pages of
background excerpts.



March 5, 1979

Honorable Lawton Chiles
 Committee on Governmental Affairs
 Subcommittee on Federal Spending Practices
 U. S. Senate
 Washington, D. C. 20510

Dear Senator Chiles:

On behalf of the Government Division of the Electronic Industries Association, we appreciate the opportunity provided in your letter of February 2, 1979 to express our views regarding the performance of the Office of Federal Procurement Policy.

The member companies of EIA's Government Division are those who provide goods and services to the federal government and who are, therefore, uniquely subject to government regulations and controls.

We are generally supportive of OFPP, its leadership, staff and activities, and favor the introduction of reauthorizing legislation. We do, however, offer the following comments:

- General - A five year "sunset" provision would normally provide adequate time to evaluate the effectiveness of a new organization. However, we feel that the broad range of activities encompassed by OFPP, and the small staff available to address such issues, probably requires additional time to provide a meaningful analysis.
- Contracting-Out - We believe OFPP's effort to revise OMB Circular A76, and the development of an associated Cost Comparison Handbook is commendable and should provide substantial, cost-effective benefits to the Government for many years. While we believe these OFPP documents are a distinct improvement over past regulations, their potentially favorable impact will never be realized unless the policy is effectively implemented. OFPP is the proper organization to ensure that this policy is implemented and its continued existence for that purpose is essential.
- Major Systems Acquisition - OMB Circular A-109 was generally well received by the members of our Association and we testified in its support before the House Armed Services R&D Subcommittee last year. However, our endorsement was contingent upon effective implementation of the policy to ensure that it did not add

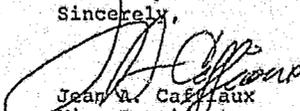
Honorable Lawton Chiles
March 5, 1979
Page Two

to an already lengthy acquisition cycle. Thus, for the same reasons previously expressed for A-76, we feel OFPP should remain in place to ensure proper implementation.

- **Socio-Economic Matters** - While we categorically object to the government's practice of using the leverage of government contracts to achieve its socio-economic goals, the fact is that if each agency or department were to establish differing implementing directives, the industry would be faced with an almost unsurmountable task of compliance. To the extent that it was possible to comply, the costs, which would be passed on back to the government, would be massive. OFPP offers the best opportunity to get some degree of uniformity among government agencies in their industry reporting requirements of such socio-economic programs as Small and Minority Business, Labor Surplus, Urban Area and others.
- **Federal Acquisition Regulation System (FARS)** - OFPP responsibility for developing the FARS is generally favorably received by industry. The industry coordinating and review mechanism developed by OFPP is quite efficient when one considers how hopelessly complex such a procedure could have been if improperly devised. The FARS program timetable seems to be slipping somewhat, but not to the extent that it is in serious jeopardy.

In summary, we strongly support the continuation of OFPP and urge that reauthorizing legislation be introduced. We believe that our experience as expressed herein on these selected OFPP programs supports our contention that the OFPP is an important and cost-effective organization providing significant mutual benefit to the government and industry and their's is a positive contribution to our national well-being.

Sincerely,



Jean A. Caffaux
Vice President
Government Division

JAC/ms

CONTINUED

5 OF 6

411

Office of the
Vice President for
Academic Affairs

The Florida State University
Tallahassee, Florida 32306



March 13, 1979

Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending Practices
and Open Government
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

I am responding to your request for comments relative to the Office of Federal Procurement Policy and your subcommittee's "sunset" review of that agency.

My connection with the OFPP has been somewhat indirect but highly positive. For about 18 months I have served on a "committee of deans" representing the National Association of Schools of Public Affairs and Administration in designing a model master's level curriculum in assistance and administration. This enterprise was sponsored by the Federal Acquisition Institute as one part of the complex task assigned to the OFPP.

Committees, especially those composed of academics dealing with curricula, have a tendency to take years to reach conclusions. I am pleased to report that our model curriculum has been completed and last month was endorsed by the Executive Council of NASPAA. A similar group of business deans has completed its work and is anticipating action by their national organization this Spring. I mention these points because it is only through the skilled and dedicated leadership of FAI executives that this significant educational task has been completed. Jack Bennett and now Bill Hunter have been fully supportive; Tom Carr and previously Warren Winstead, as a consultant under contract, have seen to the details and helped our committee members learn a great deal, very quickly, about an important subject that was quite new to the majority of us.

What has been most impressive to me is the comprehensive approach taken by OFPP and FAI. Rather than dealing with symptoms--which must be an enormous temptation when each symptom has a multi-million dollar price

Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending
Practices and Open Government
March 13, 1979
Page Two

tag--they have recognized that there is a system and that this system is at the heart of the governmental process in this country and government's interaction with the private sector. Based upon this recognition, FAI has attempted to start processes of professionalization and scholarship that will have significant impact immediately and over the next twenty years. In my judgment, the longer range objectives are the most important and deserve the continued support of the Congress.

We must develop a body of knowledge about acquisition and assistance that tells us what works when, and what does not, and then we must educate a whole new profession to apply these new tools. In the shorter range we must find techniques of upgrading the skills of those persons already employed by government. FAI acting under the guidance of Les Fettig and OFPP has in place a well-considered and well-designed plan of action.

What it does not have is direct access to the dollars which can make the system work. The dollars are already there in the federal budget, but must be directed to this new enterprise if in fact the desired improvements are to take place. Let me be specific. At Florida State University, based upon my experiences with the FAI "dean's committee", we have now established a Procurement, Acquisitions and Assistance Center (PAAC) directed by Dr. Gary Zenz, a professor of business. This new Center is housed in an Institute reporting directly to the Office of Vice President for Academic Affairs and is a cooperative venture of the College of Business and the Department of Public Administration within the College of Social Sciences.

The Center will assist the two academic units in developing an undergraduate track in the Bachelor of Business Administration Degree and a graduate track in the Master of Science in Public Administration degree programs. It will also sponsor short courses, seminars and institutes for professionals in the field. We expect to build upon Dr. Zenz's established national reputation as a consultant on procurement for private sector firms and develop a curriculum spanning the full continuum from completely-private through mixed to completely-public sector acquisitions and assistance activities.

To date our institution has received information and moral support but no funds from any federal source. We have made an institutional commitment to the enterprise because it is an obvious national need and can provide worthwhile employment for future graduates. We may have some difficulty, however, in developing a critical mass of students and in persuading sufficient numbers of faculty to shift their attention to the new field unless we can receive seed monies for student support and faculty development.

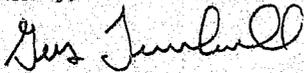
In my judgment OFPP, as a part of the Office of Management and Budget, should intensify its efforts to see that the federal agencies, which are spending so

Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending
Practices and Open Government
March 13, 1979
Page Three

many millions on acquisition and assistance, devote some portion of those dollars to the support of case studies and other research, faculty development, and encouragement of the creation of new mechanisms for upgrading the present and future federal workforce in acquisitions and assistance.

Thank you for the opportunity to comment on the important decision facing the Congress this year. If we at Florida State can be of any future assistance, please let me know.

Sincerely,



Augustus B. Turnbull III
Chairperson, and Associate Vice President
for Academic Affairs (Public Service)

/pm

414

GENERAL ELECTRIC
COMPANY
AEROSPACE GROUP
VALLEY FORGE SPACE CENTER
P. O. BOX 8555 PHILADELPHIA, PA 19101

DANIEL J. FINK
VICE PRESIDENT AND
GROUP EXECUTIVE

February 26, 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter inviting me to submit comments concerning the performance of the Office of Federal Procurement Policy (OFPP) since its creation by Public Law 93-400. The opportunity to do so is especially gratifying since the creation of an office in OMB to develop uniform Federal procurement policies was initially recommended and fostered by General Electric through its representative working with the Commission on Government Procurement. In addition to the establishment of such an office, it was also recommended to the Commission that certain basic policy matters be clearly documented and that implementation be coordinated and harmonized at the procuring agency level.

We are pleased to recognize that the OFPP has made considerable progress on many important policy matters. Some of the most significant of these pertain to the unique policy requirements of major systems acquisition, the consolidation of existing procurement regulations, the reliance by the Government upon private enterprise, and the control of the management systems and data requirements required of contractors. There are other important policy matters on which initiatives are in a more formative stage. Significant among these concern research and development, the protection of intellectual property rights, and the elimination of competitive practices which involve the recycling of RFP's, leveling and excessive price competition.

OFPP's work on major procurement policy matters such as the above has, in itself, been a sizable undertaking. At the same time, OFPP has pursued many other projects and has worked in many ways to assure that the fine efforts of the Procurement Commission did not go in vain.

The Honorable Lawton Chiles

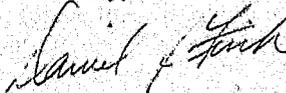
February 26, 1979

Page 2

Much work still remains to be done and I am convinced that that which has already been accomplished could be lost unless there is a continued follow-up to monitor the development of related documents by the procuring agencies and to assure their uniform implementation. That task will continue to be a complex and difficult one due to the fact that the various agencies have in the past been almost autonomous in establishing their own procurement policies and practices.

Although many of us have had some reservations regarding a few of the OFPP's priorities and solutions, I believe that the office has on the whole done a creditable job in carrying out the responsibilities for which it was created. The OFPP stands alone in the unique position to continue its work with The Congress, the Executive Agencies, and the Industry to further improve the Federal procurement process. I strongly recommend that reauthorization legislation be introduced so that the sun does not set on this very important activity.

Sincerely,



HUGHES AIRCRAFT COMPANY
CULVER CITY, CALIFORNIA

JOHN H. RICHARDSON
PRESIDENT

1 March 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
Room 441B, Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Chiles:

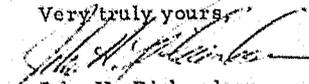
The following comments concerning the performance of the Office of Federal Procurement Policy (OFPP) during the last four and one-half years are submitted in response to the request made in your letter dated 2 February 1979.

In my opinion, the overall performance of the OFPP has been very satisfactory. Perhaps its most important accomplishment during these first years is, what appears to me to be, the establishment of a solid working relationship within the Government procurement community and with the Congress.

The OFPP has promulgated a number of very important policy initiatives and has brought several significant policy initiatives to the point of near-term promulgation. The next few years will be critical to the successful implementation of those policy initiatives and the as yet unimplemented recommendations of the Commission on Government Procurement. There can be no doubt that without the continued existence of OFPP the outstanding work of the Commission on Government Procurement and indeed the great beginnings for uniform procurement policies and practices throughout the Government will have been a wasted effort. There is a continuing need for leadership by the OFPP.

I appreciate the opportunity you have afforded me to comment on the performance of the OFPP.

Very truly yours,



John H. Richardson

John M. Fluke
Chairman of the Board
Chief Executive Officer 774 2371

February 27, 1979

The Honorable Lawton Chiles
United States Senate
Russell Senate Office Bldg.
Room 443
Washington, D.C. 20510

Dear Senator Chiles:

Thank you for affording us the opportunity to comment about the Office of Federal Procurement Policy (OFPP). We have had considerable contact with this agency, especially in conjunction with an industry/DOD task force that examined many problems associated with the procurement of electronic test equipment by the various services. OFPP made valuable presentations to the task force and was obviously knowledgeable about core problems of Government procurement and had well thought-out solutions in mind. OFPP believes that considerable economies in Government can be achieved by relying upon the commercial sector much more heavily than has been past tradition, a fresh new idea that was also much of the substance of the task force recommendations. The people of OFPP seem to be professionals with good judgement, aggressive and motivated.

I believe that OFPP has a considerable on-going role to play as a "reforming office" unscrambling the tremendously complex, confusing, money-consuming and largely unneeded Federal procurement morass.

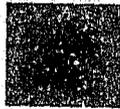
Sincerely,



John M. Fluke

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MAR 05 1979



February 13, 1979

The Honorable Lawton Chiles
United States Senate
Room 443, Russell Building
Washington, D. C. 20510

Subject: Office of Federal Procurement Policy (PL 93-400)

Dear Senator Chiles:

I welcome the opportunity that your "sunset review" gives me to comment on our view of the performance of the Office of Federal Procurement Policy since its establishment in 1974.

Government and industry and the public at large have a compelling need and responsibility to continue and to strengthen this office. Few, if any, government activities have a record of sound accomplishment that can compare to OFPP.

With the creation of OFPP, industry has for the first time had one place to go on procurement policy matters for a complete interface with the Congress, the executive agencies, and the entire bureaucracy. We have found OFPP to be both responsive and responsible.

Over the past four years we have had a number of occasions to meet with Mr. Fettig, with his predecessor Mr. Witt, and with key people on the staff. We have always felt we have been given a fair and thorough hearing. Some of these requests have resulted in corrective action which has been initiated by OFPP and others in sound advice or guidance which has provided solution within the existing policy or framework.

OFPP's accomplishment in the establishment and implementation of policy for the procurement and distribution of commercial products has been outstanding. For more than ten years Kodak has consistently advocated the elimination of "reverse engineered" specifications prepared for the sole purpose of describing satisfactory commercially available products. Since many of our products are of a perish-

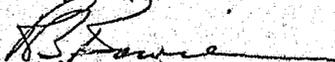
The Honorable Lawton Chiles - 2
February 13, 1979

able nature and must function in harmony with local technical requirements and conditions, the central procurement and depot distribution system has been most ineffective. It was not until The Commission on Government Procurement studies and the formation of OFPP that any constructive action was accomplished.

We have supported the implementation by OFPP of the long-standing policy of the government for reliance on the private sector to provide the goods and services needed by the government, the present program for revision of the procurement regulation system and the many other completed programs.

In spite of the outstanding accomplishments thus far there is still much to be done to complete the reform of the procurement process started by the COGP. The remaining tasks will be even more complex and controversial. It is essential that an office be maintained that can address the overall procurement process objectively and apart from the parochial interests of the many executive agencies with their varied and sometimes self-serving policies. OFPP has completely demonstrated that it is competent to manage this indispensable program.

Yours very truly



Robert G. Bowie, Director
Government and Education Markets

RGB:rlc

LOCKHEED CORPORATION
BURBANK, CALIFORNIA 91520

THOMAS J. O'HARA
VICE PRESIDENT
CONTRACTS AND PRICING

February 20, 1979

Senator Lawton Chiles
Chairman, U. S. Senate Committee
on Governmental Affairs
Subcommittee on Federal Spending
Practices and Open Government
Washington, D. C. 20510

Dear Senator Chiles:

In response to your letter of February 2, 1979, I am pleased to give you the following comments concerning the performance of the Office of Federal Procurement Policy over the past four and a half years:

- o The OFPP has accomplished much in bringing coherence to the Federal acquisition process.
- o OFPP's leadership in establishing government-wide regulations for the acquisition process is beginning to build tangible results. The economy and efficiency of government and the private sector should be substantially enhanced when the Federal acquisition regulations are completed and are used by all government agencies.
- o OFPP has done an outstanding job in reconciling the often opposing views of industry, labor, and the Federal departments concerning make-or-buy policy. The newly revised OMB circular A-76 and the associated cost handbook represents a real achievement of long-lasting consequences. While many of us in industry preferred a policy that would be unequivocal in support of reliance on the private sector, I believe that OFPP has managed to strike a reasonable compromise.
- o OFPP's leadership in setting forth government-wide policy concerning major systems acquisitions has been noteworthy and generally applauded by the executive branch, the legislative branch, and the private sector. However, much remains

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Senator Lawton Chiles

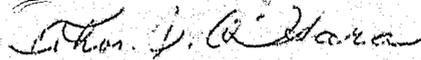
- 2 -

February 20, 1979

to be accomplished in building upon the foundation of
OMB circular A-109.

We would recommend that OFPP be authorized to continue its
important work.

Sincerely,



Thomas J. O'Hara

cc: Lester A. Fettig

MACHINERY and ALLIED PRODUCTS INSTITUTE
1200 EIGHTEENTH STREET, N.W. WASHINGTON, D.C. 20036 202-331-8430

February 27, 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open
Government
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

"Sunset Review" of the Office of
Federal Procurement Policy

Thank you for the opportunity extended to us by your letter of February 2 to present our views in connection with the "sunset review" of the Office of Federal Procurement Policy (OFPP) by the Subcommittee on Federal Spending Practices and Open Government. This review is occasioned by the Office of Federal Procurement Policy Act (Public Law 93-400), Section 11 of which authorizes OFPP appropriations only through the first five fiscal years of OFPP's existence, ending next September 30. Any appropriations for OFPP operations beyond that point must first be authorized by the Congress, and the Governmental Affairs Committee, of course, has jurisdiction over any such authorizations on the Senate side.

As you know, the Machinery and Allied Products Institute represents the capital goods and allied equipment industries of the United States. Although the bulk of the companies in these industries sell primarily to the commercial rather than to the government market, many of these companies furnish products which are essential to the government, particularly in the national defense area. And these companies have a deep interest in the procurement policies and regulations that are used by the federal government in connection with its purchases from private industry.

The basic question facing the Subcommittee at this point is the issue of whether or not the existence of OFPP should be extended beyond the September 30 deadline. The second question, assuming an affirmative decision to continue OFPP, is whether, based on experience to date, certain modifications concerning OFPP operations might not now be in order.

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The Hon. Lawton Chiles

- 2 -

February 27, 1979

OFPP Should Be
Continued

MAPI strongly believes that OFPP should be allowed to continue in existence. It seems to us that OFPP, both under its present Administrator, Lester Fattig, and his immediate predecessor, the first Administrator, Hugh Witt, has made a very substantial contribution to the improvement of the federal government's procurement policies generally.

We do not necessarily endorse all of the specific actions taken by OFPP in its approximately four and one-half years of existence. But we do think that in practically every instance whatever action was taken marked a perceptible improvement in what the situation had been at that point with respect to the issue addressed. In addition, we would cite the following three "actions and accomplishments," referred to by Mr. Fattig in OFPP's most recent Annual Report to the Congress dated January 2, 1979, as matters in which MAPI is deeply interested and strongly concurs with what OFPP has done:

1. The emphasis placed on greater reliance on commercial products rather than those designed to meet government specifications--it appears that there has been some distinct progress in this area in response to OFPP initiatives.
2. The issuance of OFPP Policy Letter 78-2 to protect service contract professional employees against wage busting in lieu of trying to accomplish the same objective through further broadening of the scope of the Service Contract Act.
3. The issuance of OFPP Policy Letter 78-3, on the application of the Freedom of Information Act requirements to government contracts.

In general, OFPP has indicated a commendable tendency to "stand up" to the old-line departments and agencies of the federal government on matters involving procurement policy. We think that in this respect OFPP has been acting in the manner intended by Congress, and we certainly recommend that Congress respond by continuing OFPP beyond the end of FY 1979.

An Emerging Problem--
Preservation of the
Proper Role of OFPP

Although we think that OFPP on the basis of its record of achievement to this date should certainly be continued, there is what we see as an emerging problem with respect to ensuring that the role of OFPP be limited to appropriate activities in the procurement area. What we mean specifically is our perception that OFPP, apparently at the direction

of the President and the Director of OMB, at least to some degree is being called upon to support governmental programs and objectives of a nonprocurement nature. This, in our view, is highly undesirable because it detours OFPP from its principal objective--the promulgation and improvement of procurement policy. In this connection, we recognize that the government contract instrument, independent of OFPP, has been utilized--and we think abused--for socioeconomic objectives. Further, it is our view that the time has long passed when the country should put a stop to this. It is unnecessary in this context to catalog the numerous ways in which government contracts have been so utilized.

As for the role of OFPP, we repeat our concern that the procurement functions of OFPP should not be encumbered with participation by its Administrator and its office in certain governmental programs that, as we view it, are strictly nonprocurement in nature. The promulgation of the President's wage-price guidelines is a particularly pertinent illustration of this point. Although the guidelines have been loudly proclaimed to be voluntary in nature, the government contract is used as the vehicle for their enforcement.

To the extent that companies do not comply with the "voluntary" guidelines, they may be debarred under implementing OFPP regulations from future government contracts and subcontracts exceeding \$5 million in amount and their performance under existing contracts may also be terminated for the convenience of the government. In hearings conducted on the guidelines by the Subcommittee on Commerce, Consumer, and Monetary Affairs of the House Government Operations Committee, the General Accounting Office and the Congressional Research Service have both taken the position (with which we agree) that the President's guidelines lack the statutory basis cited by the guidelines. More specifically, these two legislative agencies have stated that the statute cited, the Federal Property and Administrative Services Act, when properly construed, does not authorize the President to use government contracts to enforce his anti-inflation program. Moreover, the GAO, through the Director of its Procurement and Systems Acquisition Division, made the point that, for many reasons, the use of the government contract to enforce the guidelines, even if held to be legal, raises serious questions from a policy viewpoint. Finally, the test of legality is now upon us because the AFL-CIO has issued a formal announcement that it will file suit to forbid the use of the guidelines in the manner just described, and there may be suits brought by other parties as well.

Despite the very serious doubts which the GAO and CRS testimony raise concerning the role of government contracts in connection with the guidelines, OFPP has very strongly supported this policy. We assume that this is the case primarily because that is what the President and the Director of OMB expect OFPP to do.

On the other hand, unlike the situation in which we think procurement policy input has been improperly used, there are vitally important legislative issues arising on which procurement policy input should be a matter of paramount importance but has not, so far as we know, been furnished.

The Hon. Lawton Chiles

- 4 -

February 27, 1979

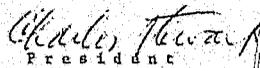
For example, the Congress is once again facing the question of extending the Renegotiation Act which expired on September 30, 1976, and the related issue of funding the Renegotiation Board beyond its scheduled termination on March 31, 1979. And the renegotiation issue raises the question of the application of the Vinson-Trammell Act--now 35 years old--which is to go into operation on the termination of the Renegotiation Act. On this question, the Department of Defense has strongly urged the repeal of the Vinson-Trammell Act as being completely outmoded and undesirable, in any event, from a policy viewpoint. Despite all of this, OFPP--again so far as we know--has been publicly silent on the procurement policy aspects of the Renegotiation Act and the related legislative issues. We recognize, of course, that OFPP may have been involved in internal governmental deliberations on these matters.

In brief then, we recommend that OFPP should concentrate its attention on basic procurement policy questions--both in themselves and as they relate to major issues then pending before the Congress or the Executive branch of the government. However, we do not recommend statutory changes in the OFPP Act to accomplish this objective, for example, by amending the law to make OFPP more independent from direction by the President and the Director of OMB. We feel that no action should be taken to weaken OFPP's ability to deal effectively with other departments and agencies within the Executive branch (a matter on which, we have already noted, we think OFPP has done an outstanding job). However, we do urge the Subcommittee, in its report on these sunset hearings, to strongly urge the President and the Director of OMB to exercise more forebearance and understanding than we think they have up to this point as to the proper and appropriate functions of OFPP and relating the duties and assignments given to OFPP in the light of these functions.

* * *

This completes our comments in connection with the "sunset review" of the Office of Federal Procurement Policy. If we can be of further assistance, please let us know.

Sincerely,



Charles T. Howard
President

CWS:mc

MARTIN MARIETTA AEROSPACE

6501 ROCKLEDGE DRIVE
BETHESDA, MARYLAND 20834
TELEPHONE (301) 897-6001

LAURENCE J. ADAMS
PRESIDENT

March 12, 1979

The Honorable Lawton Chiles
The United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

Responding to your letter of February 2, 1979, I believe the OFPP has accomplished much towards improvement of federal acquisition policies. I have some misgivings however, with respect to the role of OFPP as it is evolving. More specifically, I perceive this office developing the character of a higher tier procurement office superimposed over the acquisition offices of the various agencies.

Early initiatives of the OFPP were strongly influenced by recommendations of the Commission on Government Procurement. Matters such as Systems Acquisition of A-109, the proposed Federal Acquisition Act of S. Bill 5, the Contracts Disputes Act, the Federal Acquisition Regulations and the Federal Procurement Institute are significant achievements. As you know some of these matters have not been fully implemented, and OFPP's interest and guidance should continue to promote policies which are in the best interests of both the Government and Government contractors.

With more recent activities OFPP is substituting its judgment or imposing restraints on the responsible procurement offices, often without statutory authority. Matters such as conflict of interest, use of consultants, eighty percent deceleration principle, and imposition of certificates which convert voluntary wage and price standards into mandatory standards are typical examples.

Senator Chiles

-2-

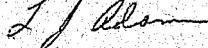
March 12, 1979

Congress created the Commission on Government Procurement and in turn the Office of Federal Procurement Policy and charged each with the responsibility to promote economy, efficiency and effectiveness in Government buying. A reassessment of the OFPP role in light of the congressional charge is most appropriate at this time. Such objectives must continually be kept in view. Any activity of OFPP which duplicates buying functions of the agencies can only be classified as inefficient and costly.

In my judgment the trend of OFPP to guide the detailed operations of procurement offices is primarily caused by their staffing practices. Individuals are employed who have spent most, if not all, of their careers with the Federal Government. These individuals bring unilateral perspective to the OFPP. The basic strength of the procurement commission was found in the fact that both government and industry were represented on each topic. This arrangement served to develop and narrow the basic issues on significant matters as opposed to refining buying techniques. By way of improvement I suggest that as OFPP is extended, serious thought be given to equal participation by both government and industry.

I appreciate this opportunity to present my views concerning the performance of OFPP, and recommend that its term be extended with particular emphasis given to the fundamental objective of efficiency and effectiveness.

Yours very truly,



Laurence J. Adams

MCDONNELL DOUGLAS

CORPORATION

SANFORD N. MCDONNELL
President and Chief Executive Officer

26 February 1979

Honorable Senator Chiles
United States Senate
Washington D.C. 20510

Dear Senator Chiles:

Thank you for the opportunity to comment on the performance of the Office of Federal Procurement Policy (OFPP). We believe that during the past 4½ years, under the leadership first of Mr. H. Witt and more recently Mr. L. Fettig, the OFPP has been both productive and cost-effective. The job done to date and the continuing need for a central Federal agency overseeing procurement policy warrant continuation of OFPP. We endorse introduction of re-authorization legislation. We do have some comments on the future role and priorities of the OFPP with respect to (i) Cost Accounting Standards, and (ii) the Federal Acquisition Regulation. These comments follow.

As you know, the Congress established the Cost Accounting Standards (CAS) Board in 1970 to promote uniformity and consistency in the cost accounting principles used throughout Federal procurement. Perhaps because no agency then existed in the executive branch to overview all Federal procurement practices, the Congress set the CAS Board up as an autonomous agency within the legislative branch. With this organizational location, the CAS Board has no procurement responsibilities. As we see it, absence of procurement responsibilities leads the Board and its staff to pursue accounting rules and standards as important ends in themselves rather than as means to improve the Federal procurement process. A comprehensive Aerospace Industries Association (AIA) evaluation of the overall CAS program (a copy of which has previously been made available to you) concluded that the burdens of the CAS program substantially outweigh its benefits.

Although the CAS legislation contained no Sunset provision, we note that the Board is in fact nearing completion of most of the tasks originally contemplated for it. In view of this and the need to integrate the CAS function into procurement policy, we believe that a compelling case exists for early Congressional action aimed at transferring the CAS function to OFPP.

We are pleased to note that OFPP has established a top priority project to promulgate a single acquisition regulation, the Federal Acquisition Regulation (FAR), to replace the Federal Procurement Regulation (FPR) and most of the Defense Acquisition Regulation (DAR) and other agency procurement regulations. Original guidelines announced for this project emphasized a zero-based approach in which

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the continuing need for and effectiveness of current regulatory provisions would be challenged. Generally simpler commercial practices were to be adopted wherever practical. We fear that in its creation of the FAR, the OFPP will face inertial forces seeking to preserve the status quo. If these forces are not overcome, the new FAR may simply be a massive consolidation and re-formatting of most or all the provisions in existing regulations, a result which would fall far short of everyone's hopes. OFPP re-authorizing legislation therefore might re-emphasize the importance of jettisoning marginally useful, detailed regulatory provisions in favor of simple statements of principle.

Please do not view these suggestions for the future as diluting in any way our evaluation of the OFPP's past performance. We think the OFPP has done a first class job and look forward to its "second term".

Sincerely,

A handwritten signature in cursive script, appearing to read "James S. Jones". The signature is written in dark ink and is positioned below the word "Sincerely,".

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February 28, 1979

Honorable Lawton Chiles
Chairman
Committee on Governmental Affairs
United States Senate
Russell Senate Office Building, Room 443
Washington, D. C. 20510

Dear Senator Chiles:

As a person involved in Government procurement for more than 20 years, I endorse without reservation the continuation of the Office of Federal Procurement Policy (OFPP). OFPP has made real progress under its first Administrator and its present Administrator in what has been viewed by many as an impossible assignment. The concept of OFPP is sound and unquestionably should be pursued by the Administrator and Congress.

Sincerely,

Clarence T. Kipps, Jr.
Clarence T. Kipps, Jr.

CTK:ead

PHILADELPHIA
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1800 M STREET, N.W.
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LOS ANGELES
MIAMI
PARIS
Associated Office

February 22, 1979

The Honorable Lawton Chiles
United States Senate
443 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Chiles:

This is in response to your letter of February 2, 1979 requesting comments on the performance of the Office of Federal Procurement Policy (OFPP) over the past four and one-half years.

Having been a participant in the Procurement Commission's recommendation to create the OFPP, and having supported the legislation establishing OFPP, I am pleased to state that, in my opinion, the OFPP's performance has far exceeded what any of us could reasonably have anticipated. During this relative short time span, OFPP has gained acceptance as the focal point for procurement policy matters, and has promoted or assisted in a number of policy reforms beneficial to the procurement process. Although OFPP's accomplishments to date are substantial, even a cursory examination of OFPP's Report To The Congress (January 1977 through September 1978), shows that much remains to be done. Moreover, since procurement is a dynamic process, it is likely that the future will present new areas that need the kind of coordination and direction that only OFPP can provide.

The OFPP, I believe, is functioning in a manner consistent with the role envisioned for it by the Procurement Commission. It has remained independent of agencies having procurement responsibilities, it has exercised directive authority in a responsible manner, and it has been responsive to the Congress. These ingredients for an effective OFPP are as important today as they were when that Office was established.

MORGAN, LEWIS & BÖCKIUS

The Honorable Lawton Chiles
 February 22, 1979
 Page Two

As you know, the Procurement Commission recommended that the OFPP consist of a "small, highly competent cadre of seasoned procurement experts." Although no specific size limitation was proposed, the general consensus was for a staff of about 20 to 25. At that time there was no workload analysis of the functions and responsibilities envisioned for OFPP; and to my knowledge none has been made since. Although I agree with the concept that OFPP should be limited in size, I believe the current staff should be expanded in order that OFPP can remain independent and provide effective oversight and control over procurement policy. The staff is too thin now to provide the in-depth attention needed for major policy issues; e.g., uniform acquisition regulations, grantee procurement procedures, major systems acquisitions, international procurement and buy-national requirements, Federal Acquisition Act, and commercial product acquisitions, to list some of the major areas. The present staff limitation, in my opinion, necessitates an over use of contracting agency personnel to formulate initial recommendations for major policy positions, and results in insufficient capability to be fully responsive to the Congress and to non-Government comments on major policy matters. These deficiencies are not intended to detract from the quality of the present staff in any way. I know from personal contacts the long and arduous hours many of them spend at their jobs. However, it is not reasonable to expect that they can continue at this present pace indefinitely.

In addition to recommending the continuation of OFPP, therefore, I would like to see an increase in staff personnel that will enable the Office to continue to perform in an exemplary manner over a long period of time.

I hope these comments will be helpful in your evaluation of OFPP's performance.

Sincerely,

O. S. Hiestand
 O. S. Hiestand

OSH/drb

433

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PHILIP CALDWELL, Chairman
V. J. ADDUCI, President and Chief Executive Officer
THOMAS H. HANNA, Senior Vice President

March 1, 1979

The Honorable Lawton Chiles, Chairman
Committee on Governmental Affairs
United States Senate
Room 3306 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Chiles:

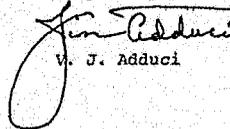
This is in response to your letter of February 2, 1979, requesting comments on the Office of Federal Procurement Policy (OFPP) in connection with your "sunset review."

MVMA supports the continuation of the OFPP. We believe the OFPP provides a focus for acquisition policy and implementation which has become increasingly necessary in recent years. Its work on the Federal Acquisition Regulation project is one noteworthy example of its potential for helping streamline the acquisition process.

I do not mean to imply that we have agreed with every substantive policy advanced by the OFPP. However, the OFPP must be given credit for its willingness to consider the viewpoints of industry and interested parties. This kind of two-way communication is, of course, one of the best ways of encouraging realistic and workable acquisition policy.

In conclusion, we believe there is a strong and continuing need for a centralized acquisition policy body and that the performance of the OFPP warrants its continuation.

Very truly yours,


V. J. Adduci

clh

BW
MAR 05 1979

COMMITTEE ON GOVERNMENTAL RELATIONS

National Association of College & University Business Officers
 ONE DUPONT CIRCLE, N.W. • SUITE 510 • WASHINGTON, D.C. 20036 • (202) 286-2346

February 26, 1979

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 University of Southern California

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KENNETH W. SLOAN
 The Ohio State University

THOMAS E. STELSON
 Georgia Institute of Technology

WALLACE C. TREIBEL
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JOSEPH S. WARNER
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REAGAN SCURLOCK

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MILTON GOLDBERG

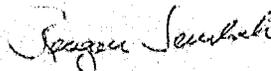
The Honorable Lawton Chiles
 United States Senate
 Washington, D.C. 20510

Dear Senator Chiles:

The Committee on Governmental Relations endorses the continuation of the Office of Federal Procurement Policy as long as it continues to demonstrate a record of simplifying and eliminating outdated regulations. The Federal Acquisition Regulations (FAR) project is a good example of productive effort.

Mr. Fettig and the Office have made a commendable effort to implement the requirements and carry out the purposes for which the Act was intended. While we commend OFPP for its accomplishments, we also endorse periodic reviews to assure the continued need for the Office and its elimination when its purpose has been accomplished.

Sincerely yours,



Reagan Scurlock



National Association of Service Contractors

1511 K STREET N.W., SUITE B12 • WASHINGTON, D. C. 20005 • (202) 296-0234

February 28, 1979

The Honorable Lawton Chiles
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

In response to your letter of February 2 soliciting our comments regarding the performance of the Office of Federal Procurement Policy (OFPP), we are pleased to share these thoughts with you.

Although we are extremely reluctant to endorse any Federal government regulatory agency, we do think continuation of the OFPP function is both needed and useful. Federal procurement still requires policy standardization and cohesion among its various practitioners. There remains a need for the OFPP role which provides impetus for developing and implementing a single body of Federal procurement regulations. There remain several worthwhile recommendations of the Commission on Government Procurement which need an OFPP for full and continuing realization.

For the above reasons we think OFPP is necessary and ought to be continued. In our view its past performance toward these ends warrants reauthorization of its charter.

Perhaps the intended efficacy of this agency can be more nearly realized in its next several years of life. We truly hope so.

Thank you for allowing us to comment on this matter.

Sincerely,

Everett O. Post
Everett O. Post
Executive Director

EOP/ac



NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

the national voice of wholesale distribution

1725 K Street, N.W.
Washington, D.C. 20006
202/872-0885

William C. McCamant
Vice Chairman of the Board

February 13, 1979

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending
Practices and Open Government
Committee on Government Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

This association appreciates your letter of February 2, 1979, providing the National Association of Wholesaler-Distributors an opportunity to submit comments regarding the performance of the Office of Federal Procurement Policy over the last four-and-one-half years.

Our association is composed of 108 national commodity line associations which, in turn, have a membership of over 40,000 wholesaler-distributors. Our industry sales were approximately \$760 billion in 1978 and are expected to reach \$830 billion in 1979 according to Department of Commerce estimates.

Our interest in government procurement is primarily in the area of commercial products. Our members carry vast inventories in all commodity lines, close to government agency users; thus, procurement through wholesale distribution channels shortens the acquisition supply line, reduces inventory investment by government, eliminates unnecessary warehousing and provides other cost savings.

Since the OFPP was established, considerable progress has been made in implementing expressed government policy. The often expressed "reliance on commercial channels of distribution" has been changed from lip service to a series of positive steps which will greatly reduce the cost of procurement. Further, NAW applauds OFPP's emphasis on purchasing off-the-shelf or otherwise available commercial products and reducing the number of unnecessary government specifications.

When the Commission on Government Procurement was conducting its extensive studies, NAW advocated placing the formulation of government

BW
FEB 21 1979

James R. Hamilton
Director of the Board
Chicago, Illinois

George A. Smith
President
Piquette, Ohio

Richard Perry
First Vice President
Grand Rapids, Michigan

William M. Barkard
Second Vice President
Buffalo, New York

D. L. Latham, Jr.
Secretary
Atlanta, Georgia

Samuel Eder
Treasurer
Dallas, Michigan

NAW's 1980 Annual Meeting, January 15-19, Honolulu, Hawaii

Honorable Lawton Chiles
February 13, 1979
Page 2

procurement policy in a non-procurement agency. During the 1950s, 1960s and early 1970s, the General Services Administration, the major procurement arm of the Federal government, determined procurement policy. GSA shaped procurement policy to provide an ever-expanding role for itself. We will remember when GSA wanted to become the great warehouse, not only for Federal agencies, but also for all state and local governments and for private institutions receiving government grants. The newspapers termed this "Department Store USA". During this period, GSA advertised prices, but it never revealed the true landed costs of goods delivered to the ultimate users. The constant hiding of total cost resulted in tremendous burdens to the taxpayer.

To halt this extension into competition with private enterprise, NAW filed two suits in Federal courts, one to halt the sale of GSA inventory to state and local governments and the other to halt such sales to recipients of Federal grants. Confronted with these legal challenges, and with interest expressed by many members of the Congress, GSA withdrew these programs. We have confidence that the OFPP will never attempt such a massive program of competition with the private sector. If the Congress does not reauthorize appropriations for the OFPP, we can anticipate a resurgence of GSA expansion.

OFPP is a neutral agency, being neither engaged in procurement nor a government user. It has a record of viewing government procurement policies and practices in a most objective manner. The progress made to date has been commendable, and the wheels have been set in motion that will achieve further savings, will increase reliance on the private sector and, in time, will reduce the size of the Federal government.

The OFPP is also very open to suggestions, is responsive to requests and makes a special effort to obtain the best advice and information available before issuing policies. This is a distinct contrast to the secretiveness of GSA, where information was guarded and protected, and wholesalers were looked upon as competitors by GSA officials. We are not competitors, but suppliers -- with considerable knowledge and experience in the distribution of products -- and have always been regarded as such by the OFPP staff.

Therefore, NAW urges your Subcommittee on Federal Spending Practices and Open Government to recommend that Congress reauthorize appropriations for OFPP. We also suggest that the Subcommittee examine and

Honorable Lawton Chiles
February 13, 1979
Page 3

evaluate the long-term gains of the last few years and not be influenced unduly by certain deficiencies in government procurement which are now receiving a great amount of attention. These other problems can be, and should be, dealt with in accordance with the law. Without OFPP, these current problems may have been greatly compounded.

Respectfully submitted,

William C. McCamant
William C. McCamant
Vice Chairman of the Board

WCM:ak

National Council of



Technical Service Industries

800 SEVENTEENTH STREET N.W.

SUITE 210 • WASHINGTON D.C. 20036 • (202) 633-0540

March 2, 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open
Government
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

The following comments, as well as the more detailed explanations set forth in the attachment to this letter, are submitted in response to your letter of February 2, 1979, relative to a review of the performance of the Office of Federal Procurement Policy (OFPP). It is our understanding that this review is being made by your Subcommittee to determine whether reauthorizing legislation should be introduced.

I recall that you were one of the two members of the Senate appointed by the President of the Senate to serve on the Commission for Government Procurement, which recommended establishment of the Office of Federal Procurement Policy in its report to the Congress on December 31, 1972. Consequently, you are personally aware of all the considerations which influenced the Commission to make creation of a central procurement policy office in the Executive Branch its number one recommendation.

The Commission recognized that such an office would be essential in implementing nearly 150 other recommendations for improving the procurement process in the Federal government, which the Commission also made in its report.

In our view the reasons which led the Commission to recommend establishment of the Office of Federal Procurement Policy, in 1972, also support continuation of it upon expiration of the current authorizing legislation on August 31, 1979.

Accordingly, we strongly urge your Subcommittee to recommend reauthorizing legislation for the Office of Federal Procurement Policy well in advance

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Page 2

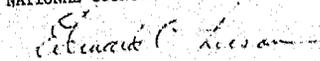
Senator Lawton Chiles
March 2, 1979

of the "sunset" date so that the Office may continue functioning
without interruption.

More detailed information supporting the above recommendation is
contained in the attached statement.

Sincerely,

NATIONAL COUNCIL OF TECHNICAL SERVICE INDUSTRIES



Edward C. Leeson
Executive Director

Enclosure

REVIEW OF THE NECESSITY
FOR CONTINUING
THE OFFICE OF FEDERAL PROCUREMENT POLICY

1. General.

The National Council of Technical Service Industries (NCTSI) is a non-profit educational association with membership that includes some of the Nations largest corporations, as well as medium size and small companies, with hundreds of millions of dollars in sales to the Federal government agencies.

Thus, it is necessary for NCTSI to maintain a current and continuing review of the Federal procurement process, with special emphasis upon actions that may positively or negatively effect the support service industry. It has been estimated that this involves annual sales to the Federal government of approximately \$8 billion, involving about 500,000 employees in the private sector.

A significant part of this work is performed by NCTSI members, which requires daily interaction with Federal government agencies and their procurement processes.

The following comments are based upon the above described interest in procurement matters.

2. Brief Review of OFPP and its Problems.

NCTSI has, because of its interest as explained above, been closely involved with both the Commission on Government Procurement while it was studying the procurement process, and later with OFPP.

It is considered necessary to keep at least the following points in mind in evaluating the performance and progress of OFPP:

(a) Time frame within which action could have been taken by OFPP.

While the Office technically has been in existence for the last 4 1/2 years, the period of effective operational performance has been much shorter. That is to say, after the enactment of P. L. 93-400 there was necessarily a considerable period of time during which the Office was not operational.

An Administrator had to be appointed; staff employed and organized; and a period of "learning the ropes" endured before the effectiveness curve could start to rise.

(b) Change of Administration midway in the short existence of OFPP.

While the impact of a change in Administration in terms of productivity in any organization is difficult to measure it is unquestionably more negative in a newly established entity that is just beginning to function than in a well established one. Again, staff changes and organizational adjustments are inevitable, with a consequent temporary loss of productivity until new courses are charted and the new personnel becomes a smoothly functioning team.

(c) Bureaucratic interests and evolving authorities.

It must be kept in mind that OFPP came into a procurement arena already populated with high level career civil servants in the Office of Management and Budget, Department of Defense, General Services Administration, and other Executive Branch agencies whose bureaucratic self interests immediately seemed challenged or, at least, subordinated by the new Office.

Thus, there had to be a shakedown period during which the respective roles and authority of all concerned were clarified; again resulting in some unmeasurable but inevitable loss of productivity.

With these nebulous but very real problems behind, OFPP now may well be at a point in its existence where its effectiveness and progress can increase dramatically.

3. OFPP Accomplishments that Specifically Affect the Support Service Industry.(a) Issuance of a draft Circular (OMB Circular A-76) prescribing policies and procedures for Government reliance on private enterprise.

OFPP has put in final draft form a revised OMB Circular A-76 that clearly sets forth the Government's policy to rely upon the private sector to provide government agencies with the products and services which they require to carry out their assigned missions and programs.

It is expected that this revised Circular, when issued and implemented, will greatly assist in clearing up past misunderstandings and controversies that exist among those who would like to see the government itself, with its own employees, provide needed products and services

and those (including especially NCTSI) who believe private enterprise should do this work.

While the final Circular has not yet been issued it is expected to be published in the near future.

(b) Implementation of the Service Contract Act of 1965.

OFPP by Policy Letter Number 78-2, dated March 29, 1978, which was issued pursuant to the broad authority vested in that Office by P. L. 93-400, administratively established procurement requirements that will protect contract professional employees against "wage busting", without the necessity of a burdensome legislative solution to the problem.

It is anticipated that other administrative actions may also be taken by OFPP that will minimize the administrative burden, and cost of implementing other provisions of that Act.

Also, related to that Act, OFPP ruled against a sudden shift by the Department of Labor to extend coverage of the Service Contract Act to aircraft engine overhaul contracts. That shift, if allowed to stand by OFPP, would have drastically increased costs, contributed to inflationary pressures, and added to the already burdensome administrative problems of implementing the 1965 Act.

4. Other Areas in which OFPP has made Significant Progress in Improving the Federal Procurement Process.

(a) Uniform Federal procurement Regulations.

Important progress has been made by OFPP towards standardizing government procurement policies which, over the years, have become fragmented and diverse because of a lack of a central guidance and control authority.

Frustration, aggravation, and bewilderment caused by various and sometimes conflicting government agency procurement regulations still exists—as it did when the Commission on Government Procurement rendered its report in December, 1972. But the progress made by OFPP in consolidating these regulations is highly encouraging and must continue.

- (b) Providing a focal point within the Executive Branch where recommendations may be made for improving government-wide procurement practices.

OFPP now provides a focal point where private industry, Federal agencies, as well as the Federal employee unions may offer recommendations to improve government-wide procurement practices.

A typical problem area has been the diverse, often biased, cost comparisons resulting from non-uniform costs accounting procedures used by agencies to estimate in-house versus private industry costs for support services. OFPP now has, in draft form, a supplement to OMB Circular A-76 that calls for standardized cost accounting practices to produce comparative cost estimates that are fair to both government and industry, and which form a good foundation for sound management decisions.

This, along with other safeguards contained in the proposed revision of OMB Circular A-76, is considered by the support service industry to be a major improvement in the procurement process which annually provides approximately \$8 billion in services.

- (c) Guidelines for use of consultant services by the Government.

For many years opposition in the media and in the Congress to private industry performance of support services for the Government have unfairly used arguments and criticisms that could apply only to "consulting services".

The new guidelines, i.e., OMB Bulletin 78-11, issued in May 1978, specifically exempted OMB Circular A-76 activities which cover support services. As a result this industry should no longer be burdened by criticisms that apply only to consultant services.

5. Other Factors Indicating a Need to Continue OFPP.

- (a) Recommendation of the Commission on Government Procurement.

The Commission on Government Procurement made nearly 150 specific recommendations for improving the procurement process of the Federal government. Of this number, 23 have been implemented and 96, including those requiring legislation, are still in process.

OFPP should continue its efforts to implement the 96 outstanding recommendations. This would achieve the policy goal set forth by the Congress at the time it established the Commission, to promote economy, efficiency and effectiveness in the procurement of goods and services by the Executive Branch.

- (b) There is a continuing need for a central procurement office in the Executive Branch of Government as recommended by the Commission after nearly 3 years of intensive study. Nothing has occurred to change this need since 1972, when the Commission submitted its final report.
- (c) The need for a central office may be brought into sharper focus by considering the number of random (but incomplete) matters that will have to be accommodated by some other means, if OFPP is abolished:
 - (i) Provide a central point within the Government that will be responsive to Congress, private industry, and the public in regard to government-wide procurement problems.
 - (ii) Provide a central point within the Government to oversee and coordinate procurement practices in all of the Federal agencies, for example, major systems acquisitions as addressed by OMB Circular A-109.
 - (iii) Provide a staff capability within the Executive Branch of government to obtain necessary government-wide procurement information, and as necessary present informed testimony thereon to Congressional committees.
 - (iv) Provide a central office which may, shape the procurement process, as necessary, to accommodate National economic objectives, e.g., cool the fires of inflation, channel contracts into labor surplus areas, etc.

NATIONAL SCHOOL SUPPLY & EQUIPMENT ASSOCIATION

NATIONAL SCHOOL SUPPLY & EQUIPMENT ASSOCIATION • 1200 WILSON BOULEVARD • ARLINGTON, VIRGINIA 22209
703/524-8819

February 27, 1979

Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending
Practices and Open Government
Committee on Government Affairs
Washington, D. C. 20510

Dear Mr. Chairman:

We concur with the letter you received from Mr. William McCamant, Vice Chairman of the Board, National Association of Wholesaler-Distributors under date of February 13.

We feel that the Office of Federal Procurement Policy is important to government purchasing efficiency as well as to the local businessman. We would like to see federal purchasing localized rather than centralized in keeping with the Report of the Commission on Federal Procurement, of which we provided input.

Our association is composed of almost 600 manufacturers and distributors of school supplies, instructional materials and equipment, serving schools in all parts of the United States.

The OFPP is doing a good job against great odds. We strongly recommend that future funding be provided in order that they may continue their important work.

Yours very truly,

D. M. Currach

Executive Vice President

D.McCurrach:jpf

cc: W. C. McCamant, NAW

SW
MAR 01 1979



NATIONAL SECURITY INDUSTRIAL ASSOCIATION
National Headquarters

Union First Bank Building, Suite 700
740 15th Street, N.W.
Washington, D.C. 20005
Telephone: (202) 393-3520

I. K. Kessler
Chairman, Board of Trustees
J. R. Lien
Vice Chairman, Board of Trustees
Chairman, Executive Committee
S. A. Coniglaro
Vice Chairman
Executive Committee
W. H. Robinson, Jr.
President

1 March 1979

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending Practices
and Open Government
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Chiles:

You have asked for the comments of the National Security Industrial Association (NSIA) concerning the performance of the Office of Federal Procurement Policy (OFPP) over the past 1 1/2 years, especially, with respect to whether the Office should be continued after evaluation under the "Sunset" provision of Public Law 93-400, which created the OFPP. In our view, the OFPP has demonstrated, over this time period, its ability to address many problems in the acquisition process which could not have been undertaken without the central focus afforded by the OFPP. Prominent in the list of initiatives of the OFPP are:

- o Improvement of major systems acquisition through the implementation of OMB Circular A-109.
- o Emphasis on reliance on the private sector through proposed major revisions to OMB Circular A-76.
- o The consolidation and simplification of the regulatory system for federal contracts through the drafting of a single Federal Acquisition Regulation.

None of these complex and weighty problems, in our opinion, could be effectively addressed by individual acquisition agencies and/or departments. Such matters require an overview and evenness of policy that only a single authority, such as the OFPP, provides.

BW
MAR 6 5 1979

Accordingly, we strongly urge the continuance of the OFPP, not only to continue the work that it has already so satisfactorily undertaken, but to be available to address significant issues in the acquisition process in the years to come. We believe that this will not only result in a more salutary acquisition process, but will result in considerable cost savings to the Government by eliminating unneeded and excessive regulations.

We believe that the OFPP should be commended for its accomplishments and attempts to stay within the charter as authorized by Public Law 93-400. We urge that re-authorizing legislation be introduced into the Congress that would continue the OFPP within the scope of its original charter. Such re-authorizing legislation should embody a policy of reducing the regulatory cost in the Federal Acquisition Process.

Sincerely,

Wallace H. Robinson, Jr.

Wallace H. Robinson, Jr.
President

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS



"Putting It All Together For The Engineer"

Address Reply To:
OFFICE OF THE
PRESIDENT

March 15, 1979

Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending Practices
and Open Government
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

You have previously received a letter from the Committee on Federal Procurement of Architect-Engineer Services, of which we are a member, commenting on the question of a continuation of the Office of Federal Procurement Policy, and recommending that that office be continued.

However, we wish to add our separate comment and endorsement along the same line. We have found OFPP since its creation to be one of the most efficient and effective organizations in meeting the objective of coordinating the activities of Federal agencies to bring about the best possible procedures in the area of Government procurement.

Our focus has been primarily in those matters which impinge on the relationships of engineers directly with Federal agencies and with the functions of Federal agencies administering Federal-aid projects. In dealing with OFPP on these matters we have always found the Administrator, Lester A. Pettig, and his colleagues, to be open-minded and willing to listen objectively to our views, even though the result may not always agree with our position.

Based on our experience with OFPP to date, therefore, we believe it would be desirable to have Congress continue that office and its functions as delineated in Public Law 93-400.

Respectfully yours,

Robert L. Nichols
Robert L. Nichols, P.E.
President

AB
MAR 22 1979



NATIONAL WHOLESALE DRUGGISTS' ASSOCIATION

670 WHITE PLAINS ROAD, SCARSDALE, N.Y. 11783 • (516) 723-3571

Joseph L. Garde, President • William L. Ford, Executive Vice President

Reply to:
 WASHINGTON OFFICE:
 1511 K Street N.W.
 Suite 800 Washington, D.C. 20005
 (202) 547-8509

March 1, 1979

The Honorable Lawton Chiles
 Chairman, Committee on Governmental Affairs
 Subcommittee on Federal Spending Practices
 and Open Government
 United States Senate
 Washington, D.C. 20510

Dear Mr. Chairman:

The National Wholesale Druggists' Association, a member of the National Association of Wholesaler-Distributors, appreciates the opportunity to submit comments regarding the performance of the Office of Federal Procurement Policy over the last four and one-half years. NWDA is a leading trade association in the drug industry comprised of approximately 350 full-service wholesalers, 250 major manufacturers of products sold through wholesalers, and almost 50 other organizations having a stake in drug wholesaling - such as advertising agencies, publications and EDP suppliers. The drug wholesalers are Active members and the remainder are Associate members.

Our interest in government procurement is primarily in the area of commercial products. The function of the drug wholesaler is to purchase and take title to goods in bulk from nearly 1,000 vendors, centralize and appropriately store nearly 20,000 product lines, and distribute them to pharmacies, hospitals, nursing homes, clinics, and state and federal government institutions. The management-oriented services drug wholesalers provide customers include accounts receivable management, financial analysis, patient medication profiles, prescription label preparation and refill analysis, sophisticated inventory management programs and third party billing.

When OFPP was established, the federal government began to emphasize the acquisition of "commercial, off-the-shelf, products" in order to achieve optimal effectiveness in supply support operations.

BW
 MAR 05 1979

The Honorable Lawton Chiles

March 1, 1979

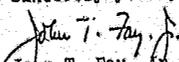
OFPP has served as both catalyst and driving force in directing this trend of federal government toward the implementation of the commercial acquisition program. With the help of OFPP, the government can now realize substantial savings that can be made by increasing its use of commercial products.

OFPP is unique in that it is a neutral agency. OFPP is neither engaged in procurement nor is it a government user. This neutrality provides objectivity in viewing government procurement policies and practices. Without OFPP, the movement to government procurement of commercially available products through a commercially available distribution system would lack the catalyst needed to guarantee the final achievement of government savings.

The OFPP has been most responsive to requests and has made great efforts to obtain the best advice and information available before issuing policies. Our Association was one of the co-sponsors of a conference on "Procurement of Health Care Supplies: The Government and Commercial Systems" on December 5, 1978, in Washington, D.C. Key OFPP officials attended as speakers and as students of the modern commercial distribution system and inventory control. Key government procurement officials were speakers. Manufacturers, wholesalers and distributors, government procurement officials and OFPP officials sat at round table discussions reviewing the needs of government and the services private industry can provide in order to achieve optimal effectiveness in the supply support operations.

NWDA urges your Subcommittee on Federal Spending Practices and Open Government to recommend that Congress reauthorize appropriations for OFPP. Without OFPP, it is doubtful that government will be able to achieve optimal effectiveness in supply and support operations.

Sincerely yours,


John T. Fay, Jr.

Director of Public Affairs

cc: W. C. McCamant

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Chairman of the Board and
Chief Executive Officer

21 February 1979

The Honorable Lawton Chiles
Chairman, Subcommittee on
Federal Spending Practices
and Open Government
Committee on Governmental Affairs
United States Senate
Room 2107, Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Chiles:

This is in response to your February 2, 1979, letter in which you solicited comments concerning the performance of the Office of Federal Procurement Policy (OFPP).

It has been the experience of Northrop Corporation that the OFPP has conscientiously attempted to provide leadership in the development of uniform Government acquisition policies and regulations. In establishing the new policies for major system acquisitions under OMB Circular A-109, OFPP actively encouraged industry participation and kept us advised throughout the formulation process.

We at Northrop have been particularly impressed with the OFPP's desire to obtain industry comments on the proposed Federal Acquisition Regulations (FAR) which is a project of great importance to all involved in Government contracting. In this regard, although the OFPP is somewhat behind schedule in the release of draft FAR's we appreciate the agency's ambitious effort in devising a simplified, uniform, Government-wide acquisition regulation.

Certainly until this important task is brought to a successful conclusion we at Northrop believe that there is a real need for continuing a centralized Office of Federal Procurement Policy. Otherwise there appears to be no effective means for preventing the unnecessary proliferation of independent procurement regulations and procedures throughout the Government.

Thank you for providing me the opportunity to comment on this matter.

Sincerely,

Thomas V. Jones
Thomas V. Jones

BW
FEB 27 1979

Northrop Corporation

1800 Century Park East

Century City

Los Angeles, California 90067

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February 14, 1979

The Honorable Lawton Chiles
 United States Senate
 Committee on Governmental Affairs
 Subcommittee on Federal Spending Practices
 and Open Government
 Washington, D. C. 20510

Dear Senator Chiles,

I am replying to your letter of February 2, 1979 with respect to the application of "sunset" provisions to the Office of Federal Procurement Policy (OFPP).

From August 1977 to August 1978, I was the Chairman of the Public Contract Law Section of the American Bar Association. During that period, I had the privilege of working with members of OFPP on a variety of matters. In my judgment, the OFPP has performed an invaluable function in the procurement process. I further believe that this function simply could not have been performed by any other agency.

Discontinuing agencies which no longer serve any useful function is a laudable and necessary objective. In this instance however, the discontinuance of OFPP would greatly increase the cost of government, and would have an extremely deleterious effect on the entire procurement process. Over its brief existence, OFPP has acquired a reputation for fairness and objectivity which is unmatched by any of the agencies dealing in federal procurement. Consequently, I would urge strongly that the Congress continue the charter of OFPP so that it can continue to do its good work.

While my contacts with the agency have largely been through the Chairmanship of the Public Contract Law Section, I do wish to note that I am writing on behalf of myself, and not on behalf of

FEB 26 1979
 GW

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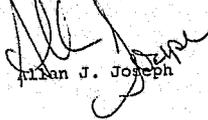
PETTIT & MARTIN

The Hon. Lawton Chiles
February 14, 1979
page 2

either the American Bar Association or its Section of Public
Contract Law.

Thank you for your consideration of my views.

Sincerely,



Alan J. Joseph

AJJ:pg

rice
aterhouse & Co.

OFFICE OF GOVERNMENT SERVICES
1631 K STREET, N.W.
WASHINGTON, D.C. 20006
202-286-0800

February 23, 1979

The Honorable Lawton Chiles
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

I appreciate the opportunity of providing comments concerning the performance of the Office of Federal Procurement Policy (OFPP).

My experiences with OFPP began during my Government service while I was Director of the Defense Contract Audit Agency and have continued since I moved into the private sector to become a member of Price Waterhouse & Co., Certified Public Accountants. I know the first Administrator, Hugh Witt, and the current Administrator, Lester A. Fettig, several key members of the Office, and am familiar with their policies and operations.

My close association with the work of the Commission on Government Procurement, and my many years' experience in this area, persuaded me it was fitting indeed that the Commission's first recommendation was to establish a central Office of Federal Procurement Policy. The cogent reasons for this recommendation which existed in December 1972 obtain equally today. My many years in Government service were devoted particularly to Department of Defense procurement matters. Accordingly, it was not until I left the Government in August 1976, that I became fully aware of the diversified and uncoordinated procurement policies and procedures which govern the many civilian executive departments and agencies.

I am strongly persuaded that the OFPP is just as essential today as its need was perceived at the time you and your fellow commissioners published the report of the Commission on Government Procurement. If anything, I think the need for continuing OFPP is greater today as we have gained the additional six years' experience with Government procurement problems.

BW
MAR 07 1979

- 2 -

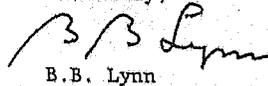
A review of the project summaries contained in OFFPP's Report to the Congress for the period January 1977 through September 1978 offers some suggestions of the significant matters in which OFFPP is involved and on which completed action may require considerable additional time. Listed below are just a very few of the many projects which I consider essential to an effective Government procurement process and which I believe cannot be achieved except through a central Office of Procurement Policy.

- o The formulation of uniform Government-wide procurement policies.
- o The establishment and implementation of a Federal Acquisition Regulation System in conjunction with your Federal Acquisition Act.
- o Further implementation of the Major System Acquisition Policy (OMB Circular A-109).
- o The formulation of a Government-wide profit policy (so badly needed in view of the wide variety of policies and procedures in existence today).

I am totally in accord with the concept of establishing sunset considerations for agencies in the Federal Government (and State and Local governments as well). There are many agencies in the Federal Government today where a sunset review would be most appropriate. As to OFFPP, I would reiterate my opinion that it is a vitally needed organization, has achieved many of the objectives envisioned for it by the Commission on Government Procurement since its establishment, and will continue as a positive force in improving procurement in the Federal Government.

If we can be helpful in any further respect, please advise.

Sincerely,



B.B. Lynn

Rice
Waterhouse

457

RCA | Cherry Hill, New Jersey 08101 | Telephone (609) 338-6245

Hon. Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

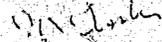
I. K. Kessler
Group Vice President

Dear Senator Chiles:

February 20, 1979

At the time P.L. 93-400 was enacted, RCA believed that the creation of the Office of Federal Procurement Policy was a good idea and has cooperated with the Office. As we approach the "sunset review" directed by P.L. 93-400, it is apparent that a great deal of unfinished work remains to be done in the effort to improve the Federal procurement process. While I do not endorse all the actions taken by the Office of Federal Procurement Policy, I believe it has, on balance, performed well and should be continued through reauthorization legislation.

Sincerely yours,


I. K. Kessler

BW
FEB 27 1979

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RAYTHEON COMPANY

LEXINGTON, MASSACHUSETTS 02173

D. BRAINERD HOLMES
PRESIDENT

February 19, 1979

The Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending
Practices and Open Government
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

I appreciate the invitation contained in your letter of 2 February 1979 to comment on the performance of the Office of Federal Procurement Policy. As a major supplier to the Federal Government, we have had an opportunity both to assist OFPP in some of its policy formulation and to judge firsthand the results of such policy implementation. On this basis and without attempting to discuss specific actions, we offer the following comments for your consideration.

We believe that the establishment of the OFPP, as recommended by the Commission on Government Procurement, has proven to be a constructive step toward the goal of improving the Federal acquisition process. The OFPP has provided a very real service by acting as a coordinating function for procurement policy matters involving multiple Government agencies. As you might well imagine, from a contractor's point of view, the ability to discuss a problem once rather than with several different customers is of considerable advantage.

FEB 28 1979

BW

The Honorable Lawton Chiles
Page 2
February 19, 1979

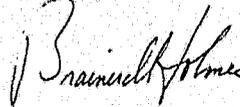
We have found OFPP personnel to be well qualified, competent and willing to listen to opposing points of view. We know of no instance in which industry was not afforded an opportunity to comment on proposed rulemaking with reasonable assurance that such comments would be fairly considered.

If the OFPP is continued, we believe it important that it be allowed to retain its autonomy in order to be most useful. In our view, utilization of the OFPP by either the Executive or Legislative branch to achieve specific goals would reduce both its credibility and effectiveness.

In summary, we believe the OFPP has been a cohesive and constructive force in the shaping of acquisition policy and recommend that it be continued beyond its "sunset" date of 31 August 1979.

I would again like to express my appreciation for this opportunity to comment and hope that this information will be of help to your Senate subcommittee in its deliberations.

Sincerely,



R&DA

RESEARCH & DEVELOPMENT ASSOCIATES FOR MILITARY FOOD and PACKAGING SYSTEMS, Inc.
 ROOM 1315, 90 CHURCH STREET - NEW YORK, N. Y. 10007
 TELEPHONE: (212) 264-7612

B. J. McKernan
 Central States Can Co.
 Chairman of the Board
 Dr. John B. Mann
 Heublein, Inc.
 Vice Chairman of the Board
 Dr. J. T. Hutton
 Foremost Foods Co.
 President
 Merton Singer, Colonel, USA (Ret.)
 Executive Secretary

March 5, 1979

Hon. Lawton Chiles
 Chairman, U.S. Senate Sub Committee on
 Federal Spending Practices & Open Government
 Washington, D. C. 20510

Dear Senator Chiles,

All of us at R&D Associates have been very much impressed with the dedication and motivation of personnel at the Office of Federal Procurement Policy. We see a constant search to do the job faster, cheaper and more effectively. This observation is particularly pertinent to the OFPP people with whom we have come in contact, namely Les Fettig, Dan Wilson and Lou Sorett. None of these gentlemen is satisfied with the old way of doing things. They constantly seek innovation and a realistic approach.

From R&DA's viewpoint, we are appreciative of the opportunity that OFPP gave us to contribute to the formation of "Guidelines for the Use of Consultant Services." We encourage OFPP's use of all responsible public and private sector resources - to include R&DA - and encourage OFPP to continue the policy.

Many thanks for the opportunity to comment on an organization for which we have considerable admiration.

Sincerely,

Merton Singer
 Merton Singer
 Colonel, USA (Ret.)
 Executive Secretary

MS:eg

BW
 MAR 06 1979

461

Harlin F. Green
Staff Vice President
2230 East Imperial Highway
El Segundo, California 90245
(213) 647-5784



Rockwell
International

27 February 1979

Hon. Lawton Chiles
Chairman, Subcommittee on Federal
Spending Practices and Open Government
United States Senate
Washington, D.C.

Dear Senator Chiles:

I am responding to your letter of February 2, 1979 to Mr. Robert Anderson, Chairman of the Board and Chief Executive Officer of Rockwell International Corporation. Thank you for your invitation to comment on the work of the Office of Federal Procurement Policy.

I regard the establishment of the OFPP as the most significant long-range step taken to improve the procurement process in the past decade. The enabling legislation which established OFPP authorized it to function as the central policy making agency in the area of federal procurement. The possible benefits to the country in the form of Government-wide uniform policies and procedures and the resulting elimination of duplication is indeed substantial.

Our specific comments are set forth as an attachment to this letter. I would be pleased to discuss any specific questions you may have.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harlin F. Green".

Harlin F. Green

BW
MAR 05 1979

I. The Continuing Need for the Office of Federal Procurement

The establishment of the OFPP fills a long-standing need in the field of Government procurement.

In the past each agency has been relatively free to establish its own procurement procedures which has produced a multiplicity of duplicative and in some instances conflicting policies and regulations.

The OFPP, functioning as a clearinghouse for procurement policy on a Government-wide basis, is taking positive steps to eliminate the overlapping regulatory scheme which has developed in the field of Government procurement. The need for this activity will, in our opinion, continue indefinitely.

II. Priorities and Methodology

A. Federal Acquisition Regulation System

The most important project undertaken to date by OFPP is the writing of the new Federal Acquisition Regulation System (FARS). We recognize that OFPP has assigned a high priority to this project and we agree that the high priority is warranted. However, because the new regulation is so extensive, it deserves careful consideration and comment by industry. The highly pressurized schedule which has been developed for publication of the regulation makes it very difficult to give the various section drafts the detailed and accurate review which they deserve. Inasmuch as the impact of the new regulation will be extensive and long lasting, we believe it would be well to consider lengthening the review cycle for the remaining portions of the FAR draft.

B. Liability for Catastrophic Accidents

The OFPP is developing draft legislation concerning catastrophic accidents which is designed to both indemnify contractors from liability beyond reasonably insurable amounts and to compensate victims for bodily injury and property loss or damage. Examples of the type of accident contemplated include those caused by nuclear incident, missile impact, chemical warfare agents and the like.

We feel that in establishing a specific project for the passage of legislation covering catastrophic accidents, the OFPP has displayed outstanding perceptiveness and sensitivity to a problem of great magnitude which has long gone unredressed. We consider that this project deserves a very high priority and that it will require a great deal of follow-through effort on the part of OFPP. Our recommendation is that OFPP maintain a high priority for this project and issue a proposed schedule for the development and introduction of this legislation.

C. Establishment of the Federal Acquisition Institute (FAI)

The OFPP has established the Federal Acquisition Institute for the purpose of developing appropriate curricula for the career training of Government personnel. We believe there is a continuing need for quality education in this field and that the planned establishment of suitable programs at qualified universities throughout the country is the right approach to take.

We believe that the program would benefit from a well-balanced presentation which includes qualified spokesmen for the industry point of view. We feel that full discussion of the two differing points of view is the best assurance that a thorough understanding of the procurement process will result. We hope that suitable arrangements can be made to implement this suggestion.

D. Freedom of Information

One of the functions of OFPP is to provide guidance in a timely manner to the various procurement departments of Executive agencies. Appendix J, dealing with requests for disclosure under the Freedom of Information Act, of contractor-supplied information is a good example of prompt reaction by OFPP to meet this need. The Policy Letter set forth in Appendix J presented a well considered statement of the issues and applicable rulings up to the time of publication. We believe that the willingness of OFPP to initiate guidance pending formal review and direction from other authorized agencies is commendable.

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TASC
THE ANALYTIC SCIENCES CORPORATION

Washington Office
1601 N. Kent St., Suite 1201, Arlington, VA 22209, (703) 243-6100
Corporate Office:
Six Jacob Way, Reading, MA 01867, (617) 944-6850

15 February 1979

The Honorable Lawton Chiles
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

Thank you for the opportunity to comment on the performance of the Office of Federal Procurement Policy (OFPP), since its inception over four years ago -- and in connection with your subcommittee's forthcoming review. I have found OFPP to be a critically important part of the federal government's operation. It was a badly needed function in order to establish overall government policies, and to coordinate the procurement activities of the various federal government agencies. As would be expected, there appeared to be a considerable start-up period for OFPP to get underway. However, it is my observation that under the current leadership of Les Fettig, OFPP is now starting to have a significant impact on the "way in which the government does its business". From my own involvement, I would say that two of its most significant activities have been the government-wide implementation of A-109 on all agencies' major acquisition programs, and the far wider use of commercial equipment and specifications in government procurements.

In my opinion, OFPP should definitely be continued in order to assure that both its role in formulating new policy can be pursued in the direction of reducing government costs, as well as its additional function of assuring that the policy is effectively and efficiently implemented throughout all of the government agencies.

With regard to each of these objectives of OFPP, I might make a brief observation. First, with regard to the formulation of new policy, I believe that it is essential for OFPP to be provided with some research funds in order for them to investigate ways to make some significant improvements in the government's "way of doing business". Secondly, with regard to OFPP's responsibility for follow-up on implementation, I think this role should be stressed. There is a very good chance that if not properly implemented, many of the very desirable policies will result in implementation in a way in

BW

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The Honorable Lawton Chiles
15 February 1979
Page Two

which their intent is defeated. For example, the requirement of A-109 for mission need statements prior to implementation of a program -- if not properly implemented -- could slow down programs or could inhibit new technological advancements. (Both are not intended by A-109.) Similarly, the desirable objective of more competition on a far greater share of federal contract dollars could result in more competition on small contracts, while not having any impact on the majority of the dollars that the government spends. (In fact, such actions could discourage the submittal of new ideas to the government through unsolicited proposals.)

In summary, I think that OFPP -- under its current leadership -- is making significant strides forward in improving the overall federal government's procurement practices, and that it is definitely in the national interest that this organization be continued. It should be encouraged to pursue both the formulation of improved procurement policies as well as the monitoring of the way in which the government agencies implement these policies, to assure that their intent is fully complied with.

Again, thank you for the opportunity to comment on OFPP, and I would be pleased to supply any additional information that you might find of value.

Sincerely,

Jacques S. Gansler

Dr. Jacques S. Gansler
Vice President

JSG:sr

TASC
THE ANALYTIC SERVICES CORPORATION

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TENNESSEE VALLEY AUTHORITY
KNOXVILLE, TENNESSEE 37902

OFFICE OF THE BOARD OF DIRECTORS

MARCH 5 1979

The Honorable Lawton Chiles, Chairman
Subcommittee on Federal Spending Practices
and Open Government
The United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your January 29 letter requesting our comments on the performance of the Office of Federal Procurement Policy (OFPP) over the last 4-1/2 years.

As you know, the authority of the administrator of OFPP does not include purchases made from nonappropriated funds. Since the great bulk of TVA's procurement is for the TVA power system and is made from nonappropriated funds, TVA has probably had less contact with OFPP than most other agencies. We therefore have no specific comments with respect to OFPP's performance. In general, it appears that OFPP is performing its assigned purpose of acting as a central source of policy on Government procurement.

Sincerely,



S. David Freeman
Chairman

BW
MAR 8 1979

An Equal Opportunity Employer

TRW

EXECUTIVE OFFICES

February 23, 1979

The Honorable Lawton Chiles
 Chairman, Subcommittee on
 Federal Spending Practices
 United States Senate
 Washington, D. C. 20510

Dear Senator Chiles:

In response to your letter of February 2, regarding your subcommittee's forthcoming review of the Office of Federal Procurement Policy (OFPP), I would like to submit for the record a statement of positive endorsement of the OFPP, its past performance, and its importance in the future, on behalf of TRW Inc.

It is our belief that the OFPP serves a singularly important role in the procurement process of the United States Government. Presenting, as it does, a "single face" in the Executive Branch with respect to the procurement policies of the Government in relation to the private sector, the OFPP provides a much-needed function. Our experience has been that the OFPP operates with a commendable lack of bias, and that it is staffed with unusually capable and well-qualified experts in all of the many fields in which it is called upon to be involved. With the surprisingly small staff it possesses, the effectiveness of its work is all the more impressive.

In our view, the performance and positive accomplishments of the OFPP since its creation in 1974 are more than adequate justification for the enactment of reauthorization legislation. In addition, the work yet to be done by the OFPP is of such importance that its dissolution at this time would be a major blow to both the administration of the Federal contract system and to the long-term reform of that system. The present major effort to develop a new, single set of contracting regulations for all Government agencies in compliance with a recommendation of the Commission on Government Procurement—the Federal Acquisition Regulation System—is a most significant case in point.

As the only chartered Executive Branch agency in a position to interface with all Government agencies and with industry in a completely unbiased manner, it is our position that the Office of Federal Procurement Policy has more than adequately demonstrated its effectiveness since its creation, and has furnished irrefutable justification for its continuation in the future.

Very truly yours,

Richard D. DeLauer
 Richard D. DeLauer
 Executive Vice President

BW
 FEB 27 1979



Harry J. Gray
Chairman and President

March 1, 1979

The Honorable Lawton M. Chiles, Jr.
United States Senate
Washington, D.C. 20510

Dear Lawton:

I was glad to receive your letter asking for my opinion concerning the re-authorization of the appropriations for the Office of Federal Procurement Policy. I fully support the idea that government agencies should be reviewed in depth on a regular basis to assure that their performance merits their continuation.

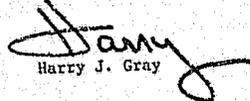
Based on the reactions of a number of people at United Technologies who have had contact with the OFPP, I can recommend that the office be given an extended lease on life. The OFPP has served as a central point of contact for industry when procurement issues affecting agencies across the government are involved. It has also assured that the viewpoints of those firms contracting with the government are given full consideration before procurement policies are revised or new policies issued.

I am advised that Hugh Witt of our Washington office plans to testify before your Subcommittee as you requested. As the first Administrator of the OFPP, and after two years with the private sector, I am sure he will provide his own personal viewpoint concerning re-authorization of appropriations for that office.

Thanks for your letter, and I hope that we will be able to get together soon, in Washington or perhaps at our facility in West Palm Beach.

Best regards.

Sincerely,


Harry J. Gray

BW
MAR 06 1979

United Technologies Corporation, United Technologies Building, Hartford, Connecticut 06101



Westinghouse
Electric Corporation

1801 K Street NW
Washington DC 20006
(202) 833-5058

February 22, 1979

Honorable Lawton Chiles
Chairman
Subcommittee on Federal Spending Practices
and Open Government
Committee on Governmental Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Chiles:

I offer these comments in reply to your February 2 letter about OFPP. I am familiar with its projects and know many of the people there. My comments are based on my own Government procurement experience of over thirty years, partly in Government but largely in industry.

The OFPP concept, on the whole, as it has matured and developed, heads in a progressive direction and is working well. It offers promise for achieving greater efficiencies and economies in procurement in a cost-effective way. The Office, with leadership and intended restraint, has avoided empire building and other bureaucratic tendencies and generally operates in a constructive and sensible way within its charter.

The massive FAR project is only a first step in overhauling the acquisition regulations. If that effort, now largely a restructuring and consolidation, can be completed, we hopefully with support of a good Federal Acquisition Reform Act can move from that point to build a more effective system. Certainly, an OFPP would be necessary to achieve such a future result. The FAR itself, however, should be considered as only one of many projects, accomplished or planned, which justify continuing OFPP.

Also, OFPP provides the link to the Congress on acquisition policy matters both to provide understanding and public accountability.

I urge that OFPP be reauthorized.

In so doing, OFPP should be given the support of the Congress and Administration to assure that it has adequate authority and is not lay@red downward; that its actions are guarded appropriately against nit-picking second-guessing attack; that it can attract

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and maintain able personnel so necessary to its functioning; and that it is not overloaded with new detailed assignments as a catch-all resource. In any other context, OFPP might well become counterproductive by dropping the system to a lower common denominator instead of offering needed improvement.

Perhaps its title should be changed to the Office of Federal Acquisition Policy to conform to current terminology.

Thank you for this chance to comment.

Sincerely,

John L. Howland

John L. Howland
Chief Counsel
Government Affairs