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THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 538

Date: August 27, 1974

Time: 9:15 a. m.

FOR ACTION: L. William Seidman
Geoff Shepard
NSC/S
Phil Buchen
Bill Timmons

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, August 28, 1974

Time: 2:00 p. m.

SUBJECT: Enrolled Bill S. 2510 - Office of Federal Procurement Policy

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Recommend approval....



Please return to Kathy Tindle - West Wing



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

AUG 26 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2510 - Office of Federal Procurement
Policy
Sponsors - Sen. Chiles (D) Florida and Sen. Roth
(R) Delaware

Last Day for Action

August 31, 1974 - Saturday

Purpose

To create an Office of Federal Procurement Policy designed to promote economy, efficiency and effectiveness in the procurement of goods, services and facilities by and for the executive branch of the Federal Government.

Agency Recommendations

Office of Management and Budget	Approval
General Services Administration	Approval
Department of Defense	Approval
Veterans Administration	Approval
Department of Health, Education, and Welfare	Defers to OMB
National Aeronautics and Space Administration	No objection
Department of Transportation	No objection
Department of Labor	No objection (Informally)

Discussion

The bill would implement one of the principal recommendations of the Commission on Government Procurement, which submitted its report to the Congress in December 1972.

S. 2510 would create an Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB) "to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws." The authority and responsibilities of the OFPP are stated in the bill in broad, discretionary terms.

The most significant provisions of S. 2510 are:

-- The Administrator would be directed to provide overall direction of procurement policy in the Executive branch and, to the extent he considers appropriate, to prescribe policies, regulations, procedures and forms to be followed by executive agencies in the procurement of property (other than real property in being), services, and construction, alteration, repair and maintenance of real property. The executive agencies would also have to follow the regulations in providing for procurement by Federal grantees.

-- The Administrator would also have the following functions: (a) to establish a system of coordinated and, to the extent possible, uniform procurement regulations for the Executive branch, (b) to develop procedures for soliciting the views of interested parties in the development of regulations, (c) to promote and conduct research, and (d) to develop a system to collect, develop and disseminate procurement data.

-- The Administrator would be required to furnish the Government Operations Committees, at least 30 days in advance of their effective date, with a detailed report on any proposed major policy or regulation, unless the report is waived by the President in case of an emergency. The President's waiver would have to take the form of a written statement to the Congress giving his reasons.

-- He would be required to keep the Congress and its appropriate committees "fully and currently informed" of the major activities of OFPP and to submit an annual report and other reports from time to time, together with appropriate legislative recommendations.

-- The OFPP would be specifically restricted from interfering with an agency's decision to enter into an actual procurement or with an agency's award or administration of a procurement contract.

-- The administrator would be required to consult with executive agencies, including the Small Business Administration, in the development of procurement policies and procedures.

-- He would be required to conduct formal meetings, as he sees fit, for establishing procurement policies and regulations and to hold such meetings open to the public.

-- He would be required to furnish information on the activities of the OFPP to the Comptroller General for the discharge of his responsibilities and to allow the GAO access to books, records and documents of the OFPP.

-- Other existing legislative authorities to prescribe procurement policies and procedures would be made subject to the authority conferred in this bill.

-- Appropriations would be authorized for the fiscal years 1975-79, with a specific authorization of \$2,000,000 for fiscal year 1975 and open-ended authorizations for the next four years.

In its enrolled form, S. 2510 does not include a number of features to which the Administration objected during its consideration, including independent agency status for the Office and provision for one-House disapproval of proposed procurement policies or regulations. It does include a number of provisions which are not desirable, in our view, but which are liveable. The latter include Senate confirmation of the Administrator (this may, but need not, establish a precedent for requiring confirmation of Associate Directors of OMB) and a "fully and currently informed" provision which could prove troublesome but can, we believe, be responded to in a constitutional manner without violating the separation of powers doctrine.

One final comment on the relationship of the Administrator to the OMB Director should be noted. The conference committee report states:

"The conferees agree that placement of the OFPP in the OMB will give the new Office prestige and leverage in dealing with the executive agencies and thereby will enhance its ability to discharge the important responsibilities conferred by the act.

"Although, as a component of OMB, the OFPP will be subject to supervision and direction by the OMB Director, and through him by the President, the conferees wish to emphasize that the Administrator of the OFPP is charged with the duties and responsibilities set forth in this act and will be held accountable by the Congress for their effective performance. Other provisions in this act are consistent with the concern for independence"

In summary, we think that the new Office will serve a useful purpose and that the remaining defects in the bill can be coped with or corrected at a later date. Accordingly, we recommend approval.



Director

Enclosures

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



AUG 22 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, DC 20503

Dear Mr. Ash:

By referral dated August 21, 1974, from the Assistant Director for Legislative Reference, your office requested the views of the General Services Administration on enrolled bill S. 2510, 93rd Congress, an act "To establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes.

The bill would implement the first recommendation of the Commission on Government Procurement by establishing an Office of Federal Procurement Policy within the Office of Management and Budget, headed by an Administrator for Federal Procurement Policy. The new office will provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

GSA favors Presidential approval of the enrolled bill.

Sincerely,

A large, stylized handwritten signature in black ink, which appears to read "Sampson". The signature is written over a horizontal line that extends across the width of the page.

Arthur F. Sampson
Administrator



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

August 22, 1974

Honorable Roy L. Ash
Director, Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

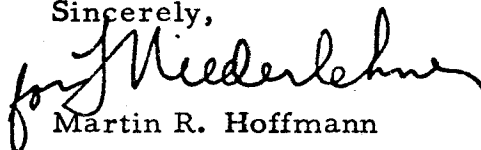
This is in response to your request for the views of the Department of Defense on the enrolled enactment of S. 2510, 93d Congress, "To establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes."

The "Office of Federal Procurement Policy Act" (S. 2510, 93d Congress) would establish an Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget. Its purpose is to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws. This Act adopts the key recommendation in the report of the Commission on Government Procurement.

S. 2510, 93d Congress, as passed by Congress and forwarded to the President for signature is the result of a conference committee report recommending certain resolutions of the disagreeing votes of the two Houses on amendments to initial bills. The conference committee resolved favorably several differences in the previous bills of significant concern to the Department of Defense. These differences were (1) the location of OFPP in OMB rather than the creation of a separate agency, (2) the removal of a requirement for a 60 day waiting period after a 30 day notice of a new policy to Congress in which either House by resolution could void issuance of the policy, and (3) the modification of a requirement for formal public meetings on policy formulation by providing to the OFPP Administrator some discretion as to which meetings should be designated as open to the public.

The Department of Defense endorses the purpose of S. 2510 and recommends signature by the President.

Sincerely,


Martin R. Hoffmann



VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420

AUGUST 23 1974

The Honorable
Roy L. Ash
Director, Office of
Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This will respond to the request of the Assistant Director for Legislative Reference for the views and recommendations of the Veterans Administration on the enrolled enactment of S. 2510, 93d Congress, an act "To establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes."

The enactment indicates that the primary purpose of the legislation is to improve "economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies." In order to accomplish this, it establishes in the Office of Management and Budget an agency to be known as the Office of Federal Procurement Policy, with an Administrator to be appointed by the President, with the advice and consent of the Senate.

The Office of Federal Procurement Policy would provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws. Other important functions of the Office of Federal Procurement Policy would be:

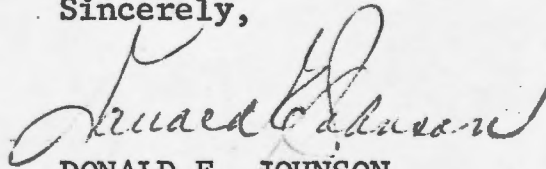
1. establishing a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies;
2. establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, 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.

One of the primary recommendations of the Procurement Commission was that an Office of Federal Procurement Policy be established to provide a single point within the executive branch where fundamental policies could be debated, developed, and finally published with a reasonable degree of consistency and supporting authority. While it is true that an organization to accomplish this could be created by executive order, legislation, on the other hand, imparts a major impetus to an organization, helps to insure continuity of effort, and provides better accountability for results. Creation of a statutory office, moreover, would enhance public confidence in Federal Procurement activities. We believe that what is needed is a program with a statutory basis, directed by an Administrator who is on a plane above and independent of Government buying activities, is responsible to the President and the Congress, and whose role is to insure integrity and efficiency in Federal procurement. The enrolled enactment of S. 2510, we believe, meets these objectives.

In view of the foregoing, we recommend that the President approve S. 2510.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald E. Johnson".

DONALD E. JOHNSON
Administrator





DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

AUG 26 1974

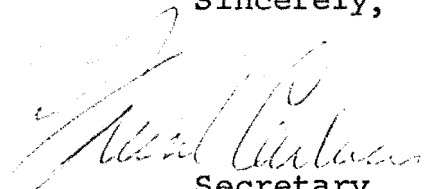
Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This is in response to Mr. Rommel's request of August 21, 1974, for a report on S. 2510, an enrolled bill "To establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes."

We have no objection to the establishment of an Office of Federal Procurement Policy as delineated in the enrolled bill. We therefore defer to the Office of Management and Budget with respect to the desirability of enactment of the enrolled bill.

Sincerely,


Acting Secretary



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
WASHINGTON, D.C. 20546

OFFICE OF THE ADMINISTRATOR

AUG 22 1974

Director
Office of Management and Budget
Executive Office of the President
Washington, DC 20503

Attention: Assistant Director for
Legislative Reference

Subject: Enrolled Enactment report on S. 2510, 93rd Congress

This is a report on the Enrolled Bill S. 2510, "To establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes." It is submitted pursuant to Mr. Wilfred H. Rommel's memorandum of August 21, 1974.

The Enrolled Bill would establish an Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget, to be headed by an Administrator appointed by the President with the advice and consent of the Senate, who shall have no duties other than provided by this legislation. The purpose of the OFPP is to provide overall direction of procurement policies, regulations, procedures and forms for executive agencies in accordance with applicable laws. It applies to procurement from appropriated funds of (A) property other than real property, (B) services including research and development, and (C) construction, alteration, repair or maintenance of real property; and it also applies to such procurement by recipients of Federal grants or assistance.

The six enumerated functions of OFPP include, inter alia, establishing a system of coordinated, and to the extent feasible, uniform procurement regulations for the executive agencies; establishing procedures for soliciting viewpoints of interested parties in procurement policies and regulations; and revising policies on reliance on the private sector to provide property and services. In developing such regulations to be authorized or prescribed by OFPP, the affected executive agencies shall be consulted. Nothing under the legislation is to impair or interfere with the determination by the agencies

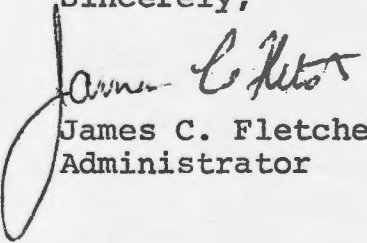
of their need for, or their use of, specific property or services; or to interfere with the determination by the agency of specific actions in the award or administration of contracts. The authority of an agency under any other law to prescribe procurement policies and regulations is subject to this legislation. However, policies and regulations now in effect shall continue in effect, and may be modified, until superseded by OFPP policies or regulations.

Upon request, each agency is to make its services, personnel, and facilities available to the OFPP to the greatest practicable extent for the performance of functions under the legislation. Except for the basic function to provide overall direction of procurement policy, the OFPP may delegate its authority to any agency. Each agency shall provide all information which the OFPP determines necessary for the performance of its functions unless prohibited by law.

The legislation also provides for the OFPP to keep Congress fully informed, to provide the Comptroller General information he may require, and to give the public ten days notice of formal OFPP meetings that deal with establishing procurement policies and regulations, with such meetings being open to the public.

The National Aeronautics and Space Administration has no objection to approval of this legislation.

Sincerely,


James C. Fletcher
Administrator





GENERAL COUNSEL

OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

AUG 23 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D.C. 20503

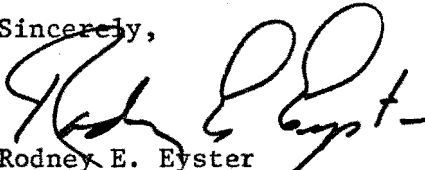
Dear Mr. Ash:

The Office of Management and Budget has asked for the views of this Department concerning S.2510 an enrolled bill

"To create an Office of Federal Procurement Policy
within the Executive Office of the President."

The Department expressed its concern about certain provisions of an earlier version of the bill, some of which have been retained. Our views on these matters are set forth on the enclosed sheets. Notwithstanding these concerns, we consider the bill in its present form to be significantly improved over the earlier version and would not object to the President signing this bill.

Sincerely,


Rodney E. Eyster

Enclosure

Comments and Recommendations of the Department of
Transportation Regarding S.2510

1. Subsection 2(1).

Comment:

The language "lowest reasonable cost" could, perhaps inadvertently, introduce a totally new concept into pricing of Government contracts. "Fair and reasonable" is the terminology commonly used to describe the Government's objective in pricing its contracts.

The word "cost," in Government procurement terminology normally refers to the contractor's cost while "price" means total cost to the Government.

2. Subsection 6(a)(2).

Comment:

The Department opposes granting to the proposed Office of Federal Procurement Policy (OFPP) authority to prescribe policies and regulations on procurement required in the performance of Federal assistance programs. In our view, this would fragment the responsibility for developing policies and regulations for managing Federal assistance programs. Procurement under such programs (i.e., contracting by grantees) is only one part of the total grant management function. Other aspects requiring policies and regulations are, for example, grant application procedures, grantee financial management systems, and grant program income.

Also, policies and regulations pertaining to procurement under Federal assistance programs are, in our view, apt to be so different in concept from those pertaining to direct Federal procurement that they should not be developed by a Federal procurement oriented organization.

Although we oppose assignment of authority to the OFPP, as proposed in the bill, we would expect that the OFPP would participate in the development of policies and regulations pertaining to procurement under Federal assistance programs.

3. Subsection 6(d)(5).

Comment:

This provision apparently contemplates a centralized, Government-wide procurement information system. The Department opposes such a system. In our view it would duplicate systems now existing in the various agencies and would unnecessarily increase the cost of collecting and disseminating data on procurement. Most agencies have systems that provide common categories of information and also data that is unique to the needs of the individual agency. Because each agency would have to keep its system in order to continue to support its own special management needs as well as to support the contemplated central system, the central system would simply be layered on top of the existing systems. Also, it is likely that the data in a central system, would be less current, complete, and accurate than that in any agency's system, if for no reason other than its remoteness, in time and space, from the source of the data.

OFFICE OF FEDERAL PROCUREMENT POLICY

AUGUST 7, 1974.—Ordered to be printed

Mr. HOLIFIELD, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany S. 2510]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2510) to create an Office of Federal Procurement Policy within the Executive Office of the President, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the text of the bill, insert the following:

That this Act may be cited as the "Office of Federal Procurement Policy Act".

DECLARATION OF POLICY

Sec. 2. It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

(1) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost, utilizing competitive procurement methods to the maximum extent practicable;

(2) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel;

(3) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;

(4) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

(5) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;

(6) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;

(7) coordinating procurement policies and programs of the several departments and agencies;

(8) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;

(9) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government;

(10) promoting fair dealing and equitable relationships among the parties in Government contracting; and

(11) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operations.

FINDINGS AND PURPOSE

SEC. 3. (a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement policies, regulations, procedures, and forms.

(b) The purpose of this Act is to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

DEFINITION

SEC. 4. As used in this Act, the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of title 5, United States Code, and also a wholly owned Government corporation within the meaning of section 101 of the Government Corporation Control Act (31 U.S.C. 846).

OFFICE OF FEDERAL PROCUREMENT POLICY

SEC. 5. (a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate.

AUTHORITY AND FUNCTIONS

SEC. 6. (a) The Administrator shall provide overall direction of procurement policy. To the extent he considers appropriate and with due regard to the program activities of the executive agencies, he shall prescribe policies, regulations, procedures, and forms, which shall be in accordance with applicable laws and shall be followed by executive agencies (1) in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property;

and (2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (A), (B), and (C) of this subsection, to the extent required for performance of Federal grant or assistance programs.

(b) Nothing in subsection (a)(2) shall be construed—

(1) to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(2) to authorize any action by recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

(c) The authority of the Administrator under this Act shall apply only to procurement payable from appropriated funds: Provided, That the Administrator undertake a study of procurement payable from nonappropriated funds. The results of the study, together with recommendations for administrative or statutory changes, shall be reported to the President of the Senate and the Speaker of the House of Representatives at the earliest practicable date, but in no event later than two years after the date of enactment of this Act.

(d) 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.

(e) In the development of policies, regulations, procedures, and forms to be authorized or prescribed by him, the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures, and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish interagency committees, or otherwise use agency representatives or personnel, to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures, and forms.

(f) The authority of the Administrator under this Act shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(g) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this Act, shall be assigned, delegated, or transferred to the Administrator.

ADMINISTRATIVE POWERS

SEC. 7. Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

RESPONSIVENESS TO CONGRESS

SEC. 8. (a) The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as may be necessary for this purpose, together with appropriate legislative recommendations.

(b) At least 30 days prior to the effective date of any major policy or regulation prescribed under section 6(a), the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy or regulation. Such report shall include—

(1) a full description of the policy or regulation;

(2) a summary of the reasons for the issuance of such policy or regulation; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.

(c) In the case of an emergency, the President may waive the notice requirement of subsection (b) by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any major policy or regulation.

EFFECT ON EXISTING LAWS

SEC. 9. 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 in section 6 of this Act.

EFFECT ON EXISTING REGULATIONS

SEC. 10. Procurement policies, regulations, procedures, or forms in effect as of the date of enactment of this Act shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to carry out the provisions of this Act, and for no other purpose—

(1) not to exceed \$2,000,000 for the fiscal year ending June 30, 1975, of which not to exceed \$150,000 shall be available for the purpose of research in accordance with section 6(d)(4); and

(2) such sums as may be necessary for each of the four fiscal years thereafter.

Any subsequent legislation to authorize appropriations to carry out the purposes of this Act shall be referred in the Senate to the Committee on Government Operations.

DELEGATION

SEC. 12. (a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this Act, other than his basic authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out that policy, to any other executive agency with the consent of such agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this Act.

ANNUAL PAY

SEC. 13. Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

“(100) Administrator for Federal Procurement Policy.”

ACCESS TO INFORMATION

SEC. 14. (a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of establishing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

REPEALS AND AMENDMENTS

SEC. 15. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended as follows:

(1) Section 201(a)(1) of such Act (40 U.S.C. 481(a)(1)) is amended by inserting “subject to regulations prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act,” immediately after “(1)”.

(2) Section 201(c) of such Act (40 U.S.C. 481(c)) is amended by inserting “subject to regulations prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act,” immediately after “Administrator.”

(3) Section 206(a)(4) of such Act (40 U.S.C. 487(a)(4)) is amended to read as follows: “(4) subject to regulations promulgated by the Administrator for Federal Procurement Policy pursuant to

the Office of Federal Procurement Policy Act, to prescribe standardized forms and procedures, except such as the Comptroller General is authorized by law to prescribe, and standard purchase specifications."

(4) Section 602(c) of such Act (40 U.S.C. 474) is amended in the first sentence thereof by inserting "except as provided by the Office of Federal Procurement Policy Act, and" immediately after "herewith,".

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the Senate bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the House to the title of the Senate bill, insert the following: "An Act to establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes."

And the House agree to the same.

CHET HOLIFIELD,
FERNAND J. ST GERMAIN,
DON FUQUA,
FRANK HORTON,
JOHN N. ERLBORN,
Managers on the Part of the House.
LAWTON CHILES,
SAM NUNN,
WALTER D. HUDDLESTON,
WILLIAM V. ROTH, Jr.
WILLIAM BROCK,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2510) to create an Office of Federal Procurement Policy, submit the following joint statement to the Senate and the House in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

Except for certain clerical, conforming, and other clarifying and technical changes, the changes made to deal with the differences between the Senate bill and the House amendments are noted below:

TITLE

The conference substitute changes the title of the act to conform with changes in the text. The title, as modified, is to establish an Office of Federal Procurement Policy (OFPP) within the Office of Management and Budget (OMB), and for other purposes.

SECTION 1—SHORT TITLE

The conference substitute provides for citing the act as the "Office of Federal Procurement Policy Act".

SECTION 2—DECLARATION OF POLICY

The conference substitute incorporates section 2 of the Senate bill declaring it to be congressional policy to promote economy, efficiency, and effectiveness in procurement, but eliminates one of the 12 original specifications for accomplishing this policy, to wit: "conforming procurement policies and programs, whenever appropriate, to other established Government policies and programs". The conferees agreed that the appropriate priorities and other relationships between procurement and other government programs should be governed by other specific legislation.

SECTION 3—FINDINGS AND PURPOSE

The conference substitute here and throughout the bill incorporates the language of the House amendment (subsection 2(a)) giving the OFPP responsibility for procurement "policies, regulations, procedures, and forms." The Senate bill treated procedures and forms as a means of implementing policies and regulations. The conferees recognize that these are closeknit responsibilities which are difficult to differentiate. The conferees agree that the OFPP generally should focus on matters of broad policy and regulatory scope and leave to the agencies details of implementing procedures and forms to the extent consistent with achievement of OFPP policy objectives.

The conference substitute adopts the statement of purpose in the House amendment (subsection 2(b)), but with changes to include the full name of the Office of Federal Procurement Policy and to spell out that procurement policies, regulations, procedures, and forms are to be "in accordance with applicable laws." The use of this language here and elsewhere in the conference substitute (subsection 6(a)) makes clear that OFPP policies must be subject to and consistent with congressional enactments. The conference substitute is substantially the same as the Senate bill except for omission of the phrase "through a small, highly qualified and competent staff." The conferees concur in this view but think it more appropriate to reflect it by report language and allow it to be effected by controlling appropriations for the OFPP.

SECTION 4—DEFINITION

The conference substitute incorporates the language of the House amendment (section 3) defining the term "executive agency." There is no change in substance from the Senate bill (subsection 4(a)(1)) except that the District of Columbia is excluded completely. Under the Senate bill, the District of Columbia was included but was authorized to exempt itself under the provisions of the District of Columbia Self-Government and Governmental Reorganization Act. Exclusion of the District of Columbia will still leave the District of Columbia free to conform to OFPP policies and regulations as it deems appropriate.

The conference substitute in conformity with the House amendment does not include the definitions in the Senate bill of the terms "Office," "Administrator," and "Federal assistance." References elsewhere in the conference substitute take the place of the definitions of "Office" and "Administrator."

No definition is included for the term "Federal assistance" or the House counterpart, "Federal grants or assistance," particularly since this is the subject of separate legislation (H.R. 9060; S. 3514). The term is intended to include transactions for payment of money or transfer of property in lieu of money generally referred to as program or project grants, grants-in-aid and grants in lieu of research and development contracts as authorized by the 1958 Federal grants statute (42 U.S.C. 1891 et seq.). However, for the purposes of this act, the conferees do not intend that the OFPP responsibility with regard to "Federal assistance" should extend to programs for the furnishing of assistance through technical, specialized, and informational services; or assistance in the form of general revenue sharing, loans, loan guarantees, insurance, and similar "no strings attached" aids to State and local governments.

SECTION 5—OFFICE OF FEDERAL PROCUREMENT POLICY

Subsection 5(a)

The Senate bill placed the OFPP in the Executive Office of the President and made it subject to Presidential direction. The Senate felt a strong need for a high degree of independence for the OFPP. The House amendment placed the OFPP within the OMB, which is a component of the Executive Office.

The conference substitute follows the language of the House amendment in locating the OFPP within the OMB. This accords with

a preference expressed by the Commission on Government Procurement in recommending the creation, by statute, of the OFPP. The reference to Presidential direction is omitted as being unnecessary, since the OMB and its components are necessarily subject to Presidential direction.

The conferees agree that placement of the OFPP in the OMB will give the new Office prestige and leverage in dealing with the executive agencies and thereby will enhance its ability to discharge the important responsibilities conferred by the act.

Although, as a component of OMB, the OFPP will be subject to supervision and direction by the OMB Director, and through him by the President, the conferees wish to emphasize that the Administrator of the OFPP is charged with the duties and responsibilities set forth in this act and will be held accountable by the Congress for their effective performance. Other provisions in this act are consistent with the concern for independence. These include:

(1) A requirement for Senate confirmation of the Administrator, the only OMB official other than the Director and Deputy Director whose appointment is made subject to such confirmation.

(2) Vesting the functions of the OFPP in the Administrator rather than in the OMB Director, this being the only instance in which an OMB official other than the Director has a statutory charter.

(3) Authorization of separate appropriations for the OFPP.

(4) A provision that the appropriations may be expended only for the purposes of the act.

(5) A requirement that the Administrator, rather than the Director of OMB, keep the Congress fully and currently informed of his activities, including his recommendations.

(6) A requirement that the Administrator give the Congress 30 days' advance notice before the effective date of any major policy or regulation.

(7) A provision that the Administrator is not to be assigned any functions other than those provided in the act.

Subsection 5(b)

The conference substitute incorporates the provision in the Senate bill (subsection 5(b)) designating the head of the OFPP as Administrator for Federal Procurement Policy. This is in lieu of the designation of the head of the OFPP in the House bill (subsection 4(b)) as an Associate Director for Federal Procurement Policy of the Office of Management and Budget. The OFPP head is to be appointed by the President, with the advice and consent of the Senate.

The conferees agree that the title of "Administrator" will give greater emphasis to the distinct role the OFPP is expected to play in the area of procurement policy.

In view of the conferees' agreement to locate the OFPP in the OMB, the Senate bill provision requiring Presidential appointment and Senate confirmation of a Deputy Administrator (subsection 5(c)) was no longer considered appropriate. It is expected that the Deputy Administrator and other OFPP personnel will be appointed pursuant to regular Civil Service procedures. In the light of their responsibilities and the status of the executive agency officers with whom they will be dealing, the conferees agree that the Deputy Administrator should be a GS-18 and that an adequate complement of other supergrade positions should be allocated to the OFPP by the U.S. Civil Service

Commission. The conferees regard this as essential to attract outstanding talent and provide the high level of leadership in procurement policy coordination contemplated by the act and the Commission on Government Procurement.

SECTION 6—AUTHORITY AND FUNCTIONS

Subsection 6(a)

The conference substitute incorporates, with minor change, the provisions of the Senate bill (subsection 6(a)) stating the responsibility of the OFPP for prescribing policies, regulations, procedures, and forms for procurement, which shall be followed by all executive agencies and Federal grantees. This is substantially the same as the House amendment provisions (subsection 5(a)).

Subsection 6(b)

The conference substitute incorporates, with clarifying changes, the language of subsection 6(b) of the Senate bill directed against the OFPP authorizing procurement actions by State and local government grantees contrary to State or local law, or authorizing Federal procurement or supply support to grantees. This takes the place of substantially similar provisions found in subsections 5(a) and 5(d) of the House amendment.

Subsection 6(c)

This subsection of the conference substitute incorporates provisions found in the House amendment (subsection 5(a)) excluding non-appropriated fund activities from the scope of the act. This takes the place of a similar provision in the Senate bill (subsection 6(d)(4)) which was limited to *military* nonappropriated fund activities. The conference substitute also incorporates a provision in the Senate bill, but not in the House amendment, for the Administrator to conduct a study of procurement by nonappropriated fund activities and report to the Congress within two years.

Subsections 6 (d), (e)

The conference substitute adopts a combination of language in the Senate bill (subsection 6(c)) and the House amendment (subsection 5(b)) enumerating six specific functions of the OFPP. There are a number of clarifying changes, including one to make clear that the OFPP will recommend and promote rather than oversee Civil Service Commission and other agency procurement personnel programs. The conference substitute also drops one enumerated function in the Senate bill (subsection 6(c)(2)) as redundant to another enumerated function (subsection 6(d)(3) of the conference substitute).

Subsection 6(e) of the conference substitute incorporates provisions in the Senate bill (subsection 6(c)(8)) and in the House amendment (subsection 5(c)) for the OFPP to consult with executive agencies in the development of policies, regulations, procedures, and forms. The conference substitute adopts the Senate language authorizing designation of other agencies to coordinate agency views.

Subsection 6(f)

The conference substitute incorporates with minor changes the provisions found in the House amendment (subsections 5(d) (1) and (2)) to rule out any authority of the OFPP to interfere with executive agency procurement actions or determinations of procurement needs.

Counterpart provisions were included in the Senate bill (subsections 6(d) (1) and (2)).

A provision in the Senate bill (subsection 6(d)(3)) defining the authority of the OFPP to deal with procurement procedures and forms was deleted as redundant to other provisions in the conference substitute (subsection 6(a)) giving the OFPP general authority over policies, regulations, procedures, and forms.

Subsection 6(g)

To assure that the OFPP will not have its procurement reform role diluted, the conference substitute includes specific language that, except as otherwise provided by law, the Administrator will have only those functions expressly assigned by the act. The conferees do not wish the Administrator to be burdened with extraneous responsibilities or to have any of his functions transferred elsewhere.

SECTION 7—ADMINISTRATIVE POWERS

The conference substitute incorporates substantially identical provisions found in the Senate bill (subsection 7(b)) and the House amendment (section 6) providing for executive agencies to furnish the OFPP with services, personnel, facilities, and access to records. The conference substitute omits other administrative provisions found in subsections 7(a) and 7(c) of the Senate bill as no longer necessary or appropriate in view of placement of the OFPP in the OMB.

SECTION 8—RESPONSIVENESS TO CONGRESS

Subsection 8(a)

The conference substitute incorporates modified language of the Senate bill (subsection 8(a)) for the Administrator to keep the Congress and its committees fully and currently informed and to submit annual and other reports on the major activities of the Office. The conferees agree that this wording is to be given a reasonable interpretation permitting submission of information on a summary basis at intervals consistent with the intent of this subsection. The conference substitute omits a provision in the Senate bill (subsection 8(b)) requiring the Administrator and OFPP personnel to testify before Congress. The conferees agree that it would be anomalous to spell out this requirement for the OFPP without a similar requirement for all executive officials. Nevertheless, the conferees expect that OFPP personnel will be available for information and testimony before congressional committees, and there is no intent to imply that the OFPP, or any other office, is beyond the reach of congressional committees.

Subsections 8 (b), (c)

The conference substitute incorporates a provision for the Administrator to give 30 days' advance notice of any proposed major policy change to the Committees on Government Operations of the Senate and the House of Representatives, with a description thereof, a summary of reasons, and the names of OFPP representatives designated for consultation with the committees. This reporting requirement is intended also to extend to policies implementing executive orders. This is a modified version of a provision found in the Senate bill (subsection 8(c)) but not in the House amendment. The

conference substitute adds a provision for waiver by the President in emergency cases, but omits a provision for the proposed policy to be rendered ineffective by resolution of either House within 60 days.

SECTION 9—EFFECT ON EXISTING LAWS

The conference substitute follows the language of the House amendment (section 8) making any authority of executive agencies to prescribe policies, regulations, procedures, and forms subject to the authority of the OFPP. The Senate bill included a substantially similar provision (section 9).

SECTION 10—EFFECT ON EXISTING REGULATIONS

The conference substitute adopts a Senate bill provision (section 10) continuing existing procurement policies, regulations, procedures, and forms in effect until repealed, amended, or superseded by OFPP action. A substantially similar provision was contained in the House amendment (section 9).

SECTION 11—AUTHORIZATION OF APPROPRIATIONS

The conference substitute incorporates, with changes, the provisions in the Senate bill (section 11) authorizing appropriations. As changed, this provision authorizes appropriations not to exceed \$2 million for the fiscal year ending June 30, 1975, of which not more than \$150,000 is to be available for research, and authorizes appropriations as may be necessary for each of the four fiscal years thereafter. It also provides that subsequent legislation to authorize appropriations is to be referred in the Senate to the Committee on Government Operations. The authorization of \$2 million for the first fiscal year is in lieu of the \$4 million authorized in the Senate bill, and in lieu of the \$1 million estimated by the report on H.R. 15233 of the Committee on Government Operations (H. Rept. No. 93-1176, pp. 6-7).

The conference substitute is in lieu of a provision in the House amendment (section 10) which indefinitely authorized such unspecified sums as may be necessary to carry out the act. However, the conference substitute does include language, reflecting the House amendment, that appropriations shall be available "for no other purpose." This is intended to assure that such appropriations will be used only for activities of the OFPP and will not be mingled with appropriations for other OMB activities.

SECTION 12—DELEGATION

The conference substitute incorporates a Senate provision (section 12) authorizing delegation to OFPP personnel, and also to other agencies of any OFPP authority except the basic authority of OFPP to direct procurement policy and prescribe policies and regulations.

The working is changed specifically to authorize redelegation as provided in a counterpart provision of the House amendment (section 11). The House amendment did not include the restriction as to delegating the basic authority of the OFPP.

SECTION 13—ANNUAL PAY

The conference substitute adopts the provision of the House amendment (section 12) for compensating the Administrator at Executive Level IV (\$38,000) rather than Executive Level III as provided in the Senate bill (section 13).

SECTION 14—ACCESS TO INFORMATION

Subsection 14(a)

The conference substitute incorporates identical provisions found in the Senate bill (subsection 14(a)) and the House amendment (section 13) giving the Comptroller General access to records of the OFPP.

Subsection 14(b)

The House conferees receded from their objection to subsection 14(b) of the Senate bill and accepted a modified version thereof in the conference substitute. There was no similar provision in the House amendment. This subsection of the conference substitute requires the Administrator to open to the public certain formal, scheduled meetings of the OFPP concerning the establishment of procurement policies and regulations and specifies that a ten-day notice will be given of such meetings. The Administrator is to designate the meetings subject to this subsection and prescribe, by regulation, the procedures to be followed in the conduct of such meetings. Although the Administrator is given authority to determine the need for and conduct of the public meetings, in general, it is intended that the formal meetings of the Office will be conducted so as to give substantial visibility to its rulemaking determinations. This subsection complements the provisions of subsection 6(d)(2) calling for the timely, effective solicitation of the viewpoints of interested parties, and is in line with the policy declaration in subsection 2(9) on improving the understanding of procurement policies.

SECTION 15—REPEALS AND AMENDMENTS

The conference substitute adopts with technical changes provisions in the House amendment amending four sections of the Federal Property and Administrative Services Act to make the authority of the Administrator of General Services to issue regulations and forms subordinate to the authority conferred on the OFPP Administrator to prescribe procurement policies, regulations, procedures, and forms under this act. The Senate bill covered two similar amendments to the Federal Property and Administrative Services Act. The technical

changes in the conference substitute make clear that no authority is given to the OFPP Administrator apart from that specifically conferred by other provisions of this act.

CHET HOLIFIELD,
FERNAND J. ST GERMAIN,
DON FUQUA,
FRANK HORTON,
JOHN N. ERLBORN,

Managers on the Part of the House.

LAWTON CHILES,
SAM NUNN,
WALTER D. HUDDLESTON,
WILLIAM V. ROTH, Jr.,
WILLIAM BROCK,

Managers on the Part of the Senate.

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OFFICE OF FEDERAL PROCUREMENT POLICY

JULY 3, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOLIFIELD, from the Committee on Government Operations, submitted the following

REPORT

[To accompany H.R. 15233]

The Committee on Government Operations, to which was referred the bill (H.R. 15233), to establish an Office of Federal Procurement Policy within the Office of Management and Budget, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

On page 3, line 19, strike out "by or for a military department".

On page 5, strike out lines 10 through 14 and insert in lieu thereof the following:

"(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts; or"

On page 6, line 19, immediately after "in" insert "section 5 of".

DIVISIONS OF THE REPORT

Purpose and summary.
Explanation of amendments.
Need for the legislation.
Hearings and testimony.
Committee vote.
Estimated cost and savings.
Background information.
Modifications in committee bill.
Organizational status.
Functions of OFPP.
Nonappropriated funds.
Federal support to grantees.
Relationships with other agencies.
Relationships with the Congress.



Section-by-section analysis.

Changes in existing law made by the bill, as reported.

Appendixes:

- 1.—Commission on Government Procurement—Study group recommendations for a central policy organization.
 - A.—Government-wide application.
 - B.—Selected areas.
- 2.—Representative functions of the Office of Federal Procurement Policy as outlined in the Report of the Commission on Government Procurement.
- 3.—Recommendations in the Commission's report dealing specifically with the Office of Federal Procurement Policy.

PURPOSE AND SUMMARY

H.R. 15233 establishes in the Office of Management and Budget (OMB) a component to be known as the Office of Federal Procurement Policy (OFPP). It will be headed by an Associate Director for Federal Procurement Policy, appointed by the President by and with the advice and consent of the Senate. His primary responsibility, under the Director of the Office of Management and Budget, will be to give overall direction to Federal procurement policy, and to prescribe policies, regulations, procedures, and forms affecting procurement for Government-wide application by executive agencies.

In the OMB organization, the Associate Director for Federal Procurement Policy will be on a par with the five other Associate Directors, at level IV of the executive schedule. They report through the Deputy Director (level III) to the Director (level II).

The functions of the Associate Director for Federal Procurement Policy (hereafter Associate Director) are to include the following:

- (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 private industry and organizations to provide needed property and services.
- (4) Promoting and conducting research in procurement policies, regulations, procedures, and forms.
- (5) Establishing a system for collecting and developing procurement data.
- (6) Recommending programs for recruitment, training, development, and performance evaluation of procurement personnel.

The bill makes clear that the Associate Director will not tell executive agencies what or how much to buy, or how to use what they buy. Neither will the Associate Director be able to entertain appeals from, or interfere with specific decisions and actions by, executive agencies in the award or administration of procurement contracts. The legislation contemplates that the Associate Director will deal, for the most part, with procurement policies which involve more than one agency, or which have general application.

The Associate Director is required to consult with executive agencies, including the Small Business Administration, and is authorized to make use of their services, personnel, and facilities to the greatest practicable extent in developing procurement policies, regulations, procedures, and forms. Also, the Congress and its committees are to be kept informed of the OFPP's activities; and the Comptroller General will have access to all its books, documents, and records.

The bill carries out a key recommendation of the Commission on Government Procurement.¹

EXPLANATION OF AMENDMENTS

The first amendment corrects a technical error in the bill and makes clear that the authority of the OFPP extends to all executive agencies but does not include nonappropriated fund activities.

The second amendment deletes certain language to avoid any possible implication that the OFPP can nullify a contract award or other contract action by a procuring agency on the ground that it is contrary to an OFPP policy. The purpose of the provision is to make clear that OFPP will not interfere in day-to-day procurement operations, or be a forum for protest or appeals by contractors who feel aggrieved by any actions of procuring agencies in the award or administration of contracts. The customary avenues for protest or appeal, such as contract appeal boards, the General Accounting Office, and the courts, remain unaffected.

The third amendment cross-references section 8 to section 5 to reiterate that the OFPP can act only "in accordance with applicable laws," as specifically provided in section 5. This makes plain the committee intent that the OFPP, in prescribing procurement policies or otherwise exercising authorized functions under the bill, must act within the framework and context of policies embodied in the laws enacted by the Congress. In other words, the Congress retains, and does not delegate, its basic policymaking functions in the procurement area.

NEED FOR THE LEGISLATION

The Federal Government expends approximately \$60 billion each year in procurement of goods, services, and facilities. These procurements are governed by two major laws relating to procedures,² and by numerous others which bear on the procurement process in one way or another. The Commission on Government Procurement identified no less than 4,000 statutory provisions relevant to Federal procurement.³

The complexities of the statutory framework are compounded by the implementing regulations. In addition to two basic sets of Government procurement regulations,⁴ numerous separate regulations are found in many departments and agencies and their components. It is not uncommon, among informed observers, to refer to the "five-foot

¹ Report of the Commission on Government Procurement, vol. 1, p. 9 (December 1972).

² Armed Services Procurement Act of 1947, as amended (10 U.S.C. 2301); title III, Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251).

³ Report of the Commission on Government Procurement, vol. 4, p. 167 (December 1972).

⁴ Armed Services Procurement Regulation, 32 CFR 3.604.2; Federal Procurement Regulations, 41 CFR 1-3.602.

shelf" of procurement regulations, directives, orders, instructions, bulletins, circulars, manuals, and notices, which the procurement officer must take into account when he wants to place an order for needed goods, services, or facilities.⁵

The multiplicity of laws and regulations frequently causes confusion and uncertainty in the business community. Conflicting policies, differing interpretations of the laws and regulations, and needless variations, obscurities, and redundancies of language create unnecessary problems and costs for the Government and for those who do (or seek to do) business with the Government.

The Commission on Government Procurement (hereafter Commission) made an exhaustive study of Federal procurement and decided that an Office of Federal Procurement Policy in the executive branch was "urgently needed."⁶ It would have this broad basic mission: To give more coherence and policy direction to the Federal procurement process. The Commission also cited representative functions to be assigned to the new office (see app. 2). Although the bill qualifies and limits the Associate Director's functions in certain respects, it follows in essentials the Commission's recommendation.

HEARINGS AND TESTIMONY

The Subcommittee on Legislation and Military Operations held hearings on a predecessor bill, H.R. 9059, to establish an Office of Federal Procurement Policy, on July 11, 12, 16, 17, 20, and 30, 1973.⁷ H.R. 15233 is a clean bill incorporating changes made by the subcommittee in H.R. 9059, and is sponsored by 16 members of the full committee.

E. Perkins McGuire, who served as Chairman of the Commission on Government Procurement, testified that the Commission purposely made creation of an Office of Federal Procurement Policy the first recommendation because of its critical importance in helping to achieve many other desired procurement objectives. Mr. McGuire said that the "need for a central point of authority was one of the most consistent points to be made by our study groups," and he added:⁸

In our deliberations the Commissioners early recognized the need for strong leadership in the management of the procurement process. We concluded that one of the important elements in providing such leadership is the establishment of a central Office of Federal Procurement Policy. The responsibilities of this office are much too important to be left in any vague area, and we therefore recommend the establishment of the OFPP by statute. * * *

The creation of such an office also was strongly favored by the Comptroller General of the United States, Elmer B. Staats, who served as a statutory member of the Commission. Emphasizing the broad agreement in the Commission on the need for a central policy office, based

⁵ See Report of the Commission on Government Procurement, vol. 1, pp. 33-34 (December 1972).

⁶ Id., p. 12.

⁷ "Office of Federal Procurement Policy," hearings before a subcommittee of the Committee on Government Operations, House of Representatives, 93d Cong., 1st sess., on H.R. 9059, July 1973 (hereafter cited as "hearings").

⁸ Hearings, p. 318.

upon consistent findings by expert study groups, the Comptroller General said:⁹

One of the underlying themes of the [Commission's] report is that a strong focal point for executive branch leadership will provide an unparalleled opportunity to minimize differences, complexities, and details in the regulations; to research and test new procurement ideas; and to transfuse innovative procurement policies and procedures throughout the agencies. The Commission believed that such a focal point, with its Government-wide overview, could do much to improve the procurement and restore credibility through evaluation, correction, and support of Government procurement policy.

Small Business Administration witnesses supported the bill. Marshall J. Parker, Associate Administrator for Procurement and Management Assistance, said: "* * * we favor very strongly the objectives of this bill because we feel there is a basic need for clarification and simplification in the area of Federal procurement." He went on to say:¹⁰

We believe the very first obstacle to be overcome is the puzzling labyrinth of procurement regulations. They are extremely detailed and complex, even for the experienced contractor. This complexity is multiplied by the number of individual agencies with which the contractor wishes to do business. Although there is great similarity in the various regulations, the fact is that there are sufficient differences to create confusion for the small businessman. We think, and we certainly hope, that the creation of a single office will contribute substantially to reducing that confusion.

Related to the complexity of the regulations is a complaint which is often brought before the hearings of the Senate and House Select Small Business Committees. That is the Government's demand for paperwork. The requirements of the contracting agencies for a variety of information from the contractors are particularly aggravating for small business. Even if the new policy office simply requires, if you will, that standard format and forms be used, we think small business would derive a great deal of benefit. We also hope that a more coordinated procurement policy would contribute substantially to clarification of priorities throughout the procurement structure. This can be another reason for a greater centralization of overall procurement policy and would also be of value to SBA in its efforts to deal with problems in procurement regulations on behalf of the small business community.

Endorsement for the OFPP also came from industry and professional groups, including the Smaller Business Association of New England, National Security Industrial Association, Electronics Industries Association, Aerospace Industries Association, National Office Machine Dealers Association, National Council of Technical Serv-

⁹ Hearings, p. 348.

¹⁰ Hearings, pp. 152-153.

ice Industries, National Association of Wholesaler-Distributors, Council for Private Enterprise, Scientific Apparatus Makers Association, Automotive Service Industry Association, American Federation of Government Employees, National Federation of Federal Employees, American Bar Association, and Federal Bar Association.

There were some differences among witnesses from the above organizations regarding the composition, size, locus, and functions of the new office; but there was general agreement that such an office should be established.

The Office of Management and Budget, followed by the major procuring agencies, generally supported the principle of, and the need for, central policy leadership and direction in the procurement area. They preferred that organizational arrangements for this purpose be made administratively or by Executive order. According to OMB testimony in July 1973, a procurement policy unit would be established in OMB, to be headed by a Deputy Assistant Director for Procurement Policy. To assist him, an interagency advisory group or Federal Procurement Council would be established, "comprised of representatives at the assistant secretary/deputy administrator level of the principal procuring agencies." The OMB Director, in his capacity as Assistant to the President for Executive Management, would chair the advisory group. The proposed arrangements were to be formalized by an Executive order, not later than the end of August 1973.¹¹

Your committee was asked to defer consideration of a statutory OFPP for a year so that the new organizational arrangements could be tested and experience gained. After a period of time, if "anticipated improvements" did not result, the OMB witness suggested that the committee could give further consideration to a statutory OFPP.¹²

A year has elapsed since that testimony was given, and your committee is now convinced more than ever that an OFPP should be created by statute. The promised Executive order has not been issued. The Federal Procurement Council was not established. The procurement policy position in OMB remained vacant for almost a year.¹³ As a consequence of further consultations with your committee, the OMB now favors creation of an OFPP by statute, along the lines provided in the bill.

COMMITTEE VOTE

H.R. 15233 was unanimously approved by voice vote at a meeting of the full committee on June 21, 1974, a quorum being present.

ESTIMATED COST AND SAVINGS

According to the estimate provided by the Office of Management and Budget, the net additional cost in the first year of establishing the Office provided in the bill is approximately \$130,000. This estimate contemplates an office with three or four professional staff. In your committee's opinion, the Office should have a staff of at least 20 pro-

¹¹ Hearings, p. 63.

¹² Hearings, p. 62.

¹³ On June 17, 1974, Hugh E. Witt, formerly Principal Deputy Assistant Secretary of Defense (Installations and Logistics), was appointed Deputy Associate Director and Assistant to Director for Procurement Policy to head the Division of Procurement Policy in OMB.

fessionals, with the necessary supporting staff and services, at a cost of approximately \$1 million for a year, or \$5 million for 5 years.

The Office of Management and Budget comments on the savings potential as follows:

Real savings should result from an improved regulation of procurement policies and an enhanced ability to handle the increasing workload in the procurement field. Central coordination of uniform procurement regulations should result in fewer contested decisions and protracted legal proceedings than would be the case without the Associate Director. Such benefits are not easily reduced to financial estimates, but they can reasonably be expected to be substantial as this office fulfills its mission.

BACKGROUND INFORMATION

The Commission on Government Procurement, which recommended creation of the Office of Federal Procurement Policy, was established by Public Law 91-129.¹⁴ Chairman Holifield and Representative Frank Horton, ranking Republican member of your committee, served as the House members of the Commission. As noted above, the Comptroller General was made a member of the Commission by the terms of its enabling act.¹⁵

In its report, the Commission identified four major attributes of the OFPP:¹⁶

- (1) Independence from procurement agency operations and contract award decisions to insure objectivity in policymaking.
- (2) Establishment at a level above procuring agencies with authority to direct, not merely advise, them in policy matters.
- (3) Responsiveness to the Congress in developing and promulgating procurement policies within the broad framework of the procurement laws.
- (4) Small size and high staff expertise in procurement and related disciplines such as engineering, accounting, and law.

Emphasized in the Commission's Report was OFPP's leadership role. It would serve as the focal point within the executive branch for developing Government-wide policies for procurement by executive agencies and Federal grantees, promulgate these policies directly or through designated agencies, reconcile or resolve agency conflicts over procurement policies or regulations, devise appropriate procedures for public participation in policy formulation, develop and promote programs for improving the procurement workforce, prescribe and monitor Government "make or buy" policies, improve the procurement data base, and establish advisory groups in the procurement area.

In various sections of the Commission's Report, additional specific functions were assigned to or associated with the OFPP (see app. 3).

¹⁴ Act of Nov. 26, 1969; 83 Stat. 269.

¹⁵ The Commission on Government Procurement was comprised of the following members: E. Perkins McGuire (Chairman), Congressman Chet Holifield (Vice Chairman), Paul W. Beamer, Senator Lawton M. Chiles, Jr. (replaced Senator Henry M. Jackson, who resigned), Senator Edward J. Gurney, Richard E. Horner, Congressman Frank Horton, Peter D. Joers, Arthur F. Sampson (replaced Robert L. Kunzig, who resigned), Frank Sanders, Elmer B. Staats, and James E. Webb (replaced Joseph W. Barr, who resigned).

¹⁶ Report of the Commission on Government Procurement, vol. 1, p. 12.

Thus, it would have responsibility for developing policies, programs, or guidelines looking toward equitable profit objectives in negotiated contracts, coordinated Federal specifications, and economical purchase and distribution of food and commercial products. OFPP policies also would determine cost principles for Government-wide application, and promote small business participation. (For the Commission's list of representative functions for OFPP, see app. 2.)

The Commission also recommended that the OFPP be charged with establishing criteria and procedures for participation by contractors and other interested parties in the development of procurement regulations. The Commission took the view that public contracting should not be covered into the rulemaking section of the Administrative Procedure Act (5 U.S.C. 553); however, it believed that affected parties should be able to participate more systematically in the rulemaking process for procurement. The committee bill (section 5(b)(2)) incorporates the Commission's recommendation on this matter.

Regarding the organizational placement of the OFPP, the Commission had these preferences:¹⁷

(1) Location in the OMB, which has a central position in the Executive Office of the President, is detached from procurement operations, has Government-wide perspective and policy or management responsibilities, is experienced in matters of interagency coordination, and can relate procurement matters to other budgetary and management concerns.

(2) High-level direction by a Deputy Director with no other responsibilities but procurement, to assure the requisite authority, attention, and continuity of effort for leadership in procurement policies.

(3) Establishment by act of Congress to provide prestige, stature, resources, and firm authority for the assigned tasks.

Although it clearly preferred that the OFPP be a component of the OMB, the Commission recognized that the President might want to establish the OFPP separately in the Executive Office. The Commission considered this acceptable so long as responsiveness to the Congress were assured. Also, the Commission suggested that preparatory to the enactment of a statute, the President could move quickly to establish the OFPP by Executive order. In this way, immediate attention could be given to important procurement problems and the carrying out of Commission recommendations.¹⁸

MODIFICATIONS IN COMMITTEE BILL

Whereas H.R. 15233 accords with the main purpose and thrust of the Commission's recommendation, the bill does have some modifications and differences, which are explained below.

ORGANIZATIONAL STATUS

By making the Office of Federal Procurement Policy a component of the Office of Management and Budget, the bill accords with the Commission's finding that this would be the most advantageous loca-

tion for the new office. However, the Commission recommended that the Office be headed by a Deputy Director. We were advised by the OMB, which now has a Deputy Director, that an office headed by a second Deputy Director would create internal organizational and management problems. The Office would be more readily assimilable in the OMB organization if it were headed by an Associate Director, coequal in rank with other Associate Directors. The bill follows the OMB recommendation. On this basis, the OMB indicated support for the legislation.

FUNCTIONS OF OFPP

The specific functions of the Associate Director, set forth in subsection 5(b) of the bill, are consistent with those recommended by the Commission but are not intended to be restrictive. The Associate Director may exercise functions in addition to those listed in subsection 5(b), whether recommended by the Commission or by others, or developed upon the Associate Director's own initiative, so long as they are consistent with the provisions of the bill and "in accordance with other applicable laws."

NONAPPROPRIATED FUNDS

The Commission did not specifically state whether the OFPP's authority would extend to nonappropriated fund activities. The bill makes clear that these are excluded from its jurisdiction.

FEDERAL SUPPORT TO GRANTEES

The Commission recommended that primary recipients of Federal grants be authorized to use Federal supplies and services, with the Government to be reimbursed for administrative costs, when Federal financing in specific grant programs exceeded 60 percent.¹⁹

Following numerous objections by companies engaged in wholesale and distribution trades, your committee made it explicit that the bill (subsection 5(d)(3)) should not be deemed to grant or affect authority of agencies to provide procurement or supply support to Federal grantees or recipients of Federal assistance. In other words, the bill is neutral on this subject. Existing policy of the General Services Administration, in reversal of an earlier policy, is to withhold from Federal agencies authority to permit their grantees to use GSA supply sources.²⁰

The OFPP will have authority to prescribe policies, regulations, procedures, and forms for procurement by Federal grantees as well as by Federal agencies. This is permissive and not mandatory authority. The extent to which it will be exercised is left to the judgment of the Associate Director. Any policies he prescribes will be binding on agencies, grantees, and contractors except that, under the terms of the bill (subsection 5(a)), he cannot require any procurement action by State and local governments contrary to State or local law.

¹⁹ *Id.*, vol. 3, p. 39.

²⁰ 37 F.R. 24113, Nov. 14, 1972, which deletes reference to grantees from 41 CFR 101-26.000. Cost reimbursement-type contractors continue to use these sources under other regulatory authority (41 CFR 1-5.5 and 1-5.9).

¹⁷ *Id.*, p. 13.

¹⁸ *Id.*, p. 14.

Your committee points out that procurement by Federal grantees (approximately \$15 billion a year) is a significant and growing part of the total amount of federally financed procurement. Federal agencies now are substantially involved in regulating procurement by grantees, acting under statutory requirements which, as the Commission pointed out, "are often inconsistent even for similar programs or projects." The Commission went on to say: "This situation generates confusion, frustration, uncertainty, ineffectiveness, and waste."²¹

Your committee believes that where billions of Federal dollars are being expended in procurement, it is sound policy to encourage prudent purchasing, fair pricing, competition among suppliers, and other measures which protect against favoritism and insure the fullest return for each Federal dollar spent. Such Federal policy guidance is justified for recipients of Federal assistance as well as for Federal agencies. Furthermore, the OFPP can serve a truly useful function, not only in promoting sound procurement procedures and practices, but in preventing excessive agency controls on grantees and assisting grantees by resolving conflicting Federal regulations and administrative requirements. We emphasize again that the OFPP will not be able to require any procurement action by State or local governments contrary to State or local law.

RELATIONSHIPS WITH OTHER AGENCIES

The bill (subsection 5(c)) places a positive obligation on the Associate Director to consult with other executive agencies in developing the procurement policies, regulations, procedures, and forms which he will authorize or prescribe. The agencies to be consulted will be those engaged in significant procurement activities, or those which have authority of their own to prescribe and promulgate policies and regulations affecting procurement. The latter would include the Small Business Administration, the General Services Administration, the Department of Labor, and the Environmental Protection Agency.

In the case of the General Services Administration, the authority of the Administrator to prescribe certain standard forms and procedures and to issue regulations governing property and procurement specifically is made subject to that of the Associate Director (section 14). Other executive agencies which may prescribe policies, regulations, procedures, and forms for procurement under any law also are subject to the authority of the Associate Director (section 8). However, the Associate Director must act in conformance with all applicable laws and, by the terms of the bill (subsection 5(d)), cannot interfere with determinations by other agencies on requirements or with specific actions in contract award or administration.

Although the General Accounting Office is not subject to OFPP's authority, the committee expects that the Associate Director of OFPP will consult frequently with the Comptroller General and his staff in the GAO. Through the years, as a result of its investigations, management audits, and rulings on bid protests, the GAO has developed great expertise in the procurement area.

²¹ Report of the Commission on Government Procurement, vol. 3, p. 153.

Rather than build up a big bureaucracy, the OFPP will work cooperatively with other executive agencies, not only consulting with them when considering significant changes in policy, regulations, procedures, and forms, but making use of their resources and personnel. Section 6 of the bill directs each executive agency to make its services, personnel, and facilities available to the OFPP to the greatest practicable extent, and gives the Associate Director access to information in these agencies that he deems necessary for the performance of his functions.

Also, under section 11, the Associate Director may delegate authority to others within his office, or to any other executive agency, with its consent, or upon the direction of the President. These provisions give ample opportunity to the Office to draw upon the vast resources of the executive branch in performing its functions and discharging its responsibilities under the bill.

The Procurement Commission's concept was that the OFPP would be small in size and staffed by highly experienced and talented persons in the procurement area and related disciplines. Your committee concurs in this concept of the OFPP, recognizing that the optimum size and composition of the Office will have to be determined by experience. As indicated above a group of 20 professionals, with supporting staff and services, would seem to be a reasonable estimate for the next few years.

RELATIONSHIPS WITH THE CONGRESS

The Commission on Government Procurement identified as one of OFPP's essential attributes responsiveness to the Congress. This attribute was viewed by the Commission in terms of cooperative working relationships between the executive and legislative branches in the interest of improving procurement policies. The Commission's Report states in this regard:²²

In the basic procurement statutes, Congress should provide the executive branch ample latitude for initiative and experimentation aimed at improving procurement policies. In turn, the executive branch must provide a responsible, effective, and responsive source of Government-wide policy control and leadership within a framework of executive-legislative cooperation.

Section 7 of the bill defines the OFPP's relationship with the Congress as follows:

The Director of the Office of Management and Budget shall keep the Congress and its duly authorized committees informed of the activities of the Office of Federal Procurement Policy, and shall submit a report thereon to Congress annually and at such other times as he deems desirable, together with appropriate legislative recommendations.

Your committee expects that the Associate Director and other officers and employees of the OFPP will be available to committees

²² *Id.*, vol. 1, p. 12.

of the Congress to present information upon request and testimony at hearings. The OFPP is placed within the OMB, a component of the Executive Office of the President, to give it prestige and leverage for dealing effectively with the executive agencies. It is not your committee's intent in this bill to imply that the OFPP, or any other office, is beyond the reach of congressional committees.

A provision in the predecessor bill (H.R. 9059), deleted by the subcommittee, specifically prohibited officers or employees of the OFPP from refusing to testify before, or submit information to, committees of the Congress. This deletion was made in the belief that piecemeal statutory declarations against executive privilege do not dispose of the basic issue and carry the implication that agencies without such statutory prohibitions may withhold information from the Congress and refuse to give testimony. The deletion is not to be construed as legislative history supporting denials of congressional requests. Your committee expects that the OFPP will be fully responsive to the Congress and its committees.

Responsiveness to the Congress is essential because, as the law-making body, the Congress is the basic source and ultimate authority for policymaking, including procurement policy. The Associate Director will have to work, as we have said, within the framework and policies set by law. Your committee believes that the OFPP can be a creative force, not only in working with the executive agencies to harmonize and simplify their procurement regulations, but in helping the Congress to identify needed legislative action in the procurement area.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

The short title is the "Office of Federal Procurement Policy Act."

SECTION 2—FINDINGS AND PURPOSE

In subsection 2(a) the Congress finds that establishing an organization to exercise responsibility for procurement policies, regulations, procedures, and forms will improve the procurement of property and services by the executive agencies.

Subsection 2(b) states that the purpose of the act is to establish the requisite organization in the Office of Management and Budget. The responsibility will be exercised by way of "overall direction of procurement policies, regulations, procedures, and forms for executive agencies."

SECTION 3—DEFINITION OF EXECUTIVE AGENCY

The term "executive agency" includes executive departments, military departments, independent establishments, and wholly-owned Government corporations within cited sections of the United States Code (5 U.S.C. 101, 102, 104(1); 31 U.S.C. 846). The effect is to exclude certain Government agencies from the scope of the act and the authority of the OFPP; namely, agencies in the legislative and judicial branches, the General Accounting Office, mixed-ownership Government corporations, the United States Postal Service and the Postal Rate Commission, and the District of Columbia. The postal agencies

and the District of Columbia are excluded by virtue of the special status accorded them, respectively, by the Postal Reorganization Act, approved August 12, 1970 (84 Stat. 719; 39 U.S.C. 101, 410), and the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (P.L. 93-198; 87 Stat. 774), giving the District broad legislative power in "rightful subjects of legislation" (section 302).

SECTION 4—OFFICE OF FEDERAL PROCUREMENT POLICY

Subsection 4(a) establishes the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget.

Subsection 4(b) provides that the OFPP will be headed by an Associate Director for Federal Procurement Policy, appointed by the President by and with the advice and consent of the Senate.

Under section 12 of the bill, the Associate Director receives compensation at the rate of executive level IV (\$38,000 a year). No express provision is made for a deputy head of the OFPP; it is contemplated that one will be appointed by the Associate Director in accordance with civil service procedures.

SECTION 5—FUNCTIONS OF THE OFFICE

The functions of the OFPP are defined by words of inclusion and exclusion.

Subsection 5(a) broadly states that the Associate Director, under the direction of the Director of the Office of Management and Budget, shall provide overall direction of procurement policy. To this end, the Associate Director may prescribe policies, regulations, procedures, and forms. These are closely-knit responsibilities, and the Associate Director is given discretion how best to discharge them. The committee contemplates that the OFPP will deal with procurement matters of broad scope and leave details to be worked out by the agencies to the fullest extent consistent with achieving the objectives of the bill.

Procurement subject to OFPP policy direction encompasses (1) property other than real property in being; (2) services; and (3) construction, alteration, repair or maintenance of real property. The exclusion of real property in being makes clear that the authority of the OFPP does not extend to Government acquisition of the fee or other interests in land and existing improvements or in parts thereof (such as office space), whether by deed, lease, license, or similar forms of real estate instruments. On the other hand, construction and similar contracts for performance of work on real property expressly are made subject to the authority of the OFPP.

OFPP authority extends to procurement by executive agencies and Government grantees or recipients of Federal assistance. However, if the grantee is a State or local government, the OFPP cannot override State or local law. The subsection expressly provides in such cases that the OFPP cannot require any action "contrary to State or local law." Thus, State and local governments are free to prescribe their own procurement procedures; and to the extent they do so, they can foreclose any action by the OFPP. Your committee expects that the OFPP will work to reduce rather than add restraints on State and local governments. The Office should make every every effort to

minimize burdensome controls and harmonize differences in administrative requirements levied by the executive agencies.

The term "Federal grants or assistance" has no universal meaning. It includes transactions for payment of money or transfer of property in lieu of money, generally referred to as program or project grants, grants-in-aid, and grants in lieu of research and development contracts as authorized by the 1958 Federal Grants Act (42 U.S.C. 1891 et seq.). For the purposes of this bill, the committee specifically means to exclude programs for the furnishing of assistance through technical and informational services; or assistance in the form of revenue sharing, loans, loan guarantees, insurance, and similar "no strings attached" aids to State and local governments.

The Associate Director is to prescribe procurement policies "to the extent he considers appropriate." He is under no compulsion except to discharge his responsibilities with judgment and discretion. He need act only when, where, and in such manner as he deems fitting and proper to achieve the objectives of the bill. He is not required to preempt the field but may move into areas of common interest only to the degree that he finds that overall control and coordination will contribute to the economy, efficiency, and effectiveness of procurement. For example, if the Associate Director perceives a need for a uniform approach to cost or pricing data requirements for subcontracts, he may determine what the measures for uniformity should be and how they are to be promulgated.

The Associate Director is to act "with due regard to the program activities of executive agencies." This means the OFPP policies must be tailored to the missions, needs, resources, and administrative requirements of each agency. Uniformity is not the sole consideration. When warranted by valid differences, it must be tempered by judgment and flexibility.

The Associate Director is to act "in accordance with applicable laws." This recognizes that Congress is the primary source of procurement policy; and any OFPP policy must be subject to, and consistent with, congressional enactments. The Associate Director may prescribe policies and procedures for an agency only to the extent the agency under its own statutory authority could adopt such policies or procedures for itself. For example, the Associate Director cannot disregard the statutory prohibitions against use of cost-plus-a-percentage-of-costs contracts, or the statutory mandate for employment of handicapped persons. Nor can he authorize or require civilian agencies to use multi-year contracts for domestic procurements, since the Congress has limited use of multi-year contracts to the military departments in overseas procurement of services and related supplies.

OFPP policies and regulations "shall be followed by executive agencies." This makes it clear that the OFPP prescriptions are mandatory, having the force and effect of law and invested with all the legal sanctions that customarily apply. Thus, contractors and bidders will be able, in the usual way, to file bid protests with the Comptroller General or initiate suit in court under the doctrine of the *Scanwell* case²³ whenever they consider a contract award or other action to be contrary to OFPP requirements.

²³ *Scanwell Laboratories, Inc., v. Thomas, et al.*, 424 F. 2d, 859 (1970).

The OFPP itself is not intended to be a policing agency. On the other hand, it must keep informed generally of agency practices for the purposes of reporting to Congress and of reviewing and revising its statements of policies and procedures to eliminate ambiguities and inconsistencies or other causes of misinterpretation or misapplication.

The authority of the OFPP is limited to procurements payable from appropriated funds. This comports with the present exclusion in the Armed Services Procurement Act of procurements by nonappropriated fund activities such as the Army, Navy, and Air Force exchanges.

Subsection 5(b) spells out six functions of the OFPP:

(1) *Establish a system of coordinated and uniform regulations.* The emphasis here is on a "system." This does not necessarily mean discarding the present structure of the Armed Services Procurement Regulation and the Federal Procurement Regulations and substituting an all-encompassing Government-wide procurement regulation. The goal is greater coordination and uniformity, but the choice of means is left to the Associate Director.

The "system" contemplated under the bill embraces not only the content of regulations but also their format, numbering, methods of publication and distribution, and controls over layering, duplication, and volume. The Commission found serious deficiencies in these respects, and the OFPP will have a clear responsibility to minimize or remove them.

Procurement regulations are to be uniform "to the extent feasible." This reiterates the need to recognize valid differences among agencies and cautions the OFPP against carrying uniformity beyond the point where the burdens and costs of achieving uniformity outweigh the benefits to the Government and contractors of simplifying and harmonizing procurement practices.

(2) *Establish criteria and procedures for an effective and timely method of soliciting public comment and recommendations on proposed policies, regulations, procedures, and forms.* Your committee believes that affording contractors and other interested parties a reasonable opportunity to present their views, will promote understanding and acceptance of the regulations. Such an opportunity should be afforded for all regulations of national scope and importance. The OFPP will have to evaluate the practical possibilities as well as the benefits and burdens of extending "notice and comment" procedures to regulations issued in field procurement offices or at other levels below agency headquarters. The OFPP also will have to consider, in this context, a problem pointed out by the Commission on Government Procurement—"the potential for blocking procurement actions by litigation over whether an agency complied with rulemaking requirements."²⁴

The "notice and comment" procedures are to be "effective and timely." This reflects an industry concern that interested parties be called in early enough in the process to make an impact on regulations in their formative stages.

(3) *Monitor and revise policies concerning reliance of the Government on private industry and organizations.* This involves the highly controversial question as to when procurement should be accomplished by Government "in-house" facilities and personnel or by contracting

²⁴ Report of the Commission on Government Procurement, vol. 1, p. 39.

out. The present Government policy is set forth in OMB Circular A-76. The OFPP will have responsibility for monitoring its application and making any revision in the policy it finds warranted. The language of the provision does not suggest the direction in which the policy should be revised.

(4) *Promote and conduct research in procurement policies, regulations, procedures, and forms.* This an important aspect of the OFPP's responsibilities. Presently, there is no systematic, coordinated research in these areas. The OFPP will provide a source and means of developing innovative ideas in procurement policy and distilling the lessons of experience in Government procurement.

(5) *Establish a system for collecting and developing procurement data.* Deficiencies in the procurement data base are well known. Procurement statistics are collected in separate sources, with many gaps and differing definitions and data breakdowns. The OFPP will be able to systematize the collection of procurement statistics and insure that information needed by the Congress and the executive branch are forthcoming.

(6) *Recommend programs for recruiting, training, developing, and evaluating the performance of procurement personnel.* As the Commission pointed out, "People are the most critical part of any effective procurement process."²⁵ The existing procurement workforce in Government is rapidly approaching retirement age. To obtain needed replacements, and to upgrade the procurement workforce generally, are difficult and demanding tasks which the OFPP can address in cooperation with the Civil Service Commission and the executive agencies.

Section 5(c) deals with participation by the executive agencies in the development of procurement policies by OFPP. The Associate Director is required to consult with the executive agencies affected, including not only procurement agencies, but agencies, which issue policies and regulations bearing on procurement by other agencies. The latter include the Small Business Administration, the General Services Administration, the Department of Labor, and the Environmental Protection Agency.

With the consent of other agencies, the Associate Director is authorized to designate them as "lead" agencies, to establish interagency committees, or otherwise to use agency personnel in developing procurement policies. The OFPP will provide overall direction, management and supervision, initiate projects and assignments, review and promulgate policies developed by the agencies, and resolve differences among them.

Subsection 5(d) makes clear that the agencies are to have full responsibility and authority to determine their own procurement requirements for property, services, or construction, including quantity, time of delivery, and "particular specifications therefor." The last reference implies a distinction between particular specifications and standard specifications, giving the agencies independent responsibility as to the former but allowing a policy role for the OFPP with respect to the latter.

²⁵ Id., p. 46.

Subsection 5(d) also precludes interference by the OFPP with specific actions of executive agencies in the award or administration of contracts. The OFPP is not intended to be a forum for contractors and bidders to file protests, claims, appeals, or other complaints against agency actions in negotiating or administering contracts. Instead, contractors and bidders are expected to follow the normal course of filing protests and claims with the boards of contract appeals or the GAO, or initiating suit in court.

Section 5(d) finally rules out any intent to grant or affect the authority of Federal agencies to provide procurement or supply support to Federal grantees. The bill does not change existing law and policy on this subject.

SECTION 6—AGENCY COOPERATION

Upon request of the Associate Director, the executive agencies are directed (1) to make their services, personnel, and facilities available to the OFPP to the greatest extent practicable, and (2) to furnish and give the OFPP access to relevant information and records except when prohibited by law.

SECTION 7—REPORTS TO CONGRESS

The Director of the Office of Management and Budget is required to keep the Congress and its committees informed of OFPP activities, and to submit annual or more frequent reports, together with legislative recommendations.

SECTION 8—EFFECT ON EXISTING LAWS

This section makes clear that the procurement policy authority of the OFPP is paramount to the procurement policy authority of any other agency. It provides that the authority granted any other agency under existing law to prescribe policies, regulations, procedures, and forms is subject to the authority conferred on the OFPP by section 5 of the bill. The reference to section 5 incorporates the authority of the OFPP to prescribe policies, regulations, procedures and forms in accordance with applicable laws. This reiterates that the OFPP cannot substitute its policies for those laid down by acts of Congress.

A prime example of the operation of this section is afforded by the General Services Administration, which now has authority to prescribe procurement policies and methods for the executive agencies under section 201(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)). After enactment of this bill, the GSA will have to conform its Federal Procurement Regulations to policies prescribed by the OFPP.

SECTION 9—EFFECT ON EXISTING REGULATIONS

Procurement policies and regulations in existence, and as amended from time to time pursuant to existing authority, are continued in effect pending repeal, amendment, or supersession by OFPP procurement policies.

SECTION 10—AUTHORIZATION OF APPROPRIATIONS

Appropriations necessary to carry out the provisions of the bill are authorized. They are made available only for the purposes of the bill. Thus, they cannot be mingled with other OMB appropriations or become available for other OMB activities.

SECTION 11—DELEGATION

The Associate Director may delegate, and authorize successive re delegations of his authority, to any OFPP official, or to any other executive agency either with its consent or upon the President's direction that such agency accept the delegation. Thus in many areas, when agencies unanimously agree upon a proposed procurement policy, the Associate Director may find it helpful to permit the policy to be promulgated by an agency pursuant to delegated authority without further approval by the OFPP. However, in connection with any delegation of authority, the Associate Director may impose requirements for coordination or approval of actions taken.

SECTION 12—ANNUAL PAY

The Associate Director will receive compensation at the executive level IV rate of \$38,000.

SECTION 13—ACCESS TO INFORMATION BY THE COMPTROLLER GENERAL

The OFPP is required to furnish information to the Comptroller General and to afford him access to all OFPP records.

SECTION 14—AMENDMENTS

Four sections of the Federal Property and Administrative Services Act of 1949 are amended. The first three now direct the Administrator of General Services to:

Prescribe policies and methods of procurement (40 U.S.C. 481(a)).

Prescribe regulations for the exchange or sale of personal property (40 U.S.C. 481(c)).

Prescribe standardized forms and procedures and standardized purchase specifications (40 U.S.C. 487(a)(4)).

The fourth now declares that "The authority conferred by this act shall be in addition and paramount to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith * * *." (40 U.S.C. 474).

Each of the above sections is amended by section 14 of the bill to make the existing authority subject to the authority of the Associate Director.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill,

as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is \$38,000:

(1) Administrator, Bureau of Security and Consular Affairs, Department of State.

* * * * *

(97) Commissioner of Social Security, Department of Health, Education, and Welfare.

(98) *Associate Director of Federal Procurement Policy, Office of Management and Budget.*

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES
ACT OF 1949

* * * * *

TITLE II—PROPERTY MANAGEMENT

PROCUREMENT, WAREHOUSING, AND RELATED ACTIVITIES

SEC. 201. (a) The Administrator shall, in respect of executive agencies, and to the extent that he determines that so doing is advantageous to the Government in terms of economy, efficiency, or service, and with due regard to the program activities of the agencies concerned—

(1) *subject to regulations prescribed by the Associate Director of Federal Procurement Policy of the Office of Management and Budget*, prescribe policies and methods of procurement and supply of personal property and nonpersonal services, including related functions such as contracting, inspection, storage, issue, property identification and classification, transportation and traffic management, management of public utility services, and repairing and converting; and

(2) operate, and, after consultation with the executive agencies affected, consolidate, take over, or arrange for the operation by any executive agency of warehouses, supply centers, repair shops, fuel yards, and other similar facilities; and

(3) procure and supply personal property and nonpersonal services for the use of executive agencies in the proper discharge of their responsibilities, and perform functions related to procurement and supply such as those mentioned above in subparagraph (1): *Provided*, That contracts for public utility services may be made for periods not exceeding ten years; and

(4) with respect to transportation and other public utility services for the use of executive agencies, represent such agencies in negotiations with carriers and other public utilities and in proceedings involving carriers or other public utilities before Federal and State regulatory bodies:

Provided, That the Secretary of Defense may from time to time, and unless the President shall otherwise direct, exempt the Department of Defense from action taken or which may be taken by the Administrator under clauses (1), (2), (3), and (4) above whenever he determines such exemption to be in the best interests of national security.

(b) The Administrator shall as far as practicable provide any of the services specified in subsection (a) of this section to any other Federal agency, mixed ownership corporation (as defined in the Government Corporation Control Act), or the District of Columbia, upon its request.

(c) In acquiring personal property, any executive agency under regulations to be prescribed by the Administrator, *subject to regulations prescribed by the Associate Director of Federal Procurement Policy of the Office of Management and Budget*, may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired: *Provided*, That any transaction carried out under the authority of this subsection shall be evidenced in writing.

* * * * *

SURVEYS, STANDARDIZED AND CATALOGING

SEC. 206. (a) As he may deem necessary for the effectuation of his functions under this title, and after adequate advance notice to the executive agencies affected, and with due regard to the requirements of the Department of Defense as determined by the Secretary of Defense, the Administrator is authorized (1) to make surveys of Government property and property management practices and obtain reports thereon from executive agencies; (2) to cooperate with executive agencies in the establishment of reasonable inventory levels for property stocked by them and from time to time report any excessive stocking to the Congress and to the Director of the Bureau of the Budget; (3) to establish and maintain such uniform Federal supply catalog system as may be appropriate to identify and classify personal property under the control of Federal agencies: *Provided*, That the Administrator and the Secretary of Defense shall coordinate the cataloging activities of the General Services Administration and the Department of Defense so as to avoid unnecessary duplication; and (4) [to prescribe standardized forms and procedures, except such as the Comptroller General is authorized by law to prescribe, and standard purchase specifications] *subject to regulations promulgated by the Associate Director of Federal Procurement Policy of the Office of Management and Budget, to prescribe standardized forms and procedures, except such as the Comptroller General is authorized by law to prescribe, and standard purchase specifications.*

* * * * *

TITLE VI—GENERAL PROVISIONS

* * * * *

REPEAL AND SAVING PROVISIONS

SEC. 602. (a) * * *

* * * * *

(c) The authority conferred by this Act shall be in addition and paramount to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith, *except as provided by the Office of Federal Procurement Policy Act, and except that sections 205(b) and 206(c) of this Act shall not be applicable to any Government corporation or agency which is subject to the Government Corporation Control Act (59 Stat. 597; 31 U.S.C. 841).*

APPENDIXES

APPENDIX 1.—COMMISSION ON GOVERNMENT PROCUREMENT—STUDY GROUP RECOMMENDATIONS FOR A CENTRAL POLICY ORGANIZATION

(Volume and page numbers refer to the green-covered, processed reports by the study groups cited)

A.—GOVERNMENT-WIDE APPLICATION

Study Group No. 3. (Regulations) :

Establish an independent central organization in the executive branch to develop and maintain a Government-wide procurement regulation (pp. 207-8).

Study Group No. 5 (Organization and Personnel) :

Establish a procurement/grant board to develop, publish, and monitor major Government policies regarding procurement/grants and related matters (vol. 1, p. 133).

Study Group No. 7 (Cost and Pricing Information) :

The Congress should provide in an updated, consolidated procurement statute that the President shall establish a permanent Procurement Policy Board to develop, promulgate, and monitor Government-wide procurement principles and policies (pp. 32-39).

Study Group No. 8 (Negotiations and Subcontracting) :

Create a central procurement unit to establish Government-wide procurement policies and regulations, monitor procurement operations, maintain liaison with the private sector, and perform other functions (vol. 1, pp. 18-20).

Study Group No. 11 (Research and Development) :

Establish a central office in the executive branch to develop and promulgate uniform procurement policies and regulations for all agencies and to monitor compliance (vol. 1, p. 18).

Study Group No. 12 (Major Systems Acquisition) :

The President should replace the existing Interagency Procurement Policy Committee (now in GSA) with a high-level council to promote coordinated development of, and promulgate, procurement policies, directives, and regulations (vol. 1, pp. 460-461).

Study Group No. 13A (Commercial Products) :

Establish an independent non-operational body or council responsible to the Congress and the President for promulgating a single national procurement policy (vol. 2, p. 924).

B.—SELECTED AREAS

Study Group No. 2 (Controls Over the Procurement Process) :

The Congress should establish the position of "Procurement Ombudsman" in the Government, with operational field offices, to receive and act on complaints about procurement matters, to exercise continuous oversight, and to improve Government procurement by identifying and correcting patterns of undesirable practices and procedures (vol. 2, pp. 886-7).

Study Group No. 6 (Precontract Planning) :

Establish a procurement-information center in one of the existing agencies to collect, correlate, and disseminate general procurement information (p. 182).

Establish a Government Patent Policy Review Board by legislation to administer a uniform patent policy enacted by law (p. 443).

Study Group No. 9 (Reports and Management Controls) :

Establish in the executive branch an organization independent of the procuring agencies to develop and insure a necessary degree of commonality in management information and reporting systems required of contractors (p. 202).

Study Group No. 10 (Contract Audit and Administration) :

Establish a joint (defense-civil) task force under OMB direction to develop and implement concepts which place maximum reliance on approved management systems (p. 147).

Establish an interdepartmental task force, with DOD as the lead agency, to develop uniform cost principles applicable to all Federal agencies (p. 188).

Establish a joint (defense-civil) committee under OMB direction to formulate uniform Government-wide property controls and procedures, including the needs of the industrial mobilization base (p. 276).

Study Group 13B (Architect-Engineer Services) :

Establish an interagency committee to standardize architect-engineer procurement practices and develop a single set of architect-engineer procurement regulations and documents (p. 184).

Grants Task Force :

Establish a central unit with overall responsibility and authority to develop, coordinate, establish, and issue regulations, standards, or guidelines for Federal assistance transactions (p. 69).

APPENDIX 2.—REPRESENTATIVE FUNCTIONS OF THE OFFICE OF FEDERAL PROCUREMENT POLICY AS OUTLINED IN THE REPORT OF THE COMMISSION ON GOVERNMENT PROCUREMENT

Serve as the focal point within the executive branch with special competence and leadership in Government-wide procurement and procurement-related matters.

Provide for the issuance of Government-wide policies as separate instructions or for DOD issuance of such policies for defense agencies and GSA issuance for other agencies. Provide for the granting of exceptions to established policies and procedures when justified.

Designate lead agencies to develop most Government-wide and multi-agency policies and procedures in coordination with other agencies. Participate, as appropriate, with the lead agency in coordination with other agencies.

Establish Government-wide guidelines concerning the use of grants and the policies to be followed in making grants.

Review and reconcile, where appropriate, those procurement policies and procedures that are not Government-wide, but affect two or more Government agencies, or their suppliers (for example, the number and kinds of differing requirements placed on suppliers).

Make or obtain the final decision when controversy or irreconcilable differences exist between executive agencies concerning procurement policy or regulatory development.

Develop and promote programs for the upgrading of procurement personnel, including recruitment, training, career development, and standards of performance and the conduct and sponsorship of research in procurement policy and procedures.

Monitor and revise instructions concerning reliance on the private sector and maintenance of the in-house competence necessary to assure that this reliance yields benefits commensurate with its promise.

Promote Government-wide exchange of information that highlights successful ways to improve the procurement process.

Establish requirements for uniform reports and statistics on procurement activities.

Establish advisory groups, as desirable, to provide counsel and advice and to serve as sounding boards for policies, procedures, and practices related to procurement.

of the Office of Federal Procurement Policy, which will have the overall responsibility for development, coordination, and control of procurement regulations.

RECOMMENDATION 11

Establish criteria and procedures for an effective method of soliciting the viewpoints of interested parties in the development of procurement regulations.

RECOMMENDATION 12

Reevaluate the place of procurement in each agency whose program goals require substantial reliance on procurement. Under the general oversight of the Office of Federal Procurement Policy, each agency should insure that the business aspects of procurement and the multiple national objectives to be incorporated in procurement actions receive appropriate consideration at all levels in the organization.

RECOMMENDATION 15

Assign to the Office of Federal Procurement Policy responsibility for:

(a) Developing and monitoring, in cooperation with the procuring agencies and the Civil Service Commission, personnel management programs that will assure a competent work force.

(b) Defining agency responsibilities and establishing standards for effective work force management and for developing a Government-wide personnel improvement program.

(c) Developing and monitoring a uniform data information system for procurement personnel.

RECOMMENDATION 30

Develop uniform Government-wide guidelines for determining equitable profit objectives in negotiated contracts. The Office of Federal Procurement Policy should take the lead in this interagency activity. The guidelines should emphasize consideration of the total amount of capital required, risk assumed, complexity of work, and management performance.

RECOMMENDATION 49

Initiate within the executive branch a review of procurement programs with guidance from SBA and the Office of Federal Procurement Policy with the objective of making small business participation in Government procurement more effective and assuring that small businesses have a full opportunity to compete for Government contracts.

PART B—ACQUISITION OF RESEARCH AND DEVELOPMENT (VOL. 2)

RECOMMENDATION 10

Recognize in cost allowability principles that independent research and development (IR&D) and bid and proposal (B&P) expenditures

APPENDIX 3.—RECOMMENDATIONS IN THE COMMISSION'S REPORT DEALING SPECIFICALLY WITH THE OFFICE OF FEDERAL PROCUREMENT POLICY

PART A—GENERAL PROCUREMENT CONSIDERATIONS (VOL. 1)

RECOMMENDATION 1

Establish by law a central Office of Federal Procurement Policy in the Executive Office of the President, preferably in the Office of Management and Budget, with specialized competence to take the leadership in procurement policy and related matters. If not organizationally placed in OMB, the office should be established in a manner to enable it to testify before committees of Congress. It should develop and persistently endeavor to improve ways and means through which executive agencies can cooperate with and be responsive to Congress.

RECOMMENDATION 2

Enact legislation to eliminate inconsistencies in the two primary procurement statutes by consolidating the two statutes and thus provide a common statutory basis for procurement policies and procedures applicable to all executive agencies. Retain in the statutory base those provisions necessary to establish fundamental procurement policies and procedures. Provide in the statutory base for an Office of Federal Procurement Policy in the executive branch to implement basic procurement policies.

RECOMMENDATION 6

Authorize sole-source procurements in those situations where formal advertising or other competitive procedures cannot be utilized, subject to appropriate documentation, and, in such classes of procurements as determined by the Office of Federal Procurement Policy, subject to the determination being approved at such level above the head of the procuring activity as is specified in agency regulations.

RECOMMENDATION 7

Increase the statutory ceiling on procurements for which simplified procedures are authorized to \$10,000. Authorize the Office of Federal Procurement Policy to review the ceiling at least every three years and change it where an appropriate formula indicates the costs of labor and materials have changed by 10 percent or more.

RECOMMENDATION 10

Establish a system of Government-wide coordinated, and to the extent feasible, uniform procurement regulations under the direction

are in the Nation's best interests to promote competition (both domestically and internationally), to advance technology, and to foster economic growth. Establish a policy recognizing IR&D and B&P efforts as necessary costs of doing business and provide that:

(a) IR&D and B&P should receive uniform treatment, Government-wide, with exceptions treated by the Office of Federal Procurement Policy.

(b) Contractor cost centers with 50 percent or more fixed-price Government contracts and sales of commercial products and services should have IR&D and B&P accepted as an overhead item without question as to amount. Reasonableness of costs for other contractors should be determined by the present DOD formula with individual ceilings for IR&D and B&P negotiated and trade-offs between the two accounts permitted.

(c) Contractor cost centers with more than 50 percent cost-type contracts should be subject to a relevancy requirement of a potential relationship to the agency function or operation in the opinion of the head of the agency. No relevancy restriction should be applied to the other contractors.

PART D—ACQUISITION OF COMMERCIAL PRODUCTS (VOL. 3)

RECOMMENDATION 4

Assign responsibility for policy regarding the development and coordination of Federal specifications to the Office of Federal Procurement Policy.

RECOMMENDATION 6

Provide statutory authority and assign to the Office of Federal Procurement Policy responsibility for policies to achieve greater economy in the procurement, storage, and distribution of commercial products used by Federal agencies. Until statutory authority is provided and until such responsibility is assigned to the Office of Federal Procurement Policy, the following actions should be taken:

(a) Establish reasonable standards to permit local using installations to buy directly from commercial sources if lower total economic costs to the Government can be achieved. However, decentralization of items for local purchase should not be permitted to affect adversely centralized procurement and distribution management required for purposes such as mobilization planning, military readiness, and product quality assurance.

(b) Develop and implement on an orderly basis industrial funding of activities engaged in interagency supply support of commercial products and services, to the fullest practical extent, so that (1) determination and recoupment of the true costs for providing such products and services will be facilitated, and (2) efficiency in the use of resources will be fostered.

(c) Evaluate continuously the efficiency, economy, and appropriateness of the procurement and distribution systems on a total economic cost basis at all levels, without prejudice to mobilization reserve and other national requirements.

RECOMMENDATION 8

Authorize primary grantees use of Federal sources of supply and services when:

(a) The purpose is to support a specific grant program for which Federal financing exceeds 60 percent,

(b) The use is optional on the grantee, the Government source, and in the case of Federal schedules or other indefinite delivery contracts, on the supplying contractor, and

(c) The Government is reimbursed all costs.

RECOMMENDATION 9

Require that grantor agencies establish regulatory procedures for assuring appropriate use of the products or services and computation of total costs for Government reimbursement.

RECOMMENDATION 10

Assign responsibility for monitoring implementation of this program and its socio-economic effects to the Office of Federal Procurement Policy.

RECOMMENDATION 16

Assign responsibility for consistent and equitable implementation of legislative policy concerning food acquisition to the Office of Federal Procurement Policy or to an agency designated by the President.

PART E—ACQUISITION OF CONSTRUCTION AND ARCHITECT-ENGINEER SERVICES (VOL. 3)

RECOMMENDATION 2

Provide policy guidance, through the Office of Federal Procurement Policy, specifying that on projects with estimated costs in excess of \$500,000 proposals for A-E contracts should include estimates of the total economic (life-cycle) cost of the project to the Government where it appears that realistic estimates are feasible. Exceptions to this policy should be provided by the agency head or his designee.

RECOMMENDATION 4

Repeal the statutory six-percent limitation on A-E fees. Authorize the Office of Federal Procurement Policy to provide appropriate policy guidelines to insure consistency of action and protection of the Government's interest.

PART F—FEDERAL GRANT-TYPE ASSISTANCE PROGRAMS (VOL. 3)

RECOMMENDATION 2

Urge the Office of Federal Procurement Policy to undertake or sponsor a study of the feasibility of developing a system of guidance for Federal assistance programs and periodically inform Congress of the progress of this study.

PART I—PATENTS, TECHNICAL DATA, AND COPYRIGHTS (VOL. 1)

RECOMMENDATION 10

Undertake, through the Federal Council for Science and Technology in coordination with the Office of Federal Procurement Policy, to develop and evaluate the implementation of a statement of Government policy on rights in technical data supplied under Government contracts. Give specific consideration to the relationships between prime contractors and subcontractors.

RECOMMENDATION 12

Undertake, through the Federal Council for Science and Technology, in coordination with the Office of Federal Procurement Policy, to develop and evaluate the implementation of a statement of Government policy on the treatment of data submitted with proposals or other related communications.

RECOMMENDATION 16

Establish an interagency task force under the lead of the Office of Federal Procurement Policy to develop and evaluate the implementation of a statement of Government copyright policy.



**OFFICE OF FEDERAL PROCUREMENT
POLICY ACT OF 1973**

R E P O R T

OF THE

**COMMITTEE ON GOVERNMENT OPERATIONS
UNITED STATES SENATE**

TO ACCOMPANY

S. 2510

**TO CREATE AN OFFICE OF FEDERAL PROCUREMENT POLICY
WITHIN THE EXECUTIVE OFFICE OF THE PRESIDENT,
AND FOR OTHER PURPOSES**



FEBRUARY 26, 1974.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

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OFFICE OF FEDERAL PROCUREMENT POLICY ACT
OF 1973

FEBRUARY 26, 1974.—Ordered to be printed

Mr. CHILES, from the Committee on Government Operations,
submitted the following

REPORT

[To accompany S. 2510]

The Committee on Government Operations, to which was referred the bill (S. 2510), to create an Office of Federal Procurement Policy (OFPP) within the Executive Office of the President, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

The amendment is in the nature of a substitute, as follows:

AMENDMENT

A BILL To create an Office of Federal Procurement Policy within the Executive Office of the President, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Office of Federal Procurement Policy Act of 1973".

DECLARATION OF POLICY

SEC. 2. It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of goods, services, and facilities by and for the executive branch of the Federal Government by—

(1) establishing policies, procedures, and practices which will require the Government to acquire goods, services, and facilities of the requisite quality and within the time needed at the lowest reasonable cost, utilizing

competitive procurement methods to the maximum extent practicable;

(2) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel;

(3) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;

(4) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

(5) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;

(6) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;

(7) coordinating procurement policies and programs of the several departments and agencies;

(8) conforming procurement policies and programs, whenever appropriate, to other established Government policies and programs;

(9) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;

(10) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government;

(11) promoting fair dealing and equitable relationships among the parties in Government contracting; and

(12) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operations.

FINDINGS AND PURPOSE

SEC. 3. (a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an agency to exercise responsibility for and direction over procurement policies and regulations.

(b) The purpose of this Act is to establish an Office of Federal Procurement Policy to provide overall leadership and direction, through a small, highly qualified and competent staff, for the development of procurement policies and regulations for executive agencies in accordance with applicable laws.

DEFINITIONS

SEC. 4. (a) As used in this Act—

(1) the term "executive agency" means an executive department as defined in section 101 of title 5, United States Code, an independent establishment as defined by section 104 of title 5, United States Code (except that it shall not include the General Accounting Office).

a military department as defined by section 102 of title 5, United States Code, a wholly owned Government corporation, and, subject to the provisions of subsection (b) of this section, the District of Columbia;

(2) the term "Office" means Office of Federal Procurement Policy;

(3) the term "Administrator" means the Administrator of the Office of Federal Procurement Policy; and

(4) the term "Federal assistance" means the provision of money, services, or property to a State, political subdivision, or person for the purpose of supporting, stimulating, strengthening, subsidizing, or otherwise promoting non-Federal activities benefiting a State, political subdivision, third party, or the public generally.

(b) The Council of the District of Columbia, established by section 401(a) of the District of Columbia Self-Government and Governmental Reorganization Act, is authorized, on or after the date its legislative powers under such Act become effective, to pass an act making the provisions of this Act inapplicable to the Government of the District of Columbia.

OFFICE OF FEDERAL PROCUREMENT POLICY

SEC. 5. (a) There is established within the Executive Office of the President an agency to be known as the Office of Federal Procurement Policy. Functions exercised by the Office shall be subject to such policies and directives as the President shall deem necessary to effectuate the provisions of this Act.

(b) There shall be at the head of the Office an Administrator of the Office of Federal Procurement Policy, who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Office a Deputy Administrator of the Office of Federal Procurement Policy who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Administrator shall perform such functions as the Administrator shall designate and shall be Acting Administrator during the absence or disability of the Administrator and, unless the President shall designate another officer of the Government, in the event of a vacancy in the Office.

AUTHORITY AND FUNCTIONS

SEC. 6. (a) The Administrator shall provide overall guidance and direction of procurement policy, and to the extent he considers appropriate and with due regard to the program activities of the executive agencies, shall prescribe policies and regulations, in accordance with applicable laws and, subject to section 8(c), which shall be followed by executive agencies (1) in the procurement of—

(A) property, other than real property in being;

(B) services, including research and development;

and

(C) construction, alteration, repair, or maintenance of real property;
and (2) in providing for or in connection with procurement of items specified in (A), (B), and (C) above, to the extent required for performance of Federal assistance programs.

(b) Nothing in subsection (a) (2) shall be construed—

(1) to grant the Administrator authority to authorize procurement or supply support, either directly or indirectly, to any recipient of Federal assistance; or

(2) to authorize any procurement contrary to State and local laws, in the case of programs to provide assistance to States and political subdivisions.

(c) The functions of the Administrator shall include—

(1) monitoring and revising as necessary policies and regulations concerning the role of the Federal Government and its reliance on the private sector in providing goods and services required to meet public needs;

(2) monitoring and revising as necessary policies and regulations to protect the interests and integrity of the public and private sectors in the procurement of goods and services;

(3) establishing a system of Government-wide coordinated and, to the extent feasible, uniform procurement regulations;

(4) overseeing and promoting programs of the Civil Service Commission and executive agencies to upgrade the quality of Federal procurement through improved programs for personnel recruitment, training, career development, and performance evaluation;

(5) sponsoring research in procurement policies, regulations, procedures, and forms;

(6) guiding and directing the development of a system for collecting and disseminating Government-wide procurement data to meet the informational needs of the Congress, the executive branch, and the private sector;

(7) 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; and

(8) consulting, in developing policies and regulations to be authorized or prescribed by him, with the executive agencies affected and, to the extent feasible, requesting one or more executive agencies (including the Small Business Administration on small business matters), to establish interagency committees, or otherwise use agency representatives or personnel, to solicit the views and the agreement so far as possible, of agencies affected on significant changes in policies and regulations.

(d) The authority of the Administrator under this Act shall not be construed to impair or interfere with—

(1) the determination by executive agencies of their need to procure, or their use of, property, services, or construction;

(2) the decisions by executive agencies to procure individual property, services, or construction, including the particular specifications therefor;

(3) the procedures and forms used by executive agencies, except to such extent as may be necessary to insure effective implementation of policies and regulations authorized or prescribed by the Administrator; or

(4) procurement policies and regulations by or for a military department when payable from nonappropriated funds: *Provided*, That the Administrator undertake a study of such policies and regulations. The results of the study, together with recommendations for administrative or statutory changes, shall be reported to the Committee on Government Operations of the Senate and the Committee on Government Operations of the House of Representatives at the earliest practicable date, but in no event later than two years after the date of enactment of this Act.

ADMINISTRATIVE POWERS

SEC. 7. (a) The Administrator is authorized, in carrying out this Act, to—

(1) appoint advisory committees composed of private citizens and officials of Federal, State, and local governments, and to pay such members (other than those regularly employed by the Federal Government) while attending meetings of such committees or otherwise serving at the request of the Administrator, compensation (including travel time) at rates not in excess of the maximum rate of pay for GS-18 as provided in the General Schedule under section 5332 of title 5, United States Code, and while such members are so serving away from their homes or regular places of business, to pay such members travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently;

(2) accept voluntary and uncompensated services, notwithstanding section 665(b) of title 31, United States Code;

(3) employ experts and consultants in accordance with section 3109 of title 5, United States Code, and compensate individuals so employed for each day (including travel time) at rates not in excess of the maximum rate of pay for grade GS-18 as provided in section 5332 of title 5, United States Code, and while such experts and consultants are so serving away from their homes or regular place of business, to pay such employees travel expenses and per diem in lieu of subsistence at rates authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently; and

(4) adopt an official seal, which shall be judicially noticed.

(b) Upon request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the greatest practical extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish and allow access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

(c) The Office, in connection with the exercise of the authority granted pursuant to this Act, shall be considered an independent Federal regulatory agency for the purpose of Sections 3502 and 3512 of title 44, United States Code.

RESPONSIVENESS TO CONGRESS

SEC. 8. (a) The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of its activities, including consideration of proposed changes in procurement policies and regulations, and shall submit a report to Congress annually, and at such other times as may be necessary for this purpose, with recommendations for amendment or repeal of existing laws or adoption of new laws when appropriate.

(b) Neither the Administrator, the Deputy Administrator, nor employees of the Office may refuse to testify before or submit information to Congress or any duly authorized committee thereof.

(c) (1) The Administrator shall transmit to the Congress a special message with respect to each major policy or regulation which is prescribed by him under section 6(a). In order to provide an opportunity for consultation, the Administrator shall send to the Congress not less than 30 days prior to transmittal of such proposed major policy or regulation notice thereof, including a statement of the purpose and substance of such proposal. Such policy or regulation shall become effective upon the expiration of the first period of sixty calendar days of continuous session of the Congress after the date of its submission, or on such later date as the Office may prescribe, unless between the date of transmittal and the end of the sixty-day period, either House passes a resolution stating in substance that that House does not favor the policy or regulation.

(2) For the purpose of paragraph (1) of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die; and

(B) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of the sixty-day period.

(3) The provisions of sections 910 through 913 of title 5, United States Code, shall apply to the procedures applicable in the consideration of such a resolution.

EFFECT ON EXISTING LAWS

SEC. 9. Authority under any other law permitting an executive agency to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in this Act.

EFFECT ON EXISTING REGULATIONS

SEC. 10. Procurement policies, regulations, procedures, or forms in effect on the date of enactment of this Act shall continue in effect, as modified from time to time, until superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to carry out the provisions of this Act—

(1) not to exceed \$4,000,000 for the first fiscal year after enactment of this Act, of which not to exceed \$150,000 shall be available for the purpose of sponsoring research in accordance with section 6(c)(5); and

(2) such sums as may be necessary for each of the four fiscal years thereafter subject to the reviews specified in section 8(a).

Any subsequent legislation to authorize appropriations to carry out the purposes of this Act shall be referred in the Senate to the Committee on Government Operations.

DELEGATION

SEC. 12. (a) The Administrator may delegate any authority, function, or power under this Act, other than his basic authority to provide overall guidance and direction of Federal procurement policy and to prescribe policies and regulations to carry out that policy, to any other executive agency with the consent of such agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this Act.

ANNUAL PAY

SEC. 13. Section 5314 of title 5, United States Code, is amended by adding at the end thereof the following:

“(60) Administrator of the Office of Federal Procurement Policy.”

ACCESS TO INFORMATION

SEC. 14. (a) The Administrator and employees of the Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities, and for this purpose, the Comptroller General or his representatives

shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings for the purpose of promulgating procurement policies and regulations, as designated by him for the purpose of this subsection, shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

REPEALS AND AMENDMENTS

SEC. 15. (a) Section 201(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(c)) is amended by inserting "subject to regulations prescribed by the Administrator of the Office of Federal Procurement Policy," after the comma following "Administrator".

(b) Section 692(c) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474) is amended in the first sentence thereof by inserting "except as provided by the Office of Federal Procurement Policy Act, and" immediately after "herewith".

I. SUMMARY OF THE ACT

In recent years, Federal government procurements of goods, services and facilities have been nearly \$60 billion annually. The purpose of S. 2510 is to provide central executive branch leadership, guidance, and direction for the procurement policies and regulations employed in these acquisitions.

Creation of a central procurement policy office, as proposed in S. 2510, would fill the void in policy leadership and responsibility identified by the Commission on Government Procurement in its report to Congress and confirmed during hearings before this Committee. This new leadership should effect substantial savings in Federal expenditures through a consolidation, simplification, and central direction of procurement policies and regulations that have, to date, become needlessly complex, diverse, uncoordinated, outdated, and, as a result, unnecessarily wasteful.

To correct these conditions, S. 2510 authorizes the establishment of a small office staffed with highly competent personnel to be known as the Office of Federal Procurement Policy. The Office will be located in the Executive Office of the President to:

- (1) provide overall executive branch guidance and direction of Federal procurement policy, and
- (2) prescribe policies and regulations to be followed by executive agencies in the procurement of needed goods, services and facilities.

In exercising this authority, the Administrator of the Office shall carry out the following specific functions:

- (1) monitoring and revising policies for reliance on the private sector;
- (2) monitoring and revising policies to protect the interests of both the government and private sector;
- (3) establishing a government-wide system of uniform procurement regulations;
- (4) promoting the improvement of personnel programs for the procurement work force;
- (5) sponsoring research in procurement policies and practices;
- (6) developing and disseminating government-wide procurement data;
- (7) establishing criteria and procedures for soliciting the viewpoints of all interested parties;
- (8) consulting and using the capabilities of concerned executive agencies in the development of policies and regulations.

The authority of the Administrator is specifically restricted with respect to:

- (1) authorizing procurement by recipients of Federal assistance from Federal supply sources;
- (2) becoming involved with individual contract award or procurement decisions;
- (3) prescribing procedures and forms, except when necessary for effective implementation of policies and regulations authorized by the Administrator; and
- (4) regulating procurement by the military departments when financed with nonappropriated funds.

The Office is to be located in the Executive Office of the President to enhance its effectiveness and stature. To insure responsiveness to the Congress, S. 2510 includes several important provisions:

- (1) both the Administrator and Deputy Administrator of the Office must be confirmed by the Senate;
- (2) no officer or employee of the Office may refuse to testify before or submit information to the Congress;
- (3) the Administrator shall keep the Congress "fully and currently informed" of activities through annual reports, special reports, and advance notification of proposed major policy changes;
- (4) the Congress may reject any proposed major policy or regulation through a resolution passed by either House; and
- (5) authorization of appropriations is limited to \$4 million for the first year and to such sums as may be necessary for each of only four years thereafter, at which time the Government Operations Committee in the Senate must review the accomplishments of the Office before authorizing legislation to continue its operation.

The bill declares that it is the policy of the Congress to promote economy, efficiency and effectiveness in the procurement of goods, services, and facilities in the executive branch and provides a set of principles to be followed in carrying out this policy. This is the same policy enacted in Public Law 91-129, which served the Procurement Commission so well in planning and conducting its study of the procurement process for the Congress.

In addition, the bill, through the creation of an Office of Federal Procurement Policy, would provide a focus for follow-through on the implementation of the report of the Commission on Government Procurement, with its 149 recommendations. The OFPP is specifically mentioned in 19 of the Commission recommendations, and would be directly concerned with many more of them.

II. NEED FOR THE LEGISLATION

Despite the magnitude of the expenditures by the Federal Government for needed goods, services and facilities (almost \$60 billion annually in recent years), there is no single point in the executive branch responsible for the policies that govern the procurement process. Nor is there a focal point to meet the demands for information, guidance and assistance from such diverse factions as small business firms, other business interests, Government agencies, or the Congress on matters involving government-wide procurement policies. Many segments of Government, operating to a large extent in an uncoordinated manner, make or strongly influence procurement policy, but there is no strong central leadership of the segments.

The concerns voiced by the public over the past decade about the integrity and effectiveness of Federal procurement need no elaboration. In recognition of these concerns, the Congress by passage of Public Law 91-129 in 1969 initiated the program that led to the introduction of legislation (S. 2510) to fill the void in procurement policy leadership and responsibility that exists in the executive branch.

The extensive hearings preceding enactment of Public Law 91-129 demonstrated beyond doubt that patchwork solutions to such perennial procurement problems as cost overruns, poor quality, and excessive paperwork would no longer suffice—that a comprehensive blueprint for bringing about fundamental reforms in the procurement process was essential. The Commission on Government Procurement gave Congress the blueprint it sought. The establishment by law of an Office of Federal Procurement Policy, as called for in the legislation, was characterized by the Chairman of the House Government Operations Committee as the “centerpiece” of the Procurement Commission plan for improving the procurement process. The Procurement Commission put it this way:

We have placed creation of a central policy office first among our recommendations because of its overall importance in achieving the improvements we propose in the procurement process.

The Office is fundamental to orderly, timely implementation of the plan provided to Congress.

The General Accounting Office, in monitoring the progress of the executive branch in responding to the 149 Procurement Commission recommendations, cited the long, laborious processing of the recommendations. GAO referred to the executive branch program as a part-time effort that would take at least several years to complete and recommended several steps be taken to accelerate the program. In his testimony in support of S. 2510, the Comptroller General observed that the evidence amassed by the Commission indicates that an effective leadership role cannot be credibly satisfied by a low-key revitalization of the present structure. Accordingly, it is his recommendation that the OFPP be established by legislation now in order to provide the executive branch with the necessary mandate, stature, authority and continuity so essential to basic procurement reform.

Even more revealing of the need for the legislation is the statement by the Administrator of the General Services Administration during Senate hearings on the bill that there is no alternative to a legislatively established OFPP. He concluded that without such an Office, the reforms in government procurement advocated by the Procurement Commission would change from maybe 5 to 7 years to maybe 100 years.

The conclusion reached by the Committee after five days of hearings, during which testimony was received from twenty-three witnesses, is that legislation is essential to the establishment of an office with sufficient stature and stability to bring about the required improvements in the procurement process. Additionally, legislation is needed to insure a high degree of responsiveness to Congress.

Basically, the legislation prescribes an organizational arrangement to provide the executive branch with a focal point of leadership and coordination where fundamental procurement policies could be developed, debated, coordinated and, finally, published and implemented by the some 20 procuring agencies with reasonable consistency and authority. There are no direct savings associated with its establishment; however, the potential for savings as a result of the impetus it would provide to the implementation of basic reforms in the way procurement is done in Government is unlimited. For example, a one percent improvement in Federal procurement would yield annual savings of a half billion dollars, and implementation of only one of the Commission's recommendations—increasing the small purchase dollar ceiling for use of simplified procedures would save approximately \$100 million annually.

The need for the legislation is further illustrated by the following examples of things the OFPP could do to improve Federal procurement operations:

- (1) Arrest the proliferation of laws and diverse regulations and achieve desirable uniformity.
- (2) Initiate legislation to reform the presently fragmented and outmoded statutory base for procurement policy and at the same time consolidate or repeal the many redundant and obsolete laws.
- (3) Bring about government-wide exchange of successful ideas

and thereby increase efficiency and economy in government operations.

(4) Build public confidence in Federal procurement practices with a visible improvement program responsive both to the President and the Congress.

Primarily the needs that have been cited for the legislation cover benefits to the executive branch and the recipients of its procurement dollars. Congress, too, has several direct and pressing needs for an OFPP. Here are five advantages that such an Office would provide for Congress itself.

It would provide a focal point for procurement matters involving more than one executive agency where Congress and the public now have to go to a large number of agencies.

Second, it would provide a point of advice to the Congress on Government-wide impact of legislation. It would help preclude the passage of legislation that is piecemeal, which conflicts with those duplicative elements of other legislation or national objectives accomplished through the procurement process.

Third, individual agencies need not be crisis-oriented and reactive to symptomatic problems encountered by congressional committees, the GAO and industry. An individual agency sometimes lacks credibility to resist patchwork solutions.

Fourth, it would provide a source for procurement data government-wide, which we do not have today, and which the executive branch and Congress needs very badly.

Fifth, it would be a point of advice to Congress on the effectiveness of procurement policies and recommend legislation to update and improve statutes.

This legislation is only the initial effort of the Senate Government Operations Ad Hoc Subcommittee on Federal Procurement to update and restructure the procurement process of the Federal Government to correct the abuses of the past, and to provide a system tailored to the demands of the future. It is but the first step, but it is the step that will set the pace for the future. It is the step that will demonstrate the determination of Congress to provide the legislative leadership and mandate necessary to bring about fundamental reforms in Federal procurement. It is an action by which Congress can demonstrate to the public that it is concerned with fiscal responsibility in procurement and the restoration of public credibility in the ability of the Federal Government to make procurements in an efficient, effective and economical manner.

When Senator Jackson introduced S. 1707 that led to the establishment of the Commission on Government Procurement in 1969, the Senate initiated a long-range program to correct basic deficiencies in the procurement process. This legislation is the key to the continuation of the program and the realization of this objective.

III. COST ESTIMATES FOR THE ACT

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91-150, 91st Congress) the Committee provides the following estimate of cost:

For administration of the Act, the cost shall not exceed \$4 million

for the first year of operation for the Office. Further authorization will be subject to congressional review of operations for each of the following 4 years and require complete assessment by the Committee on Government Operations of satisfactory performance by the Office before budgetary approval for subsequent years.

IV. LEGISLATIVE HISTORY

S. 2510 puts in effect the number one recommendation of the report submitted to the Congress by the Commission on Government Procurement after a 2½-year unprecedented review of the Federal procurement process.

The Commission on Government Procurement:¹ The Commission on Government Procurement was created by Public Law 91-129 in November, 1969 to study and recommend to Congress methods "to promote the economy, efficiency, and effectiveness" of procurement by the executive branch of the Federal Government.

The study was first proposed in 1966, and preliminary hearings were held by the 89th and 90th Congresses. The bills that led to Public Law 91-129 were introduced in the 91st Congress by Senator Henry M. Jackson and Representative Chet Holifield. Hearings on these bills in the spring and summer of 1969 produced testimony from more than 100 witnesses that filled ten volumes.

A commission, with membership from the legislative and executive branches and from the public, was adopted as the study mechanism. The statute provided for a bipartisan, 12-member body. The commissioners elected public member Perkins McGuire as Chairman and Representative Chet Holifield as Vice-Chairman. A staff of about 50 professional members was employed by the Commission to conduct day-to-day study operations and direct the study effort.

The membership of the Procurement Commission and their employment while serving on the Commission was as follows:

Perkins McGuire, Chairman, Consultant and Corporate Director, Washington, D.C.	Congressman Chet Holifield, Vice Chairman, California.
Senator Lawton M. Chiles, Jr., Florida.	Elmer B. Staats, Comptroller General of the United States, Washington, D.C.
Senator Edward J. Gurney, Florida.	Arthur F. Sampson, Acting Administrator, General Services Administration, Washington, D.C.
Congressman Frank Horton, New York.	Frank Sanders, Under Secretary of the Navy, Department of the Navy, Washington, D.C.
Richard E. Horner, President and Director, E. F. Johnson Co., Waseca, Minn.	James E. Webb, Attorney at Law, Washington, D.C.
Paul W. Beamer, Senior Vice President and Director, Valtec Corp., West Boylston, Mass.	Peter D. Joers, Special Assistant to the President of Weyerhaeuser Corp., Hot Springs, Ark.

¹The Report of the Commission on Government Procurement, vol. I, pp. vii-viii, December 1972.

The collection and analysis of massive amounts of materials required help and advice of government, industry, and the academic community. In all, the services of almost 500 persons were loaned to the Commission on a full- or part-time basis; some for periods exceeding a year.

The Commission and its participants reviewed thousands of pages of procurement reports, congressional testimony, documents, comments, and opinions; consulted approximately 12,000 persons engaged in procurement; held more than 2,000 meetings at 1,000 government, industry, and academic facilities, including 36 public meetings attended by over 1,000 persons in 18 cities; and received responses to questionnaires from nearly 60,000 individuals and many organizations. Government agencies, suppliers, and trade and professional associations all made significant contributions to the program.

Basis of the Commission's Recommendation: The most frequent finding of the 13 study groups organized by the Commission to study designated parts of the procurement process was the need for some type of central direction and control of basic procurement policy. Seven groups recommended a central institutional arrangement, while six other groups recommended centralized control of specific functions. In total, the supporters of centralized leadership in the executive branch were quite evenly balanced between the public and private sectors.

The findings of these study groups were corroborated by a special staff study. This study was initially organized by the Commission to describe the institutional structure used for the formulation of government-wide procurement policy. It was later enlarged to consider the recurring recommendations of the study groups to centralize the formulation of procurement policy.

During the special study, more than 100 top-level operating officials in fourteen government agencies were interviewed and, without exception, these officials were unanimous in their view that some form of central institution with a government-wide perspective was needed to formulate procurement policies. Various reservations were expressed by these officials regarding the location, authority, functions and relationship of the institution to the procuring and socio-economic agencies.² These findings have been characterized by the summary statement that, "No one is in charge of the function which involves the expenditure of more than one-fourth of the Federal budget."

The Need for Central Leadership: There are several unacceptable conditions underlying the need for central procurement leadership. First, coordination between executive branch agencies or between Congress, GAO and the executive branch on procurement matters is, at best, deficient. Second, the void that exists in policy leadership and a fragmented and outmoded statutory base are the root causes of many problems that beset the procurement process. Third, the OFPP is considered a prerequisite to long overdue reform of the procurement process. Finally, a central point of leadership could do much to restore credibility to the procurement process through its ability to evaluate,

² Commission on Government Procurement, *A Special Staff Study of the Roles and Relationships of Key Agencies in Procurement Policy, Control, and Management*. Washington, March 1972.

correct, and support Government procurement policy in the face of individual "horror cases."

Reasons for a central institution cited by agency officials interviewed during the aforementioned special staff study of the Commission included:

- (1) the need for someone to be in charge of the procurement function;
- (2) the need for a "court of last resort" to arbitrate agency differences;
- (3) the need for an organization to compare agency practices and policies;
- (4) the need to direct, develop and evaluate uniform procurement policies.

These needs were verified during the hearings conducted on S. 2510. An Executive branch focal point for procurement policy, responsive to and working closely with Congress, could have minimized the occurrence of the following types of problems:

- (1) a proliferation of laws with differing provisions:
 - 46 laws redundant to the Armed Services Procurement Act and the Federal Property and Administrative Services Act.
 - 110 different provisions on use of experts and consultants.
 - 80 separate provisions on access to records.
- (2) inconsistent coverage of laws in the areas of renegotiation, architect and engineering services, independent research and development, cost sharing, competitive discussions, submission of cost or pricing data, and others.

The importance of the OFPP to procurement reform is evident in Congressman Holifield's evaluation that it is the "Centerpiece" of the Commission report—over two-thirds of the Commission's 149 recommendations involve actions by a central authority such as the proposed office, and about one-half also require legislative action by Congress.

Procurement Commission Conclusions: Having concluded that "a central Office of Federal Procurement Policy is urgently needed," the Commission recommended these attributes for the Office:

Location. The Commission favored creating the OFPP within the Office of Management and Budget under a separate Deputy Director, but considered placement within the Executive Office of the President satisfactory.

Size. While size was not defined, the Commission expected the size of the OFPP to be kept small through the use of the lead agency concept employing the expertise and personnel of major procuring agencies and the assignment to agencies of leadership in specific policy areas.

Independence. Separation of policy-making from operational concerns and biases was believed to be essential to objectivity. The OFPP would not become involved in the award or administration of contracts.

Directive Authority. This characteristic resulted from GSA's ineffectiveness in managing the Federal Procurement Regulations.

To prevent a repeat of the GSA experience, the Commission recommended that the Office be placed on a plane above the procurement agencies and given directive authority.

Responsiveness to Congress. The Commission was specific in stating that the OFPP must be responsive to Congress and, further, that the Office would seek ways to improve executive-legislative cooperation.

Bills Introduced, House of Representatives: Legislation to create an Office of Federal Procurement Policy (H.R. 9059) was introduced in the House on June 28, 1973 by Congressman Holifield, Vice-Chairman of the Procurement Commission and Chairman of the House Committee on Government Operations, and Congressman Frank Horton, Ranking Minority Member and also a former commissioner.

H.R. 9059 was the subject of six days of hearings before the House Legislation and Military Operations Subcommittee, July 11, 12, 16, 17, 20, and 30, 1973. The twenty-five witnesses, presenting the views of executive agencies, the private sector, and the academic community, provided a valuable record which was used extensively in developing the Senate legislation and hearings.

Bills Introduced, Senate: Two bills to create an OFPP and one amendment were referred to the Committee on Government Operations, Ad Hoc Subcommittee on Federal Procurement.

Bills, amendments, author and date introduced:

S. 2198, Mr. Brock, July 18, 1973.

Amendment No. 500, Mr. Brock, September 18, 1973.

S. 2510, Mr. Chiles and Mr. Roth, October 1, 1973.

S. 2198 was identical to H.R. 9059 introduced earlier in the House. Amendment 500 to S. 2198 was designed to correct one of the problems (use of Federal sources of supply and support by grantees) identified during House hearings.

S. 2510 reflects the review of all prior House deliberations, and additional legislative review by Senate counsel and the General Accounting Office during the initial drafting. Additional changes, which were included as an amendment in the nature of a substitute bill, were developed by the Subcommittee and the full Government Operations Committee.

V. SECTION-BY-SECTION ANALYSIS OF THE BILL

Section 1 states the short title—"Office of Federal Procurement Policy Act of 1973."

DECLARATION OF POLICY

Section 2 is a declaration of the policy of Congress to be employed in the procurement of goods, services, and facilities by and for the Federal government. Principles to be followed in the application of this policy and the fulfillment of the purpose of this bill are also provided. They provide a conceptual framework for the conduct of Federal procurement.

FINDINGS AND PURPOSE

Section 3(a) states the congressional finding that government procurement will be improved by an organization with responsibility for and direction over procurement policies and regulations.

Section 3(b) says that the purpose of the bill is to establish a small office staffed by highly qualified personnel to provide leadership and direction for the development of procurement policies and regulations "in accordance with applicable laws." Without specifying the exact size, the intent is that the Office will be kept small. To do this, a carefully selected staff of experienced professionals in the several disciplines involved in the procurement process would be recruited, and maximum use made of the policy-making machinery in the executive branch, consistent with the provisions in Sections 6(c)(8) and 12(a). The phrase "in accordance with applicable laws" is intended to make it clear that the OFPP policies must be consistent with the laws that apply to procurement, and the Office cannot override them (for example, by authorizing cost-plus-a-percentage-of-cost type of contracting).

DEFINITIONS

Section 4 defines "executive agency," "Office," "Administrator," and "Federal assistance."

The term "*executive agency*" is used in the operative sections of the bill. The definition serves to delineate the applicability of the bill and identify the agencies which would be subject to the policy-making authority of the OFPP. These include the executive departments, independent establishments, military departments, and government corporations.

In addition, the District of Columbia (which is not an independent establishment) is included by specific mention. The District of Columbia has not been previously subject to the Federal Procurement Regulations (FPR), although on its own initiative it has adhered to them frequently. However, the Council of the District of Columbia, established by the District of Columbia Self-Government and Governmental Reorganization Act, may exempt the Government of the District of Columbia from the Act. This can be done when the Council's legislative powers become effective.

The judicial and legislative branches, including the General Accounting Office, are not within the definition of executive agency and, therefore, are not under the authority of the OFPP. Procurement by these agencies is relatively small, and subjecting them to an agency in the executive branch could raise a constitutional question under the "separation of powers" doctrine.

In view of the explicit declaration of congressional policy in 39 U.S.C. 410 to exempt the Postal Service and Postal Rate Commission from Federal law dealing with public or Federal contracts, these activities are also excluded from coverage by the OFPP.

It is not intended that the authority of the Tennessee Valley Authority (TVA) granted by Section 602(d) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 474) be interfered with by this Act. There was a provision in S. 2510 when it was introduced on October 1, 1973, that would have repealed Section 602(d) of the FPASA. This was deleted by the committee as an expression of intent that TVA not be covered by S. 2510.

The two terms "Office" and "Administrator" refer to the Office of Federal Procurement Policy and its administrator.

The term "Federal assistance" refers to what is more commonly known as "grant," "grant-in-aid" and "cooperative agreement" programs. The definition was developed from the Procurement Commission report. This term is used in describing the authority of the Administrator.

OFFICE OF FEDERAL PROCUREMENT POLICY

Section 5 establishes the Office of Federal Procurement Policy in the Executive Office of the President. It is to be headed by an Administrator. There shall also be a Deputy Administrator in the OFPP, who shall serve as Acting Administrator during the absence or disability of the Administrator until the President designates a person to fill the vacancy. Both the Administrator and Deputy Administrator are to be appointed by the President with the advice and consent of the Senate. The Office is to function subject to the policies and directives of the President.

AUTHORITY AND FUNCTIONS

Section 6(a) authorizes the Office to provide overall guidance and direction of procurement policy and to prescribe policy and regulations for procurement. These issuances must conform to existing laws, and major policies would be subject to congressional review. Procurement by both government agencies and recipients of Federal assistance would be covered.

Procurement under this section covers property, services (including research and development), and construction, alteration, repair or maintenance of buildings and other forms of real property, but excludes real property in being. Accordingly, the acquisition of a fee, easements, leases, or other interests in existing buildings and land would not be subject to the policies and regulations promulgated by the OFPP.

The Administrator is to prescribe policies and regulations "to the extent he considers appropriate." This makes clear the Administrator's discretion, in the exercise of his authority, as to what subjects to cover, when, and in what detail. Implicit in this duty is the need to review agency issuances to the extent necessary to know that agencies are acting in conformance with the overall policies of the Office. This could include a selective investigation of complaints of non-compliance.

This section also provides that policies and regulations prescribed by the Administrator "shall be followed by executive agencies." Thus, they will have the same legal force and effect as a statute and any violation would be subject to judicial challenge and review. Violations could also be subject to GAO bid and protests and audit reviews.

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 found that existing procedures for coordinating the procurement aspects of such socio-economic regulations "range from virtually non-existent to barely satisfactory."

Under the general language of this section and the broad discretion given the Administrator, the bill covers many specific recommendations of the Commission which are not spelled out in the bill itself—for example, recommendations involving establishment of government-wide cost principles and profit guidelines, establishment of policies for contractor management systems; use of commercial forms; improvement in contracting agency debriefing procedures; and setting of new standards for annually measuring the use of small business. The intent is for the OFPP to deal with the policy aspects of such matters and leave the operational, administrative, and technical phases to the procuring agencies insofar as they do not conflict with the policy or the general thrust of the OFPP to bring greater consistency and uniformity into the procurement process.

Section 6(b) places two restrictions on the authority of the Administrator to prescribe policies for procurement by recipients of Federal assistance. The Administrator, acting on his own authority, cannot, contrary to existing policy, authorize procurement by recipients, or any intermediary recipient of Federal assistance, from the General Services Administration or other agencies, or by use of Federal Supply Schedule contracts. The other restriction exempts States and political subdivisions, when they are the recipients of Federal assistance, from the procurement policies and regulations of the Office when these policies and regulations conflict with State and local statutes under which States and political subdivisions are required to act.

Section 6(c), without attempting to provide an inclusive definition of each duty and role for the Office, sets forth eight functions of the Administrator which indicate the type of organization the bill would create.

Section 6(c)(1). Under this subsection, the OFPP is to monitor and revise policies for reliance on the private sector. The bill does not endorse or assure any particular policy; however, subcommittee members expressed support of a policy of reliance on the private sector during hearings on the bill. This has reference to the so-called "in-house vs. contract" problem which has been a continuing concern of congressional committees for almost 40 years. Although there are some statutory directives, OMB Circular A-76 is the primary vehicle for establishing and implementing the national policy to rely on private enterprise for the provision of the Government's goods and services. Giving the OFPP the function of monitoring and revising, as necessary, executive directives implementing this national policy will enhance its observance and assure more positive implementation.

Section 6(c)(2). This subsection refers to the protection of the interests and integrity of both parties to a contract. The Administrator would be expected to take the appropriate action to insure that this principle is adhered to in the Government's procurement policies and regulations.

Section 6(c)(3). Under this subsection, the Administrator would establish a system of government-wide coordinated and, to the extent feasible, uniform procurement regulations. This is a primary objective of the Office. The Office would bring about greater coordination and uniformity in procurement policy and regulations, for example, by issuing its own government-wide procurement regulations or directing incorporation of identical provisions in the Federal Pro-

curement Regulations (FPR) and the Armed Services Procurement Regulations (ASPR).

Section 6(c)(4). This subsection provides a focal point thoroughly familiar with the needs and effectiveness of the procurement process government-wide to oversee and promote programs related to the qualifications and welfare of the procurement work force. It recognizes that lasting improvements in the procurement process can only be achieved with personnel programs designed to equip the procurement work force to cope with the increasingly complex demands of contemporary buying. Past efforts to recruit, train, and develop such a work force have been uncoordinated and generally inadequate. This subsection would not alter the personnel responsibilities of the Civil Service Commission or the executive agencies, but would give the Office an oversight role to insure that those responsible for the quality of the procurement work force are effectively carrying out their responsibilities.

Section 6(c)(5). This subsection gives the Administrator authority to sponsor research in procurement policies, regulations, procedures and forms. It provides him the wherewithal to avoid the formulation and promulgation of procurement policies and regulations without hard facts achieved through comprehensive research or operating experience. This provision would foster innovation and creativity and would permit the orderly development of promising procurement techniques before committing large sums of money to their use.

Section 6(c)(6). This subsection makes the Administrator responsible for directing the development of a system for collecting and disseminating government-wide procurement statistics. At present, it is not practical to determine accurately government-wide what is procured, how much is expended, or who is making the procurements. The Administrator is charged with directing the development of a system to fill this void.

Section 6(c)(7). Under this subsection, the Administrator is to establish procedures for public participation in procurement rule-making. These would apply to any policy or regulation issued by the Office, the Federal Procurement Regulations (FPR), Armed Services Procurement Regulation (ASPR), the primary regulations of other agencies, and lower level regulations as determined by the Administrator. Existing agency practices range from ad hoc solicitations of public comment to those approaching the fairly well-developed procedures of the Department of Defense. To provide greater flexibility and accommodate the special needs of parties with an interest in procurement, the responsibility for developing rule-making procedures is assigned to the Administrator, in lieu of simply removing the present exemption of contracts from the rule-making requirements of the Administrative Procedure Act, 5 U.S.C. 553(a)(2). The emphasis here is on the timely and effective solicitation of the viewpoints of all interested parties on policies and regulations of general application.

Section 6(c)(8). This subsection provides for consultation by the Administrator with the affected executive agencies. It also authorizes him to designate "lead" agencies, establish inter-agency committees, and otherwise use agency personnel as a means for developing and coordinating procurement policies and regulations. The staff of procurement experts in the Office would place heavy reliance on the procurement agencies themselves for assistance. This would assure an

awareness of agency mission needs and the practicalities of procurement operations. In recognition of a recommendation of the Procurement Commission and the importance of small business concerns, the Small Business Administration is specified as the focal point for coordination of small business procurement matters.

Section 6(d) limits the involvement of the OFPP in the details of agency operations. It specifies that the Administrator's authority for procurement policy and regulations is not intended to interfere with (1) the determination by the procurement agencies of their own requirements or use of specific property, services, or construction; (2) individual procurement decisions or transactions including the specifications therefor; (3) detailed procedures or forms except where necessary to insure compliance with policies and regulations. For the Administrator to ensure effective implementation of policies and regulations of the OFPP, it is necessary that he have limited authority to prescribe procedures and forms. This authority is expected to be used sparingly and with judicious concern for the needs of agencies. Subparagraph (4) places an additional constraint on the authority of the Office by excluding procurements by nonappropriated fund activities of the military departments, such as post exchanges, clubs, and open messes. A similar exception is now found in the Armed Services Procurement Act (ASPA), 10 U.S.C. 2303. Nonappropriated funds are moneys used by the military that are not appropriated by the Congress. They are self-generating and are returned to the activities from which they came or are used in support of other nonappropriated fund activities. In recognition of the large sums of money expended by nonappropriated fund activities and past problems, a study is to be undertaken by the OFPP of policies and regulations governing procurements paid from nonappropriated funds. A report, with appropriate recommendations, is to be submitted to Congress within two years. Industrial fund procurements are included under the bill.

ADMINISTRATIVE POWERS

Section 7(a) gives the OFPP customary administrative powers to appoint advisory committees, accept voluntary and uncompensated services, employ experts and consultants, and adopt an official seal.

Section 7(b) directs executive agencies to cooperate with the OFPP in making their resources available and in furnishing information. This is fundamental to keeping the size of the Office small. It is also necessary to avoid an "ivory tower" approach to policy making. In addition, this section furnishes the means for an administrative compliance check by giving the Administrator access to all agency information and records. The Committee considered giving the Administrator subpoena power, but decided that he has the authority to gain all the information necessary to carry out his duties. In the event any agency refuses to cooperate with the OFPP, the Administrator should report this to the Senate Government Operations Committee. The Committee will take whatever steps may be necessary.

Section 7(c) exempts the OFPP from the provisions of the Federal Reporting Services Act in the same manner that section 409(a), Public Law 93-153, excludes such independent Federal regulatory agencies as the Civil Aeronautics Board, Federal Communications Commission, Federal Trade Commission, and Federal Power Commission. The Gen-

eral Accounting Office rather than the Office of Management and Budget is responsible for reviewing the plans and forms proposed by the OFPP for use in conducting or sponsoring the collection of information from ten or more persons, other than Federal employees. Hence, the Office will be subject to the rules issued by the GAO pursuant to its authority under 44 U.S.C. 3512. In discussing the desirability of treating the OFPP as an independent Federal regulatory agency in its collection of information, the Committee gave full consideration to Conference Report No. 93-617, October 31, 1973, as it relates to section 409 (a) and (b) of Public Law 93-153.

RESPONSIVENESS TO CONGRESS

Section 8(a) requires the OFPP to keep Congress fully and currently informed and to report to Congress annually or at such other times as may be appropriate. The annual report should include an analysis, evaluation and review of the:

- (a) activities and accomplishments of the Office;
- (b) performance of the executive agencies in supporting the objectives of the Act;
- (c) status of the implementation of the Procurement Commission report;
- (d) plans and objectives for the next year; including proposed changes in major policies and regulations;
- (e) recommendations for legislation;
- (f) selected statistical data as collected under Section 6(c) (6) of the bill;
- (g) application of appropriated funds, including the sponsorship of research and development, and an estimate of the resource requirements for the next year.

This report should be prepared as of the end of the calendar year and submitted to Congress by the 15th of February.

Section 8(b) expressly provides that the Administrator and Deputy Administrator and OFPP employees may not refuse to testify before or submit information to Congress. To make the desires of Congress abundantly clear, the need for complete responsiveness will be emphasized during the confirmation hearings of the Administrator and Deputy Administrator.

Section 8(c) was included to give Congress full visibility over the procurement process and the opportunity to express itself before, rather than after, major policies are propounded and implemented. It requires the Administrator to send Congress a special message on major policy issuances and gives Congress 60 days in which to disapprove such issuances through a resolution passed by either House if it does not favor the policy or regulation. Rules under which Congress will operate with respect to these notifications are also provided.

Thirty days prior to the transmittal of major policies, the Administrator will send to Congress a notice of such policies. This will provide a period of informal consultation which should benefit both the executive and legislative branches.

Congress does not desire to get involved in the routine and less consequential issuances of the OFPP, but it does want to be a full participant in policies which may lead to the expenditure of large sums of money or may adversely impact the welfare, economy or security

of our country. Following are brief descriptions of the type policy or regulatory issuances that should be submitted by special message:

Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs. Such revisions to cost principles for these expenditures as those concerning the negotiation by certain contractors of an advance agreement with the government which establishes a ceiling for allowability of IR&D and B&P costs for the following fiscal year.

Equal Opportunity Pre-Award Clearance. Requirement that a prime or first-tier subcontractor must receive a clearance from the appropriate compliance agency that the company is in compliance with equal employment opportunity policies prior to award of any procurement of \$1,000,000 or more.

Patents. Regulations implementing the revised Presidential Statement of Patent Policy issued in August, 1971.

Methods of Procurement. Changes in such basic policies as the requirement that competitive proposals shall be solicited from all qualified sources of supplies as are deemed necessary by the contracting officer to assure full and free competition consistent with the types of supplies and services necessary to meet the government's need and to obtain for the government the most advantageous contract—prices, quality, and other factors considered.

Major Systems Acquisitions. Procurement aspects of the implementation of such fundamental and far-reaching policies as DOD Directive 5000.1, Acquisition of Major Defense Systems.

Socio-Economic Programs. Policy guidance on the use of the procurement process to foster such programs as the establishment and growth of minority-owned enterprises in support of the Minority Business Enterprise Program (Executive Order 11625).

Set-Aside Procedures and Clauses—Small Business and Labor Surplus Areas. New combined set-aside procedure which takes precedence over all other set-asides. This procedure involves a total small business set-aside with a portion thereof further restricted for small firms which also qualify as labor surplus area firms, with the associated restructuring of contract clauses.

Contractor Capital Employed Policy. Revision of the method for determining pre-negotiation profit objectives under certain contracts by specifically recognizing contractor operating and facilities capital to be employed in contract performance. Prescribes the use of a Contract Capital Index.

Issuances such as the following need not be submitted to Congress:

Value Engineering. Authorization of a reward share when a designated government activity accomplishes maintenance and overhaul within DOD resources and savings are realized as a result of using a contractor's cost reduction proposal. The contractor's reward share is determined as it would be if the maintenance and overhaul were performed under contract.

Source Limitations. Requirement that precision components for mechanical time devices and items containing precision components for mechanical time devices shall be of domestic manufacture only.

Progress Payments. Provision that progress payments shall not be made more often than bi-weekly, and in the case of items and services purchased directly for the contract, reimbursements are limited to cash payments made.

Government Property. New definitions, simplified procedures, standard formats, and automation of data related to contractor records for government property in possession of contractors.

Construction Contract Prices. Adjustment of contract prices as a result of a reduction of wages and salaries caused by action of the Construction Industry Stabilization Committee. This item refers to the Economic Stabilization Act of 1970 and Executive Order 11965 which provide for the establishment and maintenance of economic stabilization programs.

Notification of Changes. Policy and procedural guidance for obtaining prompt notification by contractors of government conduct that could constitute an unauthorized unilateral change in the terms and conditions of a contract.

EFFECT ON EXISTING LAWS

Section 9 is basic to the intent to make the OFPP the controlling force for the government-wide integration and issuance of procurement policy. It provides that any other agency authority to prescribe policy is subject to that of the OFPP. This provision relates only to the authority of an agency to prescribe policy. Neither it nor the following section gives the Office authority to contravene an existing statute. Outmoded, inconsistent or duplicative statutes having an adverse impact on procurement will be reported to Congress, with recommendations for amendment or repeal of existing laws or adoption of new laws.

EFFECT ON EXISTING REGULATIONS

Section 10 continues all existing policies and regulations until superseded by OFPP directives. This recognizes that there will be some lapse of time before the Administrator is appointed, the Office is staffed and organized, and the Office begins to function. Existing regulations could be superseded by any technique which the OFPP considers appropriate—by replacing existing regulations or by expressly terminating or repealing existing regulations. It is expected that the process would be incremental over an extended period of time, with the Office progressively developing new regulations to take the place of old ones. The Armed Services Procurement Regulation and the Federal Procurement Regulations would continue—the difference would be that they would be consistent. Under the operating concept prescribed for the OFPP in the bill, the major procuring agencies, and particularly the Department of Defense, could have an expanded role in setting procurement policy in that the OFPP will employ them to develop policies and regulations having multi-agency or government-wide application.

AUTHORIZATION OF APPROPRIATIONS

Section 11 places a limitation on the appropriations to support the Office during the first year after enactment of this legislation; establishes a sublimitation on funds used for research during that year; and provides that funds for operations of the Office are authorized to

be appropriated for only five years. Subsequent proposals for authorization of funds to be appropriated are to be referred to the Government Operations Committee and will be contingent on a conclusion by the Government Operations Committee that the Office has and will continue to promote the economy, efficiency, and effectiveness of Government procurement. Fiscal year funding for the Office will be a concern of both the Government Operations and the Appropriation Committees.

DELEGATION

Section 12 authorizes the Administrator to delegate his functions to personnel in his office or to executive agencies with their consent or with the approval of the President, provided he does not delegate the final policy-making decision to other agencies. The Administrator is expected and encouraged to use the executive agencies to develop policies and regulations, but the final approval authority cannot be delegated. Subject to this restriction, delegation to other agencies of technical and detailed aspects of policy development is considered a necessary option if the Office is to operate with the small staff envisioned by the Commission.

ANNUAL PAY

Section 13 places the salary of the Administrator at Executive Level III, presently \$40,000 a year. No provision is included for the salary of the Deputy Administrator, but he is expected to be a GS-18.

ACCESS TO INFORMATION

Section 14(a) provides for the General Accounting Office to obtain information from the OFPP and have access to its records.

Section 14(b) requires the Administrator to open to the public formal, scheduled meetings to promulgate procurement policies and regulations, specifies that a ten-day notice will be given of such meetings, and gives him the authority to determine those policies and regulations to which this requirement is applicable. These meetings will give the public an additional opportunity to express their views on highly sensitive or significant issuances of the OFPP. This subsection complements the provisions of the bill calling for the timely, effective solicitation of the viewpoints of interested parties. In general, it is intended that the affairs of the Office will be conducted so as to give maximum practical public visibility to its rule-making activities.

REPEALS AND AMENDMENTS

Section 15 contains amendments to subordinate the General Services Administration (GSA) and the Federal Procurement Regulations (FPR), administered by it, to the policy direction of OFPP. The purpose is to bring GSA, along with the Department of Defense (DOD), under the authority of the OFPP.

To accomplish this, *Section 15(a)* of the bill amends Section 201(c) of the Federal Property and Administrative Services Act (FPASA) (40 U.S.C. 481(c)), which provides for agencies to exchange used for new property "under regulations to be prescribed by the (GSA) Administrator." Section 15(a) would add "subject to regulations pre-

scribed by the Administrator of the Office of Federal Procurement Policy."

Section 15(b) would amend Section 602(c) of the FPASA which provides that the GSA authority "shall not be subject to the provisions of any law inconsistent herewith." Section 15(b) adds "except as provided by the Office of Federal Procurement Policy Act."

VI. HEARINGS

Five days of public hearings were held by the Ad Hoc Subcommittee on Federal Procurement, October 31 and November 1, 2, 14, and 15, during which the twenty-three witnesses shown in Appendix B testified.

Statements submitted for the record were received from the following organizations:

Automotive Services Industry Association
Committee on Federal Procurement of Architect-Engineer Services

National Office Products Association
National School Supply and Equipment Association
Smaller Business Association of New England

All of these statements endorsed the concept of the Office of Federal Procurement Policy as embodied in S. 2510.

Summary of Testimony: All witnesses, representing public, private and academic viewpoints, supported the need for an "OFPP" of one kind or another to exercise leadership in formulating and coordinating procurement policy. While there were differences as to location, size and authority, there was agreement that improved leadership or coordination is needed.

Industrial, professional, employee union, and independent witnesses all supported legislation as an immediate necessity.

While agreeing with the objectives of the legislation, executive agencies said it is either not necessary or should be deferred, except for Mr. Sampson, Administrator of General Services Administration and a member of the Commission on Government Procurement, and Mr. Parker, Associate Administrator for Procurement and Management Assistance, Small Business Administration, who said it would be necessary. With those two exceptions, all other executive agency spokesmen felt that the objectives of the legislation should be accomplished through executive branch action. This is not surprising in view of the statement by Mr. Zarb (Office of Management and Budget) that OMB did orchestrate the point of view of the executive agencies in that these agencies had the benefit of OMB's testimony.

The views of all the witnesses on the key issues are summarized in the table on page 27.

Realignment of Authority: In May, 1973, the President, by Executive Order 11717, transferred to GSA authority for a number of functions, including procurement. This order established the General Services Administration as the President's "principal instrument," under the policy oversight of OMB for the development of procurement management systems. This was done despite the fact that GSA itself is a major procuring agency and does not enjoy the organizational stature or authority to give policy direction to some agencies, especially the Department of Defense.

SUMMARY OF TESTIMONY ON S. 2510

	Need Strong Central Leadership?	Need Legislation?	When?	Location
General Accounting Office	Yes	Yes	Now	EOP
EXECUTIVE BRANCH:				
Office of Management and Budget	Yes	Defer	Mar. '74	OMB/GSA
Department of Defense	Yes	Defer	Nov. '74	OMB
General Services Administration	Yes	Yes	Mar. '74	EOP
Department of Health, Education and Welfare	Yes	Defer	---	OMB/GSA
National Aeronautics and Space Administration	Yes	Defer	---	OMB/GSA
Atomic Energy Commission	Yes	Defer	---	OMB/GSA
Department of Transportation	Yes	Defer	---	OMB/GSA
Department of Agriculture	Yes	Defer	---	OMB/GSA
Small Business Administration	Yes	Yes	---	---
INDUSTRY AND PROFESSIONAL ASSOCIATIONS:				
Aerospace Industries Association	Yes	Yes	Now	EOP
Electronic Industries National Security Industrial Association	Yes	Yes	Now	EOP
Technical Services Industries	Yes	Yes	Now	EOP
Professional Services Firms	Yes	Yes	Now	EOP
Office Machine Dealers	Yes	Yes	Now	EOP
Wholesaler-Distributors	Yes	Yes	Now	EOP
Scientific Apparatus Manufacturers	Yes	Yes	Now	EOP
FEDERAL EMPLOYEE UNIONS:				
AFGE	Yes	Yes	Now	Outside EOP Agent of Congress
NFFE	Yes	Yes	Now	Regulatory Agency
INDEPENDENT WITNESSES:				
American Bar Association	Yes	Yes	Now	Regulatory Agency
John Cibinic (George Washington University)	Yes	Yes	Now	EOP*
Matthew Perlman	Yes	Yes	Now	Regulatory Agency

*Or an Agent of Congress

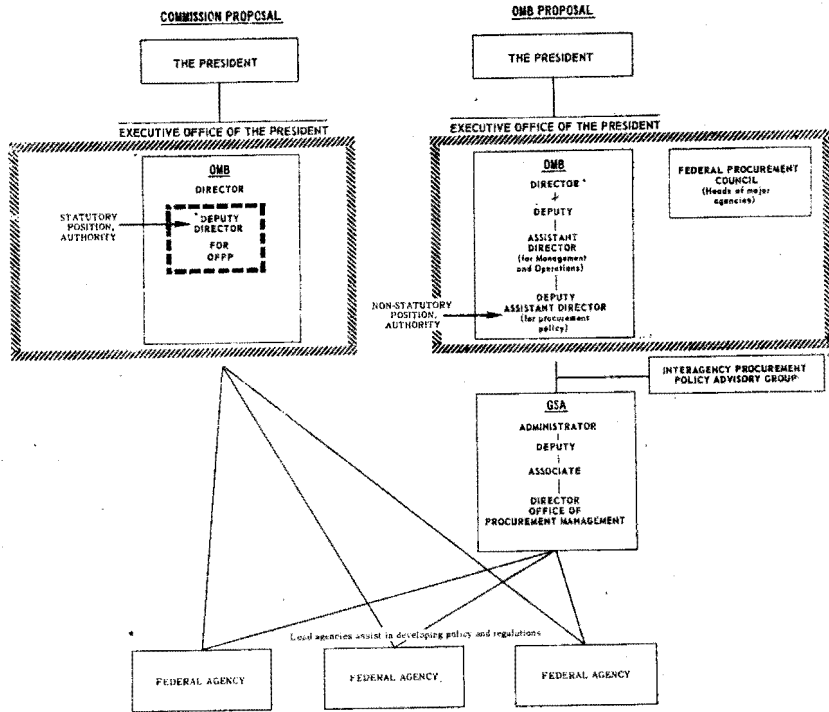
The proposed executive branch arrangement for achieving government-wide direction of procurement policy is shown in Figure 1 (p. 28). This figure, which was prepared by the General Accounting Office, also shows the structure proposed by the Procurement Commission. As will be noted from the footnote on the figure, S. 2510 would locate the Office in the Executive Office of the President rather than specifying OMB as the favored location. Other differences in the Procurement Commission and OMB proposals are also applicable to S. 2510.

GENERAL ACCOUNTING OFFICE

The Committee felt that key testimony was rendered by the Honorable Elmer B. Staats, the Comptroller General of the United States, because of his experience on the Commission on Government Procurement and GAO's government-wide perspective on procurement.

FIGURE 1

COMPARISON OF MANAGEMENT STRUCTURES PROPOSED BY COMMISSION AND OMB FOR EXECUTIVE BRANCH LEADERSHIP/COORDINATION OF PROCUREMENT POLICY



DIFFERENCES IN TWO PROPOSALS

STATURE: Commission proposes higher rank. Proposed OMB rank of Deputy Assistant Director may be too low to attract person with experience and prestige to guide Government-wide policy. OMB has not been able to recruit such a person.	CONTINUITY: Commission proposes statutory mandate. OMB proposal subject to changing priorities, emphasis. Two assistant directors have broken continuity, one departed, the other loaned to the President's new energy program.
AUTHORITY/RESPONSIBILITY: Commission focuses in one area but promotes participatory management through lead agency concept. OMB proposal diffuses authority/responsibility without statutory support; resulting policy guidance may not be binding on agencies operating under the Armed Services Procurement Act.	RESPONSIVENESS TO THE CONGRESS: Commission specifically proposes this as part of the legislative mandate. OMB believes that sufficient responsiveness can be provided without mandate.

* Legislation approved by the Ad Hoc Subcommittee on Federal Procurement (S. 2510) locates the OFPP in the Executive Office of the President and heads it with an administrator to be appointed by the President with advice and consent of the Senate.

Source: General Accounting Office Report to the Committee on Government Operations, House of Representatives, on the Progress of Executive Branch Action on Recommendations of the Commission on Government Procurement, January 31, 1974.

Mr. Staats strongly supported S. 2510 and stated:

The Administration acknowledges that legislation may eventually be needed to clarify the authority to issue regulations binding on all agencies but feels this should be deferred (at least until next March) while revitalization steps proceed—including the building of an OMB staff and further review of the Commission's 149 recommendations . . .

It is our position, Mr. Chairman, that a clear congressional mandate, with the stature and continuity which this would confer, is essential.

Later, Mr. Staats gave what he thought to be the "three vital conclusions" for congressional consideration in these words:

A. A statutory OFPP appears essential, both to obtain adequate action on Procurement Commission recommendations and to build public confidence in the procurement process.

B. Senate Bill 2510 has incorporated revisions proposed in House Bill 9059 and meets the Commission's objectives.

C. The strong leadership role to which OMB is committed should be encouraged and would be greatly enhanced by Senate bill 2510.

Mr. Staats also pointed up a central fact that was becoming increasingly apparent to the Committee:

Witnesses outside the executive branch generally feel that further delay is not warranted and that the executive branch will not, in fact, act unless a congressional mandate is provided.

NON-GOVERNMENT WITNESSES

John Cibinic, Jr., an expert in contract law and Director of the Government Contracts Program, National Law Center, at the George Washington University, called for the immediate enactment of S. 2510. Dr. Cibinic chastised the Congress for having taken a "wait and see" attitude for so long, as follows:

As I sat here this morning, listening to the testimony that has gone before and immediately preceding as well, the feeling I had is that we are supposed to wait and wait and wait. The purpose of my statement is to indicate that I think we have waited too long already.

It was in 1966 that the Congress in a House report first recommended to the executive branch that it do what this bill is now suggesting be done, I mean, ordering to be done. And I haven't seen any action yet taken by the executive branch to respond to those recommendations back in 1966 to establish a Presidential group to centralize policy-making or to establish an Office of Federal Procurement Policy as recommended by the U.S. Commission on Government Procurement. Everything that I have seen and heard after the Procurement Commission's report has been issued appears to me to be more of what I like to term "the regulatory reaction syndrome." It goes something like, do something when somebody points a finger at you and then when they start pointing the finger at somebody else then you don't have to do anything more.

I just don't see any reason why Congress should wait and be put off any longer.

The subject of Federal government contracts is so complex and so important that an independent, centralized, on-going policy group with authority to require procurement agency adherence to its promulgations is absolutely necessary.

Professor Cibinic also recommended that the Committee consider establishing the Office of Federal Procurement Policy as an independent agent of Congress if it becomes an "unwanted stepchild" in the Executive Office of the President.

George M. Coburn, Secretary of the Public Contract Law Section of the American Bar Association (ABA), stated that the policy-making body of the ABA endorsed S. 2510 in principle. Mr. Coburn called for legislation immediately, stating that:

... we cannot agree that action by the President or OMB without enabling legislation, can overcome the problems of the procurement regulations so well identified by the report of the Procurement Commission.

Matthew Perlman, a Washington attorney and Charles O'Connor III, the legal counsel for the Scientific Apparatus Manufacturers Association both offered suggestions regarding legal terminology in the bill. However, both agreed to the need to legislatively establish an Office of Federal Procurement Policy. Mr. Perlman recommended that the Committee give thought to creating the Office of Federal Procurement Policy in a like manner to the Federal Power Commission or the Federal Communications Commission in an effort to make the Office as non-political and professional as possible.

Michael Forscey, Legislative Council of the National Federation of Federal Employees, raised questions about the present executive branch plan, stating:

Presently, two Federal agencies have primary responsibility for procurement matters—the Office of Management and Budget and the General Services Administration. For different reasons each is uniquely unsuited to perform the functions envisioned by the Procurement Commission.

We believe the Congress has no intention of permitting the continuation of the status quo in the procurement field by permitting OMB to revitalize the program. But you must ask yourself if establishing a procurement office in the executive branch merely changes the form but not the substance.

Clyde M. Webber, President of the American Federation of Government Employees, likewise raised the question of where to place the OFPP. Mr. Webber's views, presented by Stephen Koczak, pinpointed past disagreement with OMB and GSA, particularly in the area of contracting out of support services. In his opinion, only an office outside the Executive Office of the President could operate in an impartial and objective manner.

Industrial associations which offered testimony on the creation of an Office of Federal Procurement Policy all agreed with the objectives of the legislation. *V. J. Adduci, President of the Electronic Industries Association*, stated:

For many years we have been concerned with the problems affecting Federal procurement. Almost four years ago we testified in support of the bill which established the Commission on Government Procurement, and we supported its efforts by nominating personnel from our industries to serve on the study groups.

One of the most important recommendations of the Commission—integral to many of its other recommendations—is

that calling for the establishment of an Office of Federal Procurement Policy. Many of the difficulties involved in government procurement were attributed to both a lack of leadership and to the lack of a central point of authority on basic procurement policy. The Commission unanimously recommended that such an office be established.

Other industry leaders and association representatives reiterated Mr. Adduci's position of support. An expression of the need for an executive branch focal point for government procurement was found in the testimony of each industrial representative.

The President of Aerospace Industries Association of America, Inc., Karl Harr, Jr. repeated his commitment to procurement reform in the government when he stated:

As I testified four years ago, the extensive complexities of the vast buyer-seller interface emphasize the need for constant reevaluation, in depth, of the basic principles which govern the government/industry relationship and the most careful application of these principles to specific matters. In short, the aerospace industry believed in 1969 that this matter alone was ample justification for the establishment of the Commission. Now, more than ever, we feel that the procurement system warrants specialized attention, both in the Congress and in the executive branch.

Vice-Admiral J. M. Lyle (retired), President of the National Security Industrial Association, called the establishment of the Office of Federal Procurement Policy as outlined in S. 2510 "a desirable improvement in the government procurement process."

Admiral Lyle also suggested that, as a matter of guiding principle, the Office should strive to achieve and maintain a proper balance between the special needs of public accountability (public officials spending public money) and the advantageous forces of the free enterprise system and the commercial market place. Admiral Lyle concluded:

The Office should be appropriately linked with action to revise the basic procurement statutes along the lines recommended by the Commission on Government Procurement.

William C. McCamant, Executive Vice President of the National Association of Wholesale-Distributors, stated:

Because wholesale distribution serves as a major channel for the procurement of goods and commodities for Federal agencies, our association has been long concerned with government procurement policies and practices.

Mr. McCamant urged Congress to establish an Office of Federal Procurement Policy and to establish the concept of "lowest economic cost" in all procurement decisions.

John F. Magnatti, Jr., the Secretary-Treasurer of the National Council of Professional Services Firms, stated during his testimony:

The Office of Federal Procurement Policy would be established within the Executive Office and thus be independent of any agency with operating and procuring responsibilities. This is essential if the Office is to function effectively. By establishing the Office of Federal Procurement Policy within the Executive Office, above the plane of operating agencies, S. 2510 enhances its capability to develop a meaningful and effective policy of reliance upon the private sector.

Edward Leeson, Executive Director, National Council of Technical Services Industries, declared:

Our council solidly supports enactment of this bill. Mr. Chairman, and members of the Committee, as we see the situation today, there is unanimity of opinion by industry, the Comptroller General of the United States and the Commission on Government Procurement that a need exists for improvement in this important area of Federal procurement policy.

N. David Palmeto, the Washington counsel for the National Office Machine Dealers Association, cited the fact that the Government is:

... a major customer for NOMDA members. We are therefore vitally interested in the procurement process ... Accordingly, we strongly endorse the creation of an Office of Federal Procurement Policy ... as set forth in S. 2510.

Mr. Palmeto also recorded a "strong preference" for the creation of an independent Office outside GSA or OMB.

EXECUTIVE BRANCH POSITIONS

Office of Management and Budget: During House hearings in July, Mr. Dudley C. Mecum, Assistant Director of OMB, who was responsible for OMB's procurement efforts, requested a delay in legislation to give the executive branch an opportunity to implement its plan. He said this would be done by the end of August. Shortly thereafter, Mr. Mecum left OMB, and his duties were incorporated under another Assistant Director, Mr. Frank Zarb.

During Senate hearings on October 31, Mr. Zarb appealed for a delay in legislation until March, 1974 so that the executive branch could implement its plans which remained unfulfilled. Since that time, Mr. Zarb has been reassigned.

The Chairman of the Procurement Subcommittee summarized the situation in questioning the OMB witness:

Senator CHILES. In testimony of OMB before the House in July, the statement was made that the executive branch concept of the Office of Federal Procurement Policy would be fully implemented by the end of August. Your request at that time was that you be given some time to prove out your approach before legislation is considered.

It is now almost November. How much still remains to be implemented in your plan?

Mr. ZARB. Mr. Chairman, there has been some delay, particularly in the area of recruiting our top team, not because of a lack of activity on our part, but because of the rigorous process which we are following to attempt to find the most appropriate people to do the job.

In short, what I am saying is, our commitment is there; our allocation of resources is there. We are moving forward in interviewing the appropriate people and developing the appropriate policy statements of the people who will be working primarily in my office. We have not let that delay the on-going work of reviewing the Commission's recommendations. GSA has continued along its road and made significant strides in that area.

Senator CHILES. I do not quite get from that an answer. First you said it would be fully implemented by August, I still do not have a date.

Mr. ZARB. Mr. Chairman, it is our objective to have our top man on board by the end of November. I hesitate in giving a specific date because much depends on the final selection of a candidate and his acceptance and the time it might take him to separate from whatever responsibility he has. We are close to several candidates and that is clearly the spark-plug for our on-going program at OMB.

Senator CHILES. You are still a long way from your prediction that you would have the program fully implemented by August?

Mr. ZARB. We are a long way from that goal.

At the end of January, 1974,

The Procurement Council had not been established;

The Deputy Assistant Director for Procurement Policy had not been appointed;

Mr. Zarb had been assigned to another position in OMB; and

In the absence of a congressional mandate, other national problems and priorities prevent any full time attention to this matter in OMB.

Aside from the repeated delays in implementing the executive branch plan, the plan itself will not meet the need for effective centralized direction for procurement policy. The above sequence of promises, unfulfilled commitments, and displaced personnel that has occurred verify the need for a firm statutory base if the Office is to enjoy the stature and continuity necessary to provide government-wide leadership. The General Accounting Office concluded this point in the following extract from their September, 1973 quarterly report to Congressman Holifield on executive branch implementation of Commission recommendations:

We understand that implementation has been delayed because:

There have been difficulties in clearly establishing responsibilities for parts of the management structure. OMB staffing of its part of the management structure has been deferred pending internal budget approval.

It is considered premature to establish the Procurement Council before the new OMB Deputy Assistant Director for Procurement Policy is available to help oversee its formulation.

Continued delay in establishing this management structure and the lack of assurance that this approach can achieve the objectives sought by the Procurement Commission confirms the opinion we and others expressed during your Committee's hearings in July that a statutory mandate is required at the earliest practical time.

We therefore strongly recommend that congressional action be taken at an early date authorizing and directing the President to establish an Office of Federal Procurement Policy either in the Office of Management and Budget or elsewhere within the Executive Office of the President.

During questioning of Mr. Zarb on the proposed OMB/GSA organization plan, as displayed in Figure 1 of this report, Senator Nunn concluded that the arrangement has very little application to any kind of set up that would really centralize procurement. He pointed out that OMB had only ratified the status quo.

The GAO, in its aforementioned September, 1973 report, made the same point in this way:

... a hybrid office located partly in GSA, OMB, and procurement policy groups represents the situation which has generally existed for years and the arrangement under which the present-day confusion exists. It provides several layers of approval for policy guidance and fragments the responsibility of a newly emerging organization in need of clear-cut and manifest authority.

Testifying for the *Department of Defense*, Assistant Secretary A. I. Mendolia, asserted that department-wide regulations from DOD would possibly serve as a model for government-wide adoption and that DOD is very much in favor of increased cooperation and coordination on a government-wide basis to improve the procurement process. Calling for a year to see if an interagency council could successfully deal with the Commission on Government Procurement recommendations, Mendolia said that the establishment of an Office of Federal Procurement Policy should be undertaken only if the executive branch fails to deal with the matter adequately.

The position of the *Department of Health, Education, and Welfare* was essentially that the General Services Administration (GSA) is already effectively coordinating proposed executive branch positions on the issues raised by the Procurement Commission. Testifying for

HEW, Assistant Secretary Robert H. Marik declared that the department had already begun to implement the Commission's recommendations, to some extent, within the department.

Witnesses representing the *Atomic Energy Commission*, *National Aeronautics and Space Administration*, *Department of Transportation* and *Department of Agriculture* echoed OMB's basic position that, although a government-wide procurement policy is highly desirable and sorely needed, legislation should be deferred until the Administration has had an opportunity to fully implement its own plans pursuant to Executive Order 11717.

Mr. Marshall J. Parker, Associate Administrator for the *Small Business Administration*, cited the problems that small businessmen usually have in procurements involving different agencies. He said that a government-wide system, under the direction of a central authority, would be of great benefit to small businessmen.

In response to questions by Senator Huddleston, Mr. Parker agreed with the need for an Office of Procurement Policy and stated that legislation would be needed to give the Office a proper base.

Senator HUDDLESTON. I know in my State, Kentucky, we frequently, under the auspices of the State government, conduct seminars to try to give small businesses and other businesses too the necessary information on how to compete for or bid for or seek government contracts.

Do you think this situation would be alleviated if we had a central department that could feed out to them the procedures for the entire government at one time?

Mr. PARKER. Yes, sir, I do . . . we try to do the same thing nationwide with small businesses, introducing them to government procurement and to competitive bidding procedures and telling them how to do it. And we have, if you will pardon the expression, a heck of a time trying to educate them on all of the different myriads of regulations that the different agencies have.

Senator HUDDLESTON. And you feel the government would benefit by being able to purchase, at least with no additional cost, those services and goods if the procedures were simpler so that more businessmen could actively seek business with the government?

Mr. PARKER. Certainly there would not be or should not be any additional costs, and it would certainly tend toward lower costs because more competition would be developed because more would be encouraged.

A lot of small businesses today, and perhaps some of the larger ones, are turned away by the complexity of the policies of the procurement regulations.

Senator HUDDLESTON. I understand that the administration wants to upgrade GSA's responsibility in this field. What is your judgment? What impact would that have?

Mr. PARKER. We would welcome any improvement in the situation toward obtaining a centralized source of policy and

direction and leadership. We think that it could do nothing but help.

Senator HUDDLESTON. So you feel that a separate agency or separate office would be more effective?

Mr. PARKER. Yes, sir, we do. Quite personally, we favor that it be by statute.

Administrator of *General Services Administration* and former member of the Procurement Commission, the Honorable Arthur Sampson, also departed from the OMB position to call for legislation to deal with procurement problems and to create an Office of Federal Procurement Policy.

Mr. SAMPSON. Mr. Chairman, I submit my prepared statement for the record, but I would like to state strongly that I am for an Office of Federal Procurement Policy. It has to have directive authority.

Senator CHILES. Mr. Sampson, we are aware of your background as a Commissioner on the Commission on Government Procurement. Do you feel that legislation might be needed to implement the objectives of the Commission Report?

Mr. SAMPSON. Yes, Mr. Chairman. I see nothing inconsistent about going on with what you have here (S. 2510). By the time the legislation is finished, the executive branch will have had time to form its position.

Senator CHILES. What we are talking about then is early spring?

Mr. SAMPSON. Yes.

Conclusion: Overall, the hearings left a convincing record of support for the legislation and its immediate enactment. The Ranking Minority Member, Senator Roth, concluded:

I feel that the witnesses made a very strong case, frankly, for the need for legislation. When I first came in, I had a question in my own mind whether it was essential, but I will say at this juncture I feel very strongly that we ought to move ahead.

Changes suggested by each witness received specific consideration during Subcommittee markup. Most of these are discussed in the next section of this report.

VII. DISCUSSION OF KEY ISSUES

The principal issues which surfaced during the hearings and the Committee deliberations concerning this legislation to establish an Office of Federal Procurement Policy are outlined in the chart of witnesses in the Hearings section or are discussed in this part of the report. The positions of the witnesses with respect to the need for an OFPP, whether it should be established by legislation, and if by legislation, when it should be enacted have been discussed. Issues to be covered here are:

Location
Authority
Size
Responsiveness to Congress
Procurement by Grantees

It should be noted that the first four issues address the major attributes the Procurement Commission said the Office should possess. These are:

- (1) Be independent of any agency having procurement responsibility.
- (2) Operate on a plane above the procurement agencies and have directive rather than merely advisory authority.
- (3) Consist of a small, highly competent cadre of seasoned procurement experts.
- (4) Be responsive to Congress.

Location: S. 2510 locates the Office in the Executive Office of the President (EOP), which includes the Office of Management and Budget (OMB). The Procurement Commission preferred placement in the Office of Management and Budget, but thought the President should have the latitude to place the OFPP anywhere in his Executive Office. Other locations recommended by witnesses included an independent regulatory board or commission or an office in the legislative branch like the Cost Accounting Standards Board.

Placement of the OFPP in the Executive Office of the President is consistent with three of the aforementioned attributes that it be:

- (1) Independent of any agency with procurement responsibility.
- (2) On a plane above procurement agencies.
- (3) Small in size.

The fourth attribute—Responsiveness to Congress—will be discussed in detail later in this part.

The Committee recognized that placement in the EOP should make the Office effective in dealing with executive branch procurement activities, the General Accounting Office, Congress, and the public. Additionally, placement in the EOP would give the Office a government-wide perspective and place it in a position to consider procurement policy in an objective manner.

Should the President locate the OFPP in OMB, it is imperative that the Administrator be at the Deputy Director level with no other responsibilities. This is necessary to ensure the identity, level of authority, and continuity of effort necessary for effective leadership of the procurement function. S. 2510 specifies that the Administrator will be at the Executive Level III, presently \$40,000 a year. Recent experience of OMB in assigning leadership for procurement at a level lower than Deputy Director to an official with other duties verifies the need for placement as set forth here—two officials assigned the procurement responsibility in OMB have left this position in the past few months. Both of these officials experienced difficulty in recruiting a full-time nationally known procurement expert at the contemplated Deputy Assistant Director level.

Representatives of the Federal employee unions and the Bar associations expressed the fear that the OFPP could not function in an objective manner if located within the EOP. They said that it should be placed in as professional and non-political setting as possible. Their suggestions were to establish it as a regulatory commission with 3-5 members or as an independent agent of Congress. The Committee recognized the merits of these arguments but did not adopt these suggestions because they are not compatible with the testimony of most witnesses or the Procurement Commission recommendation. There was a real concern in the Committee that setting the Office up as a commission would lead to yet another large bureaucracy.

The Committee will follow closely the actions of the executive branch to create the kind of organization defined by legislation and described in this report. The annual reports and the comprehensive review precedent to appropriating funds at the end of five years provide a mechanism for this oversight.

Authority: Directive authority is fundamental to the leadership role assigned to the OFPP. This authority is provided in several ways. First and foremost, S. 2510 sets forth a clear congressional mandate that the OFPP is the President's agent to bring about long overdue and fundamental improvements in the procurement process. The bill gives the Office the stature and authority necessary to carry out its mandate.

Second, placement of the Office in the Executive Office of the President in a position between the President and the procuring agencies gives it the stature and "clout" exercised by the executive. Unlike many EOP offices, the OFPP would be bolstered by a firm statutory base.

Third, the bill defines in considerable detail specific authorities and functions of the OFPP and their limitations.

Following are the more significant questions and concerns regarding the authority and functions of the OFPP which surfaced during the hearings and the Committee deliberations:

(a) Perhaps the most often expressed concern of witnesses was that the extension of the authority of the Administrator to recipients of Federal assistance would permit the Administrator to reverse current policy and authorize executive agencies to provide procurement and supply support to Federal grantees. Such was never intended. In response to these concerns, a prohibition was added to make the intent of the Committee clear in section 6(b)(1).

(b) Another subject of great interest and concern to the witnesses was the national policy to rely on private enterprise to satisfy the needs of government for goods and services. In conformance with the general rule followed in drafting this bill that it would be "organizationally" oriented, the Committee informed these witnesses that the Procurement Commission's recommendations on this subject would be considered in full at an early date. The bill says only that the OFPP will monitor and revise as necessary this policy. The policy itself is set forth in OMB Circular A-76.

(c) A basic thrust of this legislation is to enable business to be more efficient in supplying government. The cost of govern-

ment procurement is increased by unnecessary regulations and too much paperwork. Unfortunately the tendency is to add a new regulation every time someone complains about a bad contract. The Committee had two thoughts in mind—first, confine regulations to those that are going to promote efficient purchases and, second, simplify unduly complex regulations so that government and industry are not unnecessarily burdened. The Committee expects the OFPP to review selected old procedures of the agencies—adopt the good and discard the bad. One of the most valuable things the Office can do is to examine the costs of the various agencies in awarding contracts. Studies of agency procurement systems the OFPP may conduct relative to this point should be for the purpose of determining the effectiveness of basic procurement policies for which the Office is responsible and not for evaluating agency operations and procedures. Some things that would reduce costs government-wide are covered in a recent report of the General Accounting Office (B-168450) entitled "Ways For The Department of Defense To Reduce Its Administrative Cost of Awarding Negotiated Contracts."

(d) The industry witnesses were universal in calling for early solicitation of their viewpoints in the formulation of policies and regulations. They generally did not feel that they had an opportunity to participate early enough in the process to be effective. The Committee's sympathy with these concerns is reflected by the inclusion of the word "timely" in describing this function in the bill. The manner in which this solicitation will be accomplished is to be developed in the course of implementation of a specifically related Procurement Commission recommendation.

(e) Working in close coordination with the Small Business Administration (SBA), the Office should be of great assistance in achieving the desires of Congress with respect to the small business community. This cooperative effort should be especially productive in implementing the Commission recommendations related to small business. Heretofore, there has not been a focal point in the executive branch with whom the SBA or small business representatives could deal on procurement policies having a multi-agency application. While the Committee believes that the OFPP should be open, accessible and informative in all of its relations with the private sector, this is particularly important where small business is concerned. One way in which the OFPP might improve its accessibility is through periodic regional meetings with business. Most small business firms simply cannot afford to come to Washington, but they are entitled to be heard. There is little question that government activities in the field would be equally receptive to regional meetings with the OFPP.

(f) Some concern was expressed by one of the witnesses that the Administrator is required to consult only with the executive agencies affected and not with industry. In amending the legislation, the functions of the Office were revised to make it clear that there is no such intent. Section 6(c)(7) speaks to timely solicitation of viewpoints of interested parties, and Section 6(c)(8) deals with both consultation with affected executive agencies and solicitation of their views in developing policies and regulations. These are considered parallel sections, providing for inclusion of

both the government and private sectors in the rule-making process.

(g) The suggestion was made to the Committee that the OFPP should be involved in the drafting of specifications employed in procurements. One witness proposed that the Office should be given authority to regulate the extent to which development of procurement specifications should be subjected to review by interested parties. Although the Office would have no authority to impair or interfere with respect to the drafting or approval of particular specifications by the agencies insofar as their technical content is concerned, the OFPP will be interested in the impact of specifications on the overall procurement process, and will make suggestions for their improvements.

Size: Estimates of the proper size of the Office ranged from one to several hundred. The Procurement Commission said only that it should "consist of a small, highly competent cadre of seasoned procurement experts." The concept described in S. 2510 conforms to the Procurement Commission criteria—most of the witnesses also agreed with the need to keep the Office small.

Size is referenced in several provisions of the legislation. The bill states that the purpose will be achieved "through a small, highly qualified and competent staff." The first year's appropriation is limited to \$4,000,000, and provision is included for an annual review by the Congress to make sure that any growth is controlled and thoroughly justified. An additional curb on size is inherent in the language related to the use by the OFPP of executive agency capabilities and expertise in carrying out the functions of the Office. Other benefits to be achieved from this technique are that it will:

- (1) prevent the Office from becoming isolated from the operational problems of procurement;
- (2) keep it aware of the qualifications of the procurement work force and its development needs; and
- (3) make optimum use of the existing expertise and rule-making machinery in the executive branch.

Responsiveness to Congress: Although the OFPP will be a part of the executive branch, it will function as the focal point on procurement policy matters for both the executive branch and the Congress, and hence must be responsive to the Congress. In addition to providing the leadership and control for procurement in the executive branch, it will act as a clearing house for all legislative actions impacting on procurement policies and techniques. This will enable the various committees of Congress to obtain executive branch advice on procurement aspects of proposed legislation and develop legislative approaches consistent with the policy declarations set forth in Section 2 of the bill.

One of the root causes of procurement problems is the outdated, rigid, and inconsistent statutory framework for procurement. The statutory base for government procurement contemplated by the Procurement Commission report will be comprehensive, rather than detailed, and provide sufficient flexibility to accommodate new pro-

urement techniques and methods as government requirements for goods and services change.

The OFPP will play a key role in the design and implementation of a modern, flexible statutory framework. While Congress has and must retain fundamental statutory responsibility for basic (not operational) government procurement policies, its committee structure, size, and workload do not permit it to have the expertise or to devote the time necessary to be fully informed and current with respect to all the changes and developments in procurement needs and techniques and operating policies needed to meet these changes. Procurement is a dynamic process. The OFPP is a very necessary vehicle for keeping the Congress abreast of the major changes in this process and for keeping legislation up to date.

For these reasons, S. 2510 specifically provides that the OFPP will be responsive to the Congress (Section 8). The Administrator is charged with keeping the Congress fully and currently informed of its activities, and submitting periodic reports with recommendations for changes in statutes. Each major policy or regulation prescribed by the Administrator must be submitted to Congress and will only become effective if neither House passes a resolution within 60 days that it does not favor the policy or regulation. In addition, the bill provides that neither the Administrator nor Deputy Administrator may refuse to testify before or submit information to the Congress or its committees.

The manner in which appropriations are to be authorized for the OFPP is another measure designed to insure responsiveness to Congress. This includes a limitation on the first year's funds, an annual review prior to authorization of funds needed in each of the subsequent four fiscal years, and a very comprehensive review by the Government Operations Committee prior to authorization of appropriations for more than the five years of this legislation. Five years is considered to be ample time for the Office to develop its modus operandi and to determine how it can best contribute to the economy, efficiency, and effectiveness of the Federal procurement process.

Procurement by Grantees: The business community, particularly spokesmen for small business, expressed great concern that S. 2510, as originally drafted, might be used as a device for changing the current prohibition on grantee use of Federal sources of procurement and supply support. This was not intended. Even though the likelihood of the legislation resulting in a change in this policy was remote, the Committee amended the bill. It now specifically says that nothing in the bill should be construed to grant the Administrator authority to authorize procurement or supply support to any recipient of Federal assistance.

The bill does make procurements required for performance of Federal assistance programs subject to the policies and regulatory issuances of the Office. However, this provision does not authorize any procurement contrary to State and local laws when the purpose of the procurement is to provide assistance to States and political subdivisions. The magnitude of Federal assistance is such (\$39.1 billion in FY 72) that the Committee considers it prudent that, insofar as practical, procurements required for such programs be made in accordance with the policies prescribed for use by the executive agencies.

VIII. CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman) :

SUBCHAPTER II OF CHAPTER 53 OF TITLE V, UNITED STATES CODE

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is \$40,000 :

* * * * *

(60) *Administrator of the Office of Federal Procurement Policy.*

TITLE 40, U.S. CODE.—PUBLIC BUILDINGS, PROPERTY AND WORKS

* * * * *

CHAPTER 10.—MANAGEMENT AND DISPOSAL OF GOVERNMENT PROPERTY

* * * * *

SUBCHAPTER I—GENERAL PROVISIONS

* * * * *

§ 474. Congress, departments, agencies, corporations and persons exempted from provisions

The authority conferred by this Act shall be in addition and paramount to any authority conferred by any other law and shall not be subject to the provisions of any law inconsistent herewith, *except as provided by the Office of Federal Procurement Policy Act, and* except that Sections 486(b) and 487(c) of this title shall not be applicable to any Government corporation or agency which is subject to the Government Corporation Control Act.

TITLE 40, U.S. CODE—PUBLIC BUILDINGS, PROPERTY AND WORKS

* * * * *

CHAPTER 10.—MANAGEMENT AND DISPOSAL OF GOVERNMENT PROPERTY

* * * * *

SUBCHAPTER II—PROPERTY MANAGEMENT

* * * * *

§ 481. Procurement, warehousing and related activities

* * * * *

(c) In acquiring personal property, any executive agency, under regulations to be prescribed by the Administrator, *subject to regulations prescribed by the Administrator of the Office of Federal Procurement Policy*, may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired: *Provided*, that any transaction carried out under the authority of this subsection shall be evidenced in writing.

APPENDICES

APPENDIX A

EXTRACT FROM THE REPORT OF THE COMMISSION ON GOVERNMENT PROCUREMENT

(Volume 1, Part A, pp. 9-14)

CHAPTER 2

POLICY DEVELOPMENT AND IMPLEMENTATION

Federal agencies contract within a framework of ground rules set by all three branches of Government. These policies¹ establish the overall environment of procurement, and control millions of individual decisions. Therefore, in reviewing the procurement process we concentrated on the manner in which basic policies are developed and implemented.

There is a void in policy leadership and responsibility, and a fragmented and outmoded statutory base. These shortcomings in basic law and policy are root causes of many problems that beset the procurement process. Virtually every Commission study group recommended, in one form or another, enhanced central policy direction.

Effective management of the procurement process requires a high degree of direction and control of basic policy. However, except for isolated and sporadic cases, the executive branch has not seen fit to fill this need. This is not to say that there should be centralized Federal buying for all agencies, or a central group involved in agency business decisions. Nor do we suggest a huge policymaking bureaucracy to issue all procurement regulations.

What we urge, instead, is an Office of Federal Procurement Policy, high in competence and small in size, established by law and responsive to Congress, and placed in the executive branch at a level where it can provide leadership and oversee the development and application of procurement policy. The contracting agencies should continue to be responsible for individual procurement actions and agency procurement operations.

We have placed creation of a central policy office first among our recommendations because of its overall importance in achieving the improvements we propose in the procurement process.

¹ For example, policies governing methods of procurement, contract clauses, solicitation of bids and proposals, administration of contracts, termination of contracts, cost allowability, quality control, contract types, contract forms, warranties, contract options, and small purchase procedures.

Recommendation 1.—Establish by law a central Office of Federal Procurement Policy in the Executive Office of the President, preferably in the Office of Management and Budget, with specialized competence to take the leadership in procurement policy and related matters. If not organizationally placed in OMB, the office should be established in a manner to enable it to testify before committees of Congress. It should develop and persistently endeavor to improve ways and means through which executive agencies can cooperate with and be responsive to Congress.

SOURCES OF PROCUREMENT POLICY

Many segments of Government make or strongly influence procurement policy. Table 1 lists the major policymakers by branch. The next few paragraphs outline the nature of these influences.

Legislative branch

Congress establishes fundamental procurement policies through legislation and through less formal actions ranging from committee report and investigations to individual attention to constituent complaints or suggestions. These actions may shape Government-wide policy or affect only individual agencies, groups of agencies, or units or programs within an agency. Our studies identified more than 4,000 provisions of Federal law related to procurement. Most important among these are the Armed Services Procurement Act of 1947¹ and title III of the Federal Property and Administrative Services Act of 1949.² Improvements needed in these laws are discussed in Chapter 3 and in Part J (Other Statutory Considerations).

The General Accounting Office (GAO) serves as an arm of the Congress. With its responsibility for auditing and certifying to Congress the legality of specific contractual disbursements, and its continuing responsibility for closely following procurement trends, GAO exerts profound influence on procurement policy. This influence is exerted through decisions on individual matters, overall reports, audits, legislative advice to Congress, and review of proposed agency policies. Its actions may affect Government-wide patterns of practice or policy, or may relate only to particular agencies or situations.

Judicial branch

Interpretations of statutes, regulations, and contract provisions by the Federal courts in suits involving procurement have a direct effect on the evolution of policy.

Executive branch

Although Congress and the courts play a basic role, most procurement policy is developed in the executive branch. Much of this development consists of translating the basic policies and requirements established by the other branches into a body of rules and regulations governing procurement; keeping Congress informed as to the effects of legislation and recommending changes to make the process more effective; interpreting the requirements in specific cases for contractors, grantees, and others; and reporting on the results of action taken.

¹ 10 U.S.C. 2301-14 (1970).

² 41 U.S.C. 251-60 (1970).

The policies initiated in the executive branch also cover important subjects on which Congress and the courts have not spoken.

The President establishes procurement policy in some areas through Executive orders³ or similar directions⁴ to the agencies. Despite its pervasive authority, the Office of Management and Budget (OMB) has little direct, formal involvement in the formulation of procurement policy and has not evidenced a continuing concern with over procurement management; it infrequently promulgates policy in circulars⁵ limited to a particular topic.

Under the Armed Services Procurement Act, the Department of Defense (DOD) establishes policy for the military departments.⁶ The General Services Administration (GSA) is directed by the Federal Property and Administrative Services Act to set basic policies for the civilian agencies.⁷ However, this direction is circumscribed by a series of exceptions and limitations.⁸

In the absence of an effective focal point for procurement policy in the executive branch, DOD dominates its development. DOD dominates primarily because the military departments historically have done the major share of Federal contracting. Through the Armed Services Procurement Regulation Committee structure, DOD operates the most effective forum for development of procurement policies.⁹ The defense agencies are required to follow the Armed Services Procurement Regulations (ASPR) and other agencies often do so if no other guidance is available.

By virtue of its responsibility for the Federal Procurement Regulations (FPR), GSA has the second most significant impact in the executive branch on the evolution of procurement policy. The Federal Procurement Regulations are developed with the advice of an interagency committee composed of representatives from 27 agencies. However, the functioning of the committee is sporadic, and most of what is incorporated in the FPR stems from earlier coverage in ASPR. The military departments and others, including the National Aeronautics and Space Administration (NASA) are not bound by the FPR. For this and other reasons, including the status of GSA in the executive branch, the FPR system has not been an effective source of Government-wide procurement policy. New agencies, and existing agencies whose procurement missions expand into new areas, lack the guidance that should be available from a system of uniform Government-wide procurement policy.¹⁰

³ For example, Executive Order 11602, 3 CFR 234, Clean Air Act Administration with Respect to Federal Contracts, Grants, and Loans.

⁴ For example, Memorandum and Statement of Government Patent Policy issued by President Nixon, Aug. 23, 1971, *Federal Register*, 36:16887.

⁵ For example, OMB Circular A-100, *Cost Sharing on Research Supported by Federal Agencies*, Dec. 18, 1970.

⁶ In the act, this authority is granted by implication only. Other authorities relied on are 10 U.S.C. 2202 and 5 U.S.C. 301 (1970).

⁷ 41 U.S.C. 242(a) (1970).

⁸ *Ibid.*

⁹ Also significant is the fact that the *Armed Service Procurement Regulations* predated the *Federal Procurement Regulations* by a dozen years. As a result, the content of FPR has been strongly influenced by ASPR.

¹⁰ A specific example is the recently published procurement regulations of the Department of Transportation (*Federal Register*, 87:4801 et seq. (1972)), over 90 pages in length, which implement and supplement the FPR. A DOT official estimated that 98 percent of the DOTPR material should have been developed and issued at the FPR level, but because FPR is neither adequate or timely for their purposes DOT was forced to develop these policies at the agency level.

The present lack of central leadership in the formulation of procurement policy has led to development of many policies and procedures that are needlessly diverse or meaninglessly different. In our discussion of the regulatory framework in Chapter 4 and elsewhere throughout this report we discuss some of these diverse policies.

In Chapter 11, we discuss numerous social and economic programs that wholly or partially depend on the procurement process for their implementation. Agencies primarily concerned with these programs, such as the Department of Labor and the Environmental Protection Agency, issue rules and regulations that are binding on procurement officials in other agencies.¹¹ Our studies show that procedures for coordinating these policies and for melding them into overall procurement policies range from virtually nonexistent to barely satisfactory. The lack of continuing management attention and leadership from a level above both the procuring agencies and the agencies principally concerned with social and economic programs is a chief cause of problems with these programs.

In Part F, we discuss the lack of consistency across Government, and within agencies, in the use of contracts and grants. We highlight the confusion caused by inconsistent and often interchangeable use of these instruments and the hodgepodge of clauses and administrative techniques employed.

Effects on the procurement process

Throughout this report, we discuss many problems caused by the lack of central executive branch leadership in developing policies and effectively monitoring ongoing procurement operations. Our conclusions are summarized below:

Government procurement policies and procedures are needlessly diverse. Although complete uniformity is neither desirable nor attainable, there is no justification for much of the diversity that exists.

Contractors frequently are bewildered by the variety of requirements from different agencies but lack an effective route in the executive branch through which to appeal for more realistic treatment.

There is no unit in the executive branch prepared to interact with Congress and GAO on a Government-wide basis with respect to recommendations and advice for improving the procurement process.

There is no systematic Government-wide effort to improve training or qualifications of procurement personnel or for continuing study of ways to improve the process.

When agencies disagree on the best procurement policy to adopt, the only arbiter available is OMB, which is not staffed to provide the needed decisions in a timely fashion.

No authoritative source in the executive branch is knowledgeable of how the public and private sector interface is affected by procurement, how much agencies are procuring, or how well they are implementing existing Government-wide policies.

Data on the operation of the procurement process is either nonexistent or collected with little regard for Government-wide management use or comparative analyses.

¹¹ For example, 41 CFR, Ch. 50—Public Contracts, Department of Labor.

Major attributes

We have concluded that a central Office of Federal Procurement Policy is urgently needed. The office should have the following attributes:

Be independent of any agency having procurement responsibility. Objectivity requires separation of basic procurement policymaking from operational concerns and biases. Judicious use of advice and personnel from the procuring agencies will avoid the dangers of an ivory tower approach to policy formulation. The new office should not become involved in the award of contracts or in the administration of procurement actions.

Operate on a plane above the procurement agencies and have directive rather than merely advisory authority. A major limitation in the effectiveness of GSA as the responsible agency for the FPR has been its circumscribed authority and lack of control over other agencies in the executive branch.

Be responsive to Congress. In the basic procurement statutes, Congress should provide the executive branch ample latitude for initiative and experimentation aimed at improving procurement policies. In turn, the executive branch must provide a responsible, effective, and responsive source of Government-wide policy control and leadership within a framework of executive-legislative cooperation.

Consist of a small, highly competent cadre of seasoned procurement experts. To ensure its focus on major procurement policies and effective use of agency expertise, the Office of Federal Procurement Policy should be limited in size. Its staff should be composed of experts in major disciplines necessary for procurement; for example, business management, law, accounting, and engineering.

Representative functions

Without attempting to define each duty and operating rule for the Office of Federal Procurement Policy, we suggest the following functions as expressing the type of organization we have in mind:

Serve as the focal point within the executive branch with special competence and leadership in Government-wide procurement and procurement-related matters.

Provide for the issuance of Government-wide policies as separate instructions or for DOD issuance of such policies for defense agencies and GSA issuance for other agencies. Provide for the granting of exceptions to established policies and procedures when justified.

Designate lead agencies to develop most Government-wide and multi-agency policies and procedures in coordination with other agencies. Participate, as appropriate, with the lead agency in coordination with other agencies.

Establish Government-wide guidelines concerning the use of grants and the policies to be followed in making grants.

Review and reconcile, where appropriate, those procurement policies and procedures that are not Government-wide but affect two or more

Government agencies, or their suppliers (for example, the number and kinds of differing requirements placed on suppliers).

Make or obtain the final decision when controversy or irreconcilable differences exist between executive agencies concerning procurement policy or regulatory development.

Develop and promote programs for the upgrading of procurement personnel, including recruitment, training, career development, and standards of performance and the conduct and sponsorship of research in procurement policy and procedures.

Monitor and revise instructions concerning reliance on the private sector and maintenance of the in-house competence necessary to assure that this reliance yields benefits commensurate with its promise.

Promote Government-wide exchange of information that highlights successful ways to improve the procurement process.

Establish requirements for uniform reports and statistics on procurement activities.

Establish advisory groups, as desirable, to provide counsel and advice and to serve as sounding boards for policies, procedures, and practices related to procurement.

Organizational placement for the Central Policy Office

Alternatives considered for the organizational placement of the Office of Federal Procurement Policy ranged from placement in an existing agency to the creation of an independent office. On the basis of the functions to be performed and the authority to be vested in the central authority, the Commission strongly favors placement in the Office of Management and Budget.

OMB has broad Government-wide policy and management responsibility and can relate procurement matters to other program and operational requirements. It has a large measure of responsibility for leadership in all areas of management improvement and demonstrated capability for achieving interagency coordination and cooperation. It is also in a central position in the Executive Office of the President, which should make it effective in dealing with executive branch procurement activities, GAO, Congress, and the public. Additionally, having a Government-wide perspective and no purchasing responsibilities, we believe OMB can consider procurement policy needs in a more objective manner than can an agency engaged directly in procurement.

Within OMB, the Office of Federal Procurement Policy should be headed by an experienced, high-level official. We recommend a Deputy Director with no other responsibilities. This would ensure the identity, level of authority, and continuity of effort necessary for leadership toward effective management of the procurement function.

We recognize that the wishes of the President are of overriding importance in the organization of his Executive Office. Therefore, we have stopped short of saying that the office should only be in OMB. Placement elsewhere in the Executive Office, as long as responsiveness to Congress is assured, would be consistent with our recommendation.

Legislative base

The Office of Federal Procurement Policy should be established by law. In the long run, only an organization solidly based in statute can have the prestige, stature, and assurance of continuity of effort necessary for so important a function. By enacting the basic statutory

authority for the policy office, Congress can make clear the relationship it intends to maintain with the executive branch in policy development.

Executive branch action

We view the establishment of an Office of Federal Procurement Policy as long overdue and urgently required. Therefore, recognizing that the Congress will want to consider with care the legislation establishing the procurement policy office, we suggest the President give immediate consideration to establishing the office by Executive order, without waiting for the legislative process to be completed. The office could then begin to give prompt attention to the problems highlighted in our report and to work with Congress and the agencies in considering and implementing our recommendations.

Relationship of recommendation 1 to other recommendations

Throughout this report, we refer to the Office of Federal Procurement Policy either in recommendations or in the accompanying text. The purpose is to highlight the potential role of the office. We emphasize, however, that such recommendations are not contingent on the establishment of an Office of Federal Procurement Policy. Each of our recommendations has merit independent of the existence of such an office.

APPENDIX B

HEARINGS OF AD HOC SUBCOMMITTEE ON FEDERAL PROCUREMENT, GOVERNMENT OPERATIONS COMMITTEE ON S. 2198 AND S. 2510, OCTOBER 31, NOVEMBER 1, 2, 14, AND 15, 1973

PUBLIC WITNESSES

Witness, Position, and Organization

V. J. Adduci, President, Electronic Industries Association.

Professor John Cibinic, Jr., Director, Government Contract Program, National Law Center, The George Washington University.

George M. Coburn, Secretary, Public Contract Law Section, American Bar Association.

Michael Forsey, Legislative Counsel, National Federation of Federal Employees.

Karl G. Harr, President, Aerospace Industries Association.

Edward C. Leeson, Executive Director, National Council of Technical Services Industries.

J. M. Lyle, President, National Security Industrial Association.

John C. Magnotti, Jr., Secretary-Treasurer, National Council of Professional Services Firms.

William C. McCamant, Executive Vice President, National Association of Wholesale-Distributors.

Charles O'Connor III, Counsel, Scientific Apparatus Manufacturers Association.

N. David Palmeter, Washington Counsel, National Office Machine Dealers Association.

Matthew Perlman, Attorney at Law, and Clyde Webber, President, American Federation of Government Employees.

GOVERNMENT WITNESSES

Witness, Position, and Organization

Tony Baldauf, Director, Office of Plant and Operations, Department of Agriculture.

John Erlewine, Deputy General Manager, Atomic Energy Commission.

Robert H. Marik, Assistant Secretary for Administration and Management, Department of Health, Education, and Welfare.

A. I. Mendolia, Assistant Secretary of Defense (Installations and Logistics), Department of Defense.

Bernard Moritz, Deputy Associate Administrator for Organization and Management, National Aeronautics and Space Administration.

Marshall J. Parker, Associate Administrator for Procurement and Management Assistance, Small Business Administration.

Douglas Siegal, Director, Office of Installations and Logistics, Department of Transportation.

Arthur F. Sampson, Administrator, General Services Administration.

Elmer B. Staats, Comptroller General of the United States, General Accounting Office.

Frank Zarb, Assistant Director, Office of Management and Budget.



Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,
one thousand nine hundred and seventy-four*

An Act

To establish an Office of Federal Procurement Policy within the Office of Management and Budget, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Office of Federal Procurement Policy Act".

DECLARATION OF POLICY

SEC. 2. It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

- (1) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requisite quality and within the time needed at the lowest reasonable cost, utilizing competitive procurement methods to the maximum extent practicable;
- (2) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel;
- (3) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;
- (4) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;
- (5) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;
- (6) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;
- (7) coordinating procurement policies and programs of the several departments and agencies;
- (8) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;
- (9) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government;
- (10) promoting fair dealing and equitable relationships among the parties in Government contracting; and
- (11) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operations.

FINDINGS AND PURPOSE

SEC. 3. (a) The Congress finds that economy, efficiency, and effectiveness in the procurement of property and services by the executive agencies will be improved by establishing an office to exercise responsibility for procurement policies, regulations, procedures, and forms.

(b) The purpose of this Act is to establish an Office of Federal Procurement Policy in the Office of Management and Budget to provide overall direction of procurement policies, regulations, procedures, and forms for executive agencies in accordance with applicable laws.

DEFINITION

SEC. 4. As used in this Act, the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of title 5, United States Code, and also a wholly owned Government corporation within the meaning of section 101 of the Government Corporation Control Act (31 U.S.C. 846).

OFFICE OF FEDERAL PROCUREMENT POLICY

SEC. 5. (a) There is established in the Office of Management and Budget an office to be known as the Office of Federal Procurement Policy (hereinafter referred to as the "Office").

(b) There shall be at the head of the Office an Administrator for Federal Procurement Policy (hereinafter referred to as the "Administrator"), who shall be appointed by the President, by and with the advice and consent of the Senate.

AUTHORITY AND FUNCTIONS

SEC. 6. (a) The Administrator shall provide overall direction of procurement policy. To the extent he considers appropriate and with due regard to the program activities of the executive agencies, he shall prescribe policies, regulations, procedures, and forms, which shall be in accordance with applicable laws and shall be followed by executive agencies (1) in the procurement of—

- (A) property other than real property in being;
- (B) services, including research and development; and
- (C) construction, alteration, repair, or maintenance of real property;

and (2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (A), (B), and (C) of this subsection, to the extent required for performance of Federal grant or assistance programs.

(b) Nothing in subsection (a) (2) shall be construed—

(1) to permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

(2) to authorize any action by recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

(c) The authority of the Administrator under this Act shall apply only to procurement payable from appropriated funds: *Provided*, That the Administrator undertake a study of procurement payable from nonappropriated funds. The results of the study, together with recommendations for administrative or statutory changes, shall be reported to the President of the Senate and the Speaker of the House of Representatives at the earliest practicable date, but in no event later than two years after the date of enactment of this Act.

(d) 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.

(e) In the development of policies, regulations, procedures, and forms to be authorized or prescribed by him, the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures, and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish interagency committees, or otherwise use agency representatives or personnel, to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures, and forms.

(f) The authority of the Administrator under this Act shall not be construed to—

(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor;

or

(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

(g) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this Act, shall be assigned, delegated, or transferred to the Administrator.

ADMINISTRATIVE POWERS

SEC. 7. Upon the request of the Administrator, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Office to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Administrator and give him access to all information and records in its possession which the Administrator may determine to be necessary for the performance of the functions of the Office.

RESPONSIVENESS TO CONGRESS

SEC. 8. (a) The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the President of the Senate and the Speaker of the House of Representatives annually and at such other times as may be necessary for this purpose, together with appropriate legislative recommendations.

(b) At least 30 days prior to the effective date of any major policy or regulation prescribed under section 6(a), the Administrator shall

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transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy or regulation. Such report shall include—

- (1) a full description of the policy or regulation;
 - (2) a summary of the reasons for the issuance of such policy or regulation; and
 - (3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy or regulation.
- (c) In the case of an emergency, the President may waive the notice requirement of subsection (b) by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any major policy or regulation.

EFFECT ON EXISTING LAWS

SEC. 9. 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 in section 6 of this Act.

EFFECT ON EXISTING REGULATIONS

SEC. 10. Procurement policies, regulations, procedures, or forms in effect as of the date of enactment of this Act shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator.

AUTHORIZATION OF APPROPRIATIONS

SEC. 11. There are authorized to be appropriated to carry out the provisions of this Act, and for no other purpose—

- (1) not to exceed \$2,000,000 for the fiscal year ending June 30, 1975, of which not to exceed \$150,000 shall be available for the purpose of research in accordance with section 6(d)(4); and
- (2) such sums as may be necessary for each of the four fiscal years thereafter.

Any subsequent legislation to authorize appropriations to carry out the purposes of this Act shall be referred in the Senate to the Committee on Government Operations.

DELEGATION

SEC. 12. (a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this Act, other than his basic authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out that policy, to any other executive agency with the consent of such agency or at the direction of the President.

(b) The Administrator may make and authorize such delegations within the Office as he determines to be necessary to carry out the provisions of this Act.

ANNUAL PAY

SEC. 13. Section 5315 of title 5, United States Code, is amended by adding at the end thereof the following:

“(100) Administrator for Federal Procurement Policy.”

ACCESS TO INFORMATION

SEC. 14. (a) The Administrator and personnel in his Office shall furnish such information as the Comptroller General may require for the discharge of his responsibilities. For this purpose, the Comptroller General or his representatives shall have access to all books, documents, papers, and records of the Office.

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of establishing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

REPEALS AND AMENDMENTS

SEC. 15. The Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) is amended as follows:

(1) Section 201(a)(1) of such Act (40 U.S.C. 481(a)(1)) is amended by inserting "subject to regulations prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act," immediately after "(1)".

(2) Section 201(c) of such Act (40 U.S.C. 481(c)) is amended by inserting "subject to regulations prescribed by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act," immediately after "Administrator."

(3) Section 206(a)(4) of such Act (40 U.S.C. 487(a)(4)) is amended to read as follows: "(4) subject to regulations promulgated by the Administrator for Federal Procurement Policy pursuant to the Office of Federal Procurement Policy Act, to prescribe standardized forms and procedures, except such as the Comptroller General is authorized by law to prescribe, and standard purchase specifications."

(4) Section 602(c) of such Act (40 U.S.C. 474) is amended in the first sentence thereof by inserting "except as provided by the Office of Federal Procurement Policy Act, and" immediately after "herewith,".

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*