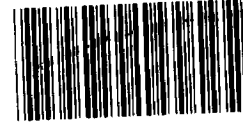


UNITED STATES GENERAL ACCOUNTING OFFICE

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STATEMENT OF
ROBERT F. KELLER, DEPUTY COMPTROLLER GENERAL
OF THE UNITED STATES
BEFORE THE
SUBCOMMITTEE ON FEDERAL SPENDING PRACTICES
AND OPEN GOVERNMENT
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
ON
THE [OFFICE OF FEDERAL PROCUREMENT POLICY]

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Mr. Chairman and members of the Subcommittee:

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

Like you, Mr. Chairman, the Comptroller General was a member of the Commission on Government Procurement which recommended the establishment of such an office. We strongly advocated the creation of OFPP in testimony before your Subcommittee. At that time, we said that a clear congressional mandate, with the stature and continuity it would confer, was essential to:

- establish strong executive branch policy,
- effect regulatory coordination among the some 20 Federal procurement agencies,
- sponsor legislative reform,
- achieve efficiency and economy in procurement operations, and
- build public confidence in the procurement process.

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

OFPP STATUTORY FUNCTIONS

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

The first OFPP statutory function is the establishment of a system to coordinate procurement regulations of the executive agencies and to make the regulations uniform to the extent possible. OFPP has designed a new system called the Federal Acquisition Regulation System (FAR). We believe this new system has great potential for simplifying contracting and improving Government/business relationships.

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

The new system identifies several kinds of regulations the individual operating agencies cannot issue, but it is

unclear about what kinds they can issue both topside and down through the organization. Our report will recommend clarification and suggest further guidelines that might be useful in curbing proliferation.

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

1. Regulations are subjected to wide public participation if they are significant, but the term "significant" is not defined. Without guidelines or tests of significance, either the Federal agencies or OFPP could at any time deny that a particular regulation is significant.
2. Participation could still be quite limited in that an agency or OFPP can bring a new regulation into almost final form before interested parties or the public are invited to participate.

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

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

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

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

The fourth function is to promote and conduct procurement research. The legislative history states the purpose is to

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

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

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

Your interest, Mr. Chairman, in having the Government use available commercial products instead of relying on voluminous Federal specifications for development of specialized items is well known. You will be interested in knowing that the new reporting system, as it now exists, does not have the capability

suggested by the Procurement Commission to provide data on amounts of commercial products bought. We brought this to the attention of OFPP officials who have said the situation will be corrected.

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

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

The FAI started with great dedication but has been hampered by staffing problems, an inconvenient physical location, and an overextended scope. Also, OFPP could give major impetus to the

FAI by setting up qualification requirement goals that all persons would eventually be required to meet to be appointed as contracting officers. Such a policy would spur a continuing effort between the Institute and the operating agencies to develop an effective procurement workforce.

ACCOUNTABILITY FOR PROCUREMENT
COMMISSION RECOMMENDATIONS

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

OFPP's recent January 1979 annual report is not completely responsive to this mandate. Our remarks are influenced by three factors.

1. More than 6 years have passed since the Commission issued its report.
2. The report itself is fast getting out of date.
3. Decisions and actions are needed promptly to bring this program to a timely conclusion.

Let me summarize the current status of the recommendations.

<u>Status</u>	<u>Number</u>
Neither accepted nor rejected	18
Rejected	11
<u>Accepted:</u>	
Action complete	26
Action pending	94
<u>Total</u>	<u>149</u>

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

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

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

- They contain some premature assessments that implementation of recommendations is complete.
- They contain constantly shifting (missed) target dates for completing implementation that give no indication of original target dates for action or reasons for delay.
- They do not show multiple actions within individual recommendations.

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

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

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

SYSTEM ACQUISITION REFORMS

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

On February 20, 1979, we published a report on implementation of Circular A-109 by the Department of Defense. In a short time, we will be issuing a similar report concerning implementation by the ⁽⁵⁾Department of Energy, ⁽⁶⁾Department of Transportation, ⁽⁷⁾GSA, and NASA. These studies conclude that there is little sense of urgency about installing the new reforms. Very few acquisitions are underway within the guidelines, now 3 years

old. Although the primary responsibility for applying A-109 rests with agency heads, OFPP has used the budgetary review process to only a limited extent to expedite matters.

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

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

COMMERCIAL PRODUCT REFORMS
NEED ATTENTION

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

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

OFPP has not acted on the Commission's recommendation to use industrial funding and to continuously evaluate procurement and distribution systems on a total cost basis. We reported in July 1978 that comparable treatment of this recommendation, as with other Commission recommendations, would require the executive branch to accept (in which case legislation should be proposed), reject, or modify the recommendation as presented.

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

OFPP POSITION ON WAGE BUSTING

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

coverage, legislation was introduced in the 95th Congress that would have brought professional employees under the Act's coverage.

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

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

OFPP agreed, and on March 29, 1978, the Administrator issued a policy letter (No. 78-2) which directed that Federal procurement procedures be developed to assure equitable

compensation for all professional service contract employees. The letter provided appropriate language for inclusion in all future solicitations whenever professional employees are expected to be needed to perform the services. We understand that several executive agencies, including the Air Force and NASA, have taken steps to implement the new policy. OFPP's role in dealing with the wage busting issue, in our view, was a proper one, and the kind of role envisioned for OFPP by the Congress when it enacted Public Law 93-400.

OFPP's ROLE IN THE ANTI-
INFLATION PROGRAM

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

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

On February 5, 1979, representatives of the General Accounting Office testified before the Subcommittee on Commerce, Consumer, and Monetary Affairs, House Committee on Government

Operations, that Executive Order 12092 is not authorized by statute. It would follow from this that the implementing procurement regulations would also lack the force and effect of law. I should add that the position of the Administration is supported by a memorandum of the Assistant Attorney General, Office of Legal Counsel.

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

OFPP also has been engaged in other anti-inflation activities. Since May 1978 OFPP's Anti-Inflation Council, which is chaired by the Administrator, OFPP, and has representatives of the 12 major procurement agencies, has sought

--to avoid, reduce, or delay the purchase of goods or services whose prices are rising rapidly, and

--to reflect the principle of deceleration in all new or renegotiated Federal contracts which contain escalation clauses. Leadership for the procurement initiatives and subsequent purchasing actions has been assigned to OFPP.

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

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

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