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Statement of
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before the
Subcommittee on Legislation and National Security
House Committee on Government Operations

Increased Emphasis on Improving Procurement Practices

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Mr. Chairman and Members of the Committee:

We are pleased to respond to the Committee's request for GAO comments on the increased emphasis which is now occurring on improving procurement practices throughout the executive branch and particularly in the Department of Defense (DOD).

The major reason for this unusual emphasis is P.L. 96-83, which originated in this Committee and laid out a 2-year requirement for the Office of Federal Procurement Policy (OFPP) to develop a Uniform Procurement System (UPS) and statutory proposals to implement this system.

This Act, which was enacted in 1979, was a further result of the excellent work of the Commission on Government Procurement (COGP) which completed its report in 1972. That Commission spotlighted the proliferation of procurement statutes--then estimated at 4,000--as one of the key problems, resulting in inconsistencies among Federal agencies and a profusion of regulations, clauses, forms, and practices which prove costly and frustrating to firms who contract with the Government.

At your request, we have been monitoring the work of OFPP which, in accordance with P.L. 96-83, must render its major report to the Congress this October. We are impressed with the efficient manner in which this mammoth effort is being conducted. By October you should receive significant plans and recommendations for review--providing all agencies continue to work with OFPP in meeting this very tight deadline.

We have also had an opportunity, recently, to learn of the new initiatives in acquisition reform which have been instituted by Secretary Weinberger and Deputy Secretary Carlucci during their short time in office. On April 30 they published a directive containing 31 decisions on ways to improve the acquisition process. This is a commendable start toward attacking long-standing procurement problems, although it needs to give more stress to enhancing competition. We will monitor its progress closely, and be especially alert to its relationship to the Government-wide reforms being developed by OFPP in accordance with P.L. 96-83.

MATTERS OF IMMEDIATE CONCERN
TO THE COMMITTEE

It is in the light of this background that we are reporting to you today. You asked that we examine certain provisions which appear in the FY 1982 Defense Authorization Bills of the House and Senate, to determine whether they are matters on which OFPP should be expected to make recommendations to the Congress for Government-wide improvements. If so, their inclusion in statutes applying only to DOD may increase the proliferation of procurement laws and regulations and militate against successful completion of OFPP's efforts to develop the most efficient and effective statute and regulations for the Government as a whole.

The remainder of this statement addresses five sections that appear in one or both of these bills:

- A. Procurement of automatic data processing equipment, Section 907 of S. 815.
- B. Requirements relating to the awarding of sole source contracts, Section 908 of S. 815.
- C. Increases in dollar thresholds for certain contract regulations, Section 903 of H.R. 3519.
- D. Restrictions on contracting out of commercial and industrial-type functions, Section 602 of H.R. 3519.
- E. Authorization of multi-year contracting, Section 905 of S. 815 and Section 909 of H.R. 3519.

A. PROCUREMENT OF AUTOMATIC
DATA PROCESSING EQUIPMENT
(Sec. 907 of S. 815)

Section 907 of S. 815 would remove from the requirements of the Brooks Act (P.L. 89-306) the procurement of ADP equipment or services by the Department of Defense for five purposes. A primary justification for this revision, cited in the Senate report, is the failures of the North American Air Defense Command's (NORAD) attack warning system.

Acting Comptroller General Socolar testified before you on May 19, 1981, regarding GAO's reviews of these failures, stating that the "problems plaguing the NORAD computer system are not in any way related to the policies, directives, or procedures of implementing the Brooks Act requirements applicable to the procurement of computers... The problems experienced by NORAD in its

computer development program are primarily attributable to poor planning and poor management and the attempt to force-fit user requirements to a particular type of equipment."

Mr. Socolar went on to say that problems of planning and management have been documented in over 100 GAO reports on DOD's ADP procurement since 1965, and that it would be inappropriate, in our view, to issue a blanket Delegation of Procurement Authority for NORAD, or any other command in the World Wide Military Command and Control System.

We further believe that ADP acquisition policies and procedures should be considered along with the unified procurement statute being developed by OFPP. Hence any legislation dealing with this matter at this time would be premature.

B. REQUIREMENTS RELATING TO THE AWARDING
OF SOLE SOURCE CONTRACTS
(Sec. 908 of S. 815)

This amendment to S. 815 has the worthy objective of enhancing competition, to provide needed savings, by reducing sole source awards. It would require a 30-day public notice prior to award, with certain exceptions, of sole source contracts involving amounts in excess of \$100,000--and consideration of any offers received as a result of that notice.

However, this worthy objective also has Government-wide application and deals with one of the key recommendations in the COGP report which states that "...sole source procurements should

be used only when formal advertising or other competitive procedures cannot be utilized, and in such classes of procurements as determined by the OFPP..." (A-6.) Hence this is a matter of importance to OFPP's formulation of the UPS.

Furthermore, the provision which appears in S. 815 details 16 exceptions from the requirement to publicize proposed sole source awards. It is our opinion that these exceptions need assessment by OFPP since several would broaden existing practice and thus tend to encourage sole source procurement, which is just the opposite of the result being sought. For example, it is provided that non-competitive follow-on procurements to earlier price or design competition need not be considered as sole source. It is true that there are instances where large weapon systems involve such substantial initial investment in plant and equipment by the winning contractor as to make it impractical* to conduct competitive re-procurement--at least at frequent intervals. But there are numerous services, supplies, parts, and components where competitive opportunities exist and should be offered to other qualified suppliers, including small business firms.

This section needs careful assessment and revision by OFPP. We do not see any need to alter existing law just for DOD when

*and prohibitive from a cost point of view.

in October the Congress will be receiving OFPP's report on matters of Government-wide application.

C. INCREASES IN DOLLAR THRESHOLDS
FOR CERTAIN CONTRACT REGULATIONS
(Sec. 903 of H.R. 3519)

This section is closely related (1) to recommendations of the COGP in 1972, (2) to a recent GAO report to OFPP on small purchases, and (3) to the decisions of Deputy Secretary Carlucci on ways to simplify the procurement process.

The provisions in H.R. 3519 would:

--Raise the \$10,000 limit for small purchases (thus permitting the use of simplified purchasing procedures) to \$25,000.

--Raise the threshold established in the Truth In Negotiations Act from \$100,000 to \$500,000. This is the level above which contractors must be required to certify that cost and pricing data submitted in connection with negotiated contracts is current, accurate, and complete.

--Raise the statutory threshold for Service Secretary review of Determination and Findings for research and development contracts from \$100,000 to \$5 million.

Deputy Secretary Carlucci, in each of these cases, approved them as recommendations to OMB/OFPP for approval and the initiation of appropriate statutory change. Hence it would appear that the inclusion of such matters in a statute before they have received appropriate review by OMB/OFPP is premature.

Furthermore, the small purchases ceiling is a matter of importance Government-wide, and any change in the ceiling should

be based on that level which will prove most effective and efficient for all agencies. The COGP recommended that OFPP be authorized to review and change this ceiling from time to time, when the increased cost of labor and materials warranted. GAO in its report to OFPP dated September 26, 1980, recommended that OFPP submit legislation to the Congress to establish the small purchase threshold "as the minimum threshold for all... social and economic programs applied to the procurement process." GAO also recommended that the legislation "raise the small purchase threshold to a level consistent with the inflationary trend which has occurred since it was established at \$10,000 in 1974." In the light of these proposals we feel that OFPP should formulate Government-wide policies for consideration by the Congress and that separate action for DOD alone is not appropriate.

With respect to the other two thresholds, we also feel that OFPP should have overall policy leadership. The lifting of the threshold for the Truth-In-Negotiations Act appears to us to be very dubious, since contracting officers now have a great deal of latitude in deciding which contractor submissions must be audited. (Impact on audit workload had been cited as the reason for raising this threshold.) Thus, this matter appears to need further study by OFPP.

The threshold for R&D Determination and Findings (now \$100,000) simply sets the level below which a Service Secretary

can delegate approval by a subordinate to depart from formal advertising. The Deputy Secretary's proposal would permit delegation up to \$1 million, whereas the language in H.R. 3519 raises the level to \$5 million--50 times greater than the present level. We do not know the reason for this difference.

The matter is of even greater concern, however, if the implication is that such D&Fs could be misused, as they have on occasion in the past, to justify sole source procurement instead of simply authorizing an exception to formal advertising.

These appear to be compelling reasons for referring these matters to OMB/OFPP as Deputy Secretary Carlucci has proposed.

D. RESTRICTION ON CONTRACTING OUT OF
COMMERCIAL AND INDUSTRIAL TYPE
FUNCTIONS (Sec. 602 of H.R. 3519)

This provision would permit the contracting out of commercial or industrial type functions to private contractors only if the military commander of the major operating command certifies that this "would not have a significant adverse effect on the mobilization or emergency contingency missions assigned to that command or on the anticipated requirement of that command in time of war."

While we do not disagree with protecting military readiness, we think that the basic problem as reported by the Commission on Government Procurement (and repeated in our report to the Congress dated September 25, 1978) is the need for endorsement by the Congress of a national policy of reliance on private enterprise

to the maximum feasible extent, consistent with the national interest and with procurement at reasonable prices.

The Congress has not yet enacted such a declaration of policy and this remains one of the statutory changes which OFPP should consider in its proposals to the Congress. The language in 602 might also militate against recommendations which GAO has made (and recently stressed to the new Secretary) to consolidate common overhead services among Army, Navy, Air Force, and Marine Corps bases which are within a convenient radius, in the interest of eliminating unnecessary personnel and costs. We estimate that potential savings of several hundred million dollars can be achieved. Unilateral action by individual commands to exempt themselves on the grounds of impact on military readiness would, we feel, deny these savings. Hence, we urge that a review of such a restriction be conducted by OMB/OFPP as part of their consideration of the overall contracting out policy.

E. MULTI-YEAR CONTRACTING
(Sec. 905 of S. 815 and
Sec. 909 of H.R. 3519)

One of the most universally supported ideas for improvement in the DOD acquisition process to emerge in recent months is the concept of multi-year contracting for weapon systems. In the fall of 1980, the House Armed Services Committee conducted hearings on the "Ailing Defense Industrial Base." Its findings stressed the need for greater incentives for capital investments

in new technologies, facilities, and equipment in order to increase productivity; and the use of procurement contracts which will promote stability and lead to efficiencies and savings to the Government. GAO testified before that Committee and subsequently before the House and Senate Budget Committees on the potential value of multi-year contracts, using annual appropriations, but with pre-determined cancellation ceilings to recompense the contractor in the event of cancellation prior to completion.

This form of acquisition planning, while long-discussed, has rarely been practiced on major systems.* There have been numerous relatively small procurements of standard type items and services where unit price savings of 10 percent to 20 percent have been realized. The Procurement Commission in 1972 in its Recommendation A-8, and GAO in a major report in 1978,**cited these benefits and recommended Congressional action to authorize multi-year contracting for all agencies using annual appropriations, under close oversight by OFPP. One of the key benefits was an expected increase in competition. These recommendations have never been acted upon and we strongly urge that they be included in the unified procurement statute on which OFPP is now working.

* An exception is shipbuilding contracts for which full funding is available from the outset.

**"Federal Agencies Should Be Given General Multi-year Contracting Authority for Supplies and Services" PSAD-78-54 Jan. 10, 1978

WEAPON SYSTEMS ARE A DIFFERENT PROBLEM

The issue of how to plan and realize the massive savings which appear possible from multi-year contracting for weapon systems is a problem of far different nature and magnitude. It necessitates program firmness, mission stability, definiteness of quantitative needs--so that comprehensive analyses can be made by the Government and prospective contractors as to the most efficient investments in plant and tooling to accomplish the long-term production programs--which may run 5 or more years. It also requires identification of the most economic methods of acquiring long lead time components and materials, as well as other economies which can result such as from long-range work force planning.

General Slay, former Commander, Air Force Systems Command, in his testimony before the House Armed Services Committee, cited preliminary studies of several systems where his estimate of savings reached \$1.5 billion. He stated that if this method of acquisition planning were possible "we could routinely save from 10 percent to 30 percent of the contract price."

The Deputy Secretary's acquisition initiatives reiterated these prospective benefits, but also expressed caution that only programs which fully qualify after careful screening should be candidates for this acquisition method. To implement his decision, the Deputy Secretary, on May 1, issued a significant and comprehensive directive to the military departments, entitled "Policy Memorandum on Multi-Year Procurement," in which he directs the

beginning of multi-year planning in preparing budget submissions and justifications for FY 1983 and beyond. He states that when conditions appear feasible "requests for proposals for FY 1983 and subsequent year requirements should require both annual year and multi-year proposals."

Under today's statutes such contracting is not feasible for three reasons:

- Existing funding statutes preclude multi-year procurement of large systems using annual or limited-year appropriations, unless specifically authorized by law.
- There is a cancellation ceiling of \$5 million for multi-year procurement which effectively precludes DOD from negotiating such arrangements for major systems. (It has been estimated that the ceiling on one aircraft program would be over \$170 million in the first year.)
- Thirdly, cancellation ceilings now cover non-recurring costs only. Recurring costs should be included within this ceiling so as to obtain the advantages of long-term procurement of materials, parts, and components.

We fully support the need for Congressional action to overcome these obstacles, and have so recommended in recent testimony to the Congress and in a report to the Secretary of Defense. The question is when and how such statutory reform should be accomplished.

In anticipation of the need for new statutory authority, the House and Senate Defense Authorization Bills for FY 1982 each now contain a section dealing with various aspects of these matters. However, the provisions differ materially, and the technical details have become very complex. We have also noted a growing concern with the need to proceed with great care to avoid reduced

flexibility in adjusting programs to meet changing threats, unnecessary risk of costly program cancellation, and unrealistic financial risks being imposed on contractors. If such detailed provisions are to be incorporated in a current statute, we recommend that a joint OFPP-DOD-GAO drafting team assist in framing the provisions.

We suggest that another--and perhaps more efficient--solution at this time might be simply to declare in the FY 1982 authorization bill the intent of Congress to thoroughly assess, in actual practice, multi-year contracting for selected major systems, before final legislation is designed. Under this approach, the Secretary of Defense would be directed to propose contracts for candidate systems in the FY 1983 Defense request for authorization of appropriations. Each candidate contract proposed would be supported by a detailed presentation of the terms (including the cancellation ceiling and how it was computed); the benefits in reduced time and costs; as well as the risks to the Government and the contractor. Congress could then give case-by-case review to each proposal during the regular budget authorization and appropriation process for FY 1983 and approve those which it found to be meritorious. Based on this experience, and the results reported by DOD. . Congress could then decide on permanent legislation to govern multi-year procurement of weapon systems for the future.

OFPP TO CONTINUE DRAFTING A MULTI-YEAR PROVISION

Meanwhile, as a separate project, OFPP should prepare a multi-year contracting section for the uniform procurement statute covering commodities, supplies, and services--based on past studies of the COGP and GAO, and the experiences of DOD and other agencies. The provisions should also cover multi-year leasing and multi-year lease-purchase arrangements.

CONCLUSION

We will continue to work closely with OFPP in the development of its report and proposed statute to implement the UPS as required by P.L. 96-83. This concludes our prepared statement. We will now be pleased to answer your questions.