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STATEMENT OF

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before the Senate Committee on Armed Services  
on Potential Impact on National Defense  
of Restoring Regulatory Authority  
to  
The Office of Federal Procurement Policy



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Mr. Chairman and Members of the Committee:

In earlier testimony before the House Committee on Government Operations and in our recent report to the Senate Governmental Affairs Subcommittee on Oversight of Government Management, we supported increased authority for the Office of Federal Procurement Policy including the need to reinstate OFPP's regulatory authority which was temporarily removed in 1979. We understand that the purpose of this hearing is to consider the implications associated with restoration of OFPP's regulatory authority under Senate Bill S.1001. The Department of Defense apparently is concerned that OFPP will direct procurement activities in a manner incompatible with national defense interests but would support restoring regulatory authority if:

- OFPP could use such authority only after DOD, GSA, and NASA certify that they are unable to reach agreement on a particular government-wide procurement policy;
- Proposed policy issuances by the OFPP Administrator would be submitted to the full Congress rather than just the Senate Committee on Governmental Affairs and House Committee on Government Operations; and
- The OMB Director rather than the OFPP Administrator would be authorized to rescind or veto the promulgation of agency regulations.

Notifying the entire Congress rather than certain committees of major policy changes will bring greater visibility to

OFPP's efforts and we find this change unobjectionable. Authorizing the Director of OMB alone rather than the OFPP Administrator with concurrence of OMB to control agency regulations, as now provided in the bill, and requiring DOD, GSA, and NASA to certify that they have reached an impasse before allowing the OFPP Administrator to take action would, in our opinion, be counterproductive. If OFPP is to have responsibility for making needed improvements in federal procurement policies and practices, it must have the commensurate authority. Three situations we have encountered in our work illustrate the point well.

The new government-wide regulation known as the Federal Acquisition Regulation (FAR) is the first attempt to deal with the multiplicity of regulations governing the federal procurement system. It replaces three sets of primary regulations and significant parts of individual agency regulations with a unified regulation for all of government and industry to follow.

Development of the FAR was started under the auspices of OFPP in 1978 when the Office had regulatory authority. A simplified and unified regulation was originally scheduled to become effective in the spring of 1980. It was not published, however, until just recently and has an effective date of April 1984, four years later than originally planned. Despite the excellent work contributed by DOD, efforts to publish the FAR almost fell apart several times and at one point the project came to a standstill because of difficulties in resolving

differences, largely between OFPP and DOD. If DOD's proposed change had been in effect during these difficulties, it is highly unlikely that OFPP would have received a certification of impasse. It is more likely, in our opinion, that the agencies would have either concluded that a FAR was unnecessary or they would have continued to seek resolution amongst themselves rather than turn to OFPP.

I say this because, even with the endorsement of the President's Cabinet Council on Management and Administration, neither OMB nor OFPP could keep things moving. Ultimately, publication of the FAR was achieved using the Paperwork Reduction Act as a lever. Using authority derived from this Act, OMB advised DOD that DOD's own regulation would not remain in effect after April 1984 except as a part of the FAR system.

Even though the FAR is to become effective next year, its future will be in doubt without OFPP regulatory authority. Maintaining the single regulation will be difficult. The regulatory councils established for the FAR--civil and defense--are independent and must approve each other's work. There is no stated mechanism for resolving disputes. OFPP needs authority to resolve disagreements among the agencies and between the independent councils so as to ensure integrity of the FAR system.

A second illustration concerns a proposed policy on competition that has been debated for over a year and is now out for public comment. OFPP's efforts to define and limit the

conditions for contracting on a sole source basis have been long opposed by DOD and some other agencies. The policy letter has gotten as far as it has only because the President has become personally involved. It is doubtful that the agencies would have certified an impasse for resolution by OFPP.

Next, I would refer to our recent report on Progress of Federal Procurement Reform Under Executive Order 12352. We visited twelve agencies who collectively spend 97 percent of government procurement dollars. Although the executive order puts OFPP in a leadership role, we found that most agencies consider themselves free to reject or unilaterally revise OFPP's policy guidance. As a consequence most agencies, including DOD, had not implemented the first in a series of important changes designed to improve the federal procurement process. This first change seeks to shift emphasis away from excessive reliance upon regulations toward managing the procurement system as a whole. It seeks to put someone in charge for example of (1) professionalizing the work force, (2) clarifying lines of authority, (3) simplifying operations, and (4) increasing competition. Lack of regulatory authority has undoubtedly hampered OFPP efforts toward achieving agency compliance.

Should Congress grant OFPP regulatory authority, it is important that its use be limited to oversight and conflict resolution. The current bill recognizes this in prohibiting OFPP from becoming involved in agency determinations of need or in individual procurement actions, and OFPP is required to

consult both with the agencies and the Congress before it releases any new policies. The bill charges OFPP with "ensuring the development of procurement policies that will accomodate emergencies and wartime as well as peacetime requirements." Finally, it is clear that agencies, including DOD, may issue regulations to meet their unique mission requirements.

Because OFPP has little more than a dozen professionals, it relies heavily on interagency task forces to help develop procurement policies. These task forces are frequently led by and staffed with experts from DOD. For example, as mentioned earlier, much of the work on the FAR and the policy guidance developed under the President's recent executive order was done with leadership and staffing provided by the three military services.

It should be noted that, at the time Congress removed OFPP's regulatory authority so OFPP could concentrate its full resources on developing a unified federal procurement system concept, it was intended that at completion of such task, regulatory authority would be restored. We at GAO understood that to be the case and we are aware that OMB had the same understanding at that time. We at GAO share the concerns of many in the procurement community that without restoration of regulatory authority to OFPP, much of the progress made to date will eventually dissipate.

This concludes my prepared statement, Mr. Chairman. I will be happy to respond to any questions you or other members of the Committee may have.