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ESTABLISHING OFFICE OF FEDERAL PROCUREMENT POLICY

GOVERNMENT

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HEARINGS

AD HOC SUBCOMMITTEE ON
FEDERAL PROCUREMENT

OF THE

COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE

NINETY-THIRD CONGRESS

FIRST SESSION

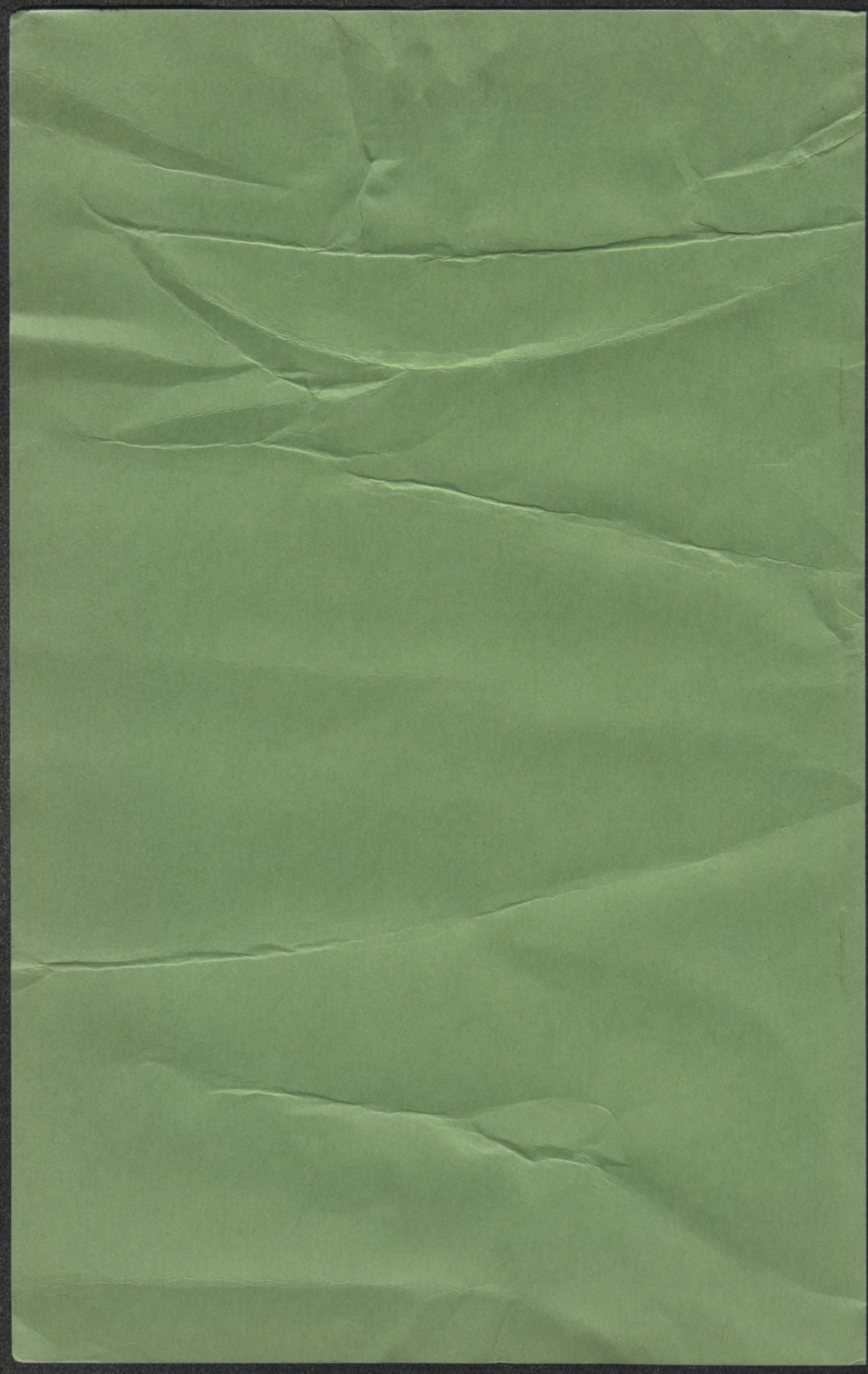
ON

S. 2198 and S. 2510

WASHINGTON, D.C., OCTOBER 31 ; NOVEMBER 1, 2, 14, AND 15, 1973

Printed for the use of the Committee on Government Operations





ESTABLISHING OFFICE OF FEDERAL PROCUREMENT POLICY

HEARINGS
BEFORE THE
AD HOC SUBCOMMITTEE ON
FEDERAL PROCUREMENT
OF THE
COMMITTEE ON
GOVERNMENT OPERATIONS
UNITED STATES SENATE
NINETY-THIRD CONGRESS
FIRST SESSION
ON
S. 2198 and S. 2510

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ESTABLISHING OFFICE OF FEDERAL PROCUREMENT POLICY

WEDNESDAY, OCTOBER 31, 1973

U.S. SENATE,
AD HOC SUBCOMMITTEE ON FEDERAL PROCUREMENT,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to call, at 11:05 a.m., in room 3302, Dirksen Senate Office Building, Senator Lawton Chiles presiding.

Present: Senators Chiles, Roth, Brock, and Nunn.

Also present: Lester A. Fettig, staff director; Loren Murray, minority professional staff; and Bob Harris, administrative clerk.

Senator CHILES. We will convene our hearings. This is the first of a series of hearings on legislation to establish an Office of Federal Procurement Policy, S. 2198 and S. 2510, and I will put these bills in the record now with amendments to S. 2198, plus any agency comments.

[The bills S. 2198, with amendments, and S. 2510 follow:]

(1)

93D CONGRESS
1ST SESSION

S. 2198

IN THE SENATE OF THE UNITED STATES

JULY 18, 1973

Mr. Brock introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Office of Federal Pro-
4 curement Policy Act".

FINDINGS AND PURPOSE

6 SEC. 2. (a) The Congress finds that economy, efficiency,
7 and effectiveness in the procurement of property and services
8 by the executive agencies will be improved by establishing a
9 more effective organization to assume responsibility for and
10 control over procurement policies, regulations, procedures,
11 and forms.

1 (b) The purpose of this Act is to establish an office in
2 the Executive Office of the President to provide overall lead-
3 ership and direction for the development of procurement
4 policies, regulations, procedures, and forms for executive
5 agencies in implementation of procurement statutes.

6 DEFINITIONS

7 SEC. 3. As used in this Act—

8 (1) the term “executive agency” means an execu-
9 tive department as defined in section 101 of title 5,
10 United States Code, an independent establishment as de-
11 fined by section 104 of title 5, United States Code (ex-
12 cept that it shall not include the General Accounting Of-
13 fice), a military department as defined by section 102
14 of title 5, United States Code, a wholly owned Govern-
15 ment corporation, the United States Postal Service, the
16 Postal Rate Commission, and the District of Columbia;

17 (2) the term “Office” means Office of Federal Pro-
18 curement Policy; and

19 (3) the term “Administrator” means the Adminis-
20 trator of the Office of Federal Procurement Policy.

21 OFFICE OF FEDERAL PROCUREMENT POLICY

22 SEC. 4. (a) There is established in the executive branch
23 of the Government an agency to be known as the Office of
24 Federal Procurement Policy.

25 (b) There shall be at the head of the Office an Admin-

1 istrator of the Office of Federal Procurement Policy, who
2 shall be appointed by the President by and with the advice
3 and consent of the Senate.

4 (c) There shall be in the Office a Deputy Administrator
5 of the Office of Federal Procurement Policy who shall be
6 appointed by the Administrator. The Deputy Administrator
7 shall perform such functions as the Administrator shall
8 designate and shall be Acting Administrator during the ab-
9 sence or disability of the Administrator and, unless the Pres-
10 ident shall designate another officer of the Government, in
11 the event of a vacancy in the Office.

12 - FUNCTIONS

13 SEC. 5. (a) The Administrator shall provide overall
14 guidance and direction of procurement policy, and to the
15 extent he considers appropriate and with due regard to the
16 program activities of the executive agencies, shall prescribe
17 policies, regulations, procedures, and forms which shall be
18 followed by executive agencies (A) in the procurement of—

19 (1) property other than real property in being,

20 (2) services, and

21 (3) construction, alteration, repair, or maintenance
22 of real property;

23 and (B) in authorizing or requiring grantees to procure
24 property and services, required for performance of grants,
25 from the General Services Administration or other executive

1 agencies, or by placing orders under contracts or supply
2 schedules entered into by such agencies. However, the au-
3 thority of the Administrator under this Act shall apply to
4 procurement by or for a military department only when
5 payable from appropriated funds.

6 (b) The functions of the Administrator shall include
7 the following:

8 (1) establishing a system of Government-wide co-
9 ordinated, and to the extent feasible, uniform procure-
10 ment regulations;

11 (2) establishing criteria and procedures for an
12 effective method of soliciting the viewpoints of inter-
13 ested parties in the development of procurement policies,
14 regulations, procedures, and forms; and

15 (3) monitoring and revising as necessary policies,
16 regulations, procedures, and forms concerning reliance
17 on the private sector to provide needed property and
18 services.

19 (c) In the development of policies, regulations, proce-
20 dures, and forms to be authorized or prescribed by him, the
21 Administrator shall consult with the executive agencies
22 affected and, to the extent feasible, with the consent of the
23 executive agencies concerned, shall designate an executive
24 agency or agencies, establish inter-agency committees, or
25 otherwise use agency representatives or personnel, to solicit

1 the views and the agreement, so far as possible, of agencies
2 affected on significant changes in policies, regulations, proce-
3 dures, and forms.

4 (d) The authority of the Administrator under this Act
5 shall not be construed to impair or interfere with the determi-
6 nation by executive agencies of their requirements for, or
7 their use of, property, services, or construction, including
8 specifications therefor.

9 ADMINISTRATIVE POWERS

10 SEC. 6. (a) The Administrator is authorized, in carry-
11 ing out this Act, to—

12 (1) appoint advisory committees composed of
13 private citizens and officials of the Federal, State, and
14 local governments, and to pay such members (other
15 than those regularly employed by the Federal Govern-
16 ment) while attending meetings of such committees or
17 otherwise serving at the request of the Administrator,
18 compensation (including traveltime) at rates not in
19 excess of the maximum rate of pay for GS-18 as pro-
20 vided in section 5332 of title 5, United States Code,
21 and while such members are so serving away from their
22 homes or regular places of business, to pay such mem-
23 bers travel expenses and per diem in lieu of subsistence
24 at rates authorized by section 5703 of title 5, United

1 States Code, for persons in Government service em-
2 ployed intermittently;

3 (2) utilize, with their consent, the services, person-
4 nel and facilities of State and private agencies and
5 instrumentalities;

6 (3) accept voluntary and uncompensated services,
7 notwithstanding section 665 (b) of title 31, United
8 States Code;

9 (4) employ experts and consultants in accordance
10 with section 3109 of title 5, United States Code, and
11 compensate individuals so employed for each day (in-
12 cluding traveltime) at rates not in excess of the maxi-
13 mum rate of pay for grade GS-18 as provided in sec-
14 tion 5332 of title 5, United States Code, and while such
15 experts and consultants are so serving away from their
16 homes or regular place of business, to pay such em-
17 ployees travel expenses and per diem in lieu of sub-
18 sistence at rates authorized by section 5703 of title 5,
19 United States Code, for persons in Government service
20 employed intermittently; and

21 (5) adopt an official seal, which shall be judicially
22 noticed.

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

25 (1) make its services, personnel, and facilities avail-

1 able to the greatest practical extent for the performance
2 of functions under this Act; and

3 (2) except when prohibited by law, furnish and
4 allow access to all information and records in its pos-
5 session which the Administrator may determine to be
6 necessary for the performance of the functions of his
7 Office.

8 SUBMISSION OF REPORTS AND INFORMATION TO CONGRESS

9 SEC. 7. The Administrator shall keep the Congress and
10 its duly authorized committees fully and currently informed
11 of its activities, and, for this purpose, shall submit a report
12 to Congress annually, and at such other times as he deems
13 desirable, with appropriate recommendations for amendment
14 or repeal of existing laws or adoption of new laws. Neither
15 the Administrator, the Deputy Administrator, nor employees
16 of the Office may refuse to testify before or submit informa-
17 tion to Congress or any duly authorized committees thereof.

18 EFFECT ON EXISTING LAWS

19 SEC. 8. Authority under any other law to prescribe
20 policies, regulations, procedures, and forms for procurement
21 is subject to the authority conferred in this Act.

22 EFFECT ON EXISTING REGULATIONS

23 SEC. 9. Procurement policies, regulations, procedures,
24 or forms in effect as of the date of this Act shall continue
25 in effect, as modified from time to time, until superseded by

1 policies, regulations, procedures, or forms promulgated by
2 the Administrator.

3 AUTHORIZATION OF APPROPRIATIONS

4 SEC. 10. There are authorized to be appropriated
5 \$3,000,000 to carry out the provisions of this Act.

6 DELEGATION

7 SEC. 11. The Administrator may delegate and authorize
8 redelegation of any authority under this Act to any official
9 in his Office or, with the consent of the agency or upon di-
10 rection of the President, to any executive agency.

11 ANNUAL PAY

12 SEC. 12. Section 5314 of title 5, United States Code,
13 is amended by adding at the end thereof the following:

14 “(60) Administrator of the Office of Federal Pro-
15 curement Policy.”

16 ACCESS TO INFORMATION BY COMPTROLLER GENERAL

17 SEC. 13. The Administrator and personnel in his Office
18 shall furnish such information as the Comptroller General
19 may require for the discharge of his responsibilities, and for
20 this purpose, the Comptroller General or his representatives
21 shall have access to all books, documents, papers, and rec-
22 ords of the Office.

23 COORDINATION OF GRANTS POLICY

24 SEC. 14. The Administrator, in cooperation with the
25 executive agencies and the Office of Management and

1 Budget, shall undertake a study to determine the feasibility
2 and desirability of authorizing his Office, or another Federal
3 office or agency, to provide overall guidance and direction
4 of grants policy, prescribe policies, regulations, procedures,
5 and forms to be followed by executive agencies in the award
6 and administration of grants, and otherwise perform func-
7 tions and powers for grants similar to those provided for pro-
8 curement by this Act. In carrying out such study, the Ad-
9 ministrator shall consult with representatives of States and
10 local governments and that segment of the public which is
11 actively engaged in the administration and performance of
12 grants. As used in this section, the term "grants" includes
13 grants-in-aid and cooperative agreements. The results of
14 the study, together with recommendations for administra-
15 tive or statutory changes, shall be reported to the Committees
16 on Government Operations of the Senate and House of
17 Representatives at the earliest practicable date but in no
18 event later than two years after the date of enactment of this
19 Act.

20 REPEALS AND AMENDMENTS

21 SEC. 15. (a) Section 201 (a) (1) of the Federal Prop-
22 erty and Administrative Services Act of 1949 (40 U.S.C.
23 481 (a) (1)) is amended to read as follows:

24 " (1) prescribe policies and methods for the follow-
25 ing functions related to the procurement and supply of

1 personal property and nonpersonal services: inspection,
2 storage, issue, property identification and classification,
3 transportation and traffic management, management of
4 public utility services, and repairing and converting;
5 and”.

6 (b) Section 201 (c) of the Federal Property and Ad-
7 ministrative Services Act of 1949 (40 U.S.C. 481 (c)) is
8 amended by inserting “subject to regulations prescribed by
9 the Administrator of the Office of Federal Procurement
10 Policy,” after the comma following “Administrator”.

11 (c) Section 206 (a) (4) of the Federal Property and
12 Administrative Services Act (40 U.S.C. 487 (a) (4)) is
13 amended to read as follows: “(4) to prescribe standardized
14 forms and procedures, except such as are related to procure-
15 ment and except such as the Comptroller General is au-
16 thorized by law to prescribe, and standard purchase
17 specifications.”

18 (d) Section 206 (d) of the Federal Property and Ad-
19 ministrative Services Act (40 U.S.C. 474) is amended by
20 striking out clauses (8), (19), and (20); by amending
21 clause (12) to read as follows: “the Tennessee Valley Au-
22 thority with respect to the matters referred to in section 201
23 (a) (4), and with respect to the disposal of any property
24 acquired or to be acquired for or in connection with any pro-
25 gram of processing, manufacture, production, or force account

1 construction: *Provided*, That the Tennessee Valley Authority
2 shall to the maximum extent that it may deem practicable,
3 consistent with the fulfillment of the purpose of its program
4 and the effective and efficient conduct of its business, coordi-
5 nate its operations with the requirements of said chapters
6 and the policies and regulations prescribed pursuant there-
7 to"; by amending clauses (13), (15), and (17) to add at
8 the end "with respect to the disposal of property"; and by
9 amending clause (16) by striking out "construction, re-
10 construction, and reconditioning (including outfitting and
11 equipping incident to the foregoing), the acquisition, pro-
12 curement, operation, maintenance, preservation";

13 (c) Section 602 (c) of the Federal Property and
14 Administrative Services Act of 1949 (40 U.S.C. 474) is
15 amended in the first sentence thereof by inserting "except
16 as provided by the Office of Federal Procurement Policy
17 Act, and" immediately after "herewith".

[S. 2198, 93d Cong., 1st sess.]

(Amdt. No. 500)

AMENDMENTS Intended to be proposed by Mr. Brock to S. 2198, a bill to create an Office of Federal Procurement Policy within the Executive Office of the President, and for other purposes

viz: On page 3, line 18, strike out "(A)".

On page 3, line 22, strike out the semicolon and insert in lieu thereof a period.

On page 3, beginning with line 23, strike out through the period in line 2 on page 4.

On page 5, between lines 8 and 9, insert the following:

"(e) No executive agency may make available, directly or indirectly, to any grantee or contractor of any agency (or any subgrantee or subcontractor thereof) any supply or service source which is made available to an executive agency by law or other authority or which is otherwise under the control of an executive agency, except as otherwise specifically provided by law or as necessary in cases determined under regulations of the Administrator where the United States has control of the only supply or service source."

93^d CONGRESS
1ST SESSION

S. 2510

IN THE SENATE OF THE UNITED STATES

OCTOBER 1, 1973

Mr. CHILES (for himself and Mr. ROTH) introduced the following bill; which was read twice and referred to the Committee on Government Operations

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Office of Federal Procure-
4 ment Policy Act of 1973."

5 DECLARATION OF POLICY

6 SEC. 2. It is hereby declared to be the policy of Con-
7 gress to promote economy, efficiency, and effectiveness in
8 the procurement of goods, services, and facilities by and for
9 the executive branch of the Federal Government by—
10 (1) establishing policies, procedures, and practices
11 which will require the Government to acquire goods,

1 services, and facilities of the requisite quality and within
2 the time needed at the lowest reasonable cost, utilizing
3 competition to the maximum extent practicable;

4 (2) improving the quality, efficiency, economy,
5 and performance of Government procurement organiza-
6 tions and personnel;

7 (3) avoiding or eliminating unnecessary overlap-
8 ping or duplication of procurement and related activities;

9 (4) avoiding or eliminating unnecessary or redun-
10 dant requirements placed on contractor and Federal
11 procurement officials;

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

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

18 (7) coordination procurement policies and pro-
19 grams of the several departments and agencies;

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

23 (9) minimizing possible disruptive effects of Gov-
24 ernment procurement on particular industries, areas, or
25 occupations;

1 (10) improving understanding of Government pro-
2 curement laws and policies within the Government and
3 by organizations and individuals doing business with the
4 Government;

5 (11) promoting fair dealing and equitable relation-
6 ships among the parties in Government contracting; and

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

10 FINDINGS AND PURPOSE

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

16 (b) The purpose of this Act is to establish within the
17 Executive Office of the President an office to provide overall
18 leadership and direction for the development of procurement
19 policies and regulations for executive agencies in implementa-
20 tion of procurement statutes.

21 DEFINITIONS

22 SEC. 4. As used in this Act—

23 (1) the term "executive agency" means an execu-
24 tive department as defined in section 101 of title 5,
25 United States Code, an independent establishment as

1 defined by section 104 of title 5, United States Code
2 (except that it shall not include the General Accounting
3 Office), a military department as defined by section 102
4 of title 5, United States Code, a wholly owned Govern-
5 ment corporation, and the District of Columbia;

6 (2) the term "Office" means Office of Federal Pro-
7 curement Policy; and

8 (3) the term "Administrator" means the Admin-
9 istrator of the Office of Federal Procurement Policy.

10 OFFICE OF FEDERAL PROCUREMENT POLICY

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

17 (b) There shall be at the head of the Office an Admin-
18 istrator of the Office of Federal Procurement Policy, who
19 shall be appointed by the President by and with the advice
20 and consent of the Senate.

21 (c) There shall be in the Office a Deputy Adminis-
22 trator of the Office of Federal Procurement Policy who shall
23 be appointed by the President by and with the advice and
24 consent of the Senate. The Deputy Administrator shall
25 perform such functions as the Administrator shall designate

1 and shall be Acting Administrator during the absence or dis-
2 ability of the Administrator and, unless the President shall
3 designate another officer of the Government, in the event of
4 a vacancy in the Office.

5 FUNCTIONS

6 SEC. 6. (a) The Administrator shall provide overall
7 guidance and direction of procurement policy, and to the
8 extent he considers appropriate and with due regard to the
9 program activities of the executive agencies, shall prescribe
10 policies and regulations which shall be followed by executive
11 agencies (A) in the procurement of—
12 (1) property other than real property in being;
13 (2) services, including research and development;
14 and
15 (3) construction, alteration, repair, or maintenance
16 of real property;
17 and (B) in providing for or in connection with procurement
18 of items specified in (1), (2), and (3) above, to the extent
19 required for performance of Federal assistance programs.
20 However, in the case of programs to provide Federal assist-
21 ance to States and political subdivisions, this authority shall
22 not be construed to authorize any procurement contrary to
23 State and local laws. Also, the authority of the Administra-
24 tor under this Act shall apply to procurement by or for a

1 military department only when payable from appropriated
2 funds.

3 (b) The functions of the Administrator shall include the
4 following:

5 (1) monitoring and revising as necessary policies
6 and regulations concerning the role of the Federal Gov-
7 ernment and its reliance on the private sector in provid-
8 ing goods and services required to meet public needs;

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

13 (3) establishing a system of governmentwide co-
14 ordinated and, to the extent feasible, uniform procure-
15 ment regulations;

16 (4) establishing criteria and procedures for an ef-
17 fective method of soliciting the viewpoints of interested
18 parties in the development of procurement policies, regu-
19 lations, procedures, and forms, and for overseeing and
20 upgrading the status of procurement personnel through
21 improved programs for recruitment, training, career de-
22 velopment, and performance evaluation;

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

25 (6) guiding and directing the development of a

1 system for collecting and disseminating governmentwide
2 procurement data to meet the informational needs of the
3 Congress, the executive branch, and the private sector.

4 (c) In the development of policies and regulations to be
5 authorized or prescribed by him, the Administrator shall con-
6 sult with the executive agencies affected and, to the extent
7 feasible, with the consent of the executive agencies con-
8 cerned, shall designate an executive agency or agencies, es-
9 tablish interagency committees, or otherwise use agency
10 representatives or personnel, to solicit the views and the
11 agreement, so far as possible, of agencies affected on sig-
12 nificant changes in policies and regulations.

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

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

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

21 (3) the procedures and forms used by executive
22 agencies except to such extent as may be necessary to
23 insure effective implementation of policies and regula-
24 tions authorized or prescribed by the Administrator.

1 ADMINISTRATIVE POWERS

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

4 (1) appoint advisory committees composed of
5 private citizens and officials of the Federal, State, and
6 local governments, and to pay such members (other
7 than those regularly employed by the Federal Govern-
8 ment) while attending meetings of such committees or
9 otherwise serving at the request of the Administrator,
10 compensation (including traveltime) at rates not in
11 excess of the maximum rate of pay for GS-18 as pro-
12 vided in the section 5332 of title 5, United States Code,
13 and while such members are so serving away from their
14 homes or regular places of business, to pay such mem-
15 bers travel expenses and per diem in lieu of subsistence
16 at rates authorized by section 5703 of title 5, United
17 States Code, for persons in Government service em-
18 ployed intermittently;

19 (2) utilize, with their consent, the services, person-
20 nel, and facilities of State and private agencies and
21 instrumentalities;

22 (3) accept voluntary and uncompensated services,
23 notwithstanding section 665 (b) of title 31, United
24 States Code;

1 (4) employ experts and consultants in accordance
2 with section 3109 of title 5, United States Code, and
3 compensate individuals so employed for each day (in-
4 cluding traveltime) at rates not in excess of the maxi-
5 mum rate of pay for grade GS-18 as provided in section
6 5332 of title 5, United States Code, and while such
7 experts and consultants are so serving away from their
8 homes or regular place of business, to pay such employees
9 travel expenses and per diem in lieu of subsistence at
10 rates authorized by section 5703 of title 5, United States
11 Code, for persons in Government service employed inter-
12 mittently; and

13 (5) adopt an official seal, which shall be judicially
14 noticed.

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

17 (1) make its services, personnel, and facilities
18 available to the greatest practical extent for the perform-
19 ance of functions under this Act: and

20 (2) except when prohibited by law, furnish and
21 allow access to all information and records in its pos-
22 session which the Administrator may determine to be
23 necessary for the performance of the functions of his
24 Office.

1 SUBMISSION OF REPORTS AND INFORMATION TO CONGRESS

2 SEC. 8. The Administrator shall keep the Congress and
3 its duly authorized committees fully and currently informed of
4 its activities including consideration of proposed changes in
5 procurement policies and regulations, and shall submit a
6 report to Congress annually, and at such other times as may
7 be necessary for this purpose, with recommendations for
8 amendment or repeal of existing laws or adoption of new
9 laws when appropriate. Neither the Administrator, the
10 Deputy Administrator, nor employees of the Office may
11 refuse to testify before or submit information to Congress or
12 any duly authorized committee thereof.

13 EFFECT ON EXISTING LAWS

14 SEC. 9. Authority under any other law permitting an
15 executive agency to prescribe policies, regulations, proce-
16 dures, and forms for procurement is subject to the authority
17 conferred in this Act.

18 EFFECT ON EXISTING REGULATIONS

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

24 AUTHORIZATION OF APPROPRIATIONS

25 SEC. 11. There are authorized to be appropriated such
26 sums as necessary to carry out the provisions of this Act.

1 DELEGATION

2 SEC. 12. The Administrator may delegate and authorize
3 redelegation of any authority under this Act to any official in
4 his Office or, with the consent of the agency or upon direction
5 of the President, to any executive agency.

6 ANNUAL PAY

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

9 “(60) Administrator of the Office of Federal Pro-
10 curement Policy.”

11 ACCESS TO INFORMATION BY COMPTROLLER GENERAL

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

18 COORDINATION OF FEDERAL ASSISTANCE POLICIES

19 SEC. 15. The Administrator, in cooperation with the
20 executive agencies and the Office of Management and Budget,
21 shall undertake a study to determine the feasibility and de-
22 sirability of authorizing his Office, or another Federal office
23 or agency, to provide overall guidance and direction for Fed-
24 eral assistance programs and the relationship of policies and
25 regulations governing the use of contracts, grants, and co-

1 operative agreements. In carrying out such study, the Ad-
2 ministrator shall consult with representatives of States and
3 local governments and that segment of the public which is
4 actively engaged in the administration and performance of
5 Federal assistance programs. The results of the study, to-
6 gether with recommendations for administrative or statutory
7 changes, shall be reported to the Committee on Govern-
8 ment Operations of the Senate and House of Representa-
9 tives at the earliest practicable date but in no event later than
10 two years after the date of enactment of this Act.

11 REPEALS AND AMENDMENTS

12 SEC. 16. (a) Section 201 (c) of the Federal Property
13 and Administrative Services Act of 1949 (40 U.S.C. 481
14 (c)) is amended by inserting "subject to regulations pre-
15 scribed by the Administrator of the Office of Federal
16 Procurement Policy," after the comma following "Ad-
17 ministrator".

18 (b) Section 602 (d) of the Federal Property and
19 Administrative Services Act (40 U.S.C. 474) is amended
20 by striking out clauses (8), (19), and (20) ; by amending
21 clause (12) to read as follows: "the Tennessee Valley Au-
22 thority with respect to the matters referred to in section 201
23 (a) (4), and with respect to the disposal of any property
24 acquired or to be acquired for or in connection with any
25 program of processing, manufacture, production, or force

1 account construction: *Provided*, That the Tennessee Valley
2 Authority shall to the maximum extent that it may deem
3 practicable, consistent with the fulfillment of the purpose of
4 its program and the effective and efficient conduct of its busi-
5 ness, coordinate its operations with the requirements of said
6 chapters and the policies and regulations prescribed pursuant
7 thereto;" by amending clauses (13), (15), and (17) to add
8 at the end "with respect to the disposal of property"; and by
9 amending clause (16) by striking out "construction, recon-
10 struction, and reconditioning (including outfitting and equip-
11 ping incident to the foregoing), the acquisition, procurement,
12 operation, maintenance, preservation';".

13 (c) Section 602 (c) of the Federal Property and Ad-
14 ministrative Services Act of 1949 (40 U.S.C. 474) is
15 amended in the first sentence thereof by inserting "except
16 as provided by the Office of Federal Procurement Policy Act,
17 and" immediately after "herewith".

OPENING STATEMENT OF SENATOR CHILES

Senator CHILES. These hearings are also the initial effort of the subcommittee to bring about a legislative overhaul of the procurement process that has not kept pace with the demands of increased needs of Government. The need for centralized leadership of procurement policy in the Federal Government is the first of 149 recommendations proposed by the Commission on Government Procurement in a report submitted to the Congress in December 1972.

As the Commission report points out, the creation of a central policy office was placed first among its recommendations because of its overall importance in improving the economy, efficiency, and effectiveness of the procurement of goods, services, and facilities by and for the executive branch.

The report of the Commission on Government Procurement was a culmination of almost a 3-year study of Government procurement, which is literally without historical precedent. The Commission was unique in that it was the first statutory commission to be wholly devoted to Government procurement.

Public Law 91-129, enacted in 1969, was a nonpartisan expression of concern by the Congress over the growing volume of Government procurement, the ever-increasing record of inefficiency and mismanagement, and the critical role of procurement in the functions of Government. The 10-volume record of hearings on the legislation introduced by Senator Jackson and Congressman Holifield left this unquestioned message—mere concern over the Government procurement process was no longer enough; continued patchwork solutions would no longer suffice; positive congressional action was highly desirable.

In carrying out its charter, the Commission addressed more than 400 independent problems and issues which, for the most part, were identified during the extensive hearings in the passage of Public Law 91-129. Many of these problems go directly to the heart of the role of Government in the economy and the role of the public and private sectors in meeting the needs of the American people.

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. That broad-based interest and concern has extended to today now that the Procurement Subcommittee is beginning its work.

I had the pleasure to serve as a member of the Commission along with Senator Gurney, and Representatives Holifield and Horton. Senator Jackson originally sponsored Senate legislation to create the Procurement Commission, and served on the Commission prior to my appointment.

Mr. Holifield, Chairman of the House Government Operations Committee, served as vice chairman of the Commission and laid the legislative groundwork to create the Commission. He has already introduced legislation and begun hearings in the House.

I would like to commend these colleagues for their invaluable service, as well as the efforts of all the public members typified by Mr. Richard E. Horner, a public-spirited businessman appointed by the President of the Senate, who, despite the press of business in Wisconsin, was always on hand for the meetings of the Commission. Mr. Elmer B. Staats, the Comptroller General, was also an invaluable member of the Commission. He not only gave freely of his own personal time but placed his key staff and the resources of the General Accounting Office at the disposal of the Commission.

The legislation to establish an Office of Federal Procurement Policy is only the beginning of a comprehensive program planned by this subcommittee to fulfill its charter to upgrade and overhaul a process that consumes nearly one-fourth of the Federal budget.

The other issues that we expect to address in the coming months affect the vital interest of industry, the small businessman, individual contractors, executive agencies, and—most importantly—the taxpayer. They include the whole area of reliance on the private sector for goods and services and Government competition with the private sector; major system acquisition policies; research and development; professional services; and others of equally vital impact.

Our objective will be a complete, thorough, orderly followthrough on the Commission recommendations in such a way that will produce constructive, lasting changes in the procurement process.

The significance of the role of the Office of Federal Procurement Policy is emphasized by the magnitude of Government spending. In fiscal year 1972, the \$57.5 billion spent on procurement represented about one-quarter of all Federal outlays. Together with the \$39.1 billion going for Federal grants, this office would exercise oversight of the effective use of 40 percent of the Federal budget. We should note that this expenditure is so immense that even a 2-percent increase in procurement efficiency would produce savings to the American taxpayer of nearly \$2 billion.

S. 2510 and amendments to S. 2198 reflect the findings and positions that came to light in House testimony. There are, of course, important issues that remain to be settled, and they will be explored. We have made a special effort to work closely with the Subcommittee on Legislation and Military Operations in the House of Representatives and will continue to do so. There is no monopoly on the desire to serve the public and the business needs of this Nation.

The House has already laid a groundwork for this subcommittee through its hearings. Legislation to create an Office of Federal Procurement Policy represents an effort designed to cut through the nightmare of the multiplicity of agency regulations and fill a void in policy leadership in this vital area.

Establishment of a central Office of Federal Procurement Policy would meet the following needs identified during the Commission studies:

- (1) The need for someone to be in charge of procurement functions.
- (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.

Having concluded that a central Office of Federal Procurement Policy is urgently needed, the Commission recommended these attributes which are embodied in the legislation:

Independence: Separation of policymaking from operational concerns and biases was believed to be essential to objectivity. The Office of Federal Procurement Policy would not become involved in the award or administration of specific contracts.

Directive Authority: Advisory authority would not suffice if the Office were to have any meaning; hence the provision for directive authority.

Responsiveness to Congress: A responsible, effective, and responsive source of governmentwide policy control and leadership is vital to continuing executive-legislative cooperation.

Size: The staff would be kept small through the selection of highly competent personnel and the use of advice and personnel from procuring agencies.

S. 2510 specifies the following functions as expressing the type of organization needed to accomplish the purpose of the act:

(1) **Focal Point:** The act provides for overall guidance and direction of procurement policy.

(2) **Reliance on the Private Sector:** The Office would aggressively monitor this policy and insure that the intent of Congress is fulfilled.

(3) **Interested Parties:** The function is prescribed to insure that the policy of promoting square dealing and equitable relationships among the parties in government contracting is carried out.

(4) **Governmentwide Operations:** There would be a uniform system of governmentwide regulations; the Armed Services Procurement Regulation and Federal Procurement Regulations would be consistent except where the Office granted an exception.

(5) **Viewpoints:** In addition to the appointment of advisory committees, the Act provides for the solicitation of the viewpoints of interested parties in the development of procurement policies and procedures.

(6) **Personnel:** Oversight of programs for recruitment, training, career development and standards of performance initiated by the responsible executive agencies for procurement personnel.

(7) **Research:** Sponsorship of research in procurement policies, regulations, procedures, and forms would be something that has not been available heretofore.

(8) **Data:** One of the surprises of the Commission's study was the finding that it was not able to determine accurately what is procured, how much is expended, and who is doing procurement. The OFPP would correct this.

Through the progress reports of the General Accounting Office, we are aware of the extensive efforts initially mounted by the executive agencies in response to the Commission recommendations. As a beginning, these efforts are commendable, but the progress reported on some phases of the program bears witness to the need for legislative action to provide strong central direction to procurement reform.

Too often in the past, attempts to achieve governmentwide consistency in procurement policies have been frustrated by a lack of authority. The vagaries of time and the variability of executive orders are too great to trust so important a function as the expenditure of a quarter of the Federal budget to the good intentions of bureaucrats. There is no substitute for a clear statement of congressional intent expressed in legislation to achieve a lasting, effective leadership of procurement policy in the executive branch. The hearings we begin today will help us determine how best to frame the legislation to provide this leadership.

Senator Roth.

Senator ROTH. Thank you, Mr. Chairman.

I would like to express my pleasure in cosponsoring with the chairman S. 2510 to establish an Office of Federal Procurement Policy in the Executive Office of the President. This legislation, like the actions which led to it, illustrates one of the great strengths of our system of government—the ability of diverse factions to join together in a bipartisan effort to bring about improvements in government.

When Congress enacted Public Law 91-129 in November 1969 to take a comprehensive, systematic look at Government procurement, it set the pattern for objective analysis, evaluation, and solution to the seemingly uncontrolled manner in which almost \$100 billion are expended annually. Public Law 91-129 established a Commission composed of a Republican and a Democrat from the Senate and House and a balance of members from the private and government sector. This objectivity was carried through in the way the Commission organized for and conducted its study of the procurement process. Now the same bipartisanship is evident in the legislation we are considering today and in this subcommittee's determination to carry out a constructive, objective implementation of the Commission's recommendations.

I would like to commend Senators Jackson, Gurney and especially our chairman who gave so unselfishly of their time and talents as members of the Commission on Government Procurement. Additionally, I would like to recognize the fine work and dedicated service of Mr. Elmer B. Staats, the Comptroller General, director of the General Accounting Office, who was the lone statutory member of the Commission. His work in monitoring and reporting to Congress on the executive branch response to the Commission's recommendations has, and will continue to be, most helpful.

The collective cooperative efforts of the Commission, supported by an able staff and hundreds of experts, produced a blueprint for action for correcting the root causes of the ills that plague the procurement process and have been of so much concern to Congress and the public. The objective of this blueprint is a procurement system that fully warrants the public trust. The "Office of Federal Procurement Policy Act of 1973" is the cornerstone of this system—the device for putting someone in charge of procurement policy—for bringing order out of chaos and frustration.

The key to effective lasting improvements in the way the Government expends almost 40 percent of the Federal budget through the procurement of goods and services and grants is the central leadership that would be provided by S. 2510. Without this leadership relief from the waste, confusion, inequities and skepticism in Government procurement will be difficult indeed to achieve. This is apparent when one considers that over 100 of the Commission's recommendations could be affected by passage of OFPP legislation.

As the chairman has stated, this legislation is only the initial effort of this subcommittee 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 an accurate portrayal of the type organization the Commission believed to be vital in achieving the improvements it recommended in the procurement process. It builds on the experience of the House in its hearings on legislation to establish an OFPP, and it considers the experience of the executive branch in its response to the Commission recommendations. It is but the first step, but it is the step that will set the pace for the future. The need is clear, the direction charted, and the opportunity ours. It is an opportunity to exert fiscal responsibility at a time when taxpayers are justifiably concerned about the expenditures of their tax dollars. I am confident that the legislative and executive branches, working together, will bring about the improvements

the Congress and the taxpayer are seeking in the efficiency, effectiveness and economy with which public moneys are expended in the acquisition of goods, services, and facilities.)

Senator CHILES. Senator Brock, do you have a statement?

Senator BROCK. Yes, Mr. Chairman.

Today, we stand on the threshold of establishing definite leadership and direction for the development of procurement policies within our Government. It is a badly needed piece of legislation, for we need to create some guidelines with which to work effectively.

There are several measures proposed to establish such guidelines, including S. 2198 which I have introduced. The need for this legislation has been clearly established by the Commission on Government Procurement, which reported to the Congress earlier this year, and by many other expert witnesses who have documented the sorry state of Government procurement policies. It is very clear that we must replace the multiplicity of agency regulations with a single, comprehensive set of rules which would apply across the board. It is also evident that the Congress has a definite obligation to see to it that Government procurement is strictly regulated. Failure to do so would open the door for the worst sort of abuse of agency-vendor relationships.

I have repeatedly called for Congress to tighten its belt.

We are one of the main contributors to the massive inflation that we now live with day to day. If, by establishing an Office of Federal Procurement Policy, we can create even a 2-percent savings in our spending, we have begun the first giant step in solving some of the problems that we have helped to create. We must increase efficiency within the Government, and if at the same time, we can create greater fairness among potential suppliers and contractors, all of the people of this country will be the benefactors.

Senator CHILES. The first witness in today's hearing was to be Mr. Arthur Sampson, Administrator of the General Services Administration. However, I was informed by Mr. Sampson yesterday afternoon that he would not be able to appear before the subcommittee today. Our intention was to have the executive branch position laid out clearly for the subcommittee at the beginning.

The current plan for follow through on the Commission recommendations and management of procurement policy splits responsibility between OMB and GSA, so we wanted both halves of the unified authority to appear together. It is regrettable that, in spite of several weeks advance notification and agreement on the schedule both by GSA and OMB, Mr. Sampson is not able to appear, and that OMB could not provide the subcommittee with its testimony until this morning.

Under the circumstances, we will try to proceed with the OMB witnesses today. We will have to reserve the right to recall witnesses at a later date so we will be able to question properly.

Mr. Sampson has been rescheduled to appear on Thursday, November 15, along with the Comptroller General. We will also hear from the Atomic Energy Commission today.

Other subcommittee hearings remain as planned for tomorrow and Friday and November 14 and 15.

Do you have a statement, Mr. Nunn?

Senator NUNN. No.

Senator CHILES. Representing Mr. Ash and the Office of Management and Budget today is Mr. Frank Zarb, Assistant Director.

Mr. Zarb, would you come and introduce your associates?

STATEMENT OF HON. FRANK G. ZARB, ASSISTANT DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, ACCOMPANIED BY CHARLES F. BINGMAN, DEPUTY ASSISTANT DIRECTOR FOR ORGANIZATION AND SPECIAL PROJECTS, OFFICE OF MANAGEMENT AND BUDGET

Mr. ZARB. Mr. Chairman, I have with me Mr. Charles F. Bingman, Deputy Assistant Director for Organization and Special Projects, who works on my staff in OMB.

If it is all right with you, I will read a brief statement.

Senator CHILES. Yes, sir.

Mr. ZARB. Mr. Chairman and members of the subcommittee, thank you for giving us this opportunity to appear before your subcommittee to present the views of the Office of Management and Budget on S. 2510. This proposed legislation grows out of the long hard work of the Commission on Government Procurement. I want to take this opportunity on behalf of OMB to respectfully commend you and Senator Gurney as members of that Commission for the most significant contribution which the Procurement Commission has made to our knowledge of the problems and opportunities for improvement in the numerous important areas which the Commission's report covered. I believe that this report will undoubtedly be the central reference point for many years to come for those who seek to improve Federal Government procurement. Many people from the departments and agencies of the executive branch lent their energies and insights to the formulation of the report, and we are already well along on a major executive branch effort to determine how to implement its recommendations.

S. 2510, which your committee is now considering, confines itself to the first of the Procurement Commission recommendations calling for creation of an Office of Federal Procurement Policy. The Commission obviously felt strongly that the issue of central direction and control in Federal procurement matters was of paramount importance, and chose the route of recommending a separate independent agency to serve this purpose. The report stated that it recommended "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 oversee the development and application of procurement policy. The contracting agencies should continue to be charged with clear responsibility for individual procurement actions."

I emphasize that the major thrust of the Commission's report was what it felt to be a lack of an effective focal point for procurement policy leadership in the executive branch. The report defined what it felt should be the major attributes of that central office:

- (1) It should be independent of any agency with procuring responsibility.
- (2) It should operate on a plane above the procurement agencies and have directive rather than merely advisory authority.
- (3) It must be responsive to the procurement policy decisions of the Congress.
- (4) It should consist of a small, highly competent cadre of seasoned procurement experts.

Mr. Chairman, I think there is little debate over the need for improvement in the central procurement leadership in the executive branch. I would like to recommend to you this morning a way to properly get on with the real interests of all concerned, that is implementing many of the Commission's recommendations. There are currently two central agencies of the executive branch, OMB and GSA, who have been and continue to be primarily responsible for procurement matters. The Department of Defense, of course, has a very significant role in the procurement area. OMB is primarily concerned with policy leadership on behalf of the President in three significant ways:

First, with respect to the very important budget and resource allocation aspects of procurement in all agencies.

Second, with respect to the effectiveness of the line programs themselves which involve procurement of goods and services through contract.

Third, with respect to policies and practices which govern the procurement process itself and the professional procurement talent who carry this responsibility.

The General Services Administration has long standing responsibility in the Federal establishment for a wide range of procurement matters under the Federal Property and Administrative Services Act, including the maintenance of the Federal Procurement Regulations, FPR's. And, the Secretary of Defense presently establishes policy for the military departments under the separate provisions of the Armed Services Procurement Act.

Now, one organizational option is to create a third independent Office of Federal Procurement Policy. This option could result in further confusion, duplication, and competition for authority among three agencies, rather than a clarification of roles and a focusing of leadership which the Procurement Commission sought to achieve. The Commission itself did not attempt to define, in detail, what it felt the role of OFPP should be, nor was there much solid discussion in the Commission report which told us how OFPP would, in fact, relate to the responsibilities which OMB and GSA would, of necessity, continue to exercise as central agencies of government.

In our assessment, the best method for moving forward now with work suggested by the Commission is to improve the present alignments of organization and place responsibility for performance with OMB and other appropriate agencies and hold it accountable for results. To put it another way, the solution to our problems is not so much an organization solution as it is a revitalization of the structure we already have and a commitment to get on with the task of improvement of Federal procurement in the way which the Procurement Commission has already pointed out to us.

Both the needed improvements and the commitment for progress are within the capability of the agencies to achieve, and several new initiatives have already been taken to make these improvements:

OMB is committed to the appointment of a Deputy Assistant Director for Procurement Policy, and we have been actively recruiting for a recognized, widely experienced procurement expert to fill this role, and I believe we are close to success with this goal. Until that person is on board, I will act as head of the Office.

On May 22, 1973, the President issued his statement assigning to the General Services Administration of a broader management role to become the President's principal instrument for development of unified effective administrative systems in support of all executive branch activities. To assist in performing this role, the President, by Executive Order 11717 transferred to GSA certain staff functions previously performed by OMB in the areas of financial management, systems development, procurement, contracting, property management, and automatic data processing management. As a result of these Presidential actions, GSA, under broad OMB policy oversight, is now taking a large share of executive branch responsibility to carry out an effective review of the Commission's report and recommendations.

We will be discussing with GSA, DOD, and other agencies a complete plan of implementation for these recommendations and other issues which need resolution or further initiatives which should be undertaken. We are using better means of interagency coordination and communication both in connection with the implementation of the Commission report and on procurement matters generally.

I believe the important thing now is to continue the upgrading of the procurement responsibilities which we have already begun in both OMB and GSA and to work with DOD and other agencies in a partnership in order to get effective implementation of the Procurement Commission recommendations. I believe that this is the best way of achieving the greater central leadership and focus of procurement policy responsibility which we agree is necessary. What's more important, it will help us focus attention on the main job now and not use up time in effort to construct a new organization and work out a new set of relationships.

I think that the main message which the Procurement Commission report conveys to us is that our procurement process must have a stronger central leadership and guidance than we have provided in the past. We believe that the central mechanism which I have described is sound and in accord with the spirit of the Commission report and that it is realistically superior to creation of an OFPP, both in terms of the speed and effectiveness with which it can act. We are already committed to moving ahead as effectively as possible with procurement systems improvement.

I do not offer these plans as the final answer in the management of the very complex problems of procurement in the executive branch, but rather to demonstrate that we can meet the needs of the Government for central leadership without the statutory creation of yet another agency to function in this arena. After several months of work on this basis, we would like to return and discuss with you our direct, early results and the possible need for further legislation to help strengthen Federal procurement policies and practices.

Thank you, Mr. Chairman, for the opportunity to present our views on this important matter. I will be happy to respond to any questions.

Senator CHILES. Thank you for your statement, Mr. Zarb.

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 was considered. In September GAO reported, and I quote from the report:

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 * * * that a statutory mandate is required at the earliest practical time.

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.

Having said that, there had been some progress made in working with GSA on these new relationships and responsibilities. GSA has established an Office of Federal Management Policy which is now operational under the able leadership of Harold S. Trimmer, Jr. As to the advisory group that we had intended to begin with during the latter part of this year, we have been reconsidering the desirability of a broad-based advisory group which would be empanelled instead. We have been taking the tack of visiting with those agencies and others who are closest to this problem.

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 prevent the ongoing 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 sparkplug for our ongoing 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. I must say, however, that while the policy structure at OMB has been somewhat delayed because of the recruitment process, we have not allowed this to delay our overall efforts in our workings with GSA and their task forces to get into the core of the Commission's study. It has proceeded and it has proceeded quite well with some unexpected delays, but quite well.

Senator CHILES. As you stated and as has been stated before, much of the authority for the Deputy Assistant Director for Procurement Policy would stem from the fact that he is to be a nationally recognized expert.

What is going to be his grade?

Mr. ZARB. His grade will be a GS-18, or an executive level 5. That determination must be reached after we have found the appropriate candidate and consulted with the Civil Service Commission. It will be either one of those two grades.

Senator CHILES. How can you obtain a nationally recognized expert at that grade?

Mr. ZARB. Mr. Chairman, we have some fairly competent people from the private sector who have come in at executive level V and spent considerable amount of time in government doing an awfully good job. I do not think that the grade level in itself is going to be the criterion that the appropriate person is going to come into government. It is going to be a fellow who has a commitment to achieve the kind of results that we all recognize can be achieved, based upon the Commission's report.

Senator CHILES. Do you agree or disagree with the Commission report that in order to have effective procurement reform carried out, the central authority must have stature outside and above the individual agencies?

I think the Commission report suggested either a deputy director of OMB or a separate office in the Executive Office of the President.

Mr. ZARB. Mr. Chairman—

Senator CHILES. Would you do this for the record? Because the report did stress either a deputy director or a separate office in the Executive Office of the President, would you start with the President and go down each administrative level until you reach a deputy assistant director for Procurement Policy?

Mr. ZARB. You would like for me to do that for the record?

Senator CHILES. Yes.

Mr. ZARB. Yes, sir.

[The following information was subsequently supplied for the record:]

The President.

Director of the Office of Management and Budget.

Deputy Director.

Assistant Director for Management and Operations.

Deputy Assistant Director (procurement policy).

Mr. ZARB. To answer your question, it is not clear, I believe, to any of the principals, at least the ones I have conferred with, the specific legislation which will be required to help really build this effort, and as I outlined in my comments, I would ask that you give us until the spring of next year, at least until March of next year, to get through these recommendations, have our staff work completed, to have our organization plans, and then come back to you with those recommendations.

Senator CHILES. One of the key areas that our subcommittee is going to investigate next year is legislation to enforce the Government policy of reliance on the private sector.

Back in 1955 the chairman of the Senate Government Operations Committee introduced legislation to reduce Government competition with industry, but found himself in the same position that we find ourselves today. The Bureau of the Budget at that time said, "Wait, we have a plan that does not require legislation." This is 1973. Now there are more than 18,000 Government commercial and business activities costing some \$7 billion a year. We are waiting on an effective plan.

Your answer sounds like a refrain that Congress has heard before. Does it mean wait until your plan is in operation or wait until it is proven?

Does it not also mean wait until the Commission report is out of date? Wait until somebody takes this up 20 years from now?

Mr. ZARB. What was the date of the BOB commitment that you mentioned?

Senator CHILES. That was 1955.

Mr. ZARB. I cannot comment on the intent or motivation of the Bureau of the Budget. I can comment on our commitment at this moment to move forward and produce for you meaningful results.

As you know, OMB is responsible for the management of OMB Circular A-76, which gets into this area of private sector participation. It is one of the OMB circulars that will not be transferred to GSA because of its importance.

It is one area that we will give a substantial amount of attention.

I would refrain from commenting further until the task force that is working on that particular recommendation coming out of this Commission report has produced its work and surfaced its options.

I can only assure you here in 1973 that OMB has a commitment to follow through with the Commission's recommendations and assure maximum attention with the least amount of time lapsing.

Senator CHILES. Senator Roth?

Senator ROTH. I would like to join the Chairman with my concern about this continuing reply from OMB that we are just on the verge of taking action. It seems to me in my experience in the Congress, both on the House and the Senate side, that too often that is the excuse of the executive branch. I'll be bipartisan and say it was as true in the prior administration as well as it is in this one. It seems that action was only taken if we pushed.

I have not gone through the question of advisory committees. We are constantly met with wait and see what is going to be done. I do not think that is an adequate answer. I think the time is long past due for taking affirmative action in this area.

Let me ask you this. I am a newcomer in this area. I do not have the advantage of the background and experience that the Chairman does on the Procurement Commission, but let me ask you this question. It has been my experience that interagency committees do not have much punch. They are not able to really push through their recommendations or don't often even agree because the members want to protect their own little areas.

How do you propose to enforce your policy decisions within the Department of Defense, GSA and the other agencies without statutory authority?

Mr. ZARB. Senator, I would like to speak to your first observation first, and then answer your question.

Senator ROTH. That is only fair.

Mr. ZARB. There is obviously no question that the time is now to make some progress and stop making promises, considering the importance of this subject. In my comments I asked for a brief period of time, several months, to demonstrate that we can make this kind of progress to the satisfaction of the Commission and to GAO in their report to you, and I made a commitment to come back to you and report that.

I cannot comment nor take personal responsibility for prior performance of the entire Federal establishment going back to 1955.

In the question of clout in legislative requirement, I think two things. I think intergovernment committees do not have clout, and standing intergovernment committees per se are not the way that we are going to get this good work done.

It is my belief that at the moment to get this early work done, OMB has sufficient strength to accomplish it, and GSA working with OMB and DOD working with OMB will make early progress.

I think it may be clearly necessary to come back and outline legislation in this area which would further strengthen the hand of the Procurement Office within OMB to do its work. I am just not at that point where I can articulate specifically the legislation that may be required.

Senator ROTH. It is my understanding that it was almost unanimous in the Procurement Commission—I stand corrected if wrong—that, with the exception of the Department of Defense, there should be a central agency responsible for providing overall direction in the area of procurement policy.

Do you really believe that OMB can get the cooperation of the Department of Defense in this area without legislation?

How do we know, even if you do set up a central control for procurement policy this year, that next year it will not be abolished?

Mr. ZARB. On the first question, in my early sessions with the leadership at the Department of Defense, there was no evidence that they are not willing to cooperate in getting this job done. The answer to the first part of the question is yes, I believe we can get this early work completed with all the agencies involved, and I believe their commitment is there to work with us. I am not precluding the possibility that we will return and ask you for further legislation to either reduce competition or duplication or give us further strength to complete the job.

Mr. BINGMAN. If I could add a remark, Senator, our feeling is that obviously OMB is not going to be abolished—at least I hope not—and that OMB must of necessity continue to be involved in the important matters of procurement because it is intertwined with the issues of program planning, program effectiveness, budgeting for program activities which are sought and obtained by contract. And that means that OMB will continuously be involved in the issues of Federal procurement. I think one of the great contributions of the Procurement Commission report was to bring into focus at one time the whole range of what was happening to us in Federal procurement matters and to forewarn us that we had not been properly exercising as much leadership or leadership of the kind that would bring solutions to the problems that the Commission highlighted.

I do not think that increased perception changes the nature of the OMB role. That is why we feel OMB not only must continue to be in procurement matters, but should exercise the same kind of leadership and problem resolution on behalf of the President that it is required to face in other difficult and sensitive areas.

Senator ROTH. Would the position of OMB be the same if this Federal Procurement Office were established within OMB rather than say, the Executive Office of the President?

Mr. ZARB. Senator, OMB of course is a part of the Executive Office of the President.

Senator ROTH. Correct.

Mr. ZARB. I have seen in recent days several options that would provide the President with flexibility where he may want to put it in OMB or another part of the Executive Office. Our genuine concern at this moment in time is to be able to demonstrate results with the implementation of these recommendations.

It is my clear observation that to get in the business of constructing a new bureaucracy is going to take time. It is going to take a great deal of discussion and it is going to take untying of old relationships and building new relationships, and if I thought that was the only way we could get this job done, then I would be here today testifying in favor of that direction.

It is my belief that we can move more quickly with the existing structure, that we will indeed be held responsible for results or the lack of results, and that we have what it takes to get going with this project and to demonstrate what you have expressed.

Senator ROTH. Let me ask one more question, a rather broad one.

You have criticized the legislation, and, I think, the recommendation on the grounds that they are too indefinite, do not delineate with specificity what the responsibilities would be, and how the Office would function.

I wonder if you could outline either now or at a later time how you would strengthen this legislation. I appreciate the fact that you are opposed to the general concept of the legislation, but let's forget for a moment that opposition and assume that you are faced with the fact that this will become law.

How would you spell out in greater precision what the responsibilities should be?

With the chairman's permission, if you are not ready to answer that now, I would appreciate the information being supplied at a later time.

Mr. ZARB. I certainly will supply it for the record, Senator.

Senator ROTH. Thank you, Mr. Chairman.

Senator CHILES. Following that same line, you have said that it is your feeling that you should proceed without legislation; but taking that same premise, if Congress is going to enact legislation to give the Office statutory authority, we would like to have your views on where it should be housed—whether it should be under OMB, or whether it should be under a separate office.

Mr. ZARB. We will submit that for the record as well.

[The following was subsequently supplied for the record:]

APPROACHES SUGGESTED FOR IMPROVING OF GOALS OF PROCUREMENT COMMISSION

We believe the best method for moving forward toward the goals suggested by the Procurement Commission is to improve the present alignments of organization and place responsibility for performance within that structure. This involves upgrading the procurement roles of both OMB and GSA to achieve the greater central leadership and focus of procurement responsibilities which are needed. This approach would suggest the following changes in S. 2510:

Modify section 3 to vest in the President the authority and responsibility for carrying out the policies enunciated in section 2 and for establishing an integrated system for effective management, control and operation of the Federal procurement process.

Eliminate sections 4 through 7 and sections 13 through 15.

Conform sections 8, 10, 12 and 16 to the changes in section 3.

Senator CHILES. Senator Nunn.

Senator NUNN. Thank you, Mr. Chairman.

I share the chairman's sense of urgency in getting something done in this matter. Unfortunately, I do not have the experience that the chairman has with the background of the Commission report.

In looking at this chart, this reflects your present organizational situation, does it not?

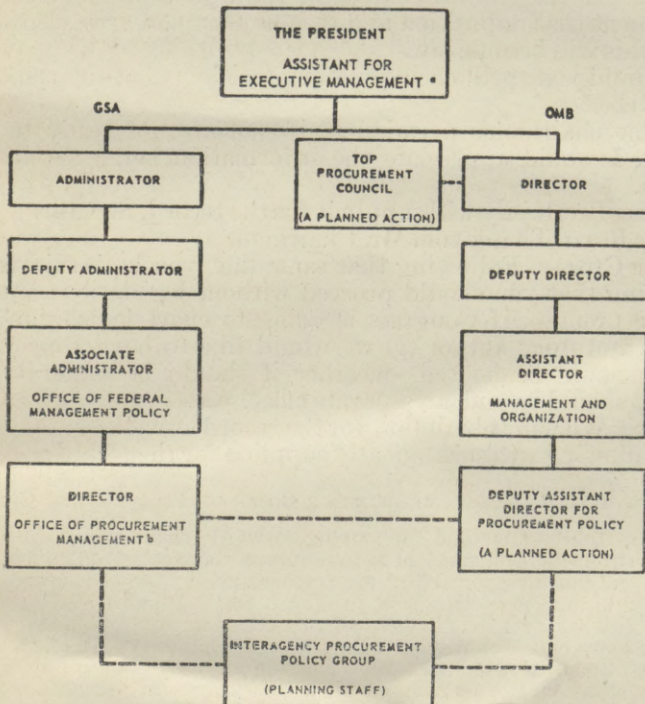
Are you familiar with this exhibit?

Mr. ZARB. I am sorry. I cannot see it.

Senator NUNN. Would somebody please show the witness a copy of this chart?

[The chart referred to follows:]

EXECUTIVE BRANCH STRUCTURE FOR GOVERNMENT-WIDE DIRECTION OF PROCUREMENT POLICY



* The Assistant to the President for Executive Management and the Director of OMB is the same individual wearing two hats.

b Includes responsibility for Federal Procurement Regulation

--- Portion of structure which will interact on procurement policy.

Senator NUNN. You have a copy of the chart.

Is that correct?

Mr. ZARB. Yes, sir.

Senator NUNN. If I could start at the top, of course, it shows the President and the Assistant for Executive Management.

Is that Roy Ash?

Mr. ZARB. Yes, sir.

Senator NUNN. He also has the responsibility for supervising all OMB activities?

Mr. ZARB. Yes.

Senator NUNN. Would this be a second half of him then?

Mr. ZARB. Technically, yes, sir.

Senator NUNN. How many other positions does he have like this? How many hats does he have in OMB?

Mr. BINGMAN. Two, sir.

Senator NUNN. This is the second hat he wears at OMB?

Mr. BINGMAN. If you are speaking of Mr. Ash, he is the Director of OMB and simultaneously Assistant to the President for Executive Management.

Senator NUNN. I see.

Coming down the chart on the right side under OMB, I assume the Director, of course, again is Mr. Ash.

Mr. ZARB. That is correct.

Senator NUNN. Over on the left side where you have GSA with a line connecting it to OMB. That is the position you have Mr. Sampson in; is that right?

Mr. ZARB. Yes, sir.

Senator NUNN. Who would be the Deputy Director of OMB?

Mr. ZARB. OMB?

Senator NUNN. Yes, sir.

Mr. ZARB. Frederic Malek.

Senator NUNN. He has overall supervision under Mr. Ash?

Mr. ZARB. Yes, sir.

Senator NUNN. Until we reach the Assistant Director of Management and Organization, it has nothing to do with this special commission; right, except to the extent that these officials have supervision over the whole agency.

Mr. ZARB. I think with one fair exception, if I may, the Director in this instance has a keen interest in this area of activity. On a number of occasions he has discussed it with me personally. He would take, in my view, a peculiar interest in the Commission's recommendations.

Senator NUNN. I am sure he does. I have a great respect for Mr. Ash and his interest in procurement and his ability. What I am pointing out here is that you have a chart that has very little application to any kind of setup that would really centralize the procurement organization. You have Mr. Sampson on one side and Mr. Ash on the other. Then you draw a line across the top as if this is part of one organization. You could draw lines all over the Federal organization charts, from DOD to Interior and everything else, and you could connect them at the top, but you would not have any organization. You have just connected a line here, and ratified the status quo.

Mr. BINGMAN. I think the same would be true if we had enacted an OFPP and that became a third organization.

Senator NUNN. What is that?

Mr. BINGMAN. The Office of Federal Procurement Policy. We have portrayed two central agencies under the President involved with procurement matters. If we were to enact an Office of Federal Procurement Policy, I feel it would be a third agency involved in Federal Procurement Policy because neither of these two would cease to exercise their responsibilities, and then we would have to show a third Administrator, Deputy Administrator, and so on.

Senator NUNN. Except that if you set it up—as far as procurement was concerned—it would be over and above the OMB and GSA, and it would be calling the shots. At least that is my understanding of the proposed legislation. You do not have anybody except the President of the United States and Roy Ash above this organization. I am sure both of them, having the duties and responsibilities they do, even though they are certainly interested, are not going to have any time available for executive leadership in this area.

Mr. BINGMAN. I would indicate that certainly in the dimension that procurement is a matter which goes beyond the technical professional aspects of the system by which you procure, it is certainly deeply involved with the resources needed for procuring the programs in the various Federal agencies. That will be an important facet of OMB's responsibilities. It is not clear at least in my mind the extent to which the proposed bill would subject the authority of the budget process to that of the Administrator of the Office of Federal Procurement Policy.

Senator NUNN. Let's forget about the bill for a minute. Let's talk about this chart. That is what I am interested in. Obviously if this has a good chance of working, then it has much that is commendable about it. As it appears, though, you have simply added one line at the top and are testifying that you have a separate procurement organization.

I just do not follow that at all. Let me ask you another question.

This top Procurement Council that comes over the dotted line to the Director, which would be a dotted line to Mr. Ash, this is not responsive to anyone other than OMB. This council would not have anything to do with GSA according to this chart?

Mr. ZARB. Senator, the council is represented by the heads of major agencies, and the GSA Administrator would be a part of that Council. So there is a relationship at that point.

Senator NUNN. The chart is not correct, then? Is that what you are saying? There is no line in the chart connecting GSA with the top Procurement Council.¹

Mr. ZARB. I have before me, and I will submit for the record, the participants on that Council that include the Administrator of GSA, this is the line, although there is no organizational line.

[The following was subsequently supplied for the record:]

FEDERAL PROCUREMENT COUNCIL PARTICIPANTS

The proposed Federal Procurement Council would be chaired by the Director of the Office of Management and Budget with the following participants:

Secretary of Defense.

Secretary of Health, Education, and Welfare.

Secretary of Transportation.

Administrator, National Aeronautics and Space Administration.

Chairman, Atomic Energy Commission.

Administrator of Veterans Affairs.

Administrator of General Service.

Senator NUNN. This is Mr. Sampson along with his million other duties.

¹ See chart on p. 40.

Mr. ZARB. On the other hand, he was a member of the Commission.

Senator NUNN. If he did not have time to come to this hearing this morning, it is very unlikely he is going to have very much time to really coordinate GSA with the overall procurement process.

Mr. ZARB. I cannot answer that.

Senator NUNN. Mr. Chairman, I do not want to take too much time about this chart, I am just observing. It appears to me—

Senator CHILES. Let's show the chart went into the record at the time of the beginning of the questions.¹

Senator ROTH. Will the Senator yield?

Senator NUNN. I would be glad to yield.

Senator ROTH. We have an executive branch structure for governmentwide procurement policy. The Defense Department is responsible for what, 75 percent or a vast majority of Federal purchases.

Mr. ZARB. Seventy-five percent.

Senator ROTH. Where does DOD fit into this overall direction?

Mr. BINGMAN. I do not know whose chart this is.

Senator NUNN. That is why I laid the groundwork. I thought you said it was your chart, reflecting the proper—

Mr. ZARB. We do not know where that chart came from.

Senator CHILES. That chart came out of GAO's last report on the progress of the executive branch in responding to the Procurement Commission recommendations.

Mr. BINGMAN. This is GAO's understanding of how this would work.

I think it should show the Department of Defense. Having said that, there are other agencies also involved in procurement, including agencies like NASA, AEC, which have their own procurement systems, tied to the Federal regulations. It is probably an incomplete chart, if the sense is to portray the whole executive branch structure.

Senator NUNN. I yield to Senator Roth.

Senator ROTH. Is it accurate as far as it goes? If you were going to complete the chart how would DOD fit into the picture?

Mr. BINGMAN. The top Procurement Council is shown as reporting to the Director of OMB, although its membership would obviously include a number of agencies not otherwise shown on the chart. I am sure you are aware, Senator, that the Department of Defense has independent statutory authority granted by Congress for the issuance of procurement directives and regulations governing procurement in the Military Establishment. So I think you would have to then show them as a separate entity working under that individual authority.

Senator ROTH. If I understand you correctly, without further legislation it would be impossible for this Council to direct the Department of Defense because they have a separate and independent statutory authority?

Mr. BINGMAN. I do not think the Council is intended to be a directive body in the sense of the role OMB usually plays to act on behalf of the President in a wide range of matters, centered primarily on the budget but dealing also with management matters in the Federal Establishment. I think we are talking about the exercise of Presidential authority here, in which OMB is frequently in the position of being the President's agent for the resolution of conflicts.

¹ See chart on p. 40.

Senator ROTH. You are still saying, if I understand you correctly, that even the President cannot merge the Department of Defense because of the statutory language already on the books.

Mr. BINGMAN. The President does direct his Cabinet Officers as the Chief Executive of the Federal Establishment. Obviously he cannot do so in a way that would cause them to violate the law. I understand there are independent efforts here in Congress to study the statutory base and the issue of whether there ought to be a consolidated set of Federal procurement statutes and provisions.

Senator ROTH. Again I would just like to understand what you are saying. I understand that the President in his role as the President and Commander-in-Chief has some overall responsibilities. It would appear from what you are saying, under the present law, you could not really centralize in any council or any director strong authority to direct in the manner I think is being proposed in the legislation before us.

Mr. ZARB. Senator, much of what has been said here this morning assumes a couple of things: First, that the Department of Defense is reluctant to participate in an exercise that would make some sense out of completing the task of procurement policy. I have personally not seen any evidence of that in talking with the leadership of Defense, who have indicated to me to work with us in this endeavor to see what kind of progress we can make.

Senator ROTH. Let me make a correction. I am not saying they will not cooperate. If I understood the testimony, there is certain statutory language that would make it difficult. That is what I was pursuing.

Mr. ZARB. Initially, of course, the Congress meant to provide separate legislation on procurement. As we move forward, we will be examining whether that is still appropriate, and what needs to be done to bring all this legislation closer together so we have a more efficient, streamlined procurement program.

My point is we do indeed—while the charts may show some things, the essence of the question is do we have the authority now to work with all the principal players to make some progress. My answer to that question is yes, indeed, we do.

The second part of the question is on an ongoing basis in terms of long-range development, do we need additional authority. If it is that we need it, we will have to come back and discuss it.

Senator ROTH. Thank you.

Senator CHILES. Senator Nunn.

Senator NUNN. I think I have taken enough time. I will yield to the chairman.

Senator CHILES. Reviewing the testimony of executive agencies on the House bill last July, it appears all that testimony might have been written by the same person. Is OMB orchestrating the position of the different agencies on this particular point?

I am one that believes that OMB has tremendous clout in an area where it wants to have clout.

Mr. ZARB. I think it is fair to say, Senator, that the other executive branch agencies that did testify—I was not present in this environment at that moment—did have the benefit of OMB's testimony. From that standpoint OMB did orchestrate the point of view.

Senator CHILES. OMB did?

Mr. ZARB. Did orchestrate a point of view.

Senator CHILES. I think it is very important for the Congress, if we are going to determine the answer to questions like where this should be housed—I do not think from my standpoint that we are fixed on that—that we know whether it should be a separate agency in the Executive Office of the President, or whether it should be under OMB.

There are a number of other areas of the bill that we are not fixed on. I think it is awfully important that we get some independent views, because it might help us avoid some mistakes. I think if we are fixed on anything, it probably has to be some statutory direction; and we want to see the authority, wherever it is, be directive rather than advisory.

Some of those things I am fixed on. I don't know how the rest of the members of the committee stand. There are many areas that we are not fixed on. I think it is awfully important that we get some independent views from the agencies on them. If we are just going to get one view—that we can do it better, let us do it with no other advice, then I think that maybe you are performing a disservice to the legislation that we may come up with.

Mr. BINGMAN. May I add, Senator, this is really peculiarly the kind of issue that OMB ought to make its views known to assist the other agencies, because it does deal with the creation of a central agency of government in the Executive Office of the President, and it does treat peculiarly with the relationships of that Office to OMB, and GSA as well, which will testify next week.

Senator CHILES. You do not think DOD, that makes 75 percent of the expenditures for procurement and has special authority in procurement, should be able to give us their views as to how they see this thing?

Mr. ZARB. Perhaps I can answer that. Part of this entire process is one of consultation. We have indeed sat down with the principal people at DOD prior to the preparation of our own testimony in an attempt to hear out their point of views and approaches before we came to our own views.

To us that is essential. We have the benefit of their inputs before we come before you. That aspect cannot be avoided.

Senator CHILES. You are getting the benefit of that input, but you are not letting us get the benefit of it. You are wanting us to, again, start off at a position where you arrive at your solution, but you do not want to give us the raw data of your starting place.

We want to be on the takeoff as well as the landing.

Mr. BINGMAN. DOD has not been noticeably reticent about making their views known and will testify before the committee. I guess the point I was making is that S. 2510 does address specifically the creation of a new central agency of government; and that is why we felt that OMB was particularly central to that position.

Senator CHILES. I do not really think I have an answer.

Mr. ZARB. I am not sure I understand the question, Mr. Chairman.

Senator CHILES. Again, why we cannot get the raw data, why we cannot have the benefit of the thinking of GSA, the Defense Department, NASA, other people that are in these agencies that certainly have their views on procurement policies and where any office should be created and how it should be created.

Mr. ZARB. I would expect in your questions of those agencies that will testify you will get at the core of what they believe and why. I

would suggest that one way we could better build this basis of understanding between the committee and the executive branch and some of the dissenting views, if there be any, is to participate with your staff as we build this work, as we attempt to construct what we think would be the position to make the most sense. And we would certainly be happy to crank them into that process as we move out.

Senator CHILES. We want to make the same offer with you. We would like to have your staff participate with us as we construct this process, too.

Mr. ZARB. Thank you, sir.

Senator CHILES. Mr. Nunn.

Senator NUNN. Could you furnish for the record a delineation of functions between GSA and OMB? In your testimony I do not get any real picture of who does what.

Mr. ZARB. All right, sir. I will.

Senator NUNN. Plus any corrections in that chart that you may have, or your own charts, so that we could get a picture of the way you envision functions of what you do and what GSA does.

The President has just switched some OMB people to GSA, and I assume that has some significance, too.

Mr. ZARB. Yes, sir. It does. We will submit both for the record. [The information referred to follows:]

DELINEATION OF FUNCTIONS BETWEEN GSA AND OMB

The following is a delineation between OMB and GSA of the central leadership responsibilities for procurement policy in the executive branch:

Office of Management and Budget

Develop primary procurement policy in elaboration of basic statutory principles.

Provide policy guidelines to reflect the impact on procurement of Presidential initiatives and to promote improvements in procurement practices.

Resolve differences arising from program objectives and policies that impact procurement activities and their implementation by the procuring agencies.

See that the central system of leadership is efficiently organized and effectively carrying out its mission with the support and cooperation of all executive agencies.

Review GAO reports and recommendations to assure that the response of the executive branch is appropriate and corrective actions taken.

General Services Administration

Within OMB policy guidelines, provide leadership for interagency group to develop, publish and evaluate procurement standards, procedures and regulations for Government-wide application.

With advice and assistance of executive agencies develop a proposed executive branch position on recommendations of the Procurement Commission.

Review agency implementation of new or revised procurement policy to assure implementation is timely and effective.

Provide leadership in identifying areas where greater uniformity and consistency in procurement practices would result in cost savings and other benefits.

Conduct independent studies to become aware of problems and conditions which call for improving Government procurement.

Within OMB policy guidelines establish a system to provide for industry and public participation in the formulation of Government-wide procurement standards, procedures and regulations in order to ensure objectivity and balance.

Senator CHILES. I just have two more questions. One is the concern, I think, on the part of the Congress that we are trying to reach a long-term solution here, and OMB might well have the interest and the direction, and through your leadership it might have the interest and the direction to want to deal with on this problem today.

How do we have any guarantee to have any continuity or any long-range or long-term solution to the problem if we do not have some statutory direction?

Mr. ZARB. I think it is likely before this action is complete we will be talking about statutory direction that will emphasize some of the good work that is being done during this process. I suggest that that framework is not yet complete. However, it should be noted for the record that in the history of DOD and OMB it has been responsive to the Congress, and I think within that spirit if we start the right kind of motion now, we can be fairly well assured that we will move along and make the right kind of progress.

I do not preclude the necessity of a legislation, too, after we institutionalize what we have begun to set up right now from now on.

Senator CHILES. Could I read into that answer any, perhaps, hint that OMB may have a bill itself—may come up with a bill?

Mr. ZARB. Mr. Chairman, in our sincere desire—

Senator CHILES. We would be very interested in that bill, if you are considering that. That is what I am saying. I would certainly want our hearings to remain open until we could get the benefit of it.

Mr. ZARB. In my personal view, as a senior official at OMB, to get this thing underway, it is my view that there could possibly be an OMB bill as we get into this work and complete our initial aspects of it by the early part of the year. I outlined that in my original comments.

I certainly would not preclude that. I would just like to have this early work completed so when we go about that part of the work, we have the benefit of substantially more knowledge and substantially more experience.

Senator CHILES. The other question I have, again, one of the major charges of the Commission report was that there be a close coordination and cooperation between the Office, whenever it was housed, and Congress.

How do you envision that working on the plan that you are talking about and the direction?

Mr. ZARB. I, for one, and I believe OMB historically has demonstrated this, would want to work with the Congress on whatever way you constructed and continually report to you our progress. Our responsiveness to your objective as articulated here—

Senator CHILES. I think the Commission envisioned much more than a reporting process. Congress through the authorization committees and through the appropriations committees is in the procurement process, in effect, of funding and authorizing. So I think, as I read the Commission report, and I was concerned with it, I think it was much more than a reporting process.

Mr. ZARB. I can only answer to the extent that responsiveness is required and requested. It will be there. I cannot answer your question without knowing more specifically the kind of responsiveness that the Commission had in mind when they wrote that language.

Whether it meets with the appropriations committee or closely involved with this subcommittee, we intend to be as responsive as you wish us to be.

Senator CHILES. I share the same concern then on the continuing basis of that as I do on the continued directive authority as to how it

happens today and also next year, and that it does not break down in the future.

Mr. BINGMAN. I think the existence of this subcommittee gives us another means that that responsiveness can be exercised. We have had a great deal of effective working relationship with the Senate Government Operations Committee here.

Senator CHILES. I would have been more confident if I had your testimony before this morning, so I would see what you were going to say.

Mr. ZARB. We apologize for that, Mr. Chairman. I would also point out that the issue of responsiveness, I do not really believe in the long range can be satisfied with an organizational configuration that would have a separate legislative office within the Executive Office. I think the issue of responsiveness goes far beyond that in the understanding and willingness to work together to get out the laws that we both believe are very essential to the welfare of procurement in this Government.

Senator CHILES. Mr. Nunn.

Senator NUNN. I would like to observe, it seems to me along the lines that I was talking about, that organizational chart, it seems you need someone who is going to devote full time to procurement policy. That is basically the Director of GSA and OMB efforts. That is my point.

Those lines come across at the top, and they relate to people who are extremely busy, and whose coordinative efforts would be almost impossible to coordinate any kind of practical analysis. It seems that someone at the lower level has got to be over the procurement function of both OMB and GSA if you really indeed are going to coordinate.

That was my point.

Mr. ZARB. OMB is not a procuring agency. It is probably the only central agency that meets all the criteria tests or most of the criteria tests set by the report. As a practical matter, it takes leadership in the policy of these kinds of matters; and I think it is important to keep in mind that there are other important principals in this process—that DOD, of course, is one of them with 75 percent of the procurement activity.

There are many other domestic agencies that have important procurement responsibilities, and we will need to pull into this process to be sure that they are part of the solutions that we are going to begin to work on.

It is not my view at this moment in time that OMB has sufficient authority and capability to carry out their mission on a 1-to-1 basis. That is the only way I guess we will know is progress or lack of progress, if that is true.

Senator NUNN. I guess I am asking who resolves the conflict between GSA and OMB. Is Mr. Ash the one that they are going to have to go to? Every single disagreement you have, you are going to have to go to the very top?

Mr. ZARB. I think two things. I think first Mr. Ash has an interest in this area and is willing to set out guidelines and standards of its priority on the basis on which we are going to move forward. And by virtue of that, we have not had, nor will we have that many disagreements about specific issues. I do not preclude the possibility of us not agreeing on a certain point that is of major policy significance, going to Mr. Ash to get a final decision. I do not believe there is going to be very many of these.

Senator CHILES. We would like to be able to submit perhaps some questions for the record later.

Mr. ZARB. Yes, sir.

Senator CHILES. Thank you for your testimony.

Senator NUNN. Thank you.

[The questions referred to by Senator Chiles and Mr. Zarb's responses follow:]

QUESTIONS SUBMITTED BY SENATOR CHILES TO MR. ZARB WITH RESPONSES

Question 1. Please describe how the executive branch structure for government-wide procurement policy direction came into being: when was planning first initiated, which agencies participated, and what specific considerations and decisions led up to the plan?

Response. OMB staff began in late 1970 to examine possible means for coordinating procurement policy development. The idea of a central forum under GSA leadership and OMB oversight was proposed for reaching agreement on or identifying procurement policy issues for decision. This concept was discussed with principal staff officials in DOD, GSA, NASA and AEC in early 1971. This position was also discussed on a number of occasions in meetings with Procurement Commission study groups seeking OMB views on establishment of a single procurement authority. Similar views were subsequently conveyed to Procurement Commission members by OMB officials. In all of these discussions OMB representatives resisted suggestions for a statutory procurement czar and expressed the view that the objectives sought could best be obtained under existing authority with lead roles exercised by both GSA and OMB.

Question 2. What progress has been made by the Task Group on Commission recommendation A-1 (OFPP), headed by OMB? How many meetings have been held, when will the final position of the task group be available to the Subcommittee?

Response. OMB has assumed responsibility for developing an executive branch position on recommendation A-1. There have been no meetings of the task group and no report is contemplated.

Question 3. What evidence will we have by March 1974 to demonstrate that your proposed plan is, in fact, effective in accomplishing the kind of procurement reform the Procurement Commission advocated.

Response. We expect by March of 1974 that the following specific actions will have been completed:

(1) OMB will have established its Office of Federal Procurement Policy, and senior official will have been selected to head that office and a staff selected and assigned.

(2) GSA will have similarly established its procurement organization.

(3) The bulk of the task forces recommending the Executive Branch position on the recommendations of the Procurement Commission's report will have completed their work.

(4) OMB will have prepared an overall strategy for decision and implementation of these recommendations, and a substantial number of implementing actions will have been initiated. First areas of concentration will be on key issues, and problems which must be solved first as the condition precedent to the solution of other problems.

Question 4. In total what resources are foreseen to be necessary for GSA to carry out its new procurement policy responsibilities. How much of this has already been authorized?

Response. Currently GSA is making 22 staff positions available to carry out its procurement policy functions. However, no final determination has been made as to the total staff resources required to effectively discharge these responsibilities.

Senator CHILES. Our next witness will be Mr. John Erlewine, Deputy General Manager of the U.S. Atomic Energy Commission.

Would you introduce your panel for our records?

Mr. ERLEWINE. On my right is Mr. Joseph Smith, who is the Director of Contracts of the Atomic Energy Commission. On my left is Mr. Gerard Welch of our Office of General Counsel.

Mr. Chairman, I have a statement. Would you like me to read it?

Senator CHILES. Yes, sir. If you could brief it in any way for us, we would have time for questions. We will submit your statement in full for the record.¹

STATEMENT OF HON. JOHN A. ERLEWINE, DEPUTY GENERAL MANAGER, U.S. ATOMIC ENERGY COMMISSION, ACCOMPANIED BY JOSEPH SMITH, DIRECTOR OF CONTRACTS, AND GERARD WELCH, OFFICE OF GENERAL COUNSEL

Mr. ERLEWINE. We appreciate this opportunity to appear before this subcommittee to present the views of the Atomic Energy Commission with respect to S. 2510.

As we understand it, S. 2510 is basically similar to H.R. 9059 concerning which I presented testimony last July before the Legislation and Military Operations Subcommittee of the House Government Operations Committee.

We stated in our testimony on H.R. 9059 that we had carefully studied the Procurement Commission's report on the proposition of a central office of procurement policy. We found ourselves in agreement with the need for centralized leadership in procurement policy. However, we mentioned that AEC is participating in the interagency effort to review and analyze many of the Commission on Government Procurement recommendations, and to propose executive branch positions on these recommendations. And we suggested that it might be prudent to await results of this effort before proceeding further.

You have heard from Mr. Zarb today that OMB has taken the lead in establishing an executive framework to respond to the Commission on Government Procurement recommendations. Under this arrangement, OMB and GSA, acting as a team, are providing leadership and monitoring progress on this comprehensive effort. Lead agency assignments have been made to develop proposed executive branch positions and to draft implementing instructions. Task groups comprised of interested and qualified agency representatives have been established to review pertinent Commission on Government Procurement study group reports, reach a consensus on a proposed executive position and method of implementation and develop a report summarizing background information, listing findings and conclusions and discussing the pros and cons of the various courses of action considered by the task group in arriving at its proposed recommendation. The task groups also prepare proposed implementation.

AEC is heavily involved in implementation of the Commission on Government Procurement recommendations in several ways. We have representatives serving on task groups considering 112 of the recommendations, and we have 4 lead agency assignments covering 16 recommendations.

So far as the task groups on which AEC representatives are serving, meetings have been held, plans and schedules for dealings with the assignments have been developed and in a dozen or so instances proposed positions have been submitted.

I might say when we say positions, this may cover more than one recommendation.

¹ Mr. Erlewine's prepared statement may be found on p. 52.

The Director, Division of Contracts, Mr. Smith, as the AEC official contact point for Commission on Government Procurement matters, is responsible for assuring that suitable action plans and schedules are developed and followed by AEC task group leaders for recommendations assigned to AEC and for the quality of task group submissions including those where AEC is the participating agency as well as those on which AEC has the lead agency assignment.

The Director of Contracts has also been designated as the AEC representative to serve on an interagency planning staff established by the OMB/GSA to review the task group proposed executive branch positions and recommended implementing actions and to provide advice to OMB and GSA concerning general acceptability of implementing actions proposed by the task groups.

I might say on the chart to which the committee has referred, the planning staff that I was referring to is on the bottom box of the chart under Inter-Agency Procurement Policy Group.¹

At the moment it appears regular meetings of the planning staff every 2 weeks will be necessary for several months before the executive branch positions are final and OMB and GSA are prepared to proceed with all of the implementing actions.

In total, our experience on this cooperative governmentwide effort is favorable. We believe that the broad framework under which the project is being handled is functioning effectively and appears to represent a workable solution on a permanent basis to the problem identified by the Commission on Government Procurement and leads us to believe that it would be better to proceed in this fashion rather than establish a new independent Office of Procurement Policy.

The remaining portions of my statement deal with points in the bill which, if enacted, we have some specific comments. One of the comments I would like to point out, on the House version of the bill there had been references to procurement forms and procedures, which we are pleased to note have been stated in a different fashion in this bill which we think is an improvement over the House version.

With respect to other aspects of the bill, we are concerned with two sections which could cause problems for AEC. First, we could see a potential conflict between section 9 of S. 2510 and certain provisions of the Atomic Energy Act.

Section 9 states that "authority under any other law to prescribe policies, regulations, procedures, and forms for procurement is subject to the authority conferred in this act."

This similar wording was discussed at the time of our testimony in July, and we were assured under that bill, this provision under this bill was not intended to impede the authority of AEC to independently prescribe regulations and procedures for special contracting and related authority contained in or adjunct to the Atomic Energy Act.

In my statement I have given several examples of those. We think consideration might be given to adding a fourth provision to subsection 6(d) of the bill to make it clear that such types of authority are not impaired.

The second section of concern to AEC is section 16 of the bill, which would amend subsection 602(d)(13) of the Federal Property and Administrative Services Act by limiting the "no impairment" pro-

¹ See chart on p. 40.

visions of the act as it relates to AEC to matters relating to the disposal of property.

Section 602(d)(13) of the Federal Property and Administrative Services Act states that, "Nothing in this act shall impair or affect any authority of the Atomic Energy Commission."

It is AEC policy to generally follow the Federal procurement regulations and to exercise the exemption authority only to the extent that compliance with the requirements of the Federal Property and Administrative Services Act of 1949, as amended, would impair or affect the carrying out of AEC's program.

Then in my statement I cite two instances of where we have exempted ourselves.

If section 16 of S. 2510 were enacted, without repeal of title III of the Federal Property and Administrative Services Act, the matter of whether or not the AEC would be required to comply with these requirements might be somewhat cloudy. This could be troublesome, especially since the examples cited are rather antiquated requirements, which we feel would be a step backward instead of forward in improving the economy, efficiency, and effectiveness of government procurement.

I will conclude my statement at this point, Mr. Chairman, but before I close I want to say I believe the record will show that AEC was an early supporter of the proposal to establish a Commission on Government Procurement, and once established, we were generous in supporting and assisting the Commission with some of AEC's staff.

As I said earlier, we are now heavily involved in the interagency effort to implement the Commission on Government Procurement recommendations, and you can rest assured that we will pursue this effort vigorously.

Thank you.

Senator CHILES. Thank you, sir.

[The prepared statement of Mr. Erlewine follows:]

PREPARED STATEMENT OF JOHN A. ERLEWINE

We appreciate the opportunity to appear before this Subcommittee to present the views of the Atomic Energy Commission with respect to S. 2510.

As we understand it, S. 2510 is substantially the same as the House companion Bill H.R. 9059 on which I presented testimony July 12, 1973, before the Legislative and Military Subcommittee of the House Government Operations Committee. Both bills would establish an Office of Federal Procurement Policy (OFPP) within the Executive Office of the President; list functions and administrative powers of the Administrator of the OFPP; and provide for submission of reports and information to Congress. Both Bills would also provide that authority under any other law to prescribe policies, regulations and procedures and forms for procurement would be subject to the authority conferred under the OFPP Act. Both would also provide for repeal and amendment of certain sections of the Federal Property and Administrative Services Act and would eliminate the authority of several agencies, including AEC, to exempt themselves from that Act except for disposal of property.

We stated in our testimony on H.R. 9059 that we had carefully studied the Procurement Commission's report on the proposition of a central office of procurement policy. At that time we found ourselves in agreement with the need for centralized leadership in procurement policy. However, we mentioned that AEC is participating in the interagency effort to review and analyze many of the Commission on Government Procurement recommendations and to propose Executive Branch positions on these recommendations and suggested that it might be prudent to await results of this effort before proceeding further.

As you have heard from witnesses from OMB and GSA, early last spring OMB took the lead in establishing an executive framework to respond to the Commis-

sion on Government Procurement recommendations. Under this arrangement OMB and GSA, acting as a team, are providing leadership and monitoring progress on this comprehensive effort. Lead agency assignments have been made to develop proposed Executive Branch positions and to draft implementing instructions. Task Groups comprised of interested and qualified agency representatives have been established to review pertinent Commission on Government Procurement study group reports, reach a consensus on a proposed executive position and method of implementation and develop a report summarizing background information, listing findings and conclusions and discussing the pros and cons of the various courses of action considered by the task group in arriving at its proposed recommendation. The task groups also prepare proposed implementation. (OMB Memorandum, CSC Federal Personnel Management Letter, etc.) in final form ready for signature or if legislation is recommended prepare draft bills ready for submission through channels to Congress.

AEC is heavily involved in implementation of the Commission on Government Procurement recommendations in several ways. We have representatives serving on task groups considering 112 of the recommendations and we have four lead agency assignments covering 16 recommendations.

So far as the task groups on which AEC representatives are serving, meetings have been held, plans and schedules for dealings with the assignments have been developed and in a dozen or so instances proposed positions have been submitted.

The Director, Division of Contracts, as the AEC "official contact point" for Commission on Government Procurement matters is responsible for assuring that suitable action plans and schedules are developed and followed by AEC task group leaders for recommendations assigned to AEC and for the quality of task group submission including those where AEC is the participating agency as well as those on which AEC has the lead agency assignment.

The Director of Contracts has also been designated as the AEC representative to serve on an interagency Planning Staff established by the OMB/GSA to review the initial evaluation of task group proposed Executive Branch positions and recommended implementing actions and to provide advice to OMB and GSA concerning general acceptability of implementing actions proposed by the task groups.

At the moment, it appears regular meetings every two weeks will be necessary for several months before the Executive Branch positions are final and OMB and GSA are prepared to proceed with all of the implementing actions. In total, our experience on this cooperative Government-wide effort is favorable. We believe that the broad framework under which the project is being handled is functioning effectively and appears to represent a workable solution on a permanent basis to the problem identified by the Commission on Government Procurement and leads us to believe that it would be better to proceed in this fashion rather than establish a new independent Office of Procurement Policy.

However, in the event it is decided to proceed with S. 2510, we wish to comment on some specific points. But, before I do, since some members of the Subcommittee may not be familiar with the operations of the Atomic Energy Commission, I will briefly describe the AEC programs and facilities. As will become obvious, the contracting function is central to our method of operation.

In very broad terms, AEC is responsible for a program of producing fissionable material, developing and manufacturing warheads for nuclear weapons; developing nuclear propulsion systems for naval vessels; development of a growing number of peaceful applications in the nuclear field, particularly the generation of electricity from atomic energy; conducting basic research in the physical and biological sciences in the atomic energy field, and regulating the peaceful uses of atomic energy—private nuclear activities.

At present, the AEC investment in plant, equipment, and real estate is approximately \$10.5 billion, and our annual appropriation is \$2.4 to \$2.6 billion per year. These Government-owned facilities are managed and operated for the AEC by contractors. Our operating contractors comprise a variety of industrial, academic, and not-for-profit organizations. For example, our Savannah River plutonium production plant in South Carolina is operated by Du Pont. Most of the Oak Ridge facilities, including the gaseous diffusion complex which provides uranium enriching services to the electric utility industry, are operated by Union Carbide. Our two weapons laboratories at Los Alamos, New Mexico, and Livermore, California, are operated by the University of California.

These contractors operate under what we call administrative—or management-type contracts; an innovation which, while not conceived by AEC, certainly has been substantially extended and improved by AEC. These arrangements are not

viewed as contracts for research or production but as contracts for management of projects and facilities. They are written and administered in a manner calculated to promote a close, cooperative relationship between the parties.

There are more than 97,000 persons working directly in our programs, of which approximately 7,000 are AEC employees. The remaining 90,000 are employed by our contractors.

In our testimony concerning H.R. 9059 we mentioned that we were concerned that sufficient flexibility is left with the individual agencies to permit them to carry out their program responsibilities effectively and efficiently.

In this context we expressed concern that H.R. 9059 would go too far in the direction of centralized control of detail in prescribing "policies, regulations, procedures, and forms which shall be followed by Executive agencies." We are glad to see that our point has been recognized and that reference to procedures and forms has been modified in S. 2510.

We also called attention in our testimony on H.R. 9059 to two sections of that Bill which we believed could cause problems for AEC. Companion sections are included in S. 2510 and we could like to call the attention of this Subcommittee to these sections.

First, we see a potential conflict between Section 9 of S. 2510 and certain provisions of the Atomic Energy Act. Section 9 states that "authority under any other law to prescribe policies, regulations, procedures and forms for procurement is subject to the authority conferred in this Act." It is assumed in the light of statements at the hearings on H.R. 9059 that this provision would not impair the authority of the AEC to independently prescribe regulations and procedures for special contracting and related authorities contained in or as an adjunct to, the Atomic Energy Act. Examples of such authorities are:

(1) Section 170(d) (commonly referred to as the Price-Anderson provisions) of the Atomic Energy Act of 1954, as amended, establishes authority for AEC to enter into agreements of indemnification with its contractors for certain types of contracts involving activities under the risk of public liability for a substantial nuclear incident.

(2) The Atomic Energy Act of 1954, as amended, establishes certain policies with respect to patents and inventions which are unique to the AEC and which require implementation in the AEC's Procurement Regulations.

(3) Because of the nature of some of its programs, the AEC has found it necessary to establish contractual requirements for areas such as nuclear reactor safety, security, and the handling of special nuclear materials.

Possibly consideration might be given to adding a fourth provision of subsection 6(d) of the Bill to provide that such types of authority are not impaired.

In addition to the foregoing examples of matters unique to the AEC's programs, there are also some matters which need to be treated in agency procurement regulations in light of how an agency accomplishes its mission. Significant examples in AEC would include contract review requirements and administration of cost-type contractor procurement activities.

The second section of concern to AEC is Section 16 of the Bill, which would amend subsection 602(d)(13) of the Federal Property and Administrative Services Act (40 U.S.C. § 474(13)) by limiting the "no impairment" provisions of the Act, as it relates to AEC, to matters relating to the disposal of property.

Section 602(d)(13) of the Federal Property and Administrative Services Act states that "Nothing in this Act shall impair or affect any authority of . . . the Atomic Energy Commission * * *."

It is AEC policy to generally follow the Federal Procurement Regulations and to exercise the exemption authority only to the extent that compliance with the requirements of the Federal Property and Administrative Services Act of 1949, as amended, would impair or affect the carrying out of AEC's programs.

Consequently, we have used this exemption authority very sparingly. For instance:

1. AEC has exempted itself from the fee restrictions on contracts for architect-engineer services prescribed in Section 304(b) of the Federal Property and Administrative Services Act because major changes would be necessary in AEC's practices for contracting for all architect-engineering services.

2. AEC has also exempted itself from the limitations in Section 304(b) of the Federal Property and Administrative Services Act concerning advance notification of a cost-plus-a-fixed-fee subcontracts and fixed-price subcontracts provided in the prime contractor's procurement methods and systems have been reviewed and approved in accordance with Part 9-59 of the Atomic Energy

Procurement Regulations. This exemption was justified to provide more economical and efficient administration of AEC's operating contracts.

If Section 16 of S. 2510 were enacted, without repeal of Title III of the Federal Property and Administrative Services Act, the matter of whether or not the AEC would be required to comply with these requirements might be somewhat cloudy. This could be troublesome, especially since the examples cited are rather antiquated requirements, which we feel would be a step backward instead of forward in improving the economy, efficiency, and effectiveness of Government procurement, one of the stated purposes of the OFPP Bill.

It is worthy to note in this connection that the Commission on Government Procurement Report recommendations includes two which would eliminate the above referenced statutory limitations (Architect-fees-Recommendation E-4 and Subcontract Approval—Recommendation A-37) and we understand implementation of these recommendations is provided for in another Bill (H.R. 9061).

We feel that the removal of AEC's "no impairment" authority is not an appropriate matter for inclusion in S. 2510, but should properly be considered as part of the Bill which would repeal the Armed Services Procurement Act and Title III of the Federal Property and Administrative Services Act and replace them with a new Government-wide Procurement Act (H.R. 9061), where the no impairment authority could be considered in the light of changes proposed in the Federal Property and Administrative Services Act and the Atomic Energy Act.

That concludes my statement Mr. Chairman. But before I close I want to say that the record will show that AEC was an early supporter of the proposal to establish a Commission on Government Procurement and once established, that we were generous in supporting and assisting the Commission with the assignment of AEC staff. As I said earlier, we are now heavily involved in the interagency effort to implement the Commission on Government Procurement recommendations and you can rest assured that we will pursue this effort vigorously.

Senator CHILES. You say in your statement that you had submitted a dozen or so positions. Were those submitted to GSA or to the task groups?

How do you submit positions?

Mr. ERLEWINE. Mr. Smith.

Mr. SMITH. We have the lead responsibility for some 16 recommendations in 4 major areas. These involve the encouragement of governmentwide use of master agreements for research and development; the use of the hardware clause in conflict cases; protest procedures; extension of Public Law 85-804 authority; and the establishment by legislation of some provisions for dealing with catastrophic accidents.

We submit these to the GSA.

Senator CHILES. What has happened to the position papers that you have submitted?

Mr. SMITH. Well, the procedure there is that they are first reviewed by the GSA staff, analyzed; then they are assigned to the planning group for review by the planning group, which you will find in the GAO chart. At that point if the planning group finds them adequate, they are sent to the agencies for official agency positions possibly also at the same time out to industry for industry comments.

Senator CHILES. Have any of those become finalized?

Mr. SMITH. From my participation on the planning group if my recollection is right, we have now acted upon 12 of these, and we have sent out some to the agencies and industries for comment. Those are proceeding. Others we have tabled for further consideration. Others have been sent back to the task groups for further development. The wheels are in motion.

There is a limited number of procurement people available to work on these things, as far as I can see, most of the procurement people are at work on the recommendations now.

Senator CHILES. Is it your feeling that this present arrangement is an ad hoc arrangement to monitor the Commission's recommendations, or would it be permanent?

Mr. SMITH. I think this will survive. The same procedures will be used in treating all the Commission's recommendations. I might add also that even if there were an OFPP, this phase of the analysis of the Commission recommendations of the executive branch position would go on in very much the same manner.

Senator CHILES. As you view the interagency planning committee, does it have any directive authority, or it is simply a coordinating body, subject to the whims of the individual members?

Mr. SMITH. It is strictly an advisory body of review and advisory to the OMB/GSA. If agencies cannot agree on policy, it will go up to top levels in GSA and OMB.

Mr. ERLEWINE. Could I add to that?

Senator CHILES. Yes, sir.

Mr. ERLEWINE. I think the concept of something being advisory or directory may not be of as critical importance as it sounds here. I think what is going on with the involvement of the agencies of the government in working on the recommendations and trying to come up with solutions that can be lived with by these agencies, is an extremely important process.

And I detect from talking to our people who are serving on these groups, that they feel that progress is being made. I feel that solutions to these problems in which the agencies, themselves agree, can be a tremendous step forward; as against, perhaps, an arbitrary decision of an office above it that is not necessarily involved in procurement.

I think it is a tremendous support for any office that may be established or any coordinating authority that may be established to have the support and effort of all the agencies of the Federal Government who are working with procurement.

I am pleased with seeing what is happening. Many of these recommendations are not matters that can be decided by anyone alone. They will require legislation or the consideration of legislation. They will require a broad range of possible actions. So I believe what OMB and GSA have set up here, is certainly on the interim basis seeming to work, and may provide a good underpinning for however the final, central Procurement Policy Office is established.

Senator CHILES. I notice in your statement, Mr. Erlewine, you say it would be better to rely on the existing cooperative organizational arrangements rather than establish an independent Office of Federal Procurement Policy. Do you feel that the OMB/GSA organization developed under Executive Order 11717 provides us with centralized leadership in procurement policy of the type which that Commission recommended? I understand that you subscribed to this organizational structure in your testimony on H.R. 9059.

Mr. ERLEWINE. My testimony in July on the House bill—I spoke of supporting the objectives of the establishment of an independent Procurement Policy Office. I continue to feel that way.

I think there may be some confusion though in testimony regarding the word, independent. It is used in two ways in the Commission's report. One, in the major attributes, where the office is talked about; it should be independent of any agency with procuring responsibility.

Senator CHILES. GSA has procuring responsibilities.

Mr. ERLEWINE. Yes. I do not think that would be the logical place for a final top office. I think myself, that OMB has the responsibilities and the authority in government of the type that really is needed for solving many of the major procurement policy matters that will come out of the Commission's study.

I think the question of where and how it is placed within the OMB or the Executive Office, should recognize that OMB does have this unique role. As Mr. Zarb pointed out, they are not a procurement agency; on the other hand, they have a great deal to say about the allocation of manpower and funds which are very necessary for any changes or upgrading of procurement.

Also OMB will be a central point from the administration's standpoint, in the recommendation of legislation. Many of the so-called procurement problems that we have, that the Commission has identified, very quickly branch off in matters that are not strictly procurement.

As the chairman is well aware, we have many clauses in our contracts that deal with matters that are not strictly procurement, whether it be labor, or EEO, or other matters. So, I think OMB, having an important role here, is in a unique position to lead the major procurement agencies in coming up with better answers to these problems or at least recommendations.

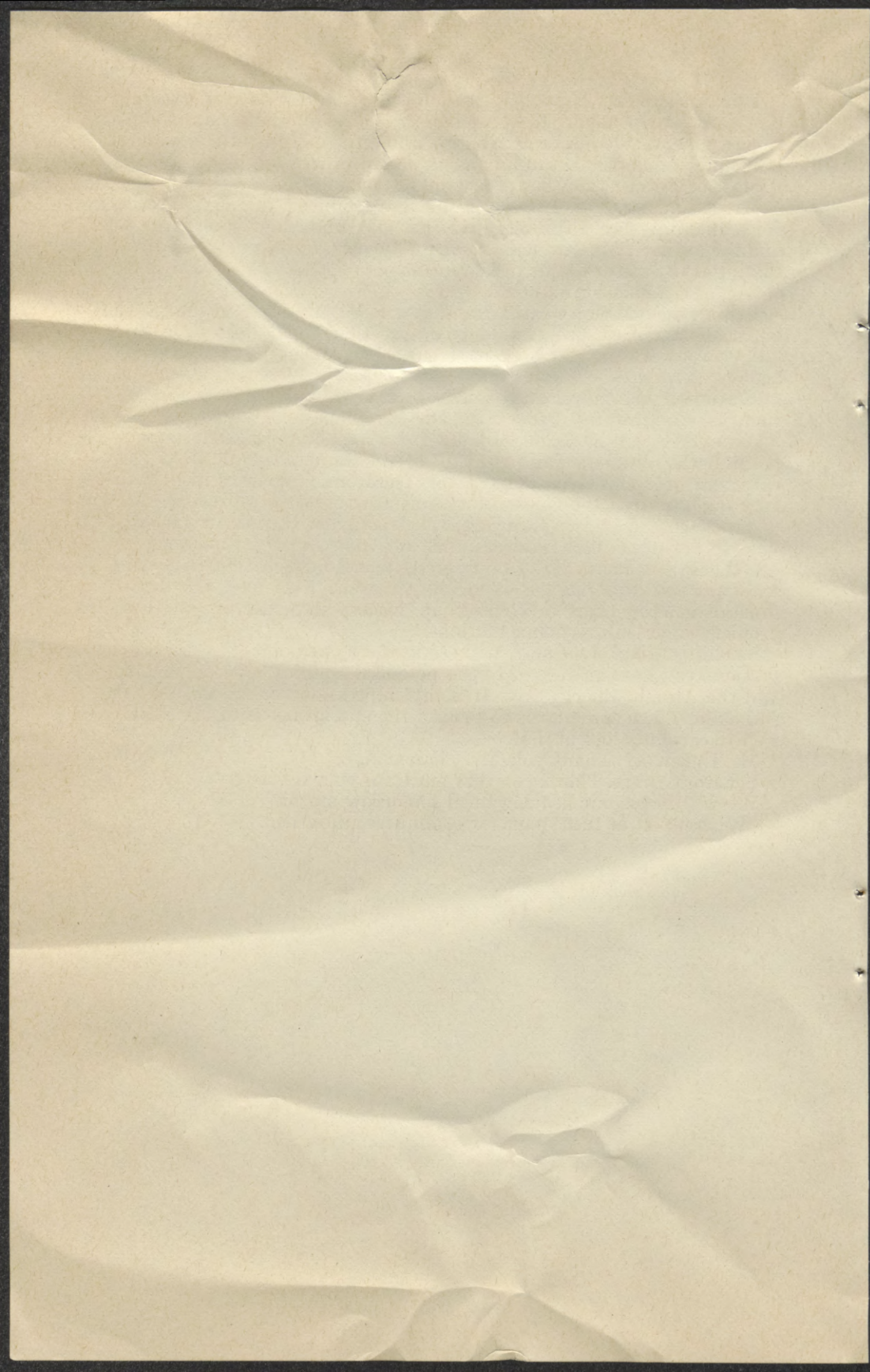
Senator CHILES. Our staff will study the legal points and the suggestions you have in regard to the potential conflict between S. 2510 and the Atomic Energy Act. It is my impression that S. 2510, as it stands now, has safeguards to protect the special needs of the AEC; we will certainly look at that.

Mr. ERLEWINE. Thank you, Mr. Chairman.

Senator CHILES. Thank you very much for your testimony.

We will recess our hearing until tomorrow morning at 9:30.

[Whereupon, at 12:35 p.m., the committee adjourned.]



ESTABLISHING OFFICE OF FEDERAL PROCUREMENT POLICY

THURSDAY, NOVEMBER 1, 1973

U.S. SENATE,
AD HOC SUBCOMMITTEE ON FEDERAL PROCUREMENT,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

This subcommittee met, pursuant to call, at 9:35 a.m., in room 3302, Dirksen Senate Office Building, Senator Lawton Chiles presiding.

Present: Senators Chiles, Roth, and Huddleston.

Also present: Lester Fettig, staff director, and Loren Murray, professional minority staff.

Senator CHILES. Good morning. If we can call the subcommittee to order?

This morning we are going to receive testimony from the Department of Health, Education, and Welfare, the National Aeronautics and Space Administration, the Small Business Administration, the Department of Transportation, the Department of Agriculture and also from Professor John Cibinic of George Washington University.

In yesterday's hearing there were some discussions using a chart from GAO's report to the Congress on the progress of executive branch actions on recommendations of the Procurement Commission, dated September 19, 1973. It has been verified that the chart was approved by OMB, and I will include the pertinent portion of the GAO report in the record at this time.¹

Senator CHILES. In our initial hearing yesterday, OMB and the Atomic Energy Commission presented testimony in support of the objectives of the Commission's report and S. 2510. Both felt that the executive branch has the capability to get the job done by executive action alone. This is in conflict with the main point made by the Commission on page 14 of their volume 1 which said: "The Office of 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." That is a quote from the Commission's report.

The Commission, I might add, was in unanimous support of the recommendation to establish an Office of Federal Procurement Policy.

The hearings scheduled for Wednesday, November 7, and Thursday, November 8, will be rescheduled due to meetings of the full Government Operations Committee that were called yesterday. The full committee is preparing the Senate's Budget Reform bill, one of the most important pieces of legislation we have before us. The subcommittee staff will provide the necessary information on future hearing dates.

¹ See appendix, p. 237.

Our first witness today is Dr. Robert H. Marik, Assistant Secretary for Administration and Management of the Department of Health, Education, and Welfare. Dr. Marik, we are happy to have you here with your staff.

STATEMENT OF DR. ROBERT H. MARIK, ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY ROBERT L. TRACTENBERG, DEPUTY ASSISTANT SECRETARY OF GRANTS AND PROCUREMENT MANAGEMENT, AND FRANK E. SAMUEL, JR., DEPUTY ASSISTANT SECRETARY FOR CONGRESSIONAL LIAISON

Dr. MARIK. I would like to introduce, if I may, Mr. Robert Tractenberg on my right, the Deputy Assistant Secretary for Grants and Procurement Management in HEW and Frank Samuel, Deputy Assistant Secretary for Legislation, whom I believe you know.

Mr. Chairman, on behalf of the Secretary of Health, Education, and Welfare, I appreciate this opportunity to appear before your subcommittee to give testimony on S. 2510, a bill "to create an Office of Federal Procurement Policy within the Executive Office of the President, and for other purposes."

S. 2510 would establish an Office of Federal Procurement Policy as an independent agency in the Executive Office of the President. The functions of the Office would be to provide overall leadership and direction for the development of procurement policies, regulations, procedures and forms with respect to the procurement of property, other than real property in being, services and the construction, alteration, repair, or maintenance of real property. The office would also be responsible for other functions related to procurement. In addition, the the Administrator of the Offices would be directed to undertake a study of the feasibility of providing overall guidance for Federal assistance programs by the Office or another Federal agency.

We endorse existing governmentwide efforts which are designed to foster strong central leadership in procurement policy and we do not think that the proposed insertion of another layer of bureaucracy above GSA will be helpful. We believe it to be—

Senator CHILES. Excuse me, may I interrupt you?

What if we weren't talking about another bureaucracy above GSA, and we were talking about replacing GSA?

Dr. MARIK. Well, Senator, I feel very strongly this way. You have a GSA and you have an OMB; organizations which are central to the executive branch and they already have the position of authority because of the cumulation of their functions, their coordinative functions within the executive branch. And so therefore their authority to direct and carry out overall procurement coordination would already be established. The extent of the function would be established.

Senator CHILES. Well, now, our problem is that something that has already been there as long as the Office of Management and Budget—and it was changed and called different names before—and GSA has been around for years and years, so that authority has been there, but nothing has ever happened.

Let's get away from talking about another bureaucracy, and let's talk about the fact that we are going to give some statutory direction to GSA or to OMB or we are going to set it up in a separate office.

Now, I would be delighted to hear from you as to where we should set that statutory authority. Tell me why we should not make the statutory authority directive so that we know that this office is going to function this year and it is going to function next year and it is going to continue to function in the future?

Dr. MARIK. All right. I think that to the degree that OMB and GSA have not functioned strongly under their existing authority, you may be justified to do those things necessary to stimulate that kind of performance in the future. But I think that when a situation like this develops where the existing management structure has not performed, the problem is to invigorate that management structure to cause it to perform and not necessarily to overlay another type of organization that might duplicate what something else has not accomplished.

And further in my testimony we will talk about some of the things we have done in HEW where the new administration in HEW has found that the management structure has not performed to our satisfaction with regard to grants and contracts. So we have tried to do those things to infuse more authority, more competence, and more accountability in the existing management structure to make a stronger direction overall for grants and contracts within HEW.

Senator CHILES. OK. Please continue.

Dr. MARIK. I was saying in my prepared testimony that we don't think another layer of bureaucracy above GSA would be helpful. We believe it to be an eminently effective arrangement whereby, with OMB having ultimate supervisory oversight responsibility, the General Services Administration, pursuant to Executive Order 11717, has undertaken the responsibility for directing and coordinating the development of procurement—

Senator CHILES. I want to take issue with the word "effective." The House committee was told, when they held their hearings in July, that by August OMB and GSA would be ready to implement the office they are setting up. Now, we are told that maybe some time next year, the spring or something, they would like to come back again. So I take issue with your word effective.

Dr. MARIK. Well, yes. However, I would say it has been my impression that the work that GSA has been doing to translate those procurement commission recommendations into action and the coordinative work they have been doing with representatives of the other agencies has been a truly monumental undertaking in which there has been substantial progress.

Now, I've got problems enough of my own within HEW without answering for GSA, but I do believe that they have done some very constructive things in moving ahead on the Procurement Commission.

Senator CHILES. We are delighted to have you up here to answer for GSA. We haven't been able to get them to answer for themselves.

Dr. MARIK. We believe, Mr. Chairman, that the goal of providing central leadership and guidance is already being achieved within the present executive branch structure. The problems that exist are mainly in the long accumulated deficiency of administration at the executive agencies and, especially, the procuring activity levels. The concept of

an OFPP does not meet those problems. What is needed to meet them is continuing pursuit of this administration's direction of insuring that executive agencies are structured and capably manned to carry out efficiently and intelligently the procurement and material policies that the Congress has laboriously developed over the years, and to which GSA has assiduously provided regulatory implementation, together with such modifications as may be found appropriate on the basis of studies such as the Commission's.

In HEW, we have moved firmly in this direction by establishing recently an Office of Grants and Procurement Management which has complete procurement and material policy and management authority within HEW. This Office is headed by a Deputy Assistant Secretary, Mr. Tractenberg, reporting to me.

Senator CHILES. When you talk about the policies Congress has already laboriously developed, are you talking about that hodgepodge of thousands and thousands of statutes we have placed on the books over the years that nobody has ever gone back and looked at? Is that the laborious work you are talking about?

Dr. MARIK. Yes, sir, it was laborious.

Senator CHILES. I am sure it was.

If GSA is assiduously working on that, I can understand why they can't do anything else.

Dr. MARIK. Well, I think these days the main effort of course is in translating the recommendations of the Commission into action.

Mr. Tractenberg's major responsibilities are to set departmental policy in order to effectuate statutory and national administrative policy in the areas of grants, procurement and material and to manage the grants, procurement and material functions of the Department, including its constituent agencies, in order that those policies be enforced. He will play an important role in carrying this Department's experience back to OMB and GSA and participate in assisting them in strengthening the administration of procurement and grant policy throughout the executive agencies.

The early initiatives of this newly established Office reinforce my confidence that the objectives of the Commission on Government Procurement can best be attained through administrative action of the executive. A brief examination of the administrative steps that the Department, and in particular the Office of Grants and Procurement Management, has undertaken in line with the objectives defined in S. 2510 will illustrate this.

Section 2(1) of S. 2510 declares it to be the policy of Congress to promote economy, efficiency, and effectiveness in procurement by establishing policies that assure timely delivery of quality products at the lowest reasonable cost, utilizing maximum competition. As the committee may know, the Department awards a large number of its contracts through negotiated competitive solicitations. In this respect, the Office of Grants and Procurement Management is presently establishing minimum departmentwide criteria for the evaluation of technical proposals and the selection of sources. We are not satisfied with the present quality of technical review of source selection. We expect that the development of procedures among the constituent agencies in conformance with these minimum criteria will improve the acquisition of quality products at the lowest possible cost.

As another example, section 2(2) of S. 2510 calls for the improvement of the quality and performance of Government procurement organizations and personnel. The Office has established a registry of all contracting officers within the Department, which includes such information as grade, education, experience, and training. We are seeking to upgrade the level of procurement knowledge within the Department as well as to establish a personnel improvement program designed to enhance the professionalism of those who are part of the procurement work force. There is more to be accomplished in this area, but the foregoing represents a productive step forward.

Some other activities initiated or implemented by this new Office, in its short existence, which are in consonance with the policies of S. 2510, are:

(1) The development of structured purpose codes for contracts (and later for grants) as part of a central information system. This information will be used to assure avoidance of redundant procurements and for rapid response to information requests for procurement information from the Secretary, the Congress, and the public. (Section 2(3), S. 2510.)

(2) Another initiative is the issuance of a standard form and provisions for request for proposals to be used by all DHEW components in order to achieve greater uniformity and simplicity in procurement procedures. We have also instituted a pilot program in which basic agreements with specially negotiated general provisions have been entered with several universities. We are considering making applicable these basic agreements to all Department components doing business with those universities. (Section 2(4), S. 2510.)

(3) The integration of grant and procurement policies is another example. We are presently engaged in a review of the Department's decisionmaking in the use of grants and contracts. Where grants are determined to be the appropriate instrument, we will infuse certain traditional procurement concepts into the process such as competition, business analysis, and stronger project management. (Section 2(8), S. 2510.)

(4) We are continuing the departmentwide procurement training program which now has been expanded to procurement training for project managers. We are also instituting a practice of mandatory training where a contracting officer or project officer has committed a serious error in judgment or has violated a procurement law or regulation. (Section 2(10), S. 2510.)

We are undertaking many other initiatives in consonance with the policies of S. 2510, such as, a standard cost and pricing guide; departmentwide commonality of procurement data; the establishment of an ombudsman to assure fair dealing for small business and profitmakers in general; a departmental contract performance evaluation system; and a multiyear project to establish a uniform system of assistance regulations for the department much like the Federal procurement regulations.

I have recounted these activities, not to be generous about the advancements the department has made, but to point out that none of these enterprises, which are specifically directed towards fostering and implementing the policies recited in S. 2510, involves anything more than thoughtful and energetic management within the existing

executive structure or is in any way dependent on, or likely to be assisted by, the insertion of another level of bureaucracy above GSA.

As a final point, Mr. Chairman, I would like to bring to the committee's attention a significant feature of HEW's activities, which we believe must be kept in mind at all times. HEW has an immense involvement in providing financial assistance and support to a myriad of activities and organizations whose principal concern is the betterment of the human condition. This assistance is carried out most effectively through the mechanism of grants, loans, and interest subsidies. In fiscal year 1973, for example, our financial assistance program involved the awards of grants, loans, and interest subsidies of approximately \$20 billion. By contrast, our contracts for procurement of goods and services amounted to \$763 million. We feel very strongly that the many different relationships between the department and its many different kinds of grantees under many different kinds of programs where we are a provider of financial assistance, cover a spectrum that at one end may approximate procurement but elsewhere is fundamentally different from the classic relationship to contractors from which we procure services or supplies. We emphasize this point so that there will be continuing recognition that traditional contracting practices and procedures do not always apply in the assistance relationship and that a system of guidance for assistance should not be submerged under a procurement function.

In summary, Mr. Chairman, it is our belief that the objectives of the Procurement Commission, which were sought in recommending that an Office of Federal Procurement Policy be established, can be accomplished through governmentwide activities like the ones I have described in the preceding paragraphs, led by OMB and GSA and illustrated by our own efforts within the Department of Health, Education, and Welfare. Our experience with these arrangements will give us a better basis upon which to determine whether legislative measures such as S. 2510 are necessary to achieve the goal of a coordinated Federal procurement policy. Consequently, we believe that action should be deferred on legislation establishing an independent Federal Procurement Office.

Thank you, Mr. Chairman, for the opportunity to present our views on this important issue. I would be happy to respond to any questions.

Senator CHILES. Thank you for your statement, and let me say that I am delighted to see the actions that HEW has undertaken under Mr. Tractenberg.

Mr. TRACTENBERG. That is right.

Senator CHILES. That you set up. I do think that is outstanding. I really want to learn a lot more about it and go into it further, especially with your grants and the oversight provisions that you are making.

I think we share a kind of common goal of what we are trying to do and the objectives that we are trying to reach, but I have an awful hard time understanding how each of the agencies operates. Well, I guess I do have a hard time, but maybe I shouldn't because you are all now attempting to make progress. I think some of you are making progress, and I do think that is good. At times it reminds me a little bit of the scene that was played between me and my dad, which is now played between me and my son. Whenever I was deficient in

something, my father would say I think we are going to have to establish some hours and you are going to have to come in at night by the hours we establish. And I would always say, dad, it is not necessary and you would agree if you only knew what I am doing now because I have changed my pattern completely.

Now my son tells me the same thing, and his pattern didn't change and mine didn't change and it won't unless there is someone to see that we do change our patterns.

We have been talking since 1955 as to whether we were going to have to have some kind of office and statutory direction, but the pattern seems to be exactly the same—just let us do it this way, and we will be able to do it on a better basis.

For the life of me I can't understand, as good as your work is—and I think it is excellent—why there should not be somebody directing that all agencies be doing this with their grants. Who is going to direct HEW 5 years from now in a new administration when you don't have a Mr. Tractenberg, who is a person very attentive to these kinds of things and wants to have some hold on things? Just like who directed HEW 5 years before when you didn't do any of these things? So unless there is some directive authority—and that needs to come, I think, from statutory authority—who is going to do it?

Mr. MARIK. Let me ask Mr. Tractenberg to answer because he represents our credentials in this field, far better than I do. And I would not want to let this hearing go by without hearing from him.

Senator CHILES. I would be delighted to hear from you.

Mr. TRACTENBERG. I have been in the Government and the procurement field now for about 12 years and for many of those years I recognized the need for the sort of thing that the civilian agencies and the military agencies need to do. There was a deficiency. There is no question about that.

But I see the impetus for correction of the deficiency coming from the Commission's report. There have been other ad hoc committees of Congress investigating procurement, no question about it, but it is the first time a body of true experts really sat down and analyzed what the Government is doing in the area of procurement. And it was a good report and it came up with some very very good recommendations. And I think those recommendations and that report really constitute the impetus for a lot of what you hope to see and what I hope to see done in this field.

Senator CHILES. How long will it last? Just as long as that report sits on the shelf?

Mr. TRACTENBERG. I think and I believe this is what Dr. Marik was stating in his testimony that if the Government can't govern itself, if it can't carry out these policies and have a sustained effort to carry out these policies then legislation is required.

Senator CHILES. You said the Government can't govern itself. Congress is part of the Government.

Mr. TRACTENBERG. I understand that, Mr. Chairman. What I meant is the executive, if the executive can't get the impetus to keep it going and sustain it, then legislation is required.

What we are suggesting is the opportunity to do this out of our conviction and our belief that it is needed with the guidance that comes with the very sound principles developed from the Procurement Commission.

Senator CHILES. I think the thrust of the central office is the thrust that you are trying to give in your shop. I am delighted to see that you are taking that kind of action that you have set up a special office, that you have got someone in there that is qualified and capable to whom you are giving some authority and that you are tying it back into the Secretary so that he will have some clout. That is exactly what the Commission envisioned. It is what we need somewhere.

There was some discussion as to where it should be housed but that is exactly the kind of office, the kind of clout, the kind of direction, the kind of leadership that the Commission was envisioning and I think that the Congress is envisioning in the legislation we have introduced. I want to say for this subcommittee we don't know where it should be located. We are open on that. The bill calls for it to be a separate office under the President. There are all kinds of schools as to whether or not that is best. Maybe it should be housed in GSA. I have strong feelings that perhaps, it should be housed in OMB because that is where the clout and the direction is. But I can't see any real conflict in what you are saying and what you are trying to do in having a directive agency. And, again, remember one of the things the Commission was interested in was seeing that there is coordination between the executive branch and the Congress on this. So if you have some authority or some statutory agency set up you are going to have a better reporting procedure to the Congress. You are going to tie Congress more into that. A lot of the fault in our procurement policy in the past comes to Congress' door. I don't mean to say they are the fault of the executive branch. I think a lot of them, a lot of the fault is because of this patchwork of laws that were passed. Many were special interest legislation at the time they were passed. They sat on the books 20 or 30 years ago and are still on the books. Much of the problem has been that Congress has failed in its obligation, that Congress has a constitutional obligation to set up the budget and so say what we are going to buy, what we are going to pay for it and so on. So that is directly Congress' obligation. They do it through the administrative agencies, but we charge the people their taxes—we in the Congress—so they really pay us. So we are very much a part of this.

The other thing, the Commission said that this should be an independent office; independent of its own procurement policies or it couldn't look at what it was doing objectively. Now, GSA can't do that. GSA is in the procuring business of all kinds of procurement. So they can't really fit into that.

OMB, perhaps, can because OMB is in a different setup from GSA. A special office could do it. I think really what we need to get is advice from you and all of the agencies as to where we should be housing this, what kind of authority we should be talking about, and how we can do this without handicapping you from being able to do your own thing and from being able to come up with the best you can. All of these things are really what we need to see to be sure that we don't create another bureaucracy and so that we don't go off and make some kind of mistake.

I think the idea is that this should have directive authority, that we should try to set it up, and we should tie the Congress into it. I just can't find issue with that.

Dr. MARIK. Could I respond before Mr. Tratenberg does on the subject of organizational location, because I would like to extend the parallel of what we have done in HEW.

Clearly, starting from Secretary Weinberger, there is a very firm commitment in this department that procurement and grants will be done properly, effectively, and have accountability as far as the taxpayer's funds are concerned. Starting from that premise, the Secretary then did not move to set up a special officer in his office, his immediate office, reporting immediately to him to take care of that—as I would perceive the analog of an independent agency within the executive office to be. Instead, Secretary Weinberger put it under the existing assistant secretary, who happens to be myself, who had that kind of organizational responsibility for grants and procurement policy within HEW. In other words, he directed me to find a way to concentrate this kind of management oversight and management force relating to grants and contracts in order to make it a more effective part of HEW, but he is still holding accountable someone within the existing fabric of the organization to do it.

I would see that as parallel between establishing the function within OMB or within GSA, and setting up another organization which in some ways is parallel to those two.

Senator CHILES. Well, that is good and I take no issue with that, but you started that sentence saying that Secretary Weinberger was vitally interested in this, that it was something he wanted to see happen, something he wanted to see done, but what about Secretary Jones or Secretary Smith, who are not so vitally interested? How do we get his interest? Do we do it by GSA calling him on the phone and saying, Mr. Secretary, we think you ought to get vitally interested in this, and you ought to do exactly what HEW is doing. You ought to follow the kind of operations they are doing.

Do you think that is going to tweak his interest: a phone call from GSA?

Dr. MARIK. If GSA and OMB have that kind of responsibility—and particularly I look at the policy and the oversight responsibility that we would see in OMB—I think there is a tremendous amount of leverage there. There is, as a matter of fact, more leverage than in an independent agency.

Senator CHILES. Do you think that Secretary Weinberger gets real tweaked by phone calls from GSA?

Dr. MARIK. I think he gets a real tweak from calls from OMB.

Senator CHILES. That may be.

Dr. MARIK. Generally, the GSA calls me, I think, rather than the Secretary.

Senator CHILES. That is exactly the point. If we house it in GSA, they do call you, and they don't call the Secretary.

Dr. MARIK. Yes, sir, but understand that what I would envision, what I would perceive as happening in the executive branch is that, while GSA has the responsibility for the actual implementation, the policy responsibility, in effect, the overall accountability for the effectiveness of grants and contract activity in the executive branch would rest with OMB where there is an undeniable concentration of clout. So it does seem to me that, if indeed GSA has problems in affecting their will, and I don't say they do, but if that should come about, they

have a line of authority by relating back to OMB to assure that the departments and agencies do produce and do perform.

Senator CHILES. Well, the other thing that I looked for is, where is the accountability back to the Congress? Under the present setup, where is the accountability as to who is working on this and who isn't? I really don't see that kind of accountability at the present time.

You know, when you come before the Congress with your budget and you are seeking \$20 billion for contract and grant authority, then I think Congress ought to be able to look and see whether you have set up a real good shop: you are doing this, that, and the other thing; you have met all of the existing directives; or you have met the recommendations. We would then know that you are looking at this money closely as opposed to our just trying to pick out one little grant or one thing and trying to say we don't think the way you are doing it is proper. I think Congress ought to be able to do that with every agency that comes before them if they are going to be properly accountable.

Dr. MARIK. Well, in the case of HEW, Mr. Chairman, I don't think the Congress has been at all hesitant to review all of the things we have been doing and we certainly welcome that.

Senator CHILES. Even when your budgets pass without a single amendment?

Dr. MARIK. There has been a lot of concentrated homework done on the part of the committee hearings. I mean there was a great deal of testimony about it.

Senator CHILES. I am not only on the HEW subcommittee, I am also on the Appropriations Subcommittee, so I did have a chance to hear some of that testimony and get into the accountability and whether the Congress really did understand what all of your functions are and what is going on. I would like very much to get a chance to look further into your efforts, and, again, I would like to congratulate you, Mr. Tractenberg, on those efforts.

Mr. TRACTENBERG. Thank you very much.

Senator CHILES. I think the point that you made that there is a different criteria for grant authority and for contract authority is very valid. I think, if I sense a fear, it is that you are afraid the procurement office would not understand that. I think that is valid, and I think they should know about the contract authority and the grant authority. I think that is very valid.

At the same time when we look at the billions of dollars going out by virtue of grants and contract authority, it is all the more important to try to get a handle on that.

Dr. MARIK. We couldn't agree more, and I would say probably our efforts are more intensive in this area of grants, both because of the greater funds involved and also because it is less well defined than any other area.

Senator CHILES. Right. Well, the point you are making is the reason we definitely want to get back to you because, as you know, S. 2510 calls for a special study of grants and Federal assistance programs, recognizing that this is really an area the Commission didn't get into as fully as we should have in relation to the other parts of the report. So we want to have a chance to have the staff get together with you and look over that.

Mr. TRACTENBERG. I would be very happy, Mr. Chairman.

Senator CHILES. Thank you very much.

Dr. MARIK. Yes, sir.

Senator CHILES. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman. Let me just say first that the change in time of yesterday's hearings prevented me from attending. I have a short statement I would like to make at this time.

OPENING STATEMENT OF SENATOR HUDDLESTON

I commend the chairman of the subcommittee for scheduling this series of hearings on proposed legislation to create an Office of Federal Procurement Policy and for his initiative in organizing and preparing for this all-important review of the recommendations of the Commission on Government Procurement.

The work in which this subcommittee will be involved is part of an unprecedented move to protect the tax moneys of the American people. Federal procurement activities total about \$60 billion a year—almost one-fourth of the total Federal budget. They involve everything from the purchase of pencils to missile systems and high-powered aircraft. They cover the services of architectural and engineering firms, of research departments, and the purchase, maintenance, and repair of billions of dollars worth of real property.

The Department of Defense is, of course, the major procurer in the Federal Government, accounting for almost two-thirds of all procurement costs in 1972. Many spinoffs of this principal procuring position are well known. We are all pretty familiar by now with the so-called "permanent defense industry" and of the more widely heralded cases of cost overruns. These are, indeed, problems to which we must address ourselves, but they are only part of the problems in the procurement process.

Rather than discuss specific problems at this time, however, suffice it to say that in view of the sizable amounts of the taxpayers' dollars which go into procurement and the economic and social repercussions the process can have on areas and individuals, we should demand that this money be spent in the most effective, efficient, and economical manner possible.

Furthermore, we owe it to those who are called upon to participate in the process—Government contractors in all types of operations—to provide clear and viable guidance for procurement needs. Unless such guidance is available, we cannot expect that procurement will be carried out in the best way possible.

Today, procurement is generally guided by two statutes—the Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949—both of which are more than 20 years old. In addition, there are an estimated 4,000 laws which relate to procurement, and thousands of directives and regulations. Some 80,000 Federal employees are engaged in the procurement process, plus many more in the private segments of our economy.

That there have been calls—especially from the private segments—for simplification and clarification of the procurement process, for more coordination and management, is neither surprising, nor a call to be conveniently dismissed.

The report of the Commission on Government Procurement has provided a fine basis from which to move forward. The result of more

than 2 years of work and the consideration of more than 400 issues, prompted some 149 recommendations, 67 of which would require congressional action for implementation.

In the upcoming months, this subcommittee will be involved in the review of those recommendations and in formulating the legislation which we deem advisable to improve the procurement process. It will be a complicated—and at times controversial—task, but one which is well worth undertaking. This concludes my statement.

Now, Mr. Marik, I am very much interested in the efforts being made in your Department and commend you for them.

A couple of things do occur to me. One of them is that some of the objectives and some of the things that you seem to be accomplishing are very fundamental. I would think they should have been resolved or considered or established as policy when the first procurement dollar was spent. Yet we are apparently just now in the position of developing these procedures.

What happened before this?

Dr. MARIK. Well, sir, I can only account for the time during my presence here, of course, which started in March. And all I can say is that we have been going as fast as we can and effectively as we can from that day forward.

Senator HUDDLESTON. Which makes the point that in the absence of some standardized system or procedure, as Commissioners come and go, policies change, and what you may be doing now very effectively and very efficiently may not have been done in that way prior to your coming and may not be done that way when you leave?

Dr. MARIK. Senator, if I may just digress a moment because I feel very strongly about this. In the end, any agency or department will only be managed as well as the effectiveness of those individuals in given offices will allow. No amount of written procedures and established procedures is going to make an awful lot of difference if the total management of the department or agency is not effectively able to carry them out. We have any number of examples of very careful studies that have been done and evaluations of programs which have been carefully put on the shelf and not implemented.

The Secretary, from the day he came in, has been raising questions about the effectiveness of programs. Now, the question of evaluating programs, the question of looking for results when you spend the taxpayer's money, to accomplish certain objectives, now, those are things that pretty well have been in the area of management and indeed in written procedures for some time. Yet, just going through the motions has not achieved tangible results in the sense of increasing our effectiveness. I would submit that it really depends more on the quality of the individual in Mr. Tractenberg's position and certainly the quality of the individuals starting from the Secretary on down, more than it does on the specific phraseology of written procedures.

Senator HUDDLESTON. Well, I can't help but believe that an administrator could be more effective if he had before him procedures that have been spelled out, brought about by the kind of activity that you are engaged in right now, placed in a central agency. I can't help but think that would be the most efficient and best way to accomplish this rather than just letting the responsibility be up for grabs every 4 years if a new administrator comes in.

Dr. MARIK. Well, Senator, I wouldn't want you to infer from what I said that I think written procedures and established procedures are not useful. All I mean to say is that you just need more than procedures themselves. You must always be attentive to that.

Senator HUDDLESTON. Within your own Department, how much force do these procedures that you are developing have in the sub-departments, for example?

Dr. MARIK. Let me answer with an overview, and I would like to give it then to Mr. Tractenberg so he can give you an answer. But again, here we are talking about the strengths of line management, which I feel is in a very healthy condition in HEW today. And so we are able, when Mr. Tractenberg's office ascertains that certain procedures are inadequate, when he determines that certain things need to be changed, we are able to implement and enforce those changes and indeed change the behavior of the people who are reviewing proposals and granting funds or contracts.

So the answer is yes, we can be very effective, but let me ask Mr. Tractenberg to fill that answer in.

Mr. TRACTENBERG. Specifically, Senator, the regulations have the force and effect as law insofar as HEW is concerned. As a judgment of the Department, we publish all our regulations in the Federal Register and give the public an opportunity to comment. We then put them in our HEW procurement regulations, which has the force and effect of mandatory compliance by all component agencies of the Department.

And you raised a very good point; that is, that a lot of the things that we are doing would appear to be fundamental, and they are to a large extent, Senator, but they have never been done from a central standpoint. They have never been done from the standpoint of the Office of the Secretary. Out of Dr. Marik's office, as assistant secretary, there is an office now looking at what the component agencies are doing and how they are complying.

There was, for instance, a very well defined small business policy, but the implementation was weak. There was no one going out there and seeing what was being done, how it was being carried out. I have stopped, for instance, requests for proposals because they didn't meet legal and policy criteria; just stopped them in their tracks. And this is something that has never been able to be done before from a central management standpoint and I am encouraged that there is going to be a lot of strength coming out of this particular office over the next several months.

Senator HUDDLESTON. Let me ask you this. Every department has expenditures and programs that are peculiar to that department—yours probably more than most—and yet every department also probably has standardized operations that could apply throughout the entire structure of Government. What percentage of your time and efforts in this field are devoted to policies that are peculiar to your department and that may not apply to any other department? How much is devoted to the type of activity that may apply to any department?

Mr. TRACTENBERG. That is hard to judge. I would say virtually all of our procurement activity is relatable to any department. We don't have a particularly complicated procurement endeavor. It is not large systems acquisitions or anything of the sort. And I think we really do

not have a particularly unique problem with respect to the area of procurement but we have some major programs, for instance, in the Cancer Institute which are carried out by contract work. For the most part, what we do in the procurement area is relatable to across the board, but that is a small part of it. Last year we spent \$763 million in procurement, which is a relatively small amount. On the grant side, there is an enormous amount, as you know, of categorical programs and most of our effort is spent looking at those, particularly the program regulations of those various agencies. We are trying to get uniformity and sometimes standardization among programs. The OMB Circular A-102 relating to State and local governments has been a good step in developing a uniform type of assistance regulations that can be applied across the board. Even then we have an enormous amount of exceptions so that we have to get approval on for particular quirks in the statutory provisions involving the HEW programs. So clearly the larger part of the problem is in the categorical programs in trying to relate them to some continuity.

Senator HUDDLESTON. Your superior could provide some input into a central agency or office that might be established through this particular legislation to relate to government in general and to specific needs, couldn't he? Dr. Marik expressed some concern about the establishment of another level of bureaucracy. I can assure you many of us feel that way, too. But aren't you indicating that another level or bureaucracy has been established within a specific department?

Dr. MARIK. No, sir. What we did is, when this new leadership took over HEW in the early part of this calendar year, there was an Office of Grants Administration in the Comptroller's Office and an Office of Contracts Policy in the Office of the Assistant Secretary for Management. We decided to combine those two and put them in the Office of the Assistant Secretary for Management. So really, we have not created a new layer. As a matter of fact we have consolidated, and I believe, therefore, strengthened related activities that have existed in two different areas of the Department before.

Mr. TRACTENBERG. I just want to add that memorialized through delegations of authority and statements of organization is the very clear management, the central management responsibility of this particular office. It was that aspect of the preexisting functions that did not exist. And it was in putting that together and saying, look, now you are together but you also have some clout, it was that that established, I think, a step forward in terms of our office.

Senator CHILES. That seems to be to be the greatest testimony that we need for the central authority, and that is exactly it. You said you had all kinds of existing rules and regulations, and you had all kinds of procedures that were supposed to be followed, but there was no central management, there was no clout; therefore, the things just fell out by the roadside.

Dr. MARIK. That is true, Mr. Chairman, but understand as I mentioned before, the analog.

Senator CHILES. We are not going to tell anybody you said that, Mr. Tractenberg.

Dr. MARIK. I am afraid the young lady who is sitting in front of me has recorded that for posterity.

Our point still is that we certainly recommend that there be a strong central consolidation in order to have this overall policy and imple-

mentation oversight in terms of what the agencies and the departments do, but I go back to the point that establishing an independent agency outside of already established organizations and flows of power within the executive branch and flows of authority within the executive branch, I think, would be a mistake. We did not do that in HEW. We did not hang this onto the Office of the Secretary, to the immediate Office of the Secretary, but we did it through the existing authorities of my office which had existed organizationally for some time. Now within my office then we did those things to create a strong function with clear support from the Secretary on down. And I would say that within OMB, for example, and within GSA, certain things could be strengthened to underscore the authority. But, that is different from setting it up as an independent agency outside of the current patterns of power.

Senator HUDDLESTON. Different but more desirable, too.

Senator CHILES. Well, would you also say within GSA or within OMB or within the Office of the President?

Dr. MARIK. In our relatively smaller world of the executive branch, HEW, I think the organizational analog of the President is of course the Secretary, and the analog of the position described in this bill would be to have a special commissioner for grants and contracts in the immediate office of the Secretary reporting directly to the Secretary. We decided not to do that because we decided that Mr. Tractenberg in his function could have greater authority within the existing organization than he could have in the immediate Office of the Secretary, where, honestly, he probably would have had a harder time getting into the flow of authority because the Secretary, clearly, as the President, doesn't have time to relate to him day to day. But in this case I think that the structure reinforces his ability to be effective.

Senator CHILES. I think the point you are making is a very valid point for housing this thing in OMB as opposed to setting it up as a special office.

Dr. MARIK. Well, that would be my strongest point. That would be my strongest point, but our second point would be, as Mr. Tractenberg said, that the greatest impetus in recent times for procurement management has been the result of the Commission, and we would think that it would be reasonable to let the current actions that are going on in GSA, to let them come to fruition before you prejudge that it is an impossible way to achieve what you are after. Because we think that very likely that will achieve what you seek.

Senator HUDDLESTON. That is the basis for suggesting that action be deferred?

Dr. MARIK. Yes, sir.

Senator HUDDLESTON. It should be deferred ad infinitum?

Dr. MARIK. No, I don't think it should be deferred ad infinitum.

Senator HUDDLESTON. To a new administration?

Dr. MARIK. No. I think it should be well within this administration.

Senator CHILES. You have told us a great deal of activity is going on, and for that we feel gratification, but it has been 10 months since the report was published. In that 10 months, we see that of the 149 recommendations, there have been only a few lead agency positions submitted to GSA to date; first drafts have been completed on another 40 recommendations; and there are over 100 recommendations for which there has been no draft.

So on the part of some of the others, and me in particular, here in Congress that isn't moving too quickly. The Commission report is getting a little dustier every day. It is 10 months old now, and it can't have the impetus it had 10 months ago. So what is going to happen to it 10, 20, 30 months from now, if there isn't some followthrough, if there isn't some direction?

Dr. MARIK. Well, all I can say to that, sir, is that I have a tremendous amount of respect for the ability of GSA, which is working on this. I also know from occasional contact with the man working on this that he has been working very intensively. I certainly am not able firsthand to give you an evaluation of why certain things take longer than perhaps they were estimated to, but I certainly think Mr. Ink, Mr. Dwight Ink, would be able to defend very well the status of the situation today.

Senator CHILES. I am delighted to hear Dwight Ink is still alive and well.

Well, I thank you again for your testimony.

Dr. MARIK. Yes, sir.

Senator CHILES. We may have some written questions to submit to you.

Dr. MARIK. We would be happy to respond, sir.

Senator CHILES. Our next witness will be Mr. Bernard Moritz, Deputy Assistant Administrator for Organization and Management of the National Aeronautics and Space Administration.

STATEMENT OF BERNARD MORITZ, DEPUTY ASSOCIATE ADMINISTRATOR FOR ORGANIZATION AND MANAGEMENT, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, ACCOMPANIED BY GEORGE J. VECCHIETTI, DIRECTOR OF PROCUREMENT FOR NASA

Mr. MORITZ. I appreciate the opportunity to appear before you and express the views of NASA on S. 2510, a bill "to create an Office of Federal Procurement Policy within the Executive Office of the President, and for other purposes." With me today is Mr. George J. Vecchietti, Director of Procurement for NASA.

S. 2510, would implement a principal recommendation of the Commission on Government Procurement by establishing a central organization to provide overall leadership and direction for the development of procurement statutes. NASA believes that procurement throughout the Government should be coordinated and consistent where practicable; however, uniformity of policies and practices should not be sought as an objective in and of itself but only when good judgment indicates this is desirable. Inconsistency in points of view and their translation into regulations does not necessarily mean that error has been committed. The great dissimilarities that exist in the environments affecting different industries in the United States and the products and services in which they deal may well justify different approaches to them by Government agencies. While NASA has no reservation concerning the overall policy objectives of S. 2510, it does regard the structure proposed to reach the objectives sought as possibly leading to an undesirable degree of uniformity and very likely resulting in a loss of flexibility to individual agencies to adopt regulations which they believe necessary for their operations.

Should the OFPP be responsible not only for establishing policy but also the preparation, coordination, issuance, and maintenance of implementing regulations, a large organization of several hundred people would clearly be required. Also, since under the proposed bill the OFPP would have paramount authority over policy and regulations, it is foreseeable that resort would be made to that Office whenever disagreement arises with the regulations of a particular agency. For the latter reason alone, the OFPP would probably require a substantial staff.

Senator CHILES. Not to interrupt you unnecessarily, but on the House side, as I understand it, the testimony that NASA gave there is that about 99 percent of the procurement regulations of NASA are identical to DOD?

Mr. MORITZ. That is correct.

Senator CHILES. Well, you didn't mean too much flexibility from DOD if 99 percent of your regulations are identical to theirs. You haven't had any great problem with flexibility there.

Mr. MORITZ. I can explain that, sir. NASA, unlike others of the civilian agencies, is under the Armed Services Procurement Act. The industry with which we deal primarily, the aerospace industry, also deals with the Department of Defense. We felt it would be unwise to deviate from the procedures and regulations of the Department of Defense relating to the same industry with which we deal unless there was a very cogent reason for doing so. Therefore, from the date of the establishment of NASA we have followed wherever possible the regulations issued by the Department of Defense and have deviated from them only where there were clear requirements for us to do so because of the particular nature of our own mission, which is 100 percent research and development.

And I might add, and Mr. Vecchietti has reminded me, that we do participate with the Department of Defense in the development of its regulations so we do have knowledge at the time that the changes are being considered and knowledge of the background that has led them to consider changes.

Senator CHILES. S. 2510 anticipates you will participate too.

Mr. MORITZ. My point, the point I am trying to make is made in the very next sentence. The OFPP could not do the job envisaged by S. 2510, without adequate manpower resources of its own. The temporary detail of personnel from the various procuring agencies would not be an effective way for the OFPP to work. More importantly, NASA believes that the concept embodied in S. 2510 of separating regulations making from the arena of operations may be unreasonable. Our own experience is that regulations and operations need to be closely associated so that working experience can be fairly reflected in procedures that are made standard. We feel that agencies responsible for operations must have flexibility to establish regulations which they believe are required. The OFPP could be regarded as having authority without responsibility and the executive agencies as having responsibility without authority.

I say that because in our experience we must have knowledge of operations which we can factor into decisionmaking on the creation of regulations. To have regulations established in an agency independent from the agency having responsibility to carry out a program, in our opinion, is not wise.

I might add at this time that the recommendation regarding the establishment of an Office of Federal Procurement Policy, the recommendation of the Procurement Commission, uses the word "policy" in describing the functions of that office. S. 2510 and its companion bill in the House have used other words in addition to that. Later on in my statement I suggest what the solution might be.

The reservations NASA has concerning the proposed bill are directed primarily to including regulation making within the powers of the OFPP. Were the OFPP to be vested with responsibility for defined areas of general procurement policy and the executive agencies for their implementation through regulations they would establish, we would have no problem. Examples of policy areas in which the OFPP should function are contracting out for support services, profits, independent research and development, and bid and proposal expenses, and rights in technical data, to name a few.

NASA agrees with the Commission on Government Procurement that a greater degree of uniformity in both procurement policy and procedure is a desirable goal. However, we are not convinced that the organizational structure and respective responsibilities set forth in S. 2510, for approaching this goal are desirable.

We believe that a focal point should be established to resolve general procurement policy issues, to monitor the procurement activities of the executive agencies to assure that they are consistent with approved policy and to promote improved quality, efficiency, economy, effectivity, and fairness of procurement operations. These matters are certainly worthy of increased attention at a high level of Government. We believe that the mission can be accomplished with executive action and without legislation.

Mr. Vecchietti and I will be glad to answer any questions you may have regarding this statement. Thank you.

Senator CHILES. Well, I would agree with your statement that the mission can be accomplished by Executive action, but again, part of the Commission's thrust in its report was that you would have a policy that would happen today and would also happen the next year and continue to happen, and we also know that thus far they haven't happened that way. But they could happen with a little nudge from some statutory authority, could they not?

Mr. MORITZ. Yes, sir.

Senator CHILES. As I understand it, one of your fears seems to be that while you say there are some areas in which NASA does its contracting just like anyone else; for instance, your janitors and other service contracts, there are other areas you think are peculiar to the mission of NASA. You think in these cases that some uniform policy would give you problems if you tried to establish regulations for your peculiar problems?

Mr. MORITZ. I think that is so and I believe the testimony of other agencies is along the same lines. I could add, however, that there is a benefit to some lack of uniformity in that we have the resulting innovations which administrators occasionally do make. And in establishing a monolithic type of structure under which one office is responsible for the regulation-making of all of the executive agencies in the Government, I think we would be creating a roadblock to advances in administration and in management.

It is difficult to arrive at a consensus at the beginning upon the terms of a particular policy or regulation, and I submit it will be even more difficult to secure changes after they have initially been established.

Senator CHILES. Many of the items you raised here are objections that I would have to the office if it was set up in the way you describe. I don't think the Commission subscribed to the conditions you mentioned, and I don't think the introducers of this legislation subscribe to them. For example, the unacceptable loss of flexibility you mentioned in your statement or the organization of several hundred people, expensive arbitration of disagreements pertaining to only one agency, staffing of the OFPP by temporary details and agency personnel, formal legislation without consideration of operational considerations. For all these, I would have the same fears if I thought the office was going to function that way, and I think the Commission would have the same fears. I would like to hear from you either today or in writing, how you think the legislation could be restricted to prevent the conditions you describe. I think we are envisioning a very small and a highly professional staff.

Mr. MORITZ. My point, Senator, is that the words of the bill—and I might add that I have been in this business for 20 years starting from the audit side of procurement, the legal side of procurement and the operating side of procurement so I have been around all facets and perspectives that are applicable and—

Senator CHILES. We are not going to hold any of your past sins against you.

Mr. MORITZ. Thank you. Some of what you referred to as fears which I see arise out of experiences in the past. I believe this bill, when it speaks of a new office of OFPP having paramount authority over regulations, would cause to be realized some of the situations I am apprehensive about. I express no apprehension here about the creation of an office which would deal with policy, provided the policy areas are reasonably defined in the legislative history. My concern is purely and simply over the establishment of an organization at a level of OMB or the Executive Office of the President which does not have responsibility for the execution of programs involving the tens of billions of dollars which are annually expended by the executive agencies; but nevertheless would have paramount authority over regulations. I believe that with that kind of a workload of responsibility, there would have to be a whole lot more than 15 or 20 people in this office.

Senator CHILES. You don't see anything wrong with having a central authority with directive authority to say, when you do let a service contract, there are certain things you need to check, certain areas that you need to go into?

Mr. MORITZ. Well, we could debate what the line is, Senator, between policy and regulations. If the determinations of the policy office are at a high enough level, above what I would define as operational, I have no problem. I have a question about whether the office should be doing what I think you started to describe, for example, consolidating different types of services under one contract. That to me is operations and not the kind of thing that I would define as of policy import of a level that an office of Federal Procurement Policy ought to be dealing with. This is where my principal concern is, that I don't see in the

proposed bill enough definition of what is meant by "policy"; and the inclusion of the word "regulations" in the House bill 9059, and the words "procedures and forms" were also used, and I just think that job cannot be done by a small staff with a half-dozen to 15 to 18 people. The staff of people that is working within the Department of Defense and I was there for a time and Mr. Vecchietti was for many years—is in the hundreds and that is only for the regulations implementing the procurement provisions of the Armed Services Procurement Act.

Senator CHILES. As I recall, during the Commission studies, concern was expressed by industry over different policies regarding patents and independent research and development. NASA was a part of that problem. Now do you see anything wrong with having an overall governmental policy in regard to that?

Mr. MORITZ. No. That is one policy area that I would have OFPP take responsibility for.

Senator CHILES. That is the kind of thing that can drive a contractor out of his tree.

Mr. MORITZ. I agree.

Senator CHILES. And right now we have all kinds of different policies. Senator?

Senator HUDDLESTON. Well, I think here, again, we have a situation where you have a particular type of purchasing that may not be applicable to all other agencies of Government and that consumes a large part of the budget. On the other hand, what would preclude an Office of Federal Procurement Policy from getting an input from your agency on policies that may relate directly to your types of purchasing in the same way it would get an input from HEW and other agencies? In getting the input from the various agencies, it could then develop a system that would be applicable in many other areas too. Such an office would have the authority to filter in regulations that would not be a handicap to you but at the same time may provide some guidance to other agencies. Is this not a possibility, in your judgment?

Mr. MORITZ. Oh, yes, that is a possibility, sir. We would expect to have input to the OFPP and I am sure there would be a great deal of coordination. But in the final analysis, if it were determined that there had to be a single regulation and with the multitude of complexities that various agencies are confronted with, the regulation might turn out to be different from what we would like to see. We would have problems then. And there are always people who disagree with policies. Establishing another office would certainly, I believe, cause various interested parties to resort to that office and if that office had paramount authority, as it does under this bill as drafted, I believe we could be faced with having to live with regulations that were undesirable from the standpoint of our particular operations.

Senator HUDDLESTON. That is possible even today?

Mr. MORITZ. Yes.

Senator HUDDLESTON. Well, the testimony of the representatives of OMB, did not specifically preclude the necessity for legislation to provide proper guidance and proper regulations. If I understand your testimony before the House in July though, you didn't at that time either?

Mr. MORITZ. I did not. I do not preclude that. I believe as my statement today suggests, and this is 4 months after the testimony

of July 11, I believe, that I made in the House, that the executive branch of the Government can do this job. Now whether it will do the job is dependent on the identification of the right kind of people, of the kind of influence that they have throughout the affected agencies of Government; I believe the objectives would be better served by the executive branch doing the job without legislation. But I am not here saying that NASA has any objection to legislation, should Congress conclude that that is necessary. I think that a statutory framework is desirable for most things. I happen to be a lawyer. I am not arguing that point. I think the time is too early though to make that decision. I think efforts underway in the executive branch will solve many of the problems. I too am a little frustrated that it is taking so long to do some of these things but I am most concerned that we don't solve the problem by legislating a bill which would cause more problems than the problems we have been experiencing to date.

Senator CHILES. Well, we share your concern with that. If you have any suggestions which you would like to give us in writing on how to tighten up the bill or anything, we would be delighted to hear from you.

Mr. MORITZ. Thank you.

Senator CHILES. We thank you both for your testimony today.

Our next witness is Mr. Marshall Parker, the Associate Administrator for Procurement and Management Assistance of the Small Business Administration.

Would you introduce yourself and your associates?

STATEMENT OF MARSHALL J. PARKER, ASSOCIATE ADMINISTRATOR FOR PROCUREMENT AND MANAGEMENT ASSISTANCE, ACCOMPANIED BY H. GREGORY AUSTIN, GENERAL COUNSEL OF THE SMALL BUSINESS ADMINISTRATION, AND ROBERT McDERMOTT, DIRECTOR OF PROCUREMENT ASSISTANCE, SMALL BUSINESS ADMINISTRATION

Mr. PARKER. Yes, sir. On my right is Mr. H. Gregory Austin, General Counsel of the Small Business Administration and on my left is Mr. Robert McDermott, Director of Procurement Assistance in SBA.

If it would suit the Chairman, I would prefer to put my statement in the record and briefly summarize what we have, sir.

Senator CHILES. Very good, sir.

Mr. PARKER. I would like to first of all say that the Small Business Administration currently favors the objectives of S. 2510 because we believe that there is that basic need that you described for clarification and simplification in the area of Federal procurement.

It goes without saying that the largest obstacle that we find for the small Government contractor is that great myriad of procurement regulations. They are extremely detailed and complex even for the experienced contractor much less the small businesses that do business with the Government or which are entering into Government business to try to cope with all of these. As a matter of fact, we find with the small businesses that we deal with that they complained rather vigorously about the fact that when they do business with, say three different departments of Government, for instance NASA and the Defense Department and GSA, they are having to deal with three sets of policies, three sets of regulations and all of the complexities thereof.

While we agree there is similarity in some of these regulations, the differences are sufficient to create the confusion and misunderstanding by the small businessman that exists today.

We do think the creation of a single policy body would contribute substantially to reducing that complexity. Another of the chronic complaints of the small businessman is the demand for all of the paperwork by the procuring agencies of Government.

If the new policy office would simply require—and this is a simple matter—the use of standard formats, forms, and so forth, small business would derive some measurable benefit in that respect.

In addition, such things as uniform policy structure would improve the prospect of locating specific contract problems and cutting away red tape since each new problem would not catapult the small business into a completely different structure and policy system.

Next we would hope that a more coordinated procurement policy would contribute substantially to the clarification of priorities throughout the Government procurement structure.

In addition to this, we believe that greater centralization of procurement policy would help the Small Business Administration in its efforts to resolve problems in procurement regulations on behalf of our small business clients, the small business community.

At the present when the Small Business Administration determines that some portion of existing regulations is prejudicial to the interest of small business, we must approach each regulation individually and often in a different manner.

This more or less sums it up. We are strongly in favor of the objectives of this bill and would like to compliment you, Mr. Chairman, along with the other members of the Commission on Government Procurement for the fine job that was done.

We are the lead agency on three particular task groups right now. We are participating in a dozen others, and we think only good can come out of them for the small businessman.

Senator CHILES. Thank you for your statement. Your statement in full will be included in the record.

[The prepared statement by Mr. Marshall follows:]

PREPARED STATEMENT OF MARSHALL J. PARKER

Mr. Chairman, I am Marshall Parker, Associate Administrator for Procurement and Management Assistance, Small Business Administration. We appreciate this opportunity to present our views on S. 2510, and hope that they will be helpful in your deliberations.

The Small Business Administration favors the objectives of S. 2510 because we believe there is a basic need for clarification and simplification in the area of Federal Procurement. To explain, I would like to describe a few of the problems which any small firm faces in attempting to do business with the Government.

The first obstacle is the puzzling labyrinth of procurement regulations. They are extremely detailed and complex for even the experienced contractor. This complexity is multiplied by the number of individual agencies with which the contractor wishes to do business. Small firms, for example, may find themselves individually seeking contracts with the Defense Department, the National Aeronautics and Space Administration, and the National Institutes of Health. The procurements of these agencies will be governed, respectively, by the Armed Services Procurement Regulation, the NASA Procurement Regulation, and the Federal Procurement Regulations, with varying implementing directives. While there is similarity in these regulations, the differences are sufficient to create confusion and misunderstanding for small businessmen. Creation of a single policy body would contribute substantially to reducing such perplexity. Although

certain implementing directives and deviations from the standard would not be entirely eliminated, the basic managing instruction should be determined by a single authority. This would be reassuring to small businessmen.

Related to the complexity of procurement regulations is a chronic complaint from the small business community regarding the Government's demand for varied paperwork. The requirements of the contracting agencies for a variety of information from their contractors are particularly aggravating for small business. Often the small businessman's main hope of competing in the marketplace is to minimize overhead to the point that more value can be put into the product at a price which is still lower than his larger competitor offers. If a new policy office simply required use of standard formats and forms, small business would derive some benefit. Additionally, such a uniform policy structure would improve the prospect of locating specific contract problems and cutting away red tape, since each new problem would not catapult the small business into a completely different structure and policy system maze.

I would also hope that a more coordinated procurement policy would contribute substantially to clarification of priorities throughout the Government procurement structure. Problems occur, for example, in research and development, where the basic motivation of technical personnel is to obtain the best possible product without due regard to the level of need, often referred to as "Gold-Plating." Although small business could provide a specified degree of competence, the thrust of the research and development procurement has been to obtain the best—at a cost appropriate to the best—rather than the adequate. Hence, the Government's small business set-aside policy is frustrated by the procuring agencies' drive to obtain the greatest possible number of research and development proposals, thereby (in the minds of technical personnel) assuring delivery of the best possible product within the existing state of the art.

Contracting officials also resist set-asides for supplies or services because they seek absolutely the lowest possible price for a particular product rather than consider a reasonable (and perhaps lowest) price that could be offered by small business. There are policy matters to cover such examples, but they are diffused and, to some degree, disordered and internally inconsistent. Strong centralized leadership would help to clarify policy on such cases.

The Small Business Administration has deepening concern, also, for small contractors trapped by increased raw material unavailability, or placed in contract loss positions resulting from a rapid raw material price rise after contract award. The varied and diverse assistance avenues, if available at all, of the contracting agencies present overwhelming complexities to the troubled small business concern seeking relief. Central policy formation could provide clearer more concise and understandable relief alternatives, making more apparent the associated business risks, to troubled small business contractors, and to small firms contemplating entrance into the Government procurement system.

Greater centralization of procurement policy would also be of value to the Small Business Administration in its efforts to resolve problems in procurement regulations on behalf of the small business community. At present, when the Small Business Administration determines that some portion of existing regulations is prejudicial to the interests of small business we must approach each regulation individually and often in a different manner.

In summary, while we at the Small Business Administration agree with the desirability of a coordinated Government procurement policy, which is the objective of the creation of an Office of Federal Procurement Policy, we would defer judgment as to the best organizational scheme to achieve this goal.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions the Committee may have.

Senator CHILES. You stated that the SBA does strongly favor the objectives of the legislation, and you have also subscribed to the attributes of the central procurement authority, which, of course, as the Commission said, are essential if these objectives are to be achieved.

Do you agree with the reasons the Commission said it was necessary for a central procurement authority to have these attributes; namely, that it be independent of a procuring agency and have directive authority over procuring agencies?

Mr. PARKER. Yes, sir. We do and heartily so, if you will.

Senator CHILES. And have some directive authority?

Mr. PARKER. Yes, sir. We feel that it should be lodged in that single body and from it uniform policy would flow down for the clarification and simplification that we addressed ourselves to.

Senator CHILES. The Commission also thought it was essential to have cooperation between the Congress and the executive branch—and I hope you subscribe to that too?

Mr. PARKER. Certainly.

Senator CHILES. Based on those objectives, how do you judge the prospects for getting this kind of a central authority under the current OMB-GSA plan?

Mr. PARKER. Mr. Chairman, we would defer any actual plan as to the organizational scheme at this point. I would however say—in answer to your question—that I personally do not believe that it should be lodged in any agency or department of Government that has as its prime mission that of procurement or in any agency that, in carrying out its main mission, has a major function in the area of procurement.

I might say this, that the procurement policy job would be sublimated to the mission of procurement.

Senator CHILES. Well, if the Congress was to follow the Procurement Commission's recommendation that an independent office be established with the stature and authority to provide needed clarification and simplification, where would you locate that office? Would you locate it in OMB or in the GSA or in the Executive Office of the President?

Mr. PARKER. Well, Mr. Chairman, I would have to defer judgment again as to the organizational scheme, but I do think it should be in the executive branch. I agree with the general concept of the Procurement Commission and again I say that where it should not be located is in any agency that has procurement as its main mission because it would be sublimated to that main mission.

Senator CHILES. Yesterday our OMB witness told us that OMB was orchestrating the testimony of all of the agencies, but he also agreed that, if we were going to do a responsible job on this legislation then we were entitled to hear the independent views of the agencies. In the absence of any OMB direction, would you think that the thrust of S. 2510 is in the best interest of small business?

Mr. PARKER. Yes, sir.

Senator CHILES. What changes or improvements would you propose in S. 2510 to best serve the interest of small business?

Mr. PARKER. We think that as presently constituted it would serve that interest, and I would not have any suggestions to make otherwise.

Senator CHILES. In your statement, you mentioned a problem that small businessmen are very concerned with; this involved a limitation in raw materials. Now, how would you suggest that we cope with that problem under today's procurement situation, under the GSA-OMB envisioned plan, and under the concept of S. 2510?

Mr. PARKER. I might make this statement, sir, that we at the Small Business Administration are very deeply concerned about the plight that small business finds itself in today and the serious impact that is being experienced through, if you will, the shortage of materials, the escalating costs of the materials, and the fact that most of the contracts do run 6 months or a year in many cases. Due to the uncertainty and

the unreliability of the economic indicators, as far as where business will be a year from now, small businesses are unable to stockpile. Even if they had the correct economic indicators, they do not have the necessary credit and so forth to buy this material in advance for "stockpiling" for a contract. The relief from these pressures—and when I say these pressures, I mean that small businesses are in a crunch in that a lot of them are literally going broke because of the escalating costs and shortage of materials. The relief provisions that are now contained in procurement regulations and policies do not provide a suitable method to take our small businesses out of this crunch. Consequently, they are going down. We have had hundreds of examples of inquiries and requests for help to do something along those lines. It is a tough situation because at present the only provision other than advocacy that we see—and we have used it two or three times—is the provision of extraordinary relief. After that, it is a regular claims procedure which in many cases is too late. We feel that with a central office of procurement policy, that the policy would be spelled out and that simplified procedures for timely relief would flow down from that one group and it would be easier for one group to see the plight of the small businessman.

Senator CHILES. And you are saying that a central office of procurement policy is the kind of office that could fit the policy to meet the emergencies and the situations at a particular time?

Mr. PARKER. Yes, sir, we feel certain it would be able to streamline present procedures and develop new procedures that would meet the emergencies whereas the various procurement policy groups in every different agency are simply not doing it.

Senator CHILES. I see. Senator?

Senator HUDDLESTON. You indicated that both large and small businesses agree that some change is needed in procurement policies. In your contact with these businesses do most of them complain about the regulations or about the fact that there are so many inconsistencies, so many variations from department to department?

Mr. PARKER. Yes, sir, I think you put it very well; the fact is the inconsistencies, the variations. In other words, when a contractor finally learns to do business in one department and he branches out and wants to do business with another agency of Government he has to start all over again to find out the policies, and he often gets in trouble because of his lack of knowledge of the new policies.

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. Under Mr. McDermott's leadership, 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 businesses 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 towards 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. We also favor that it be by statute. Most everyone feels that everybody in Government should see to it that small business gets a fair proportion of the Government dollars spent—that is my own feeling—but the Congress—and we think in its wisdom—saw fit to put in an act through statute, a mandate if you will to all of Government to see to it that it actually happens. And as a result it does happen. We are getting, incidentally, very good cooperation from the procuring agencies.

Senator HUDDLESTON. Thank you.

Senator CHILES. We want to thank you very much for your testimony. I think that the Commission's work should help small business. Of course, we hear continuously from people in big business, but the smaller businesses seem to be much more handicapped than the big businesses by the plight of having to follow five or six different ways of trying to bid on things, whether it be toilet paper sales or anything else. They just keep saying to us—and it is hard to answer them—why in the world does this happen? They keep saying, I couldn't run my business this way so why in the world are you trying to run the Federal Government this way? We had great help and great encouragement from your agency in connection with the Commission. Mr. Ray Harshman, of your agency, was particularly helpful.

Mr. PARKER. Thank you very much, Mr. Chairman.

Senator CHILES. We appreciated your help, and we thank you for it.

Our next witness will be Mr. Douglas Siegel, Director of the Office of Installations and Logistics, U.S. Department of Transportation.

STATEMENT OF DOUGLAS L. SIEGEL, DIRECTOR, OFFICE OF INSTALLATIONS AND LOGISTICS, U.S. DEPARTMENT OF TRANSPORTATION

Mr. SIEGEL. Mr. Chairman, I am pleased to appear before this subcommittee to present the Department of Transportation's views on S. 2510, the bill "To create an Office of Federal Procurement Policy Within the Executive Office of the President."

The principal purpose of the bill, as we read it, is to create a central authority within the executive branch to insure that procurement pol-

icy and practice throughout the Federal Government will be uniform where appropriate and at least consistent when uniformity is undesirable.

We, in the Department of Transportation, have had experience, on a much more modest scale, with an effort to achieve that kind of uniformity and consistency in the policies and practices of diverse Government procurement operations. We were created as a Department in 1967 through the combination of several organizational elements with long histories and very different administrative customs and bureaucratic traditions.

The Commission on Government Procurement noted that there were differences in the procurement policies and practices of the Federal agencies. The Department of Transportation, when it was established, furnished a dramatic example of this diversity.

As a decentralized Department, our operating administrations, for the most part, have their own procurement offices. Very early we noted differences between them, not all of which could be explained away by differences in mission. We set about shortly after the Department was established to achieve the sort of uniformity and consistency that this bill would establish for the entire Government. We have had some success. In place of separate regulatory issuances by the administration, we now have one single set of Department of Transportation Procurement Regulations. And there is, in our Office of Installations and Logistics, a centralized focal point for the development and articulation of common procurement policy and practice. On the whole, I believe the effort has been successful and useful. We are all, I think, the better for having had the advantage of the experience of each of our elements in shaping a common policy and a common set of directives.

On the basis of our experience, we support the objectives of this bill as we understand them. However, I am not sure that the solution proposed in the bill is the best way of achieving those objectives. The real problem, as I see it, is not one of lack of authority. The Federal Property and Administrative Services Act of 1949, the Armed Services Procurement Act, and the general authority of the President to direct and manage all of the Government's activities is adequate to do the job. What has been needed was greater uniformity and consistency in the executive branch in procurement policy and practice.

Our experience in the Department of Transportation may have its parallels with the current need for uniformity in procurement policies throughout the Federal Government. We achieved our uniformity and consistency without any specific legislative mandate. Our organic statute does not specify uniform procurement policy or practice as one of our specific objectives. We did what we did under the Secretary's general mandate to manage—to direct and control—all of the activities of the Department of Transportation.

It now appears that the President is taking similar steps to make the procurement policies throughout the Federal Government more uniform. As we all know, the President has issued Executive Order 11717, and taken other measures to broaden GSA's responsibilities for improving procurement management systems.

An interagency procurement policy group and an executive planning staff, comprised of representatives of the agencies with the largest procurement programs, have been established. These committees have

met and are continuing to meet on a regular basis. Working groups with representation by the interested agencies, are, as a first step, developing executive branch positions and appropriate implementing actions on each of the 149 recommendations of the Commission on Government Procurement.

The steps that have been taken evidence a commitment by the executive branch to use existing Federal machinery to create greater uniformity and consistency in Federal procurement policy and practice.

The machinery that has been set up, in our view, should be able to provide the needed central policy direction and management control. I believe this subcommittee can assume what we, in the executive agencies, strongly feel is the fact—that the commitment by the executive branch to follow through with this effort is sincere and will last, and that it will accomplish the objectives which are envisioned for the Office of Federal Procurement Policy. The Department of Transportation recommends, therefore, that action on this proposed bill be deferred pending this subcommittee's appraisal of the effectiveness of the executive branch's recent actions.

This concludes my prepared statement, Mr. Chairman. I now will try to answer any questions you, or other members of the subcommittee, may have.

Senator CHILES. Thank you, Mr. Siegel. I note in your statement you say it is not from lack of authority that you think that procurement policy hasn't been effective. Then it has to be from lack of direction?

Mr. SIEGEL. That is quite right, or lack of "clout" I think is a more common explanation. I think that the General Services Administration for years has had the authority to take a greater leadership role than it did. Now the reasons why it didn't were explored in the Procurement Commission's report, such as the fact that their people didn't have a high enough clout within the executive branch when compared with the cabinet level officials they had to contend with and order around.

Senator CHILES. But now you think they have direction?

Mr. SIEGEL. Now I think they do. I see evidence of it. I serve on these working groups and these committees, and I do see evidence of it. I have never before—and I have been in the business, like some of the other witnesses, for many years—and I have never seen this much consultation, this much drive, this much motion, this much progress toward coming to common solutions to common problems.

Senator CHILES. And that would be coming from the Commission's report?

Mr. SIEGEL. It came as a result of the stimulus of the Commission's report.

Senator CHILES. Which, in turn, you might say came from the legislative mandate?

Mr. SIEGEL. Yes, sir.

Senator CHILES. So if there is direction now, the direction really came from the statutory direction from the legislature?

Mr. SIEGEL. Well, it derived from the statute.

Senator CHILES. And this is good, we all agree?

Mr. SIEGEL. Yes.

Senator CHILES. Well, then, why do we fear some future statutory direction?

Mr. SIEGEL. Well, I have a personal fear—and it results from my professional approach to this—I think that we now have as much momentum going as we can possibly get. I think the process, as it is now, is precisely the process that we would have under a small Office of Federal Procurement Policy—in that it would be a consultative process. There would be representation by all of the interested agencies. Positions would be coordinated. And, as you know, that takes time. I have this personal fear that any change, now, in the administrative setup would cause some delay for the transition from one mechanism that is now doing the job, to a new mechanism, that will have to be set up as a result of the enactment of the bill. My position isn't that this bill may not ultimately be necessary. I think if there is a flagging in our efforts—and you can watch the progress that is now taking place—but if there is this flagging I can see, in the next session of Congress, introducing identical bills and having them on the shelf as the goal to continuous vigorous executive branch action.

Senator CHILES. The other point that you made was the example that you observed happen in your department, that is the merger of procurement policy authority. You said that you now felt the same thing could happen in the executive branch through the direction that is there now in GSA, OMB, and all of the other agencies?

Mr. SIEGEL. That is correct. I might say, as someone who has been around this town for a number of years, and a bureaucrat most of them, centralized authority, once it is established, somewhere, is the most difficult thing to get to disappear. I think it will last. I think there has been established, under what is going on now some centralized little bureaucratic groups with centralized authority and I think you can count on their momentum to keep this whole thing going. I think the fact of the existence of these organizations, the fact that you have public commitments, the circumstances under which they have been made and the fact that you people will be watching us will certainly keep it going.

Senator CHILES. Isn't there a difference between your particular situation, which is under the Secretary and under his authority to direct his agency. Isn't that different from the President's authority because under present statutes we have set up independent authority under the Department of Defense for armed services procurement, with exemptions from the Federal Property and Administrative Services Act of 1949. Isn't there a difference between, say, the President's authority and the Secretary's? In other words, the President doesn't have as much authority in the overall shop as your Secretary has in his shop?

Mr. SIEGEL. I don't know. He now appears ready to exercise his authority and he has exercised it. He has set up within the existing machinery a process by which we are going to get common policy. I see a development in that direction.

Senator CHILES. Is your only concern that to set up a statutory authority now would hamper the work presently going on?

Mr. SIEGEL. Well, I see that as a possible concern. I would hate to see a legislatively mandated thing that would do no more than what is presently being accomplished. Considering the way in which the executive branch operates—I think there is a certain amount of pride that we have in the executive branch that we can get the job done and I think that will lead us perhaps to at least as much activity as the creation of the new statutory office would.

Senator CHILES. On the basis of what we have heard so far, I would certainly agree that the executive branch is sincere in its commitment to follow through on its efforts to accomplish the objectives envisioned for the Office of Federal Procurement Policy. I am skeptical of your assurances that this commitment is a lasting one and that it will last after this administration.

Has it been your experience in Government that success or administrations are committed to the programs of their predecessors unless these programs have a solid foundation, requiring the approval of some independent authority before they can be abandoned?

Mr. SIEGEL. Well, programs are one thing. I think that administrative bureaucratic machinery is another. I think once bureaucratic machinery is set up, centralized controls of any function of the Government, they last unless somebody takes positive efforts to obliterate them.

Senator CHILES. Again, I wish I shared completely your optimism. How long would you say we should wait to determine whether the action that the Commission described as being long overdue and urgently required is to be accomplished?

Mr. SIEGEL. I wouldn't wait at all. I would keep watching us and, if you notice a flagging in our efforts, start thinking again in terms of reporting a bill out.

Senator CHILES. Senator?

Senator HUDDLESTON. I would just say that I don't see very much conflict or inconsistency with the idea of the interagency planning and the statutory establishment of the office. I think the office would want input from operations such as you indicated. Administrators, executives, Congressmen, and Senators come and go, but it seems to me that it would be a much better policy for the Government itself to have some kind of consistency, guided by statutory requirements flexible enough to be able to change when groups like you were talking about present better plans, better regulations?

Mr. SIEGEL. Well, generally, I would agree with you. I think, though, that a statute, without a commitment, won't get you anywhere. And I think with the commitment a statute is unnecessary.

I think GSA has, largely, the authority that you are describing in this bill.

Senator HUDDLESTON. The actions by the group you referred to, are they subject to review or approval by GSA or OMB?

Mr. SIEGEL. Yes, I would say they are subject to a process which is in the control of GSA and OMB. It is a consultative process. Positions are being developed; hopefully, we will get public reaction to them in addition to interagency reaction when the time comes to implement them. Since we are using the machinery of GSA to do a lot of the things and since OMB sits behind as the general policy director, yes, they are involved.

Senator HUDDLESTON. Do you think they would ultimately approve or disapprove of them?

Mr. SIEGEL. Well, it is a forum in which we are reaching consensus on a lot of things through participation by all of the agencies. Now somebody has to actually push the papers out. I think it is working in that way.

Senator CHILES. I do want to thank you very much for your testimony.

Our next witness will be Mr. Tony M. Baldauf, Director, Office of Plant and Operations, of the U.S. Department of Agriculture.

STATEMENT OF TONY M. BALDAUF, DIRECTOR, OFFICE OF PLANT AND OPERATIONS, U.S. DEPARTMENT OF AGRICULTURE

Mr. BALDAUF. Thank you, Mr. Chairman, and members of the Committee.

I am Tony Baldauf, Director of the Office of Plant and Operations of the Department of Agriculture. This is a staff office which reports to the Assistant Secretary for Administration. I have responsibility for the policy direction of contracts and grants management of the department.

Mr. Chairman, I have a very short statement here. With your permission I will just read through it.

Senator CHILES. Fine.

Mr. BALDAUF. Thank you for giving me this opportunity to appear before your subcommittee to present the views of this Department on S. 2510, a bill "to create an Office of Federal Procurement Policy Within the Executive Office of the President, and for other purposes."

Insofar as the procurement contracting and grants management programs of the Department of Agriculture are concerned, we are in agreement with the Procurement Commission recommendations calling for central direction and control of Federal Procurement matters. As we see it, the objective of the Commission recommendations can be achieved within existing authorities of the Executive Branch. We would endorse the placement of responsibility for central direction and control of Federal Procurement at a level sufficiently high to provide the needed focus and direction to development of procurement policy applicable Government-wide. It seems to us this would be the best method for promptly moving ahead with the work suggested by the Commission and should be organizationally effective. At least with some experience with this approach, we would be able to make better judgments as to how best to organize to meet the Commission objectives.

I will be glad to answer any questions the committee has in regard to this statement or to help in any way I can.

Senator CHILES. Thank you, sir. I note that you subscribe to the Procurement Commission's recommendation calling for central direction and control of Federal procurement policies and that you endorse the placement of responsibility for this central direction and control at a level sufficiently high to provide the needed focus. Do you think that the present plan to achieve this is organizationally effective? Should OMB and GSA have a split in their responsibility with the direction being several layers below top management? We do have an OMB that is looking for a Deputy Assistant Director for Procurement Policy and in GSA we do have the administrator. My question is, do you think this arrangement can provide the kind of direction the Commission envisioned in its report?

Mr. BALDAUF. I would certainly feel that the Deputy Director of OMB should have the necessary power and authority to effect any change in procurement policy that might be necessary. While I am not familiar with the details of this arrangement, I would assume that what is being proposed is that GSA act as the operating arm for whatever segment of procurement policy enunciation the OMB authority decided that they should have.

The problem right now organizationally is that while we tend to look upon procurement contracting solely as a process of supplying the requirements of a program, there is also involved in satisfying these requirements the carrying out of programs that in effect ride the contract such as the socioeconomic programs, that is, small business assistance, minority enterprise programs, and the like.

I am doubtful that under the Federal Property Act that GSA would have the necessary authority to make any policy decisions in the event of conflict between the procurement agency and those agencies which have statutory authority to direct these other programs. Such conflicts may involve questions that do not relate to what we customarily think of as the purchasing process. They are really questions that deal with broad socioeconomic matters. And in this relationship it seems to me that somebody at the OMB level should be involved in resolving conflict. There are bound to be conflicts wherever you assume a dual role. In administering a procurement contract the dual role would be: One, to satisfy the requirements of the operating program; and two, to satisfy the demands of some socioeconomic program or other programs riding the procurement contract.

Senator CHILES. Senator?

Senator HUDDLESTON. It seems like all the agencies want to wait to see if they can't develop their own system to solve this problem. I don't know how long all this waiting is going to continue. This report has been out for some time.

Mr. BALDAUF. Perhaps I might suggest this. The Department of Agriculture has operated under the Federal Procurement Regulations System ever since it was developed. This was an initiative on the part of GSA to establish the FPR system. Amongst most civilian agencies at least we do march to the same tune, that is, the Federal Procurement Regulations. Those regulatory matters to which the Commission addresses itself are, I think, in terms of bringing the Department of Defense, NASA and other regulations and the FPR system into a better coordinated regulation system. If this were to happen, it would have little impact on the procurement operations of this department.

Senator HUDDLESTON. That is all I have.

Senator CHILES. Thank you, sir. We appreciate your testimony. Our next witness is Prof. John Cibinic, Jr., director, Government Contracts program, National Law Center, the George Washington University.

Glad to see you, sir.

STATEMENT OF PROF. JOHN CIBINIC, JR., DIRECTOR, GOVERNMENT CONTRACTS PROGRAM, NATIONAL LAW CENTER, THE GEORGE WASHINGTON UNIVERSITY

Professor CIBINIC. It is a privilege to appear before the subcommittee and give my views on this important legislation. I have submitted

a very short statement. If it would be best, I would submit my statement and then just summarize what I have said in it.

Senator CHILES. Fine. Without objection, your statement will be included in full in the record at this point.

Mr. CIBINIC. All right.

[The prepared statement of Prof. John Cibinic, Jr., follows:]

PREPARED STATEMENT OF PROF. JOHN CIBINIC, JR.

Mr. Chairman, it is a privilege to appear before this subcommittee and give my views on this important legislation. On July 12, 1973, I appeared before the Legislation and Military Operations Subcommittee of the Committee on Government Operations of the United States House of Representatives and indicated my support for H.R. 9059, a bill similar to S. 2510. Since then I have become even more convinced that the Congress should move quickly and decisively in establishing an Office of Federal Procurement Policy.

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. From all appearances, it seems that the executive branch is not going to establish such an organization. Even if such an organization could be established without legislative action, and there is considerable doubt on that point, the past track record of the executive branch certainly does not instill confidence that such an organization would be created and maintained.

On March 23, 1966 in House Report No. 1344, 89th Congress, 2nd Sess., the Military Operations Subcommittee of the House Committee on Government Operations recommended the creation of " * * a Presidentially appointed Government Procurement Policy Board to consider the direction and effects of procurement policies and Government programs on a Government-wide basis." No executive branch action was taken to implement this recommendation. Then on January 10, 1967, H.R. 157 was introduced to create a Commission on Government Procurement. The bill was strongly endorsed by all witnesses except those from the executive branch, whose attitude might be fairly classified as ranging from "Who needs it?" to "If passed, we'll tolerate it." That bill did not pass, largely due to lack of support within the executive branch.

Finally, in November 1969, Public Law 91-129 was passed, creating the Commission on Government Procurement. A review of the hearings on that legislation fails to reveal any great enthusiasm for the proposed Commission on the part of executive branch witnesses. Then, the important work of the Commission was delayed awaiting the appointment of executive branch members. During the existence of the Commission, the executive branch contributed many workers to the Commission staff. However, there is not much evidence of overall executive branch effort to take interim or final action on many of the problems identified through the course of the Commission's work. It wasn't until March 19, 1973 that the OMB announced its plan to respond to the Commission report. Since then, the task forces have presumably been at work, but again there is no evidence that the subject of federal procurement is being treated in a comprehensive, rational manner. What appears to be happening is a continuation of the same Regulatory Reaction Syndrome as existed in the past, only on a grander scale. Mere response to the Procurement Commission's recommendations is not enough. Unless there is continuity, in a short time we will be back where we started from.

While I support S. 2510 as drafted, I would recommend a modification if the executive branch attitude does not change. It would be better to create the Office of Procurement Policy as an independent agent of Congress than to make it an unwelcome and unwanted part of the executive branch.

Mr. CIBINIC. 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. It 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.

Senator CHILES. Assuming that there is some initiative now in the executive branch by some of these task forces and some of these reports, do you think it is something this Congress could count on as being a continuing thing?

Professor CIBINIC. These task groups?

Senator CHILES. Yes.

Professor CIBINIC. No. I don't see how they could continue. The reason I say that is that the task groups have specific tasks to perform and those are the tasks that were identified by this Procurement Commission.

Senator CHILES. Many of those are tasks the Procurement Commission's report envisioned could and should be done without statutory authority.

Professor CIBINIC. Well, as I point out in the statement, why did they wait until they got the report? Why didn't they start acting before they got the report?

But even so, I can point to you, as comprehensive as it is, the Commission's report doesn't cover everything that needs to be done. There are many other things that need to be done that aren't being done. Now everybody in the executive branch will say that the reason we are not doing these other things is because we are concentrating on the Commission's report. So I say that unless we get something which will insure permanence, that even though it may take 2 or 3 years or so, we will be back to where we were in 1966 and then it will take us a period of 7 or 8 years to drag a Procurement Commission bill through again and we will be back at the same place again.

Senator CHILES. That is part of the concern I share that we will have lost the impetus, the sort of mandate we have from the people that the Commission report gives. Hundreds of people testified, and thousands of people, who are trying to do business with the Federal Government, got a chance to voice their anguish a little bit through the fact that there actually was a Commission. We will lose all of that if we wait and wait and wait.

Professor CIBINIC. I would like to add another group of people to the people who are hoping that something will be done. That group of people has never had a representative speak before a committee and I don't think it had a representative speak before the Procurement Commission. That is the group of people who are actually working in the procurement area for the Government. Now, I don't mean to say that everybody who has testified here is divorced from the working level but you are getting policy positions of the executive branch agencies in the most part. I have spoken to many people who are on

the firing line, actually in the working area and believe me they support this bill. That is a constituency that I think ought to be considered as well because these people are professionals, and they know what it is like to work under some of these policies which are widely divergent without reason.

Senator CHILES. Another thing you point out in your statement is that in 1967 the executive branch was not greatly interested in there being a Procurement Commission; in 1969 they were not greatly interested in it; and when the bill became law, they were not greatly interested.

So we ought to consider that when we hear their cries and fears being raised now.

Professor CIBINIC. Yes, sir.

Senator CHILES. We ought to realize that it is really sort of a very natural phenomenon that we are going to hear those fears expressed again.

We find the same executive branch now saying to the man: this Commission report is wonderful, it is the thing that is giving us the impetus to get going, and we are now going to do it right; we are going to clean up our shops, and we are going to have a better world tomorrow because of the Commission's report. Hopefully, they will say the same thing about S. 2510 or whatever the Congress passes, if we see fit to pass a bill because when it comes law, then they will be able to see the light again.

Professor CIBINIC. I would like to respond to two things if I might, Mr. Chairman. One of them has to do with this interagency task force way of operating. I have seen it operate in the past and it appears to me to be a pretty ineffectual way. The reason is that a strong agency can block the interagency task force action on a particular position that it feels very strongly on. Now whether that particular position is essential for the agencies' mission or not, I will leave it to someone else to determine, but it is an effective way for the specific agency to feel that they have some control over what is being done. As a result sometimes it takes many years for a sensible policy to be adopted. We had this shown in the interagency task force operations on modifying a standard form clause for construction contracts. That took about 6 years to really get massaged through, and it was largely due to the inability of somebody to say I have the authority to decide what the policy shall be and I am deciding it shall be this.

Senator CHILES. We would like to have your ideas and recommendations as to where we should house this authority?

Professor CIBINIC. Well, I support housing it in the executive branch, but, as I said in my statement, not if it is an unwelcome and unwanted tenant.

Senator CHILES. Where in the executive branch: between OMB, GSA, and the independent office?

Professor CIBINIC. Well, I have difficulty with the independent office of the President in the sense that I don't really see much of the structure there.

Senator CHILES. There is no clout?

Professor CIBINIC. Pardon?

Senator CHILES. There is no clout?

Professor CIBINIC. Well, no clout, but also it is too amorphous an entity. I have no difficulty in saying that it shouldn't be in the GSA and that is for several reasons. First, is that GSA has a heritage which it may overcome someday but it will be difficult for it to overcome and that is that it doesn't have that great a respect among the other procuring agencies simply because, and probably wrongfully in many cases, it is considered as being brooms, mops, desks, pencils, and so forth type of operation. As I say, that may be unfair, but that is the kind of reputation it has among other procuring agencies. But secondly, it is also engaged in procurement, and it is pretty hard to divorce that from the overall actions of the agency when one man is at the head of it. So I think that, for want of any other place within the executive branch, it would be suitable to put it in the OMB level.

Senator CHILES. What could Congress do to see that it is not an unwelcome tenant?

Professor CIBINIC. I don't think that Congress can do anything except see that there is a commitment, and the footdragging stops on the bill and from what I gathered—and I wasn't here yesterday—that unfortunately is not the case yet. But if it is an unwelcome tenant, I can see that Congress probably ought to consider saying, look, we want to give this to the executive branch but you don't want it. Since we feel something like this is necessary, we will create this as an arm of Congress. Now there is precedent for that. I don't think that would be unconstitutional. I don't think that would be the most preferential way to do it, but I am so committed to the necessity of something like this and seeing that it works that I think that it ought to be considered.

Senator CHILES. Senator Huddleston?

Senator HUDDLESTON. Do you think such an agency or an office could overcome the difficulties they are bound to encounter in the wide variety of procurement or the nature of procurements by the various departments; that is, HEW versus the Department of Transportation and so forth? Do you see any problems with each individual department?

Professor CIBINIC. Well, I find it difficult to see that there is that much difference in what the agencies do, Senator. For example, when HEW is buying a certain kind of research, the Department of Defense often buys a similar kind of research. NASA may be buying a similar kind of research also. And they are just very, very similar. Their procedures are similar, but they are probably using different contract clauses and different contract forms. And there has never been anyone who has pointed out as to why they need a different form of contract because of the mission of their agency. It seems to me that obviously you wouldn't use the same clauses in buying constructions as you would in buying supplies. But it just seems hard for me to see why you would use different clauses in buying construction of an office and buying a VA hospital. But if you indeed need a different clause for a VA hospital and there was some special reason for it, it doesn't seem to me that would be precluded by what Senate 2510 would establish.

Senator HUDDLESTON. I don't believe the bill addresses itself to what penalties might be assessed if an agency failed to comply with the regulations established by the Office. Do you have any suggestions on that?

Professor CIBINIC. Well, I testified before the House that I didn't think that you would need to. I think it would unduly complicate the

bill. I don't think you would need to establish this kind of thing because there is a branch of Congress or an agency of Congress, I should say, the GAO, which is fully qualified to pinpoint when people don't follow procurement laws and procurement regulations. That is the first point. No. 2, that branch or the agency of Congress can also, if the wrong that is done is great enough, disallow accounts for the accountable officer in the procurement agency. I don't really have any fear of the executive branch refusing to follow in its day-to-day procurement operations, what such an office would promulgate in the way of policies and regulations.

Senator HUDDLESTON. Thank you.

Senator CHILES. Senator Roth?

Senator ROTH. One of the comments made yesterday with respect to the legislation was that it was not definite, it was not sufficiently definite in spelling out what would be the responsibilities of the Federal procurement office. I wonder if you have any thoughts on that? Have you had a chance to study the legislation? Do you feel that there are any ways it could be strengthened by spelling out in greater detail what its functions would be?

Professor CIBINIC. Well, I think that the only thing it would do by spelling anything out in greater detail would be to weaken the bill. What I mean by that is that the bill specifically says that you are not supposed to get into operations if you are the head of the Office of Federal Procurement Policy. You are supposed to make policy and not get involved in the operations. And I think that is where the break-out could apply. But I can see no benefit to be served except weaken the power of the Office of Federal Procurement Policy.

Senator ROTH. I am looking at it not only from the executive standpoint but from the congressional point of view. There has been, as you are well aware, a great deal of criticism that Congress is too often delegating broad authority without spelling out what the guidelines should be. Let me ask you this question. Of course, one of the purposes is to implement the statutes that are on the books, but how much authority should they have to go beyond that? For example, should this Office have authority to promulgate regulations to achieve what it considers socially desirable objectives? I think there has been a lot of criticism in the past, whether you agree with the objectives or not, that, at times, the executive branch has incorporated conditions in their contracts not because they were strictly in the interest of procurement but because of some national point of view that it felt was socially desirable.

Professor CIBINIC. Right.

Senator ROTH. What kind of authority should be given this Commission in these areas?

Professor CIBINIC. Well, I think that the area of social and economic policies, in that area, if they are established to be the policies of the executive branch and this organization was within the executive branch, then I see no problems with it having the authority to do that.

Senator ROTH. You think there should be no requirement that they should be established by the Congress?

Professor CIBINIC. Well, if we can do it today—and we have been able to do this today—without any special statutory requirement, no I see no need.

Senator ROTH. This is remedial legislation, of course. We are proposing it because we are not satisfied with the way it is today.

Professor CIBINIC. Yes. Well, I don't know that the remedial legislation, however, is aimed at tying down a specific statutory provision as a necessity for procurement policy to be adopted. There are many gaps whether they be in the social area or purely in the economic sense of the bargain between the Government and the contractor, that are not covered by specific statutory provisions. In fact, right now, the statutes for procurements and related matters are so broad that you have great areas that are being filled in by the executive branch. Now, the Armed Services Procurement Act would take one page of fine print for those matters related to procurement, and the armed services procurement regulations are this thick. And in a lot of the areas there are policies which are not specifically tied to any particular substantive provision in the Armed Services Procurement Act. I think the Congress has said that this is proper as long as you are doing an efficient and effective job of filling in the gaps that we leave you to fill in, and it just seems to me the remedial aspect of the legislation is the criticism that the executive branch has not been doing an efficient and effective job of filling in the gaps that almost of necessity come into play because of the inability to prescribe everything in fine detail.

Senator ROTH. I am not sure where I stand on this issue, whether I disagree or agree with you, but I am a believer that the Congress time and again does delegate too broad authority. If we are going to claim our rightful role—and it is difficult, I admit—we have to move with more precision. I am not sure what the delegations of authority in this legislation are at this time, but would you let me ask you this. What about including a provision along the lines that any new policy has to be submitted to the Congress and give the power of veto to the Congress?

Professor CIBINIC. Well, there is a simple provision in the Cost Accounting Standards Board legislation and the procedures that the Cost Accounting Standards Board follows. It appears to me that you can if you followed such a provision, you would have to make some break between what would be submitted to Congress and what would not be submitted to Congress.

Senator ROTH. That is right.

Professor CIBINIC. And I don't know just off the top of my head—well, I could not formulate an appropriate distinction between what would and what would not be submitted off the top of my head, but I would have no objection anyway to such a requirement.

Senator ROTH. I am just saying I would hate to have every page of the armed services procurement regulations so distinguished.

Professor CIBINIC. Yes. And I think that is the point. But what happens in the Cost Accounting Standards Board is, I think, there is too much paper going to Congress under the standards that are being put out.

Senator ROTH. Let me ask you this further question. As a general approach, I feel that all new agencies such as this should be reviewed periodically by Congress. I question the wisdom of creating indefinitely new agencies. Now, last year we had a couple of things come up, and I made the proposal that a new agency would be established for 5 years, which would then force the agency to come back and justify

its existence and require that the Congress carefully review its functions. What would you think about that provision here?

Professor CIBINIC. What you are saying is that you would do away with tenure. In the academic world I think this would be a good thing to do away with and I would have no objection in the bureaucratic area as well. I think the incentive would be very much greater on the people there to do a good job and to do it quickly. The only problem is you run the risk of haste making waste and people making a show to justify their existence rather than doing a good job. Whether you will be able to deal with that or not I don't know. But I don't think a 5-year period—just saying we will review and decide whether you will be in existence 5 years from now would be a good thing. I think that there would have to be something that would replace it in 5 years, whether it be that office or something else, because I do think we need a continuing ongoing requirement here. So I think the 5-year period would be OK, but it is the form you put it in.

Senator ROTH. It just seems to me that it makes it responsive to the Congress when it knows it has to come back and justify its existence.

Professor CIBINIC. Right.

Senator ROTH. One final question. The legislation does not spell out the size of the Commission. I have grave reservations about creating any new agency without some limits upon it. I read in some of the reports talk about as big a Commission as 20 to possibly 300 people. Do you have any feelings on what the size should be?

Professor CIBINIC. Yes, I think I testified before the House that I could envision ultimately getting up to about 300 personnel including clerical, secretarial, and professional people. An agency, say, the size of 2, 3, 4, 5, or 15 or 16 professionals and clerical people, it just seems to me would be about as good as no agency whatsoever. You need to have enough people to go in and say—well, just take one problem area, for instance, and that is the problem of warranties and whether or not Government acceptance of a supply will cut off all Government remedies. Now, you need to have somebody who can spend a period of time taking the inspection clause that we have in the contract, the warranty procedures and policies we have in all of our existing agencies, the differences between construction, services, and supplies, and you need to have somebody who can do something with that. Now, he can draw on the procuring agencies' resources and help and assistance, and the help and assistance of industry, but unless he has the time and the capability of making judgments himself and ultimately recommendations for decisions to the head, then there is no sense in having this. We ought to stay with the interagency task force groups that we have. We would be just putting it in name only.

Senator ROTH. Let me ask you this question. The criticism was made yesterday that we are just superimposing a new agency on what is being done now. As one who is, at least personally, greatly concerned about the personnel as well as the budget, won't this mean that the takeover of these functions, at least theoretically, enable some of the agencies to dispense with certain functions because you are bringing together a group, not necessarily people from the agencies, but a group to do them? Wouldn't it be unnecessary for some of the agencies to continue to do some of the things that will be taken over by the central agency?

Professor CIBINIC. Well, I would sure hope so. I would hope that that is what we would do. We had the problem within the Department of Defense and they settled it. They had the AFPI, they had the APP and the NPD's, and there was duplicative work being done. You had a set of DOD procurement regulations this high and a set of Air Force procurement regulations this high, and the first thing that happened was that it got so high that even the Department of Defense couldn't stand it any more and said they would eliminate duplicative coverage in procurement regulations. And so that cut down the paperwork. And I hope it also cut down the staff, but I can't be sure of that. It would seem to me that there is one policy to be made, and everybody should just print it.

For example, as concerns allowability of costs in Government contracts, the Atomic Energy Commission for some period of time has been able to balance the other agencies and have a special provision with respect to independent research and development costs and bidding and proposal costs. Now whether the AEC is right on how the policy should be decided or whether the other agencies are right on how that policy should be decided I haven't seen anything advanced or any reason advanced why that should be different. What happens in this area of procurement regulations is that there are many people who are looking at the allowability of cost area. For example, there is somebody within the GSA who looks at it in the Federal procurement regulations area and somebody in NASA who looks at it and somebody over in DOD who looks at it and somebody over in the AEC who looks at it. And it would appear to be obvious there is no reason to have that kind of duplication if you have one person looking at allowability of costs.

There are many professionals within DOD, ADC, and NASA who are contracting officers who can respond as to whether a certain policy adopted by the OFPP is good or not and they can complain to them, but right now they are a little hesitant to complain too much about their own agencies' regulation because that's likely to get them in trouble with their boss who had responsibility for the regulation.

Senator ROTH. Well, thank you for your helpful testimony.

Senator CHILES. We do thank you, Professor, and appreciate very much your appearing.

This will recess our hearings for today.

Tomorrow we will hopefully have some major industry association witnesses. We will continue our hearings at 9:30 in the morning.

[Whereupon, at 12 noon, the committee recessed to reconvene at 9:30 a.m. Friday, November 2, 1973.]

ESTABLISHING OFFICE OF FEDERAL PROCUREMENT POLICY

FRIDAY, NOVEMBER 2, 1973

U.S. SENATE,
AD HOC SUBCOMMITTEE ON FEDERAL PROCUREMENT,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:40 a.m., in room 3302, Dirksen Senate Office Building, Senator Lawton Chiles, presiding.

Present: Senators Chiles, Roth, and Nunn.

Also present: Lester A. Fettig, staff director, and Loren Murray, professional minority staff.

Senator CHILES. The subcommittee will reconvene its meetings. Today we will continue hearings on legislation to create an Office of Federal Procurement Policy in the Executive Office of the President.

Up to this point, the subcommittee has heard testimony from the executive branch agencies, and we have noted that seven different agencies have voiced a surprisingly similar feeling: The Executive Office can get the job done, that Executive orders will promote an on-going commitment and that legislation is not needed at this time.

We have also heard testimony concerning the location of the proposed office, and there is some concern about the clout that the Office of Federal Procurement Policy should have. These are two open issues that the subcommittee is also concerned with.

The Federal procurement process is very much a two-way street, involving the Government and the private sector, so today we are pleased to have representatives from four major industry associations: the Aerospace Industries Association, the National Security Industrial Association, Electronic Industries Association, and the National Council of Technical Service Industries.

We will also hear from Mr. Matthew Perlman, a local attorney specializing in contract law.

Our first witness this morning is Mr. Karl G. Harr, Jr., president of the Aerospace Industries Association.

[A biographical sketch of Mr. Harr follows:]

BIOGRAPHICAL SKETCH OF KARL G. HARR, JR.

(June 1971)

Born, August 3, 1922. Married, 4 children.

1963—President, Aerospace Industries Association. Also, Member Board of Trustees, Princeton University, 1968; Member, Board of Trustees, Experiment in International Living, 1967; Member, Board of Directors, Union Trust Co. of D.C., 1964; Member, Board of Directors, American Association of Rhodes Scholars, 1963-1970; Member, Policy Committee, Council of Defense and Space Industry Associations (CODSIA), 1964 (Chairman, 1964).

1961-63—Counsel, Rogers, Hoge & Hills, New York City.

1958-61—Special Assistant to the President of the United States for Security Operations Coordination, Vice Chairman of the Operations Coordinating Board, and Adviser, National Security Council Planning Board. Attended all Cabinet, NSC and NASC meetings. Also, Member, President of United States' Committee on U.S. Information Activities Abroad, 1960.

1956-58—Deputy Assistant Secretary of Defense for International Security Affairs and alternate member of NSC Planning Board.

1954-55—Special Assistant to the Under Secretary of State for Administration. Consultant to Deputy Under Secretary of State, Staff Director of Secretary of State's Public Committee on Personnel, and Director of a project for the Richardson Foundation.

1950-53—Associate, Sullivan & Cromwell, New York City.

1948-50—Rhodes Scholar, Balliol College, Oxford University, Ph. D. in Political Science (1950).

1946-48—Yale Law School, LL. B. (1948).

1943-46—Military Intelligence, U.S. Army, Private to Captain. China-Burma-India and Southwest Pacific Theaters.

1940-43—Princeton University, A.B. (1943). Magna cum laude, Phi Beta Kappa, President, Senior Class. Received M. Taylor Pyne Prize. Varsity football.

STATEMENT OF KARL G. HARR, JR., PRESIDENT, AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.

Mr. HARR. Mr. Chairman, I am Karl G. Harr, Jr., president of the Aerospace Industries Association of America, Inc. I welcome this opportunity to appear before your subcommittee on behalf of the Nation's major manufacturers of aircraft, spacecraft, missiles and their components.

The aerospace industry has a keen interest in virtually every subject area reported upon to the Congress earlier this year by the Commission on Government Procurement. We appeared before the House Legislation and Military Operations Subcommittee in July to offer our strong support for H.R. 9059, with certain modifications, as an important first step in implementing the Commission's recommendations. We are here today to offer our strong support for S. 2510, and we especially endorse the concept of having the Office of Federal Procurement Policy operate under certain procurement guidelines such as proposed in the Declaration of Policy, section 2 of S. 2510.

Although Chairman Chet Holifield of the House subcommittee has been a guiding force in the creation of the Procurement Commission and its subsequent endeavors, the importance of the proposals stemming from the Commission's work makes the creation of this corresponding Senate panel, chaired by one of the Commissioners, particularly gratifying. As I testified 4 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.

The task the Commission faced in this regard was revealed by the enormous effort that was required to complete its four volume report supporting 149 recommendations. The totality of this activity left no doubt either as to the complexities of present-day Federal procure-

ment or the degree of administrative sophistication required to insure the economy, efficiency and effectiveness of the process.

While the Commission was proceeding with its study, our industry's experts in the Government procurement area became increasingly convinced that only by addressing the substantive fundamentals of Federal procurement could truly meaningful improvements in the process be accomplished. We noted with favor that the Commission, in its own words, "concentrated on the manner in which basic policies are developed and implemented" and observed that "there is a void in policy leadership and responsibility, and fragmented and outmoded statutory base." The Commission then placed first among its recommendations the creation of a central Federal Procurement Policy Office.

The aerospace industry endorses the establishment of such a procurement policy office. However, we also respectfully solicit your consideration of a few refinements in the proposed statute which we believe will produce a more effective instrument for achieving the objectives sought by the legislation.

We endorse an office which will be independent of specific procurement responsibilities and decisions and which can therefore both evaluate the need for and assure the equity, consistency and economy of procurement policies, regulations and procedures. Such an agency obviously should and would provide ready means of review where the equity and practicability of such regulations, within a coordinated system of regulations, may be challenged. It would be able to test both existing and proposed regulations against principles established by law and it would provide a vehicle for incorporating the views of all those involved in the process.

Counterproductive regulatory situations existing prior to the Commission's study have been further compounded during the period of its labors. A truly independent office where total objectivity can be applied to bring order and equity to the regulation of procurement is essential.

Based on the foregoing, we recommend amendments or refinements in the language of S. 2510 which would:

(1) Specify the major criteria by which a regulatory directive is judged, i.e., is it needed, is it equitable, is it consistent with established principles, is it economically justifiable?

(2) Strengthen the requirement that the OFPP establish an effective method of soliciting the viewpoints of interested parties by emphasizing that this participation be solicited early in the drafting phase of developing regulations.

(3) Direct the OFPP to act upon requests for review of an agency procurement policy or a regulation or a procedure thereunder as long as a specific or contested contract is not involved.

Before discussing each of these recommendations we would particularly like to emphasize the need for the enactment into law of a set of Federal procurement principles which will establish the foundation for governing, with fairness and equity, the fundamental procurement relationships between the Federal Government and the private sector.

We believe the declaration of policy in section 2 of S. 2510 is an excellent start in establishing such a set of principles.

As the Commission on Government Procurement noted, "shortcomings in basic law and policy are root causes of many problems that beset the procurement process." We concur with this Commission finding and would observe that documentation in its comprehensive

study now provides the Congress with a most timely opportunity to strengthen basic law and policy. Moreover the mere size of annual Federal procurements, nearly \$60 billion, begs for such a set of principles.

In 1971 our association developed such a proposed set of principles. We recommend today that consideration be given to the preamble we developed for inclusion in section 2 as the preamble to the policy statements. The preamble reads as follows:

The procurement of goods and services by federal agencies from private enterprise is a significant factor in the national economy and contributes substantially to the economic growth and world leadership position of the United States. To foster the continued growth and strength of the nation, it is declared in the public and national interest that certain principles be set forth defining the fundamental relationships between the public and private sectors of our society in all federal procurement actions. These principles and policies shall have precedence unless otherwise barred by law.

We also recommend that the first policy set forth in section 2 be clarified so that "competition" is understood to be either formally advertised or negotiated as contemplated by H.R. 9061.

We further recommend that these additional policy statements or principles be added:

Promoting the use of and procurement to the maximum extent from private enterprise to fulfill the needs for goods and services. (Reference to reliance on the private sector is made in Section 6(b)(1), but not positively stated.)

Recognizing that the government should abide by the same business principles that govern others in the field of commerce.

Promoting the opportunity to earn a reasonable profit shall be fostered in government procurement commensurate with the risks assumed and comparable to similar commercial endeavors.

Our study contains several more proposed principles which we recommended in our recent testimony on H.R. 9059. We were pleased to note, however, that S. 2510 essentially covered the other principles.

The complete study from which these principles are quoted is entitled "Federal Procurement Principles, A Proposal in the National Interest." A copy of this study is now made available for the subcommittee.¹

Now turning to the three points initially made, our first refinement of S. 2510 deals with giving greater specificity to the criteria by which regulatory directives are to be evaluated.

Federal procurement has become one of the most heavily regulated businesses in the American economy. The proper degree of such regulation and the justification for it must be subject to constant review. Its cost must be weighed as well as the inherent waste of excessive regulation.

Obviously there are good and valid reasons for procurement regulations. What the aerospace industry has long viewed with alarm is the unchecked and often overlapping proliferation of such regulations within the entire regulatory system. The attendant costs today are staggering. For example, it is simplistic in the extreme to view the 3,000-page Armed Services Procurement Regulation as the DOD regulatory system. In order to comprehend the system one must also consider every DOD policy, management system, report, procedure, et cetera, that bears on DOD procurement activity and upon the con-

¹ See appendix, p. 256.

tractors serving it. To estimate total cost is just not possible—nobody knows. One small clue was offered by the Blue Ribbon Defense Panel Report in 1970 when it estimated \$4.4 billion as the fiscal year 1969 cost for management systems imposed upon contractors by regulation.

The Office of Federal Procurement Policy should be provided with a clear expression of the will of the Congress that specified criteria be employed by the OFPP including the tests of need, of cost impact, of compatibility with other regulations or policy, of the level of regulatory detail actually required to do the job, and of equity to the parties involved in accordance with established procurement principles.

Our second recommendation, that dealing with the participation of interested parties in the process of developing regulations, requires only the briefest comment. We ask that the legislation be clear in intent in this area because experience has convinced government contractors that the methodology and the procedure by which participation of the regulated is provided is important. We endorse section 6(b)(4) of the bill, but suggest expansion of the language to indicate that participation early in the drafting of regulations is essential to attaining the effectiveness being sought. This will prevent parochial views from being cemented into agency positions so securely that subsequent provision for other perspectives is practically impossible. This does happen through bureaucratic rigidity and, occasionally, when some individuals who buy equate the right to buy with the right to regulate.

Our final proposal, we believe, identifies a logical and important function of the Office of Federal Procurement Policy which should be set forth in S. 2510. We recognize the impracticality of having the Office give prior approval to every department's or agency's revised or new policy, regulation, procedure, et cetera. Therefore we recommend that the Office provide an objective, and currently missing, check and balance function by responding to requests for review on a case-by-case basis of procurement policies, regulations and procedures being questioned.

What we seek in the new OFPP is a mechanism short of the courts but beyond the bias of the originator where an agency procurement policy, regulation, or procedure may be reviewed upon appropriate request. Given a set of statutory procurement principles and given a set of criteria by which regulations can be judged by the OFPP, we see the Office as the answer to a long-term need for a check-and-balance system. We believe that this assignment to the OFPP would provide added integrity to the procurement process.

Mr. Chairman, this concludes my testimony. I trust I have faithfully reflected the posture our industry seeks to convey at this hearing. The industry sees in the establishment of an Office of Federal Procurement Policy an historic opportunity to set right a host of things that have been disturbing agency heads, congressional leaders, and the taxpaying public. These refinements we have suggested for inclusion in S. 2510, are offered as constructive recommendations in the public interest. We hope that they are given consideration in that light.

Thank you. I will be glad to answer questions.

Senator CHILES. Mr. Harr, I thank you for your very thoughtful and constructive statement. It is nice to see that someone has studied the bill as thoroughly as you and your staff seem to have studied it.

You appear to have a very thorough understanding of the bill, as well as the objectives of the Commission.

As you know, the executive branch believes that it has a plan that will accomplish through GSA and OMB everything that the Commission wanted done.

In July, Chairman Holifield was asked to put off legislation until August. We were asked to wait until next March. Would you comment on the advisability of postponing legislation any further, and also what you think of the proposed OMB-GSA procurement plan?

Mr. HARR. Well, Mr. Chairman, we believe that the legislation should be enacted now. We believe it is most timely. We believe, for instance, that the function that your bill and H.R. 9059, seek to accomplish should not be sought within a procuring agency, for one thing, and, second, we believe that the Office would be most apt to have continuity, flexibility, and independence if it were established according to your bill.

Senator CHILES. I note that you suggest as a first amendment that the bill should spell out the standards to be used by the Office to judge procurement regulations. Aren't the examples you mentioned for criteria—equitable, consistent, and so forth—properly covered in the declaration of policy statements of S. 2510.

Mr. HARR. Well, we think they should be spelled out to a greater degree. Yes; we do, sir. Actually we think there are two elements. We think your bill goes a long way toward doing what we think is needed. These suggested refinements and amendments are to pinpoint that more clearly. The fundamental thrust of our position, and we, as you are fully aware, live with this system and have lived with it and will continue to live with it to a tremendous degree, is that lacking in the overall Government process now is an adequate vehicle for making the pragmatic judgments as to the desirability of a given procurement regulation or procedure within the total context of the situation. Now the pragmatic aspects of it are the ones that we have mentioned here in our first proposed amendment: Is it needed, is it really needed? It should pass that test. Is it equitable? Well, that is a broad word, but it goes a long way toward defining a criteria which, if thought not to be met, can be intelligently debated.

Is it consistent with established principles, and I will come back to that one in a second. And finally, is it economically justifiable, that is to say, there is always a net benefit determination to be made because many systems, many management systems, viewed in the abstract look a lot better than they do when compared with their costs, both their direct costs and their very large indirect costs, which are very large in many cases.

Now, the third one that I passed over, is it consistent with established principles, goes to the second major thrust of our thoughts about what is lacking in the current overall Federal procurement policy. There is no spelled out congressionally mandated set of principles which would serve as criteria for the operation of the Office of Federal Procurement Policy or against which existing regulations and policies can be tested. Of course, when you talk in terms of such principles, you talk, as you do in all enabling or constitutional type language, in fairly general terms. But if they are set forth, even in such general terms, they do provide criteria against which those affected and those

affecting can make their respective cases, and they do provide a mechanism, a procedure, against which the sovereign, in the form of Congress and the executive branch, can judge the validity of (a) the principle, what it is in terms of the national interest and (b) the given application, or the regulation of these procedures against such principle. We would like to see that. We have prepared, at some length, what we think are the appropriate Federal procurement principles. We are not without recognition that these are, of course, the ones coming from the industry.

Senator CHILES. If you wish to submit those we would be happy to receive them.

Mr. HARR. We would be delighted to submit them.

Senator CHILES. We will place those into the record.¹

Mr. HARR. Thank you.

Senator CHILES. I think part of the thrust of the bill is to share the concerns you set forth in the preamble. Of course, you know the problem we always run into when we start making something too specific in legislation. Then you run the danger of narrowing your choices rather than broadening them. We will certainly look over your proposal in that regard.

Mr. HARR. Thank you.

Senator CHILES. You also propose that the bill emphasize participation of interested parties early in the drafting of regulations. The Commission report emphasized that, and it certainly is our intent. We were trying not to straitjacket completely the Office of Federal Procurement Policy by giving them a number of "thou shalts." If you make too many of those, I am afraid you run the risk, because you didn't tell them to do something, of someone saying, "That's not within their purview," or they shouldn't be going into that because Congress spelled out what they should do and they told them they should have early solicitation. Again our purpose in drafting was trying not to, by making some narrow requirements, lessen what we think the overall role should be, and that is to set guidelines.

Mr. HARR. I understand that fully, Mr. Chairman.

I would like, if I may, to comment on this question, because again I think it is a fundamental one. We are not without experience in dealing with the Government along the whole spectrum of consultation; that is to say, early, late, none, a lot, effective, ineffective. There is a constant weighing on the part of all concerned of some factors which in their ultimate form may be somewhat irreconcilable as to what the best procedure is.

I don't think any people in the private sector or in industry have any illusions about where the sovereignty lies—who will make the ultimate decision. I don't think also we are so naive as to suggest that we don't have a self-interest in influencing that decision. Of course, we do.

However, what we are talking about here, and why we thought the point was important enough to highlight in our testimony to you, is that by the nature of the beast a large amount of the important knowledge involved in coming up with correct—I am talking about correct meaning in the national interest—procurement policies and regulations necessarily resides within industry. It is in primary custody of a tremendous part of the problem. It is in primary custody of the

¹ See Appendix, p. 256

actual experience and knowledge that is involved in doing these jobs. This means that in order for an intelligent policy or regulation to be developed by the Government, it must incorporate to an appropriate degree and at an appropriate level that knowledge; otherwise, there will be backing and filling, waste, unworkability, whatever, to the benefit of no one.

So what we are saying is, we believe that the most effective time to incorporate what industry has to offer to the development of the procurement process is early in the process before things become too rigid. That is the rather lengthily stated basic gist of what we are seeking here.

Senator CHILES. The third amendment you talk about is allowing the challenge of a regulation to come to the Office of Federal Procurement Policy, and you said you didn't anticipate that it would be a court.

One of the concerns and one of the arguments we are hearing against the OFPP is that it is going to be another tremendous level of bureaucracy with a staff of hundreds. I think the drafters do not anticipate that it should be that way. I would be concerned if a contractor had the right to carry an appeal or challenge to a regulation to the OFPP as a right. Then you would have to have a tremendous staff, and you would be getting into an area that we really are trying not to by having a very select, highly professional group with directive authority that can try to bring some order to the present chaos we have in procurement policies. If we did set this up where any contractor had a right to go there to carry his grievance against a regulation, that would be working against the intent and would be creating another bureaucracy, another agency. The Office should have the right, duty, and obligation to review regulations and determine those they feel are unfair, but the burden should not be on them to review every one that is challenged.

Mr. HARR. We fully agree with what you said, Mr. Chairman. We are talking about appropriate situations. We are trying to point up here the absence of an effective vehicle, or an adequate vehicle, for the challenge of a given procedure, policy, or regulation. Certainly there would be a risk if it were not clearly spelled out, as you point out, of establishing some sort of a quasi-judicial open forum for the challenging of any given regulation by industry. But that is not what we are talking about. What we are talking about is the problem of the issuing agency being the only existing place that you can go to challenge the wisdom, the validity, the appropriateness, the economic sense, or the equity of a given policy or regulation. And the issuing agency is presently not directed by a set of principles and criteria.

We think that one of the most potentially beneficial results of this Office of Federal Procurement Policy would be that once it is mandated and charged with given guidelines in general terms and establishes principles by which it will operate, you will have a forum in which policies can be accepted or rejected in any given case, but where these policies can be discussed and compared with the criteria that have been established.

Of course, we are specifically exempting from any of this procedure anything involving a specific contract.

SENATOR CHILES. I see.

You also suggested that we include a preamble in section 2. The suggested preamble sounds a little more like the introduction to legislation concerning a policy of reliance on private enterprise than a statement of procurement policy. It is a specific recommendation of the Commission, and it is something that I expect us to take up as a precise matter next year. I am not sure we should try to legislate that into this bill.

Mr. HARR. Well, I would be prepared to accept that. We think it is an important point to be gotten in somewhere. We think it is an important matter to have congressionally mandated, but I am not sure what would be exactly the best possible and most appropriate vehicle.

Senator CHILES. Thank you. Again, I want to compliment you on your testimony and the understanding that you have shown through it. We will certainly study your testimony.

Mr. HARR. Thank you, Mr. Chairman.

Senator CHILES. We also thank you for providing the services of Herman E. Shipley to the Commission during the study phase of the Commission's work. It was a great help.

Mr. HARR. Thank you, sir.

Senator CHILES. Our next witness is Mr. V. J. Adduci, president of the Electronic Industries Association.

STATEMENT OF V. J. ADDUCI, PRESIDENT, ELECTRONIC INDUSTRIES ASSOCIATION, ACCOMPANIED BY ALEX A. LANDESCO, JR., CHAIRMAN, GOVERNMENT PROCUREMENT RELATIONS COUNCIL, EIA

Mr. ADDUCI. Mr. Chairman and members of the committee, I am V. J. Adduci, president of the Electronic Industries Association, or EIA. We welcome this opportunity, and deeply appreciate the committee's invitation, to testify on the views of our industries in respect to S. 2510 regarding the establishment of an Office of Federal Procurement Policy in the Executive Office.

With me is Mr. Alex A. Landesco, Jr., who is chairman of our Government Procurement Relations Council.

The electronic industries of the United States have an annual sales volume of some \$30 billion and employ well over 1 million people. Members of the association are heavily involved in providing equipment and services to the Department of Defense, the National Aeronautics and Space Administration, and other departments and agencies of the Government.

For many years, we have been concerned with the problems affecting Federal procurement. Almost 4 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. We feel that the intensive study conducted by the Commission and the recommendations which it developed can lead to major improvements in the procurement of goods and services required by the Government.

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. In making this recommendation, the Commission added certain caveats based on their extensive study of the procurement system and the complex organizations that it must serve. Among other things, the Commissioners stated that this Office should—

- (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; and
- (3) Consist of a small, highly competent cadre of seasoned procurement experts.

The Office of Federal Procurement Policy, as proposed by S. 2510, generally meets these criteria.

Contrary to this proposed implementation by statute, a recent GAO report entitled "Executive Branch Response to the Recommendations of the Commission on Government Procurement" (B-160725) describes the plans for administrative implementation of the Office of Federal Procurement Policy. This approach would include a policy office in the Office of Management and Budget, an implementation office in the General Services Administration, and an executive council composed of representatives from OMB and the major procuring agencies. This dispersion of responsibility and authority would prove a serious impediment to the positive action needed to implement other significant recommendations made by the Commission, and would be inconsistent with the criteria prescribed for the Office by the Commission.

In general, EIA supports the basic purpose of S. 2510, but in doing so submits certain observations for further consideration by the committee. We feel that this proposed Office should be primarily concerned with fundamental principles and the establishment of Government procurement policy. It should maintain authority over, and review of, procurement practices and regulations, and prescribe uniform regulations, but only as necessary to insure effective and equitable implementation of its established policies.

We approve section 5(b) (2) which calls for the Office of Federal Procurement Policy to establish criteria and procedures for an effective method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, and procedures. Making the proposed actions of the Office of Federal Procurement Policy subject to the Administrative Procedures Act merits consideration as a means of insuring the solicitation of the viewpoints from all interested parties. We are concerned, however, that section 5(c) requires the Administrator to consult only with the executive agencies affected and not with industry.

While industry is frequently provided an opportunity to comment on proposed changes to the armed services procurement regulations, and occasionally on the regulations of other agencies, this generally occurs only after the Department position has been firmly established. Industry has frequently felt that their comments and recommendations are arbitrarily disregarded when they are in conflict with an already established Department position. This same situation exists in the proposed executive branch plan in response to the Procurement

Commission recommendations—industry coordination is the last step in the procedure before release for implementation. The General Accounting Office, in its report (referenced previously), identifies this feature as a deficiency in the executive branch plan, and recommends earlier industry consultation. To those unfamiliar with the Federal procurement environment, this may not appear to be vitally important to the interest of the Government and the general public. However, the dominant position of the Government in the market requires that industry have a voice in the development of regulations to maintain equity in the relationship.

EIA strongly approves section 5(b)(3) which gives the Administrator the responsibility for monitoring and revising as necessary the policies, regulations, and procedures concerning Government reliance on the private sector for goods and services. As noted in the Commission report, implementation of this longstanding policy has suffered from a lack of high-level recognition and attention. Responsibility for this policy has been assigned to an office in OMB which has never had the resources to monitor or enforce compliance by departments and agencies.

The current document enunciating the policy, OMB Circular A-76, delegates the implementation to the agencies. Agencies, however, have shown no tendency to be hard on themselves in requiring strict compliance with the circular provisions. In addition to the deficiencies cited in the Commission report, GAO reviewed implementation of this policy in the Department of Defense in 1972 and civil agencies in 1973, and reported ¹ that it was unsatisfactory. An extensive study and report ² by the Department of Commerce in 1971 also identified widespread deficiencies in implementation by the executive branch and called for revision of Circular A-76 with greater emphasis on the basic policy of reliance on the private sector. Placing the responsibility for implementation of this policy in a new office, within the Executive Office of the President, could provide the needed attention and emphasis.

EIA would be principally concerned that the new Office be at a level sufficiently high in the executive hierarchy to exercise effectively the authority over all agencies having procurement responsibilities. This authority must be commensurate with the responsibilities assigned the Office. As recommended by the Commission, EIA strongly supports the position that the Office of Federal Procurement Policy should be independent of any agency having procurement responsibilities.

In conclusion, the Electronic Industries Association is pleased to have this opportunity to endorse S. 2510, subject to consideration of the additional points mentioned. We feel that prompt enactment of this legislation by Congress would contribute immeasurably to the achievement of maximum benefit from the recommendations of the Commission on Government Procurement.

Mr. Chairman, we appreciate the time and attention of the committee. Thank you very much.

Senator CHILES. We thank you very much for your testimony. We will certainly consider your suggestions.

¹ "Better Controls Needed in Reviewing Selection of In-House or Contract Performance of Support Activities," B-158685, General Accounting Office, Mar. 17, 1972, July 31, 1973.

² "OMB Circular A-76 Study," U.S. Department of Commerce, Bureau of Domestic Commerce, Dec. 15, 1971.

You make your case very effectively that the bill should call for industry comments early in the process. You point out that this is one of the problems you see with the way the recommendations are being handled now by OMB and GSA. How does industry voice its views today on procurement policies to the agencies? For example, do you feel that you do have adequate access to DOD?

Mr. ADDUCI. Yes, through the Armed Services Procurement Committee, we do have opportunity to comment, but, as I have indicated previously, it is usually the last action that is taken.

Senator CHILES. It is kind of after the fact. Are you saying, after they have made up their mind, they solicit your advice?

Mr. ADDUCI. This is our concern. Really, they pretty much have made up their mind in advance and then go through the process of asking industry for comments, but the question is how effective is that?

Senator CHILES. Is having your comments earlier only going to benefit your industry, or is that going to be a public benefit?

Mr. ADDUCI. I think if you have all the information first, and you can evaluate it, then the policy that ensues will be probably a good policy both for industry and for the public. Mr. Landesco here is my specialist.

Senator CHILES. He looked like he was nervous there, and he wanted to say something.

Mr. LANDESCO. I wanted to get in a word, if I may.

I think one of the problems today in connection with commenting to the Department of Defense is that we do not hear early enough what the problem is which DOD hopes to correct by a new regulation, or by a revision to the old one. So, not only are we in a position of being asked too late to comment on what they are proposing to do, but, in many cases, we do not hear what the problem is that they hope to correct, and by earlier participation in the formulation of the new regulation and by a discussion of the problem as they see it, we feel that we could be of more constructive help. Our testimony at this hearing is aimed in that general direction.

Senator CHILES. Would you comment on whether the office, which is contemplated in this legislation, would be better located in OMB, as a separate office in the Executive Office of the President, or as an independent agency?

Mr. ADDUCI. I don't know that we have a firm position on where it should be. We do feel that it probably should be independent. One concern with having it in OMB would be that it would be relegated to a fairly unimportant position, that it wouldn't have the attention. But if it were a separate agency in the Executive Office, then it might have more power and more attention. So I suppose—

Senator CHILES. Our concern is we know OMB has the clout, and we are concerned a little bit as to whether a separate office would be able to get the attention of the agencies with the heavier clout.

Mr. ADDUCI. Do you want to talk about that?

Mr. LANDESCO. I think OMB would certainly be acceptable, Senator, but our worry is that possibly the actual day-to-day work and the chief responsibility would be passed down to GSA by OMB, and

this, we think, would not be effective. They have had this responsibility for some years now, and have not used the clout that they had to come up with effective answers to all the problems.

Senator CHILES. We had some testimony yesterday by Professor Cibinic of George Washington Law School recommending that we try it first either in OMB or in the Executive Office of the President and then if it is an unwelcome child, Congress might have to set up its own agency. That is a possibility. I think it best, and I think the Commission felt, that it should be in the executive branch, but we could run into the problem of whether it is a completely unwelcome child. If they saw fit not to follow the legislative mandate, then it might well be Congress will have to consider whether it should set up its own agency.

Could you give us any specific examples that cover specific cases of concern to you that might be corrected if you had an office such as we are embodying in S. 2510? I know it is hard to ask you right now, but for our record, we would be interested.

Mr. LANDESCO. I think probably the outstanding example of the lack of success of coordination and uniformity that GSA has been, let's say, unsuccessfully tackling for many years now, is the unification and coordination of the cost principles that have to do with the controversy of costs by Government contractors. There is no consistency in the handling of costs or the recognition of costs by the various Government agencies, and I think this is probably one of the knottiest problems that would have to be resolved at some point.

Senator NUNN. Mr. Chairman, I would just like to commend both of our witnesses on their testimony. I particularly agree with your conclusion which states that, as far as the status quo of the present procedures goes, this dispersion of responsibility and authority would prove a serious impediment to the positive action needed to implement other significant recommendations made by the Commission, and would be inconsistent with the criteria prescribed for the office by the Commission. In other words, what you are saying is what I had as an impression the other day when OMB testified. You have a two-headed monster here; part of the policy is in OMB, and implementation is in GSA, and you have a council at a very low level, with supposedly Roy Ash supervising all of it with his 10 million other responsibilities. It is going to end up so diffused that it is going to be meaningless, in my opinion.

I think wherever we put this function, there ought to be a clear delineation of authority and responsibility so that Congress can look right at the eye of whoever is supposed to be doing it and say, "You have failed," or "You have succeeded." I believe that is the essence, as I read it, of your testimony, too. Is that right?

Mr. ADDUCK. You read us correctly.

Senator NUNN. I would just like to say as far as I am concerned you hit the nail on the head, and I completely agree with you.

Senator CHILES. We thank you both for your testimony.

Our next witness will be Mr. J. M. Lyle, president of the National Security Industrial Association.

STATEMENT OF J. M. LYLE, PRESIDENT, NATIONAL SECURITY INDUSTRIAL ASSOCIATION, ACCOMPANIED BY WILLIAM L. CLARK, STAFF VICE PRESIDENT, ROCKWELL INTERNATIONAL, AND JAMES F. LOVETT, DIRECTOR OF FEDERAL GOVERNMENT RELATIONS, WESTINGHOUSE ELECTRIC CORP.

Mr. LYLE. Mr. Chairman, I am Vice Adm. Joseph M. Lyle, U.S. Navy (retired), president of the National Security Industrial Association. I am accompanied by, on my right, William L. Clark, staff vice president of Rockwell International, and, on my left, James F. Lovett, director of Federal Government Relations for Westinghouse Electric Corp. Both of these gentlemen are exceptionally experienced and knowledgeable concerning Federal procurement law and practice and the Government and industry contractual relationship, and therefore well qualified to represent the association with me here today.

We appreciate this opportunity to appear on behalf of the National Security Industrial Association (NSIA) to present its views on S. 2510, a bill to create an Office of Federal Procurement Policy.

NSIA is a nonprofit association of approximately 300 American industrial and research companies of various types and sizes, from large to small, representing all segments of defense industry in every part of the United States. Its function is to provide effective two-way communication between Government, primarily Defense and NASA, and the industry which supports it. Through a structure of eight standing advisory committees it provides advice and technical assistance to the Government, either on request or on the association's own initiative. An additional means through which NSIA performs its communications role is a program of national activities, embracing professional symposia, conferences, seminars, industry briefings, and organized visits to defense installations.

From an industry point of view, NSIA believes that the establishment of a small organizational element in the Executive Office of the President with authority limited to the development and oversight of Federal procurement principles and policies would be a desirable improvement in the Government procurement process. We believe, however, that an administrative office which superimposes another layer of regulation on top of the regulatory structure of the agencies, or which intrudes in the operational aspects of agency procurement, would be a step backward rather than forward.

NSIA, therefore, generally supports the purposes of S. 2510, subject to the following observations and qualifications.

First, the proposed Federal procurement policy should be concerned only with fundamental principles and basic policy; not with the development of detailed procurement regulations. However, NSIA endorses the provisions in S. 2510 for the establishment by the administrator of criteria and procedures for overseeing and upgrading the status of procurement personnel through improved programs for recruitment, training, career development, and performance evaluation, and for sponsorship of research in procurement policies, regulations, procedures, and forms.

Second, in developing its guiding principles the proposed office should strive to achieve and maintain a proper balance between the special needs of public accountability (public officials spending public

funds), and the advantageous forces of the free enterprise system and the commercial marketplace. It should be concerned with promoting fairness and equity in the Government-industry contractual relationship, protecting the legitimate interests of the contractor as well as those of the Government. A constant critical review of the body of existing and future Federal procurement law and regulation to these ends should be a guiding precept for the office.

Third, provision should be made for timely formal consultation with and comment by industry in developing procurement principles and policies; and for industry appeal of the office's issuance to a higher executive level. Provision should also be made for the office to ascertain industry recommendations for development or modification of Federal procurement policies. Finally, provision should be made for review by the office of existing agency practices, policies and regulations to determine conformity with Federal procurement policy, upon request by accredited industry organizations.

Fourth, the office should be established in OMB or as a separate element in the Executive Office of the President. It should not be a statutory regulatory agency. The office should be a small policy unit, staffed with high level personnel headed by a professionally qualified Presidential appointee. It should be free to call upon other executive agencies for information and personnel assistance.

Fifth, the proposed office should stay out of the several agencies' procurement operations and should have no direct supervisory authority over the procurement function in the several agencies.

Sixth, the proposed office should also have no concern with matters pertaining to claims, contract appeals and other quasi-judicial functions related to individual procurements.

Seventh, the establishment of the proposed office should be appropriately linked with action to revise the basic procurement statutes along the lines recommended by the Commission on Government Procurement.

Rather than commenting in detail at this time on the language of the bill, we felt that it would be more useful for us to provide these suggestions for the committee's consideration in shaping the final version of the legislation. If desired, we would be pleased to work with the committee staff to this end.

Mr. Chairman, in closing, I would like to add that we note with great approval that S. 2510 embodies provisions in several areas which are in keeping with industry views long held and expressed in the earlier House hearings on similar legislation. We believe that these strengthen the bill and will improve the effectiveness and efficiency of the contemplated office.

We note particularly in this connection the declaration of policy containing language stressing promotion of fair dealing and equitable relationships among the contracting parties. We note with approval the omission of procedure and forms from the purview of the office, the inclusion in the functions of the office of the monitoring of policies and regulations to protect the interest of both the public and private sectors in procurement. We note also the provision, which we endorse, for the development of a system for collecting and disseminating Government-wide procurement data.

Mr. Chairman, this concludes my statement and we stand ready to respond to any questions you may have on it.

Senator CHILES. We thank you very much for your statement. Your testimony is very helpful in that it expresses quite specifically how you think the Office of Federal Procurement Policy should be structured and the authority it should be given. I believe the bill conforms to your observations and qualifications. We do have several specific comments to make and questions to ask you to clarify your remarks.

I note that in your statement you say provision should be made for timely formal consultation with and comments by industry in developing procurement principles and policies, and for industry appeal of the Office's issuances to a higher executive level.

If we do that aren't we also going to have to put in "agencies," and is it not, then, going to be the higher executive level that becomes a procurement office on policy, wherever that is going to be? What are we going to do if we just say industry has a right to appeal, but the agencies don't?

Mr. LYLE. Mr. Chairman, I should make it clear we are not indicating that we favor the Office having any role in connection with the appeal with respect to specific procurements or contracts. We are simply talking in the administrative realm of policy and broad practice and regulation. We do feel though that as in any administrative process and situation—administrative process and not judicial in any sense—we should have the right to appeal to the next higher level of administrative authority to review a decision handed down by the Office itself. I think, in answer to the last part of your question, that the agencies in effect have that inherently in the process in the way the executive branch works.

Senator CHILES. Perhaps they do. My only concern is here we are trying to see that the departments try to bring some order and uniformity into regulations where that can be done, and try to determine whether or not they are fair. If they try to do that and both parties have a right to take that up, then wherever they are taking it up to probably becomes what we are trying to set up in this office.

Mr. LYLE. I understand your concern. Let me say it again this way, sir—all we are talking about, all that we are advocating here is the normal practice, in case of something on which industry feels very strongly, regard it as a very significant issue, very important to its interests, of the right to appeal to the next higher level of authority for review of the action.

Senator CHILES. Well, I would like to comment on the remainder of that paragraph when you say;

Finally, provision should be made for review by the Office of existing agency practices, policies, and regulations to determine conformity with Federal procurement policy, upon request by accredited industry organizations.

If that point is made in the legislation and spelled out and given as a right, how can we do this in conformity with your first request that we have a small highly professional office? Aren't we necessarily going to have a bureaucracy because any industry can say, "I don't like this regulation by this agency and I want you to review it?"

Mr. LYLE. In response to your question, Mr. Chairman, a couple of points: First, let me stress that we are not suggesting that the office review all issuances from the agencies, but simply that on a rifleshot basis, upon appeal or upon request by a responsible representative from the industry side, the Office look into in a specific area to see if

what that agency is doing—I am not talking about an individual contract, but the continuing practice or policy—conforms to the established policy, Federal policy, in the area.

Senator CHILES. I guess my concern is that is exactly what we want them to do. I think we are trying to spell out in broad language that they should review, and they should determine: Is there uniformity, is there fairness, is there consistency. I think if you spell out in legislation that the right of review is there for any industry that wants to appeal a regulation—and I don't know how we could draw in an accredited industry association as opposed to any contractor doing business with the Government—if you spell that out as a right, I think necessarily you have created a regulatory agency; and they are going to be bogged down in reviews in a quasi-judicial capacity.

Mr. LYLE. Mr. Chairman, the other point I wanted to make is that I am well aware that you have language in S. 2510 which goes a good way toward meeting what we were talking about, the section that includes among the functions of the Administrator the monitoring and revising as necessary of policies and regulations to protect the interests and integrity of the public and private sectors. We simply wanted to highlight that as an important feature.

Senator CHILES. Well, I note that you said in your statement that rather than commenting in detail at this time on the language of the bill, you felt it would be more useful to provide your suggestions, and you would be pleased to work with the committee staff to this end. We would like to take you up on that offer and ask you to give us your suggestions as we go along and as you have a chance to specifically study the bill to see whether it meets the criteria that you are setting forth, because we have some concerns. I think we agree with you very much in trying to keep this a small, highly professional group and not create just another sweeping regulatory agency. How we can do that and yet have it function is certainly going to be important.

Mr. LOVETT. Senator, on this point, may I say one thing?

One of our problems, and we have had experience with this, is that DOD issues a regulation and you later find down in a procurement operation out in the field something going completely awry, no conformance at all; DOD knew nothing about it until industry called it to their attention. That is what we are talking about. In other words, the guy who is doing the buying on the line is not complying with the overall policy which has been set by the higher level. That is really all we have in mind—we are not looking for a bunch of lawsuits to start and so forth.

Senator CHILES. The main thing is, you are trying to establish better communications, as I understand it.

Mr. LOVETT. That's right.

Senator CHILES. And you seem to feel it is better that the office be concerned only with fundamental principles and basic policy, excluding detailed procurement regulations, procedures, operating instructions, and forms. I would just like to make a few points on that score and then get your comments.

First, as you know, S. 2510 does not constantly refer to procedures and forms as does the House bill, as you note. Second, and more important though, principles and policies without any implementing action are like preaching to a choir. Take DOD's policy directive on major sys-

tems acquisition, Directive 5000.1; no matter how good or bad we think it is, you wouldn't expect it to accomplish anything all by itself without some implementing directives and regulations. The same thing applies to DOD's latest procurement policy fad, "design to a cost." You can enunciate the policy, give speeches about it, and tell how much money it is going to save and how much better procurement and weapons it is going to provide, but until design to a cost or any policy gets embodied in regulations and procedures, again you are fishing without bait.

I would like to get your comments on that.

Mr. LYLE. Mr. Chairman, I recognize that there is a great middle ground difficult to define precisely between us in the areas of judgment and semantics both, but our concern which has led us to try to draw the line between policy and regulation and bar the office from getting into this area represented by regulations and procedures and forms, is that we think this area is an administrative jungle, which will lead to a large bureaucratic machine just to keep up with the mechanics of it, and that this will impair the effectiveness of the Office and lead inevitably to a large, unwieldy, cumbersome operation which is not what apparently we are both after. To dramatize this and to exemplify it, I invite your attention to the armed services procurement regulations (ASPR), which is the body of procurement regulations for just one agency, DOD, admittedly one of the more complex agencies, as far as the procurement process is concerned, but the size of the ASPR and the task of keeping it current is staggering in its immensity. If you try to extrapolate this to the next higher governmental level and a single office establishing, developing, and maintaining a body of regulations for all agencies—if by regulations you mean the equivalent of ASPR—we simply think it won't work, and so it has to be confined to something more basic and in broader terms.

Senator CHILES. Again, I think we are both seeking exactly the same thing.

Mr. LYLE. That's right.

Senator CHILES. It is how we reach it. I am concerned that we don't so limit this Office that it can't do something about that body of regulations known as the ASPR.

Mr. LYLE. As soon as you say "regulation" to me, as soon as the bill appears with the word "regulation," that is what flashes through my mind, and I suspect to most professionals' minds.

Senator CHILES. Well, again, that is an area in which we would be delighted to have your suggestions as we go further.

Senator Roth.

Senator ROTH. Why don't you go ahead?

Senator CHILES. Why do you think the creation of the Office should be tied to the consolidation of procurement statutes, which is another specific recommendation?

Mr. LYLE. I would like to defer to Mr. Clark on this.

Senator CHILES. All right, sir.

Mr. CLARK. The intention of our statement, Senator, is not that it necessarily be sequentially done as proposed to the Congress, but that there be an essential relationship between the two in that both the proposal of your bill and the proposal of the Commission to revise the basic procurement statutes have as an end the simplification or clarifi-

cation of the body of law and the body of policy relating to the general topic of Government procurement. What we are proposing is not necessarily that S. 2510 could only, should only, be pressed in connection with a revision of the basic procurement statutes, but that it would be linked in the sense that they have the same objectives in mind.

Senator CHILES. I think another of our concerns is we are trying to bite off the Commission report a step at a time, and this is not going to be the only bite we are going to take at it, so we don't have to put all the eggs in this one basket. We have felt the more logical way is to go down the report, and it might well be that when we reach that portion of the report, we will want to look at this Office to see if this is where part of this could be done. But I think we are trying to treat the report just one step at a time.

In this connection, I would like you to know that the problem of major systems acquisitions, which was certainly an area that the Commission spent a considerable amount of time on, is going to be a high priority area for our subcommittee at a later date, some time next year. I would like to know if your association has paid any special attention to that part of the Commission report, and if you plan any activities to deal with it. That is, again, on a different subject.

Mr. LYLE. Yes, Mr. Chairman. We have two committees that are concerned with various aspects of the procurement and acquisition area: One is the procurement committee, and one is the research and engineering committee. Between these two, they have covered the entire report and determined the association position which we will use selectively as the occasion calls for it. But the research and engineering committee particularly has concentrated on the area of the major systems acquisitions portion, and we do have opinions on it, have done work on it, and are prepared to express ourselves later on as the occasion may call.

Senator CHILES. Again, we would invite you to have some of your people get in touch with our staff for this early input that you are talking about, because it is something we would very definitely be going into next year.

Mr. LYLE. The other input that we and the other defense-oriented industry associations, aerospace, electronics, the shipbuilders, and the old Ordnance Association, now the Defense Preparedness Association, have made, is that in response to an informal request from DOD, we put together a balanced industry panel from companies in all product lines which the DOD used as a sounding board for the development of executive branch positions on this same portion of the report, not from the standpoint of asking industry for input in the way that we were advocating earlier, that is not appropriate here, but saying, "If we take this kind of position, what will this do to you, what will the effect be on you?"

Senator CHILES. I see.

Mr. LYLE. I understand it has been quite useful to DOD and the other agencies concerned in the refinement and perfection of their positions.

Senator CHILES. I am glad to hear that. I think that could be useful.

Senator Roth.

Senator ROTH. Yes. Thank you.

I would like to dig a little further into what should be the responsibilities of the Office of Federal Procurement Policy. In your testimony, you make a statement that NSIA endorses the provisions in S. 2510 for the establishment by the Administrator of criteria and procedures for overseeing and upgrading the status of procurement personnel and so forth, and for sponsorship of research in procurement policies, regulations, procedures, and forms.

I'm sorry I missed that part of your testimony, but as I understand it, you don't feel that the Office ought to get involved in, say, the actual promulgating and drafting of regulations such as we have in ASPR. Let me ask you this question: Let's take an area; let's deal with something specific rather than in the abstract; let's take the problems of research. What would be the role of this Office in this area? Would they be the one that established the basic policies? Would you agree this Office should establish the basic procurement policies of the Government?

Mr. LYLE. In acquiring research and with respect to patent policy? Senator ROTH. I submit that only as an illustration.

Mr. LYLE. Yes, we see the office doing that to the extent that the situation permits uniform policies. It would prescribe underlying policies, which would, to the extent that they are applicable, govern the procurement operations and process of the several agencies.

Senator ROTH. But the office would establish the policy and then the specific regulation, such as in ASPR, would be drafted at that level.

Mr. LYLE. At the agency level?

Senator ROTH. Yes; at the agency level. Is that what you are proposing?

Mr. LYLE. Yes.

Now, going back to the Chairman's earlier observation and question on this, we fully recognize that the OFPP, the office, has got to do a complete, fairly elaborate job of setting forth this "policy," with all the attendant or necessary criteria and guidance that an agency has to have in carrying it out, but we feel it should let itself get immersed in the degree of procedural detail that is implied to our mind by the word "regulation."

Senator ROTH. You, like a number of others, have talked about a small office, but no one really defines what they mean by "small."

Mr. LYLE. Fifty.

Senator ROTH. Fifty, not more than 50? Are you talking about all personnel or just the policymakers?

Mr. LYLE. I am talking about the total staffing.

Senator ROTH. Total staffing?

Mr. LYLE. Maybe 25 or 20 policymakers or professionals, is probably a better way of looking at it.

Senator ROTH. Do you feel that we are giving sufficient authority to the office? Do you think its authority should be broadened; do you feel that the guidelines in the bill might be too sparse? We do say in the proposed legislation that it will implement those statutes on the books, which is pretty specific. But the question I raised yesterday, and I am raising with you, is how broad should the discretionary authority of this office be in areas not covered by the statutes? What brings this to my mind is that I recall there has been a lot of controversy in the past as to whether or not contracts should be used

to achieve socially desirable objectives. Has your industry been involved in this area?

Mr. LYLE. Let me work backwards. So far as the specifics you mentioned, the matter of the use of the contractual vehicle for socioeconomic purposes is now a matter of legislative fact, and so we can't expect the agency to have any authority to reshape or countermand the policies set forth by the Congress. That change would have to come from the Congress.

But, answering your first and broader term question, I would say that the bill is adequate with respect to the authority of the agency; it gives the proper scope. We think that scope should be hemmed in in several dimensions as we indicated. We think the bill pretty well reflects that. We suggested or implied certain modest changes to improve it, but we think that the bill gives the office proper scope. Mr. Clark may want to add to that.

Mr. CLARK. No. I think the language certainly encompasses in words like "monitoring" and "revising" the kind of policy action that we would hope such an agency would get involved in.

Going back to an earlier question of Senator Chiles', our thought when we suggested a means of calling attention to existing policy and regulation through accredited industrial organizations, or through other interested public groups, was that this was a means by which a small office could be informed as to developing patterns of policy implementation which public groups such as industry organizations might see as a trend or tendency away from that policy or procurement which was in the best public interest. So, again, that suggestion is directed toward keeping it a small, effective body.

In direct response to your question, Senator Roth, I think the language of the bill is aimed very much along the lines that we would feel appropriate.

Mr. LOVETT. Senator, I think there is one thing all of us have ignored a little bit, and I think it is very important to you Senators. Later in the bill you say that the office ought to come back and make a report to the Senate and the Congress, and I think this is a very valuable thing to you, particularly in areas like patent policy. There are many, many patent statutes now, and I think that this office could serve as a focal point, if you will, to keep the Congress advised as to what Government and industry needs and problems in this area are, and make recommendations for legislation, as you said. We have all ignored that in our statement, but I think it can serve as a great asset to you men in the Congress in the areas of patents, research and so forth, to advise you of all the conglomerate things that are now on the books that maybe ought to be consolidated. This applies also to some socioeconomic legislation, I would think, because many socioeconomic things that started in procurement in the thirties and forties have now been overtaken by specific legislation. Do we still need to use procurement as a vehicle for carrying out those policies, and things like that this office could do, I think, very, very well for you.

Senator ROTH. Yes, I think this would provide a very valuable vehicle for the Congress.

I have two proposals that I am considering which are somewhat related to what we are discussing. As one who thinks Congress ought to strengthen its role in these areas, and it's very difficult to accomplish, I wonder as the policy office announces new policies, new guidelines,

if Congress somehow shouldn't have some voice in it. We discussed yesterday the possibility of the power of veto. When new policies or guidelines are issued, it seems they ought to be reported to the Congress and it might take such action. I am not sure; would you gentlemen like to comment on this?

Mr. LYLE. I think I would favor the latter if I understood you. We feel strongly, as Mr. Lovett just indicated, that it is proper and good to require the office to report periodically to the Congress and make any recommendations deriving from the office's experience for the improvement of the process from the national point of view. But to blur the constitutional boundary by requiring it in effect to clear its actions or issuances with the Congress beforehand I think would tend to slow down the process, and do just what I said, to blur the authority and responsibility lines in a way that seem to us undesirable.

Senator ROTH. Well, I am concerned, where there are no guidelines laid down by the Congress and we give too broad authority, whether the Congress would have an effective voice in the operations.

Let me ask you a second question. I also intend to offer an amendment requiring the office to come back every 5 years for renewal. I think Congress ought to take a look 5 years hence and see whether or not the office has discharged its obligations, whether it has been helpful in procurement.

Mr. LYLE. We would applaud that; I think that is a good idea.

Senator ROTH. Thank you, Mr. Chairman. Thank you, gentlemen.

Senator CHILES. I would like to thank you and NSIA for your help and support in making Capt. Jim Harvey available to work with the Commission. I look forward to working with you and your staff further on this legislation.

Mr. LYLE. Thank you.

Senator CHILES. Thank you, Admiral, and gentlemen.

Our next witness will be Mr. Edward O. Leeson, executive director of the National Council of Technical Service Industries.

STATEMENT OF EDWARD C. LEESON, EXECUTIVE DIRECTOR, NATIONAL COUNCIL OF TECHNICAL SERVICE INDUSTRIES, ACCOMPANIED BY TIMOTHY RUSSELL

Mr. LEESON. Mr. Chairman, I am Edward Leeson, the executive director of the National Council of Technical Service Industries, and, with your permission, I would like to introduce my colleague, Mr. Timothy Russell, who, I might say in passing, was the originator of circular A-76, so I think we have some expertise of value.

Mr. Chairman, and members of the committee, we appreciate this opportunity to present the views of our council regarding S. 2510, a bill to create an Office of Federal Procurement Policy within the Executive Office of the President.

Our council solidly supports enactment of this bill for reasons which I shall explain to the committee.

Before doing so, however, I believe it would be helpful to briefly state the purposes and objectives of the National Council of Technical Service Industries and why our council is vitally concerned with the bill which your committee is now considering.

The National Council of Technical Service Industries (NCTSI) is a nonprofit association of major corporations which provide, by contract, a wide variety of support services that the Federal Government agencies require in carrying out their assigned missions and programs.

These support service activities, according to Government figures, total approximately \$20 billion annually. They include a wide range of activities required by the Department of Defense, National Aeronautics and Space Administration, the Department of Transportation, and many other agencies. They can be performed either by contract with private industry or by Federal personnel, civilian, and military.

Of these Government activities, estimated at an annual cost of \$20 billion, approximately \$11½ billion is performed in-house by Government personnel and \$8½ billion is performed by industry. A substantial portion of these private sector services are provided by NCTSI members.

We believe that in our present economy, where more than 60 percent of the working force is engaged in service-type industries and where the private sector provides these services in a competitive environment, Government should rely upon private industry to supply its requirements for products.

Our council is dedicated to that objective, which we believe is entirely consistent with the efforts of the Congress and the administration to reduce the Federal establishment in size and scope and to carry out the Government's functions at the lowest possible cost to the Nation's taxpayers.

Although there has been a longstanding bipartisan national policy that the Government will rely on the private sector to provide required services, as set forth in Office of Management and Budget (OMB) circular A-76, that policy has not been effectively implemented by the Federal agencies.

Mr. Chairman, and members of the committee, I wish to emphasize several points with regard to the statement that I have just made because this bears directly upon the need for an Office of Federal Procurement Policy which would be created by S. 2510.

It has long been recognized by this council that a vigorous and effective implementation of the national policy of reliance on private industry as set forth in OMB circular A-76, and predecessor directives, has not existed. Facts to support this assertion were developed and presented to the Government several years ago, along with recommendations for improvement in this situation. Those recommendations incidentally were developed by NCTSI and presented by NCTSI to the Government for implementation.

This view has been supported and documented in reports by the Comptroller General of the United States, after comprehensive reviews of activities in the civil agencies and in the Department of Defense. The Comptroller General has also made specific recommendations for improvement.

The Commission on Government Procurement, after extensive and lengthy studies, also unanimously reached the conclusion that a new approach and stronger implementation of the bipartisan national policy of reliance on private industry is needed. The Commission, however, was split on how to best achieve that objective.

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.

But, to date, there has not been effective action by the executive branch of Government. The September 19, 1973, report of the Comptroller General regarding progress of executive branch action on recommendations of the Commission on Government Procurement does not lessen industry's concern about the lack of executive overview and followup on implementation of policy directives and guidelines concerning Government competition with private enterprise.

It does not appear from the Comptroller General's report that current executive branch plans will provide the kind of overview and management direction that is clearly required by S. 2510. Section 6(b) of the proposed bill provides that the functions of the Administrator shall include the following:

(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.

This, in our view, is precisely the kind of high-level governmental management attention that is needed but which has been lacking in the past.

Accordingly, we strongly recommend and urge congressional approval and enactment of S. 2510 at the earliest practicable date.

Again, we appreciate this opportunity to present our views and will attempt to be responsive to any questions the committee may have regarding this statement.

And, Mr. Chairman, we would be delighted to answer any questions which you may have.

Senator CHILES. Thank you, Mr. Leeson. We appreciate your strong support of our bill which you express with great clarity.

The reasons you have given for support of the legislation should be of interest to all of your members. While passage of legislation would insure improved monitorship of the policy that the Government will rely on the private sector to provide needed goods and services, the subcommittee will follow with interest the executive branch response to the Commission's recommendations on this subject.

In your testimony, you said \$11 billion out of \$20 billion for support services were performed in-house. Do you have any figures as to how much of that could be contracted out to private sector companies?

Mr. LEESON. I would defer to Mr. Russell on this, who is quite well prepared.

Mr. RUSSELL. Mr. Chairman, the \$20 billion figure that was referred to in the testimony is one that was picked up during earlier hearings by the House Government Operations Committee's Special Study Subcommittee. The figure, the basis for the figure, is that provided by the General Accounting Office. The only breakdown that they were able to give at the time and, as far as I know since then, is that the in-house support service activities that were classified as commercial or industrial by the Government people totaled about

\$11½ billion and that the so-called contract support service figure was \$8½ billion. Of these amounts, the largest part was in DOD. I think we should mention that when you try to provide a definition of support service activities, it gets to be something that can be interpreted in many different ways by many different people.

Now, I would like to give you the definition that was used in this case to come up with the above figures, and I will quote it so that you can see how, what sort of a problem is presented, "Support services may be defined as any operation ancillary to the function of any agency which does not involve a product and can be performed by civil service agencies or by contract." So it is very difficult to get an accurate figure with that kind of definition.

Mr. LEESON. I think supplementing that, Mr. Chairman, this has been a controversial subject throughout the executive branch and all the procuring agencies, the exact definition, whether it is Websterian or whether it is personal in reaction is extremely vague. We assume that anything in addition to the technical definition that Mr. Russell just went through, which supports an activity, a weapons system, a product, an operation, systems management, systems analysis, automatic data processing, and similar types of operations which are in support of functioning goods, hardware, and material and management of those systems, is in the support service category. It is a broad-brush treatment, but it can't be narrowed down, and unfortunately, I think, in the past it has been bandied around much too regularly as being nothing but janitors and elevator operators. This is not so. It includes many hundreds of Ph. D.'s and highly qualified technicians.

Senator CHILES. I understand that.

What we are seeking is the figure. It would be much more meaningful if you would say the private industry is only doing \$8 billion and the Federal Government is doing \$11 billion. Unless we can break out how much of that \$11 billion logically and reasonably can be done by private industry, as opposed to being in some area that would not lend itself to being done by private industry, we don't really have a true comparison.

Mr. RUSSELL. Certainly I understand the thrust of your question, and I would like to say that the OMB Circular A-76 is addressed to what is termed "commercial and industrial activities." Now, the figures that are derived here were compiled in the light of that definition, and the agencies themselves say that of their in-house activities, \$11½ billion represent the kind of activities that are addressed by OMB Circular A-76, all of which could be performed by private industry. So I guess we can say that despite a pretty fuzzy definition of what these activities might be, the figure we have here is one that has been compiled by the Government agencies themselves and has been attested to by the General Accounting Office.

Senator CHILES. Could you give us your views on the request by OMB that we wait until next spring before we consider any legislation?

Mr. LEESON. That requires a certain amount of self-restraint. I think we have waited entirely too long. I think any further waiting on it is just purely marking time waiting for the flag to show up, and I don't think that flag is going to show up. I don't think we should waste any more time. Time is well beyond us, and I think that the very—perhaps this is being unfair to the Congress—but the very

ponderousness of the legislative procedures is going to take enough time as it is. It is high time we got on with it. I feel very strongly about that, Mr. Chairman.

Senator CHILES. Senator Roth.

Senator ROTH. Yes, I have one question. In your testimony, you say it has long been recognized by this council that a vigorous and effective implementation of the national policy of reliance on private industry, as set forth in OMB Circular A-76 and predecessor directives, has not existed.

My question is: Is this a policy that should be set forth in the statute, or do you feel that it is adequately covered now under directives?

Mr. LEESON. I think the Office of Federal Procurement Policy, in the statute as it would be written in 6(b), clearly spells out what we are asking for in the implementation of A-76. I think the policies in A-76 are clear, that the executive branch of the Government, and I guess the Government in its entirety recognizes the necessity and the desirability of depending on the private sector for support and services. I think the bill spells out that A-76 must be implemented. We have no statutory authority. We have no clout, and we have a relatively apathetic approach to the implementation of A-76 as its original impact was supposed to be intended.

I think the law, if it becomes a law, 2510, certainly in the bill as it is presented, gives us the opportunity to insist on an overview basis and not necessarily punitive regulation. I would agree with my colleagues in industry that punitive regulation might be a little too far, but in answering your question, I think the bill does give us the opportunity to get the implementation of A-76 which has not existed in the past.

Senator ROTH. You are referring to 6(b)(1) and 6(b)(2)?

Mr. LEESON. Yes, sir.

Senator ROTH. I must say in all candor I would agree that the language does not set any particular policy. It just says you will monitor its reliance, and it doesn't say what reliance. I want to take the opposite position; I think, under the responsibilities of Congress, we would have to spell out the policy.

Mr. LEESON. Well, we could certainly welcome this action. We do not read in the law as written in 2510 anything which specifically says you must regulate A-76 and become punitive in the process. I agree, we are assuming that monitoring and revising are necessary, and such monitoring would be of a regulatory nature.

Senator ROTH. It says 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. To me it doesn't state any basic policy as to what extent that reliance should be, which I thought was the crux of your testimony.

Mr. RUSSELL. Senator Roth, of course you will recall that the Commission on Government Procurement after having studied this in depth for about a year and a half, this problem as well as many others, did in their final report come up with their recommendation, which was recommendation No. 22, that there should be provided through legislation a national policy to rely on private enterprise for needed goods and services and, of course, if that were to be done it would very well clear up that problem that I think you have in your mind.

On the other hand, I suppose there is room for the view that during the entire history of this country there has been an acceptance of the proposition that we do have a private enterprise system and that the Government will do only those things which a government should do. But recently that policy has been bent out of shape.

Mr. LEESON. I think, in summation, Senator, we would welcome any strengthening of the language of the bill which would insist on the proper implementation of the policies as set forth in A-76.

Senator ROTH. Thank you very much.

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

Mr. LEESON. Mr. Chairman, may I read into the record for the moment, I asked yesterday if I could put into the record an exhibit A and exhibit B which were in essence submissions we made in a lawsuit in direct context with what we are talking about here, which is a lawsuit between the *AFGE v. McLucas*, and the Air Force relative to rifing and contracting out.

Senator CHILES. We would be glad to receive those.

Mr. LEESON. They are submitted to you.

Senator CHILES. Looking at the size of one of the briefs there, our cost constraints are necessarily going to cause us to put in a memorandum or some digest of that document. But we would be happy to have you submit that to the committee and we will make some kind of a digest for it.

Mr. LEESON. It has been submitted and we thank you, sir. We thank you for the privilege of being here.

[The information referred to follows:]

RELEVANT EXTRACTATIONS AND CONDENSED MATERIAL FROM THE TESTIMONY OF EDWARD C. LEESON, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, VERSUS THE HONORABLE JOHN L. MCLUCAS, SECRETARY OF THE AIR FORCE ET AL.

Edward Leeson, Executive Director of the Council of Technical Service Industries, submitted on behalf of the plaintiffs exhibit A and exhibit B to support the contention of the plaintiffs that the Air Force Department should be enjoined from reducing its current work force which has been traditionally provided by member companies.

I. EXHIBIT B—CRITICAL ANALYSIS OF OPINION OF CIVIL SERVICE COMMISSION RELATING TO LEGALITY OF HIRING CONTRACT TECHNICIANS BY THE DEPARTMENT OF THAT OPINION TO SUPPORT CONTRACT

(a) The gist of the report is contained in major points that the courts have traditionally recognized the broad powers of government agencies to contract for services in carrying out their functions.

(b) That only Congress can limit the agencies and their ability to utilize contracts for special services.

(c) That the Civil Service Act should not be used as the exclusive vehicle for securing all personnel services for the government.

(d) That the General Counsel's of the Civil Service Commission opinion on support contracts does not apply to the case under litigation, and

(e) That previous statutory provisions are not applicable in this case.

II. EXHIBIT A—A COMPILATION OF THE BASIC FACTS WHICH CREATED THE CIRCUMSTANCES UNDER WHICH THE SUIT WAS ENTERED

The primary contention of the plaintiff is found in the challenge of the American Federation of Government Employees, AFL-CIO vs. Honorable John L. McLucas, Secretary of the Air Force, et al. in the United States District Court for the Western District of Texas, San Antonio Division.

Senator CHILES. Our next witness is Mr. Matthew S. Perlman, a partner in the law firm of Arent, Fox, Kintner, Plotkin & Kahn, where he specializes in public contract law.

**STATEMENT OF MATTHEW S. PERLMAN, ATTORNEY,
WASHINGTON, D.C.**

Mr. PERLMAN. Thank you, Mr. Chairman.

I want to state at the outset that I come here expressing my own views developed in 13 years of Government procurement practice as a Government lawyer and as a private practitioner. I am not representing anybody as I appear today.

I believe that the single most important recommendation of the Commission on Government Procurement was the establishment of the Office of Federal Procurement Policy. Most other recommendations of the Commission—and there are many excellent ones—relate to particular policies which will change in time as they are affected by varying conditions. But establishment of OFPP is establishment of an institutional framework within which policies can be developed to handle new situations as they arise. S. 2510, like H.R. 9059, would establish the constitution, so to speak, for the promulgation of procurement regulations and policy. I heartily recommend its passage.

I agree with the reasons stated by the Commission on Government Procurement for the establishment of OFPP. The necessity for uniformity of procurement regulations to the extent practicable cannot be overemphasized. The danger today is that regulations of the various agencies, are close but different—you think they are the same when they are not. It is not very hard for contractors and lawyers to become confused. Professionalism is another good reason cited by the Commission for OFPP. Professionalism in procurement policy varies widely from agency to agency, and while the best agencies are highly professional, some agencies with which I deal are incredibly naïve in Government procurement.

But the most important advantage I see in the new OFPP is separation of the procurement policy function from the day-to-day performance of the procurement function of buying. I would like to take a little time to expand upon the importance of this independence.

As we all know, the Government is generally the buyer in our procurement system; industry is generally the seller. Those who write procurement regulations today and establish procurement policy today think of themselves as buyers. They set the contract terms and conditions on which the Government buys to favor the buyer in almost every conceivable case. If a court or board finds that a clause favors the contractor, more often than not we see a quick amendment of the clause. While longtime Government contractors may be inured to the inequity of many current ASPR, FPR and agency clauses, those new to Government contracts are often appalled and shocked. In numerous instances, I have seen clients refuse to bid Government work because of the risks and bureaucratic controls the terms and conditions impose upon them. In other instances, I get clients who did not read or appreciate the boilerplate they agreed to and find themselves in deep trouble in situations in which they are not culpable. They do not believe that their Government would be so unfair to them in writing its contracts.

I do not blame those who write procurement regulations today for this situation. They are paid to write for the buyer and they do just that, as lawyers for manufacturers or insurance companies write terms and conditions that favor their clients. As consumer interests point out these days, such one-sided provisions are not right when imposed by manufacturers or insurance companies, and they are not right when imposed by the Government procuring agencies. In fact, when Government agencies do impose unfair provisions, they often find them self-defeating since they cannot enforce them due to bankruptcy or the refusal of contractors faced with bankruptcy to carry out their bargain—witness the C-5A and the F-14. But for everyone of those situations where major contractors avoid disaster, there are hundreds of similar situations for small- and medium-sized businesses who do not get the relief Lockheed and Grumman did.

The standard answer is that the contractor never had to agree and could have not bid. But that is no answer for either the small business that does not understand the terms and conditions he is agreeing to or the contractor whose only customer is the Government and who has the choice of going bankrupt for sure if he loses the business and only maybe going bankrupt if he signs the one-sided contract—after all, he reasons, there is always a chance the critical risk may not occur.

To be effective, the Office of Federal Procurement Policy must be independent—it must regard itself as neither the buyer nor the seller, but as an arbiter between them. It must listen to the buyer and to the seller—to the Government agency and to the contractor—and it must establish procurement policies and, contrary to some of the other witnesses this morning, I believe it should establish regulations, which will give the Government the products and services it needs at fair and reasonable prices, on terms and conditions which promote efficiency, yet which are fair to those with whom the Government does business.

I believe one of the distinct advantages of S. 2510, over H.R. 9059, is that S. 2510 sets forth a series of purposes which are significantly broader and more enlightened than the purposes which guide those who make procurement policy today. The call in section 2(11) for fair dealing and equitable relationships goes to the one-sidedness of clauses of which I spoke earlier. The call in section 2(9) for minimizing disruptive effects on particular industries, areas, or occupations is something that is important but largely ignored today. The call in section 2(4) for avoiding or eliminating unnecessary or redundant requirements on contractors and Federal officials, while occasionally given lip service, certainly deserves the emphasis the bill gives. These purposes, like the other nine purposes in section 2, are well suited to guide OFPP in its very difficult task.

I note that S. 2510, would place OFPP in the Executive Office of the President. I would suggest that there are some disadvantages in placing OFPP in the Executive Office of the President. For one thing, recent history shows that being in the Office of the President will not necessarily give the Administrator access to the President and the power that implies. One need only look at something like the Office of Science and Technology to demonstrate this point. Furthermore, I think we all recognize, and the Procurement Commission report was excellent in this regard, that what we need in Government procurement is professionalism. Procurement policy in my view is

not a partisan matter. We all, whether we be Republican or Democrats or Independents, want efficiency, colloquially speaking, we all want the most bang for the buck. Nobody wants unnecessary or wasteful procurement. The problem is not the principle but how to achieve it, and in my experience, disagreements between individuals on how to achieve the goal seldom turn on principles of conservatism or liberalism or have much correlation with political labels. The Office of the President is necessarily political, and I believe it would be wiser to establish OFPP in as close to professional and nonpolitical setting as possible. It should be responsive to the Congress as the Commission suggests and should be responsible to the President for good performance, but it need not be part of the White House structure for this.

I would suggest that OFPP be established as a regulatory agency with five commissioners like the FPC or the FCC or the CAB. Such an organization would have continuity which an office in the Office of the President would lack, but not so much continuity as to be stifling, at least hopefully. It would have the independence, which the Commission points out is necessary, and I believe under the act as it is currently proposed, it would have power. It would have power because the law gave it power. It would have power because agencies that did not follow the promulgations of OFPP would find themselves faced with protests and lawsuits which would effectively enforce the edicts of OFPP. You can be sure that we lawyers will not let the Office of Federal Procurement Policy's regulations or procurements which the law says agencies shall follow, be avoided. The "Shall be followed" language of section 6(a) seems sufficient to me. But if there is any doubt, strengthen that language and you will have the "directive" authority the Commission so rightly said was necessary.

One provision of the bill seems to me to run contrary to the general purpose of the legislation. That is section 6(d)(3), which section states that the act should not be construed to impair or interfere with the procedures and forms used by executive agencies. One of the bill's purposes is to introduce uniformity and simplicity into the procurement process, and this purpose would be greatly served by standard procurement forms and uniform procurement procedures, at least in some instances. I would be disappointed if section 6(d)(3) made it difficult for the Administrator to require standard forms and uniform procedures. While the Administrator might be able to use the exception to the exception in section 6(d)(3) to achieve desired uniformity, the exception seems to create a needless obstacle. I see no real purpose for the exception in subparagraph (3), and I suggest its deletion.

In conclusion, I would like to commend the authors of this bill for a very fine effort, and I would like to urge passage of the bill. The changes which I and some of the other witnesses have suggested, I think, are far less significant than the basic bill. I think it would do a great deal for Government procurement.

Senator CHILES. We thank you very much for your testimony, Mr. Perlman.

Is it your feeling that putting the Office in the Executive Offices of the President does not guarantee that the Administrator is ever going to be able to see the President or have any clout?

Mr. PERLMAN. Yes, sir.

I think the best chance for clout comes from the fact that, like the ASPR and the FPR now, what this office comes down with, will have the force and effect of law, and there are a number of forums in which this law can be enforced. I also think the procuring agencies are going to, by and large, follow OFPP's edicts which have the force and effect of law without any compulsion.

Senator CHILES. How do you feel about the provision that would place it in OMB?

Mr. PERLMAN. I think OMB would be a better place than in the Office of the President. OMB has been a highly professional organization for many years. However, I think there are some problems in placing it with OMB. The Congress and the President have an argument about whether the Administrator and the Deputy Administrators must be confirmed, and it seems to me that the OFPP Administrator or whoever heads OFPP should be confirmed by the Senate. I think for that reason, it may be impractical to put the organization in OMB.

Senator CHILES. I would like to cite to you a couple of objections that are raised when you talk about setting up a regulatory agency of the kind you have suggested, and then have your comments with regard to these objections.

One would be the argument that when policy becomes identified with the consensus of a committee or board, it is fragmented into a series of ad hoc decisions which make it difficult to achieve a sense of direction or even profit by experience. Substantive problems are translated into administrative ones, and then confused with purpose. There is greater concern with how things are done than with which things are done.

Mr. PERLMAN. Well, as you know, today's procurement policies and procurement regulations are largely developed by a committee. I spent a good deal of time a few years ago working on the ASPR Committee, and am well aware of such problems with that committee made up of an OSD chairman and eight people representing various Government constituencies. There is no question about the fact that an individual has decided advantages over a group in making decisions.

I believe that we are talking about what is essentially a regulatory process, and that we have had reasonable success with the various regulatory bodies that we now have—the CAB, the Federal Power Commission, or what have you. In such an organization, the chairman normally has a good deal of control over the staff. He has the problem of selling what he has come up with to the other members, and certainly you may have undesirable compromises as a result. But you may have a single individual reaching an undesirable result, too.

Senator CHILES. There is the other argument that much of the committee approach is designed to permit participants or agencies to register objections. Thus the thrust of the committee is toward a standard of average performance or a maintenance of the status quo.

Mr. PERLMAN. Well, Senator, I don't look upon these members of this Commission, if I can call it that, as being representatives of any particular agency. It seems to me that they will all have the same function and have been named in the same way that the administrator would be named under your bill. Their job would not be to represent agencies. They would necessarily consider the views of various agencies, but they would come up with what they thought was the best

proposal. I don't fear the particular problem to which you refer would be a problem so long as the people were totally independent.

Senator CHILES. Another concern, if we were setting up a commission of, say, five members, how would you set forth the qualifications of these people? Some of the regulatory agencies we have now are pretty strong toward industries which they are supposed to regulate. While you are complaining of the present policy being very, very much one-sided toward the Government, there would be reason for great concern if we had five people appointed through one administration or another who were representing the sellers.

Mr. PERLMAN. Senator, there would be equally great concern on my part if an individual represented the sellers instead of the buyers. I think that whether we have an individual or a commission we obviously have this problem. The people, the single man or three men or five men who are appointed have to approach this as truly independent and as representing neither buyer nor seller. I would have to trust to our processes of appointing men. I don't think any proposal can eliminate the problem to which you refer. You could also have a very probuyer appointee. I think the hope is that that wouldn't occur.

Senator CHILES. Your testimony indicates that both small and large businesses would welcome the legislation we are proposing. In your dealings with contractors, have you observed any negative reaction to the establishment of a Federal Office of Procurement Policy such as we have under consideration?

Mr. PERLMAN. I haven't really observed any negative reaction or a great deal of positive reaction. You know, when you are establishing a new institution, nobody knows what that institution is going to mean for the particular company, and while it is very easy for someone to say this clause ought to be changed or that ought to be different, to judge OFPP, a contractor must make a judgment as to whether this commission will agree with him on key matters. But I believe that this is a bill that the industry ought to be for and that if this body turns out to be independent, representing neither the buyer nor the seller, I think industry stands to gain fairness. Some companies may find that in particular areas the OFPP is much tougher than the current administrators are, but I don't think this is terribly important. Let the chips fall where they may.

Senator CHILES. I see.

We have noted your caution concerning the language of the bill relating to the authority of the Administrator with respect to procedures, and we will certainly take this into consideration. It was our feeling that our exception to the exception would apply to the procedures if the Administrator got into a place where we were trying to get uniformity in a field. We will certainly look at that.

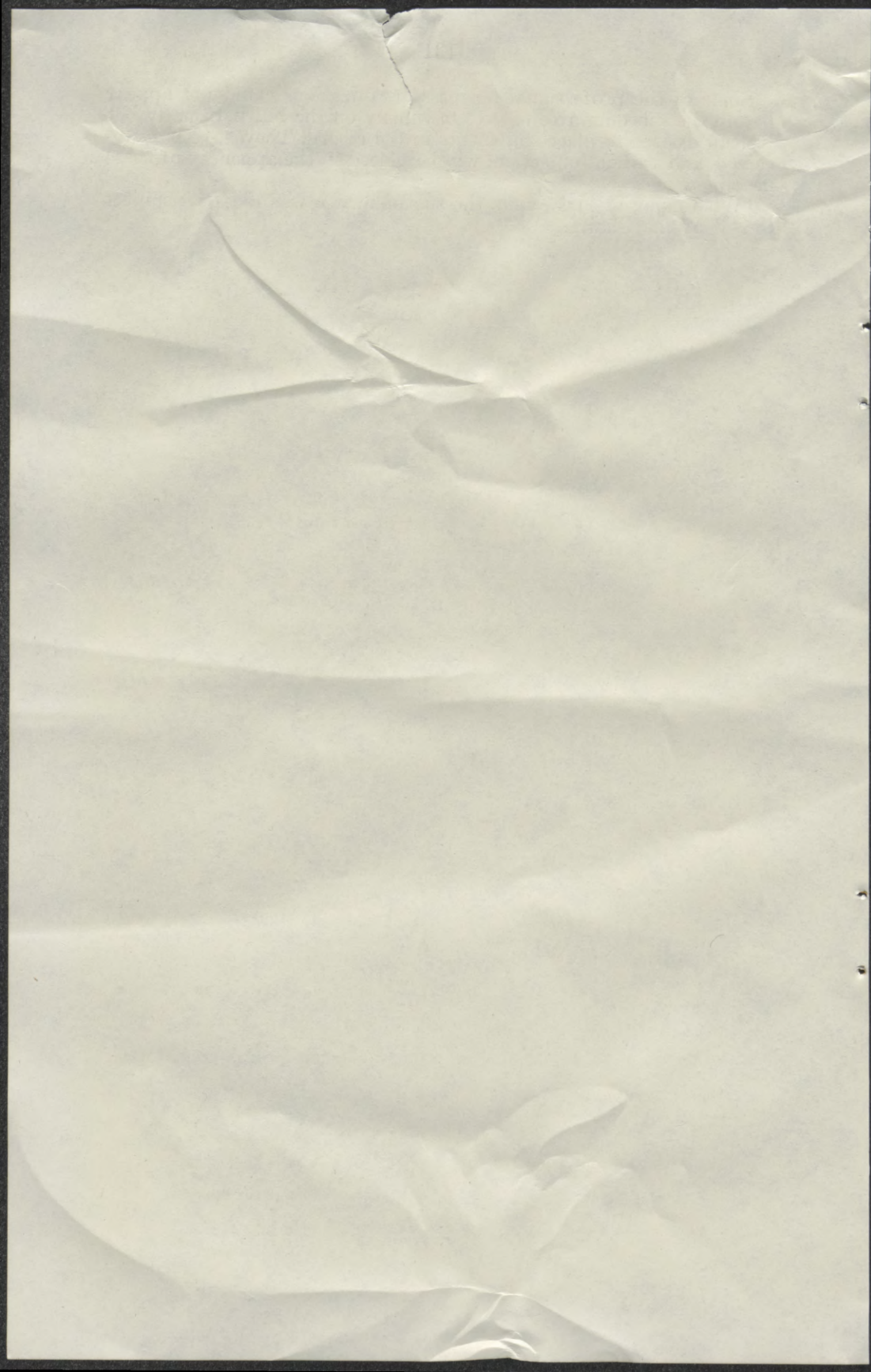
We want to thank you for your fine statement and for taking the time to come up and give us your views. I would like to solicit your continued help in the work we are doing.

Mr. PERLMAN. Thank you, Senator.

Senator CHILES. This will conclude this series of our hearings. We will recess probably until a date next week, but because of markup hearings of the full committee on the budget control bill, we have not been able to set definitely the time of our next hearings. As soon as we have a time, the staff will make the proper announcements. We will now recess until further hearings are scheduled.

Some of the professional business organizations could not appear before the subcommittee to give testimony on the bill personally but instead desired to place statements in the record. They have been received, and without objection, will be placed in the appendix of these hearings.

[Whereupon at 11:45 a.m., the subcommittee was recessed, subject to call of the Chair.]



ESTABLISHING OFFICE OF FEDERAL PROCUREMENT POLICY

WEDNESDAY, NOVEMBER 14, 1973

U.S. SENATE,
AD HOC SUBCOMMITTEE ON FEDERAL PROCUREMENT,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:30 a.m., in room 3302, Dirksen Senate Office Building, Senator Lawton Chiles, presiding.

Present: Senator Chiles and Nunn.

Also present: Lester A. Fettig, staff director; Loren Murray, professional minority staff; Bob Harris, administrative clerk; and Elizabeth Aiken, clerical assistant.

Senator CHILES. Today we will continue hearings on legislation to create an Office of Federal Procurement Policy in the Executive Office of the President.

Since we have a large number of witnesses this morning, I will insert some material in the record now.

First are comments from the Advisory Commission on Intergovernmental Relations.

Hearing no objections, so ordered.

[The material referred to follows:]

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS,
Washington, D.C., October 17, 1973.

HON. SAM J. ERVIN, Jr.,
Chairman, Committee on Government Operations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Advisory Commission on Intergovernmental Relations on S. 2510, "A Bill to create an Office of Federal Procurement Policy within the Executive Office of the President, and for other purposes." The Commission has not probed specifically the issues raised by this proposed legislation and hence offers no formal comments. At the same time, certain intergovernmental questions are raised by the proposed legislation and staff offers the following informal reactions for Committee consideration:

In Section 2, an item might be included relating to the coordination of Federal procurement policy and programs with those of State and local governments as well as to minimizing the possible disruptive effects of such Federal policies and programs on these other units of government.

Under Section 4, a definition of Federal assistance programs might be included.

Under Section 6(c), consultation with State and local governmental representatives might be added.

Finally, the exact nature of the feasibility study called for under Section 15 is somewhat unclear.

Thank you for the opportunity to review and comment on S. 2510.

Sincerely,

ROBERT E. MERRIAM,
Chairman.

Senator CHILES. I also have here some letters forwarded to the subcommittee from Senator Burdick.

[The material referred to follows:]

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., November 2, 1973.

Hon. LAWTON CHILES,

Chairman of the Ad Hoc Subcommittee on Government Procurement Operations Committee, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: On October 31 your Subcommittee began hearings on S. 2510, a bill to create an Office of Federal Procurement Policy.

Some strenuous objections have been raised by two of my constituents in North Dakota in regard to a similar bill which was introduced earlier in the House of Representatives. I am enclosing the two letters objecting to the House bill so that your Subcommittee may know of the concerns that have been raised. If possible, I hope they will be made a part of the record of the hearings.

With kind regards, I am

Sincerely,

QUENTIN N. BURDICK.

Enclosures.

DAKCO DISTRIBUTORS, INC.,
Minot, N. Dak., August 16, 1973.

Hon. QUENTIN N. BURDICK,
*U.S. Senator, Senate Office Building,
Washington, D.C.*

DEAR SENATOR BURDICK: You may be aware that Congressman Chet Holifield (D-Ca) and Frank Horton (R-NY) under H.R. 9059 have introduced provisions therein which would set up a new independent office of Federal procurement policy which would have the power to let grantees buy equipment materials and services of all kinds from or through the GSA.

Gentlemen, we feel this would be an absolute competitor to private business and do not see the fairness in it whatsoever.

Your cooperation in opposing such legislation would be very much appreciated less we become divided as a nation of government benefactors and taxpayers on the other hand.

Sincerely yours,

DAKCO DISTRIBUTORS, INC.,
R. F. SAUNDERS,
President.

MINOT, N. DAK., September 4, 1973.

Senator QUENTIN BURDICK,
Senator MILTON YOUNG,
Congressman MARK ANDREWS,

GOOD MORNING, HONORABLE CONGRESSMEN: H.R. #9059 introduces provisions therein which would set up a new independent office of federal procurement policy which would have the power to let grantees buy equipment, materials and services of all kinds from or through the GSA.

No longer would the cities and towns be dealing directly with the business community. Also your local schools and hospitals will be purchasing according to federally established standards and from federal warehouses, instead of from the local business community.

I firmly oppose all efforts to establish Federal procurement for all states, cities, counties, universities, hospitals, police departments, and both public and private institutions which receive financial aid from the Federal government. It is unsound public policy, it is a vast extension of the government into the private sector, and it violates the long time principle embraced by the Congress of reliance on private enterprise to the greatest extent possible.

Cordially,

MARV LUNDEEN.

Senator CHILES. I want to express my gratitude to today's witnesses for adjusting their schedule in light of our having to postpone their appearances.

Our first witness today is Mr. A. I. Mendolia, Assistant Secretary of Defense for Installations and Logistics.

Mr. Mendolia, we will listen to your statement carefully, since the Department of Defense plays such an overwhelming role in procurement, nearly \$40 billion a year.

If you will please come forward.

STATEMENT OF HON. A. I. MENDOLIA, ASSISTANT SECRETARY OF DEFENSE (INSTALLATIONS AND LOGISTICS), ACCOMPANIED BY JOHN M. MALLOY, DEPUTY ASSISTANT SECRETARY OF DEFENSE (PROCUREMENT); AND STANLEY NISSEL, OFFICE OF THE ASSISTANT GENERAL COUNSEL, LOGISTICS

Mr. MENDOLIA. Mr. Chairman and members of the committee, I appreciate the opportunity to comment on the proposal to establish an Office of Federal Procurement Policy (OFPP). I have with me Mr. John M. Malloy, Deputy Assistant Secretary of Defense (Procurement), and Mr. Stanley Nissel, Office of the Assistant General Counsel (Logistics), both of whom have had extensive experience in the field of procurement. I will look to them for assistance in responding to your questions and in trying to be as helpful as possible to the committee.

This bill would establish, following the first recommendation of the Commissions on Government Procurement, an office to provide overall guidance and direction of procurement policy and to prescribe policies and regulations for the executive agencies.

The Department of Defense (DOD) procurement would very probably dominate the interest of the Office of Federal Procurement Policy proposed by S. 2510, since DOD currently does about 75 percent of all Federal contracting, excluding grants. Therefore, DOD does have a very definite interest in what the composition and role of any such office would be.

In many ways, the Office of the Secretary of Defense now performs, for Defense, most of the typical functions that might be assigned to the Office of Federal Procurement Policy. The military departments and the defense agencies are responsible for placing all DOD procurement. It is the responsibility of the Office of the Secretary of Defense to establish policy and to monitor the procurement process throughout the Department. This responsibility is carried out in close coordination with the military departments and defense agencies, and is responsive to their procurement needs. The interests of other agencies are also considered, in order to assist in the application of uniform policies throughout the executive branch wherever practical. The General Services Administration (GSA) has the responsibility under the Federal Property and Administrative Services Act of 1949 to establish policy for the civil agencies. We coordinate with GSA on a continuing basis in the interest of achieving uniformity between the two sets of regulations whenever this is desirable.

The DOD is very much in favor of increased cooperation and coordination on a Government-wide basis to improve the procurement process. The report of the Commission on Government Procurement enumerates several areas in which purchasing policies and regulations can be improved. The procurement of goods and services accounts for

one-quarter of the Federal budget—over \$50 billion annually—and involves millions of procurement actions or transactions each year. It would be naive to pretend that a business of this magnitude is so well run that it cannot be improved. It is only natural to expect that in such a business there will be errors, human failures, and mistakes of judgment. We know that we make mistakes. We are not looking for ways to hide them. On the other hand, we certainly don't take the view that, because mistakes are an inevitable part of the system, no improvement is possible or worthwhile. We are receptive to worthwhile recommendations for improvement. We are working continuously to improve, to insure that errors are not repeated, to employ new techniques, and to evolve a better procurement process.

In addition to the longstanding practice in DOD, which I have described, there are new ongoing efforts which stem directly from the work of the Commission on Government Procurement. You are familiar with the Executive order which transferred several functions from the Office of Management and Budget (OMB) to GSA and resulted in delegating to GSA the responsibility for developing executive branch positions on the recommendations of the Commission. GSA has set up a new office of Federal Management Policy to carry out its new functions. The Office of Management and Budget has set up an interagency planning committee composed of representatives of the major agencies to assist GSA in developing positions on the Commission recommendations. There is a good spirit of cooperation among the agencies and much dedicated effort by very experienced and knowledgeable procurement personnel. DOD is heavily engaged in the present interagency effort. The comprehensive program is indicative of what can be accomplished under present arrangements. The current effort is proceeding very well, and I know of no reason why interagency cooperation cannot be improved, solidified, and continued on a permanent basis, under OMB leadership. As you know, Mr. Chairman, it is impractical to try to completely separate procurement policy and procurement regulations from day-to-day operations. Procurement is a critical and integral part of each agency's mission. Thus, agency heads must have some voice in the formulation and resolution of procurement policy and regulations. This can be accommodated under present authorities, through interagency coordination, and does not require legislation. It would simply be an extension on a Government-wide scale of the kind of leadership in procurement policy and regulation which DOD has provided to the military departments for the past 25 years.

We do not believe it necessary at this time to create a new statutory agency simply to provide leadership. OMB is capable of providing the necessary leadership to maximize interagency cooperation. We have recommended to OMB the creation of a small, competent Federal Procurement Council. This would be comprised of representatives of several agencies and would coordinate matters of interagency concern. The Council would be chaired by the OMB. Disagreements in the Council would be resolved by OMB; and if directives are necessary, they would be issued either by the agencies themselves or by OMB, as appropriate.

In view of the ongoing efforts and the additional measures which are being planned in the executive branch, Congress should provide

a reasonable period, say a year, for the evolution of a working concept for carrying out the improvements recommended by the Commission and dictated by our own experience. I think we should apply the "fly-before-buy" philosophy here to the evolution of improvements in procurement in much the same way that we in DOD apply it to weapons system acquisition. There is too much at stake not to give the ongoing executive branch efforts a reasonable time to work things out. The challenge to all of us to continue improving the procurement system and to provide the best guidance, regulations, policies, and procedures to our contracting people is a never-ending one. The improvements that are needed require the concerted effort of those agencies which are engaged in the procurement function. It would be unrealistic to expect that the creation of an independent agency or office will automatically cure all the current deficiencies in the procurement field. Legislation in this important area should be deferred until a mechanism such as a Federal Procurement Council has been given an opportunity to improve Federal purchasing. The establishment of an OFPP by statute is a step which should be undertaken if the executive branch fails to deal adequately with the matter. Such a statute would set in motion a whole host of actions, from which retreat is very difficult at best.

In closing, we share your concern with improving the effectiveness of the procurement process and the DOD will assist in every possible way. However, we believe it would be best to await the implementation of the OMB plan within the executive branch before enacting legislation.

Senator CHILES. Thank you very much for your statement. You state that the Department of Defense is very much in favor of increased cooperation and coordination on a Government-wide basis to improve the procurement process. The Office of Management and Budget witness said the same thing, and he added that there is need for improvement in the central procurement leadership in the executive branch. Of course, all of this boils down to one key question, can we best provide this leadership by legislation or voluntary coordination?

Let's take a look at exactly how this question was settled in your own Department. As you describe it, the Office of the Secretary of Defense now provides the same procurement policy leadership for the Department of Defense as an Office of Federal Procurement Policy would provide for the executive branch as a whole. What you have done for the Department of Defense, we propose to do for the entire executive branch.

Isn't it true that the reason the Department of Defense has central leadership is because you have statutory authority in title 10 of the United States Code, section 2202, which gives directive authority to the Office of the Secretary of Defense so that your office can function as the focal point for procurement policy over the military departments and defense agencies?

Now, could you have accomplished what you have with advisory authority alone, without legislative authority?

Mr. MENDOLIA. Mr. Chairman, it is our belief that OMB, if it were to be selected as the lead agency, has the necessary clout to provide directive authority in the areas where coordination or cooperation doesn't come about. Our presumption is that they could provide that directive authority.

Senator CHILES. But do they have the same directive authority that the Office of the Secretary of Defense has over the defense agencies?

Mr. MENDOLIA. Not by statute but, as I said, by the clout of the budget, their view could prevail if the agencies could not agree. I guess our view is that that is worth trying before we take legislation to bring that coordination about.

Senator CHILES. Without new authority, without new legislation, is the OMB authority to prescribe procurement policy legally binding on DOD, which has statutory authority?

Mr. MENDOLIA. Well, we have the authority at the present time.

Senator CHILES. Of course, what we continue to get is the answer that OMB can do it. I think OMB could have the clout, but I think what we are talking about is not just this 6 months, or this OMB Director, or this President, we are talking about procurement policy that is going to continue forward until the next time it gets looked at which may be another 20 years before there is a Commission study or there is someone who looks at it again. I have a hard time seeing how, when DOD has only been able to take the steps they have by virtue of having statutory authority, you could say that this voluntary thing is going to work. OMB could have done this last year or the year before or a few years before that, but they didn't.

Mr. MENDOLIA. I think it is fair to be skeptical about the likely success of cooperation and coordination based on the past record. But I think it would be fair to evaluate the impact of the Commission on Government Procurement and see what comes out of the very comprehensive list of recommendations. I am impressed with the fact that here within 1 year after the publication of the Commission's report, so much progress has been made. For instance, DOD is the lead agency on about 52 of the 149 recommendations. We expect by the end of this year to have accomplished the development of our position on 41 of those. In other words, 80 percent. And we expect to have 20 percent of them finished by the middle of next year.

Now, it took the Commission 3 years to develop its posture. It did an outstanding piece of work and it was the catalyst for a reexamination of this whole area. I think it was a necessary piece of work. I think it is going to take a fair amount of time to digest those recommendations. To me it would be desirable to give the executive branch an opportunity to see whether it could, in fact, bring about agreement heretofore has been difficult. If that process fails, then the Congress ought to say that the executive branch isn't capable of doing it and pass the necessary legislation.

I would think a year would be a reasonable period of time in which to let the process work. Then, if legislation is required, it could be designed perhaps more effectively to do what you and the Congress would like to see done.

Senator CHILES. Well, I appreciate that view. I think the concern we have on the other side of the question is that the Commission report is getting older every day. While there certainly has been impetus from the executive branch on the Commission report, we are concerned and we want to see how long that drive will stay.

Mr. MENDOLIA. Surely.

Senator CHILES. How long will that continue if the Congress isn't actively pursuing the report itself and showing the importance that it

feels that the report has? You say it would take another full year. OMB said only 5 months.

It strikes me that on a smaller scale you have really been sort of flying your DOD approach for a long time and with the necessary legislative authority and congressional backing. In our view, the "fly before you buy" has already taken place as far as DOD's experience is concerned.

We are not proposing something that is radically new. We are just trying to continue on a larger scale what has been successful already in the DOD operation. I would like to have your opinion as to whether you think that by pooling the collective experience and the expertise of DOD and GSA in developing multiagency procurement policy and putting that experience under strong central leadership, we could make quantum improvements in procurement policy governmentwide?

Mr. MENDOLIA. It is my understanding, and I am speaking from a very limited experience, but my understanding is that between the Armed Services Procurement Regulations and the Federal Procurement Regulations, those regulations cover a large percentage of the Federal procurement right now. We think that with the leadership of the OMB to help resolve some differences, the present mechanism could establish governmentwide policy.

We think that the GAO's reporting to the Congress on the progress of the executive branch action on the recommendation of the Commission is a useful tool to keep the Congress apprised of the effectiveness of this coordinated effort. If, in the Congress' view, the executive branch is not responsive, then I think it would be appropriate to do as you say. But, as I have read the testimony thus far, I sense a void in the lack of a clear definition of how the Office of Federal Procurement Policy would, in fact, work. There is a broad concept. I think it would be desirable to have OMB establish the office it plans. They are in the process of trying to fill a slot. Have them pull together the process and, with the recommendations and provisions that are being collected (and a lot of them are ready for coordination), just see how effective that process is. I would think that the Congress would be in a good position then to determine how they want that legislation written. A year from now there should be a much greater insight and understanding of how to design the Office of Federal Procurement Policy and whether OMB is the appropriate place for it.

Senator CHILES. It is certainly encouraging when you say the Department of Defense coordinates with GSA on a continuing basis in the interest of achieving uniformity between the Armed Services Procurement Regulation and the Federal Procurement Regulations whenever this is desirable. But, it also seems that either this coordination has not been as effective as it should be or the decisions as to where and when uniformity is desirable has been guided more by separate self-interests of the agencies rather than by government-wide considerations.

When you consider that amongst other things, there are 110 different provisions on experts and consultants and that 80 separate provisions for access to records exist, there is a breakdown somewhere.

Earlier in these hearings, the representative of the Small Business Administration told us that the first obstacle which any small firm faces in attempting to do business with the government is the puzzling labyrinth of procurement regulations. They are extremely detailed

and complex for even an experienced contractor and are certainly so for the little firm trying to do business with the government for the first time. While there is a similarity in the regulations, the differences are sufficient to cause confusion and misunderstanding.

It appears that these conditions have developed in spite of the good intentions of the Department of Defense and the General Services Administration in their efforts to have close cooperation.

I would like to know then in the face of these past experiences by well-meaning people, with good intentions, wouldn't a better solution be to have constructive legislation, developed with the assistance of the best advice we can possibly get? In other words, what I am saying, is, what is lacking is someone with responsibility and authority to bring more simplicity and consistency and uniformity into our procurement policies; someone that will provide dynamic rather than passive leadership; someone who is responsive to both the needs of the Executive and Congress.

Mr. MENDOLIA. I can't deny that in principle, and I think in our statement we aren't opposing it. What we are saying is we think the OMB is a proper spot for that directive authority. We think we ought to have OMB fill the slot that it proposes and then see how that process works before designing legislation. We are not in disagreement with the principle of having directive authority nor can we deny that co-operation and coordination has not been as perfect as would be desirable.

Senator CHILES. Have you had an opportunity to determine how this will operate, what agencies are going to be represented on the Council?

Mr. MENDOLIA. Our view is that the Council ought to be a small one, simply because six agencies account for about 95 percent of all Federal procurement. So our view is that we ought not to create a large Council. Also, we think the mechanism as currently established which would enable GSA to represent a significant number of smaller agencies. NASA, HEW, DOD, and there may be others, are agencies that have large procurement responsibilities.

So we can envisage an OMB leadership with a Council of perhaps six to eight representatives. We think that could operate as a policy body, resolving disputes and putting together where necessary the two large bodies of existing procurement regulations. In our view, that would be workable without adding another layer, a group that would think its charter would be to start from scratch. We have what we think is a workable body of regulations in the ASPR, despite its ponderousness. We can extrapolate that to the procurement policies of other agencies. The mechanism, it seems to me, is already in existence to accomplish that. Incidentally, I know from my own questioning of people who do business with DOD, that there is a uniform response that the ASPR, while large, represents a body of law which they recognize as being fairly unchanging and which they can understand. That is a uniform response I have gotten.

Senator CHILES. I think that history shows that back in 1953 the Military Department really regarded the office which you are now occupying as another layer?

Mr. MENDOLIA. Yes.

Senator CHILES. And that is was something they could do very well without?

Mr. MENDOLIA. Exactly.

Senator CHILES. What would you think the positions or grades of the Council members should be?

Mr. MENDOLIA. Well, we think the office ought to be headed by a GS-18 or executive level and we think the Council ought to be comprised of people at the assistant secretary level, or his deputy for procurement. We think a two-man team where either could represent the agency would be an effective way of establishing policy.

A key element in our thinking is that there are adequate regulations in being now. There perhaps could be modified as necessary, but the office ought to concern itself with coordination in the establishment of policy, using directive action where necessary to solve disagreements, which there will be, as you pointed out.

Senator CHILES. What kind of staff would OMB need to fulfill the leadership role?

Mr. MENDOLIA. Our view is that the staff could be fairly small. And, again, without trying to determine what the workload would be, we would think that it probably could be under 10. The reason we think so, is that the organizations like DOD have people dealing with those problems from day to day now. Thus, we and other agencies could supply expertise to resolve specific problems. To me the analogy is in being now. In other words, to work on the 149 recommendations of the Commission, we in DOD have 83 task groups working to bring together DOD's position on the recommendations for which we are the lead agency. We think that process could apply in serving an office of Federal procurement policy, whatever it was. The staff wouldn't have to be large, if it restricts itself to policy determinations.

Senator CHILES. You said you foresee that it would have directive authority?

Mr. MENDOLIA. Yes.

Senator CHILES. How is it going to have directive authority?

Mr. MENDOLIA. Well, my understanding now is that OMB has the authority for its issuance of circulars, and that those circulars have the effect of law.

Senator CHILES. Those circulars couldn't override if they conflicted with your statutory authority, could they?

Mr. MENDOLIA. No; but I find it hard to envisage a directive that would come out of OMB that would be in direct contradiction. The ASPR regulations have considerable flexibility. To my knowledge there is nothing in the Armed Services Procurement Act that prevents DOD from cooperating or coordinating with any agency. I know of no bar to that.

Senator CHILES. And your statement before the House Subcommittee in July stated that you would present suggestions on the form and operation of the procurement council to OMB in the near future. Have you done that?

Mr. MENDOLIA. We have done that and it is basically the outline that I have just mentioned. We think the council ought to be small. As we tried to think it through in detail, I should add here we felt that it was difficult to define an organization without evolving it and saying what the workload is and determining how best you can respond to the problems ahead. We think the evolutionary approach would be the prudent one. We should establish an office in OMB and

let it determine what the workload ought to be, pull in the agencies, using the 149 recommendations as a foundation for its work. These represent a considerable body of effort that could take presumably several years to bring to a point of complete agreement. The OMB group should continue to push through the recommendations to completion.

Senator CHILES. What kind of reaction have you gotten from OMB in regard to your recommendations?

Mr. MENDOLIA. To my knowledge, in the broad sense that we are talking about here, we are in agreement.

Senator CHILES. If the Congress persisted and enacted statutory authority to create a central office, could you give us your recommendation as to where it should be housed or how it should be structured? Should it be under GSA? Should it be under OMB? Should it be a separate office?

Mr. MENDOLIA. Our view is that it really ought to be under OMB. I will subscribe wholeheartedly to the principle that was espoused in the Commission on Government Procurement—we do not think that the office should be in an agency that is involved in procurement. To me, that rules out GSA and it rules out DOD.

Now as to the other two options, OMB or an independent agency, well, our view is that OMB would be a suitable one simply because they would be able to staff it and support it with a minimum of additional expense. They also have a good pipeline to the major procurement agencies that should enhance the working relationship.

Senator CHILES. What do you see as the advantages of having it in OMB as opposed to having it in a separate agency?

Mr. MENDOLIA. Well, the reasons that I mentioned, I think there is a good line of communication. I know there is a good line between DOD and OMB within these limits. They have a purview over our activities. We have close liaison. We know what they are doing and they know what we are doing. We have support that could be provided. We think if you start from scratch with a separate agency that there would be a hiatus, that there would be a lag in having the new office just simply get organized and learn how to do its job. And to me it is just a matter of judgment as to whether 6 months or a year is worth the difference. We would opt for OMB.

Senator CHILES. Probably it would permit a continuation of the process you are going through, wouldn't it, if it were in OMB as opposed to trying to start a new office?

In the bill in section 6(c), it provides that: In the development of policies and regulations, the Administrator shall consult with the agencies affected and may designate an executive agency to take the lead in special areas of procurement reform. Much of this is trying to be done now on a voluntary basis.

With the small office envisioned by this legislation would you think the Congress could count on the Department of Defense to take the lead in developing Government-wide policies? For example, take the lead in major systems where you have by far the most experience?

Mr. MENDOLIA. I do. I look on that as our responsibility. And in my 4-plus months in this office in probing into this area, I have seen what I would call an excellent response, for instance, in tackling 52 of the recommendations. We have gotten a very good reaction. We are

doing our part. We feel it is in our interest. We feel it is in the national interest to do those jobs.

Senator CHILES. We think so too, and of course, we have tried to write the bill in that way so that DOD, for example, would be expected to play a leading role in the development of policies with a Government-wide perspective.

If you see any flaws in the bill in this regard, we would be very interested in hearing from you.

Mr. MENDOLIA. Fine.

Senator CHILES. In your statement you seem to be afraid of the consequences that could come from legislation when you said: "Such a statute would set in motion a whole host of actions from which retreat is very difficult at best."

What provisions of the bill do you think we would have to retreat from?

Mr. MENDOLIA. One of the aspects that is worrisome to us is that the bill envisages that a body would, for instance, be responsible for direction of procurement policies, regulations, procedures, and forms. Here we are as an agency purchasing or procuring 75 percent of the Government's business. We have put together an ASPR Committee. We have the regulations. We have the people who are knowledgeable. We have a dynamic means of responding to the people who do business with DOD. We think it would be unwise to set up a structure that in essence, would tend to compete with that process. We think that process is responsive. We think we have a mechanism, for instance, for appeals, a mechanism for changing the regulations. We would worry about an office that was set up which, in essence, would want to look at whole mechanism and start from scratch.

We think that would be inhibiting and would detract from the appearance of efficiency on the part of the Government rather than improve that image. That is the area of principal concern to us. We have no objection basically to a mechanism which would provide one face of the Government to the contractor.

Senator CHILES. I still have a hard time completely realizing your fears. You say, on the one hand, that you think OMB has all of this authority that we would give them by statute, in effect, they could give you the same kinds of problems you say, we would be giving you by the authority in this bill.

If we are simply going to give authority that you say they already have, then I don't see where the fear comes from unless it is from the separate office.

Mr. MENDOLIA. That is probably our principal concern. In other words, if a separate office were given the authority as I see outlined in this bill, given the nature of the new organism, then it would try to fulfill the charter that was given to it by the Congress. And we think that in that process, they would try basically to redo much of the mechanism that is in being. Our view is that that is unnecessary. Our view is that we ought to extend the mechanism that is in being now in GSA and DOD, extend that to the agencies and to clean up those differences that have been observed by the Commission on Government Procurement, so that those people dealing with Federal Government have a minimum of difficulty. We don't see any problems from a DOD point of view, in taking whatever steps are necessary to see that those interfaces are put together in a meaningful way. We are

doing that now. In other words, we don't see the problem there and we have no objection to OMB knocking heads together when cooperation didn't provide a unified position.

Senator CHILES. Senator Roth has expressed concern that maybe the bill should have an expiration date. I think he has talked about 5 years, so that Congress would have to take another look at it and see whether it is justifying its existence, whether it is doing a proper job, or is just another layer. What would your view be about that if the Congress were to pass this legislation?

Mr. MENDOLIA. Again I guess I take the opposite view. I would say I don't think there is any question in our minds at DOD that this ought to be a continuing process. I find it hard to visualize that we don't want to have a continuing coordinating body.

So my view is, why not maintain the momentum that has been created by the Commission on Government Procurement and establish an office and see whether that office will, in fact, do what the Commission intended? If it does not do that—if OMB can't carry it out—then in the light of experience which I think would be considerably greater a year from now, devise legislation to do the job. My view would be to do the pilot work now.

Senator CHILES. No, my question is, assuming we went forward and created this office, do you see merit to having an expiration date so that we could look and see on the expiration date whether the office is justifying its existence?

Mr. MENDOLIA. No, I really don't see it. I think the need for the function would be a continuing one. There should be some effort to continually review it simply to see whether the legislation ought to be amended. That certainly is in order.

Mr. MALLOY. Mr. Chairman, I would like to add a point here. I think it would be a good idea for the Congress to take a look at any such activity at perhaps a 5-year interval. However, I have seen other Government agencies that have been established with specific expiration dates and it has a very adverse effect on the agency's ability to get outstanding people and keep them. There is always a question in the minds of the people as to whether they are going to have their jobs beyond a certain period of time. I expect it would be difficult for the man running the office to keep it staffed properly.

Senator CHILES. We want to thank you very much for your appearance and for any inconvenience we caused by rescheduling it.

Mr. Mendolia. No problem.

Senator CHILES. Very good.

Our next witness was scheduled to be Michael B. Rukin, president of Analytical Systems Engineering Corp. and a director of the Smaller Business Association of New England, but he didn't get his plane this morning from New England.

Is Mr. Charles O'Connor present?

Mr. O'Connor is appearing on behalf of Scientific Apparatus Makers Association.

STATEMENT OF CHARLES A. O'CONNOR III, APPEARING ON BEHALF OF SCIENTIFIC APPARATUS MAKERS ASSOCIATION

Mr. O'CONNOR. Thank you, Mr. Chairman.

I would be happy to proceed as you see fit, to either read the statement or summarize it, and submit to questions.

Senator CHILES. If you want to summarize it for us and then submit to questions, we will include your statement in full in the record.

Mr. O'CONNOR. That would be just fine.

Senator CHILES. The statement in full will be included in the record.
[The prepared statement of Charles O'Connor follows:]

PREPARED STATEMENT OF CHARLES A. O'CONNOR III

My name is Charles A. O'Connor and I appear here today as counsel for the Scientific Apparatus Makers Association, a voluntary non-profit trade association counting among its membership over 200 small, medium, and large companies. SAMA's members are engaged in the development, manufacture, and distribution of the tools of science and we are very proud of the achievements of our industry which have enabled the laboratories of the United States to become by far the most productive and innovative in the world. I am here to express the views of our membership on S. 2510, a bill to establish an Office of Federal Procurement Policy.

The Scientific Apparatus Makers Association, or SAMA as it is commonly known, takes this opportunity to express the appreciation of its members for the accomplishments of the Commission on Government Procurement. Our members strongly supported the legislation establishing the Commission, and we were most appreciative of the highly expert and efficient way in which it went about carrying out the objectives of that legislation. In general, it is SAMA's opinion that the report and recommendations of Commission represent a tremendous accomplishment which, if properly considered and implemented, will bring about much needed improvement in our procurement system. SAMA is very grateful for the opportunity that it had to cooperate with and participate in the Commission's work.

We would also like to congratulate the subcommittee for recognizing with early consideration the importance of what we believe to be probably the single most important recommendation made by the Commission, namely the establishment of the Office of Federal Procurement Policy within the Executive Offices of the President. The Commission's report fully and effectively articulates the many reasons why this office is urgently needed and little purpose is served by further repetition here. SAMA does wish to voice its support, however, for the provision establishing the Office of Federal Procurement Policy as a unit within the executive office of the President. So organized, the Office of Federal Procurement Policy will be independent of any agency having procuring responsibilities, an independence which in our view is vital to OFPP's effective functioning.

Of particular concern to SAMA members is whether S. 2510 would authorize the administrator of OFPP to confer on other executive agencies, such as the General Services Administration, the authority to provide procurement and supply support to Federal grantees. In this regard section 6 of the bill which described the functions of the new office, subsection 6(a) (B) gives us particular concern. In pertinent part it reads that "The Administrator . . . shall prescribe policies and regulations which shall be followed by executive agencies . . . in providing for or in connection with procurement of [(1) personal property; (2) services including research and development; and (3) construction, alteration, repair, or maintenance of real property] to the extent required for performance of Federal assistance programs." We understand that this subsection was intended merely to authorize the administrator to establish policies respecting procurements undertaken by federal grantees and other recipients of federal assistance using grant or assistance funds. The bill is intended to enable the Administrator to require that grantees, under appropriate circumstances, obtain competitive bids for the contemplated procurement, or make the requisite findings before undertaking a negotiated procurement. S. 2510 was never intended to confer upon the Administrator discretionary authority to permit GSA or other Federal agencies to provide supply and procurement support for Federal grantees.

SAMA has no reservations about these purposes if indeed our understanding of the legislative intention in this regard is correct. Rather our concern is that the current language of the bill is susceptible to the interpretation that it expressly enables the Administrator in his discretion to permit GSA and other Federal agencies to provide supply and procurement support to grantees. Furthermore, this language might be construed as implementing recommendations S. 9 and 10 of the Commission regarding procurement of commercial products. These recommendations having to do with grantees' use of Federal procurement

support proved highly controversial in the Commission's deliberations; indeed they were adopted by a closely divided vote of 6-5, one commissioner abstaining. Even if not construed as a specific grant of authority to implement these three controversial Commission recommendations, the ambiguous language of section 6 could nevertheless be construed as at least an assumption on the part of Congress that the authority for Federal agencies to provide supply and procurement support for Federal grantees already exists, and this we do not believe is the case. To obviate any possible confusion about the intent of this bill, we propose additional language which would eliminate the ambiguity. This language would be a simple caveat to be added to the sentence in section 6(a) ending "to the extent required for performance of Federal assistance programs" to read as follows:

, but nothing in this Act shall be construed as authorizing the Administrator to provide procurement or supply support to any recipient of Federal assistance or grants.

The inclusion of this language in section 6(a) would eliminate the concern of SAMA.

If our understanding of the legislative intent is incorrect, however, and in fact the legislation is intended to give the Administrator authority to set policies under which Federal supply and procurement support could be given to grantees, we hope to convince this Subcommittee that such action is an unnecessary, costly and deleterious interference in the free enterprise system and that this language should be deleted.

To inject the issue of grantees' use of Federal procurement support into legislation creating the Office of Federal Procurement Policy invites unnecessary controversy where the legislative goal is to achieve general applicability and to encourage universal support. Furthermore, the question of whether Federal agencies should be authorized to provide procurement support to grantees should be considered by the Congress, separately on its own merits and not incidental to the creation of an office of policy making jurisdiction.

Congress has never expressly authorized GSA or any other Federal agency to provide procurement or supply support to grantees and to the extent that the Congress has congenitally considered this issue at all, the prevailing view has always been to prohibit Federal supply support to other than federal institutions. Since government agencies may not lawfully undertake actions for which they have no clear Congressional authorization, and we know of no legislation which can be construed as authorizing any Federal agency to undertake procurement actions in support of other than the Federal Government's own direct activities, Federal supply support to grantees is, in our view, plainly arbitrary capricious, and not in accordance with law.

In recent years the General Services Administration has twice undertaken to enter the distribution business in competition with the private sector. First, GSA sought to provide procurement support to State agencies under a liberal interpretation of the Inter-Governmental Cooperation Act of 1968. This initiative met with considerable opposition from the private sector, and Congress as well and finally was terminated pursuant to a directive of the Bureau of the Budget. GSA also undertook to provide procurement support to Federal grantees under the dubious theory that the activities of the grantee organizations were in reality merely an extension of the Federal agencies making the grants. This program has also been terminated in this instance at the behest of the Office of Management and Budget. See, 37 Fed. Reg. 10959 (1972) OMB wisely recognized that this grantee support program violated the long established Congressional policy of keeping the Government out of business activities where it would compete with the private sector. OMB also reasoned that the grantee support program was inconsistent with the governmental policies of protecting and promoting small business. The Federal program for the use of government supply sources by grantees has now been discontinued. 37 Fed. Reg. 24113 (1972) It seems clear, therefore, that both the Congress and the executive have disapproved and disavowed the concept of Federal agencies entering the distribution business.

Historically this country has fostered the idea of a competitive private sector free from unfair Government competition particularly in performing those functions which the private sector has demonstrated its greater effectiveness and efficiency. Authorization to federal agencies to provide distribution support to grantees would constitute a major, and we submit most unfortunate departure from this traditional national policy. Clearly if GSA enters the business of providing distribution and procurement support to grantees, it competes for

business that is now being handled by the private sector. Nor is there any basis for assuming that GSA can perform this function more efficiently than the private sector. Indeed the contrary is true since the private competitive distribution system in this country is recognized throughout the world as a model of efficiency and quality.

Not only would GSA's distribution support to grantees constitute competition with the private sector, but GSA moreover, would have a distinct and unfair competitive advantage while providing distribution services identical to those offered by the private sector. Furthermore, even assuming that GSA could eventually function as efficiently as private distributors, a most unlikely eventuality we submit GSA's distribution costs would not be less than the private sector's. Unlike the private distributors, however, GSA need not recover the cost of distribution in its price to grantees since its operating costs are underwritten by annual appropriations. In other words, the price that GSA quotes to grantees (unlike the price quoted by private distributors), does not reflect its actual distribution costs. Consequently, the lower GSA price to grantees is no bargain to the taxpayer who is paying for the distribution costs through his tax subsidization of inefficient GSA distribution.

The economic consequences to the private sector from GSA competition for grantee business are potentially enormous. For example, during the limited time when GSA was actually engaged in providing procurement support to Federal grantees, it became almost impossible to assure that grantee institutions would limit their purchases from GSA to items specifically intended for use on grant projects. Furthermore the so-called "institutional buyers" who rely heavily for financial support on Federal grants account for almost 60% of some SAMA members total sales volume. Obviously, while direct Government purchases account for only approximately 10%, should these institutional buyers shift their purchases from SAMA members to take advantage of the subsidized prices of GSA, the economic consequences for this industry are grave.

The foregoing should indicate why SAMA members greet with concern if not alarm the prospect of Federal agencies undertaking to provide procurement support to Federal grantees. The authorization of such grantee procurement support would constitute bad public policy, we believe, and should Congress undertake to consider legislation specifically aimed at accomplishing such an authorization, SAMA would hope to dissuade them for all the foregoing reasons. Any such legislative proposal is surely of sufficient economic significance to warrant separate consideration by the Congress. In no event should such an authorization flow by implication from legislation having an entirely distinct and unrelated purpose, namely, to establish a very critically needed Office of Federal Procurement Policy. For this reason, we strongly urge the Committee to modify the ambiguous language of section 6 (a) (B).

I would like to thank the Committee for affording SAMA this opportunity to express its views on this important legislation.

Mr. O'CONNOR. First of all, Mr. Chairman, let me thank you on behalf of the Scientific Apparatus Makers Association for giving us this opportunity to appear before you and comment upon what we consider to be very important legislation in which we wholeheartedly agree in major portion, and with which we take any exception in only minor portion. In fact, it is only section 6 of the act, which defines the functions of the Office of Federal Procurement Policy, that gives us pause, specifically, subsection (a) (B). This reads in pertinent part:

"The Administrator . . . shall prescribe policies and regulations which shall be followed by executive agencies . . . in providing for or in connection with procurement of" and then I summarize the list: "Personal property; services including research and development; and construction, alteration, repair or maintenance of real property."

The rest of the quote goes as follows: ". . . to the extent required for performance of Federal assistance programs."

We understand that this language was intended merely to authorize the Administrator to establish policies respecting procurements undertaken by Federal grantees and other recipients of Federal assistance using grant or assistance funds. We are afraid, however, that this

language could be construed to confer upon the Administrator discretionary authority to permit GSA or other Federal agencies to provide supply and procurement support for Federal grantees.

This, we think, is an authority that does not presently exist and that has been invoked in the past by GSA erroneously, we believe, to provide Federal grantees with various types of supply and procurement support. We think GSA made an unfortunate move that was questioned in the past by the Office of Management and Budget in particular. We think GSA's action wrong for a number of reasons. It is unwarranted Government intrusion into the private sector—the distribution system. It is Government intrusion into the private enterprise system without a prior demonstration of any greater efficiency or savings that would accrue from this. In fact, the GSA is at a competitive advantage, vis-a-vis the commercial private sector, because its basic administrative and overhead expense, the warehousing, et cetera, of supplies, is basically underwritten by the taxpayer. So such economies as might be thought to exist in such a program are, in fact, false. They are false economies because the taxpayer is paying for the basic overhead expense, which is not passed on to the supplier. Thus the likelihood is that Federal grantees will have an opportunity to purchase from the Government at prices considerably less than those available in the private sector, merely because of this basic tax subsidy that agencies such as GSA have.

We think that the private sector has demonstrated its efficiency, while to the contrary, a demonstration of greater GSA—or other agency—efficiency in this regard has not been made.

We think that the action that has been taken so far by the Office of Management and Budget to terminate this program—and it is now terminated, that is, the program conducted by GSA—has been a correct and wise one.

We are concerned that this language in the bill, as vague as it is, might be erroneously construed as a conferral of authority which we do not think the drafters of the bill had in mind. For that reason, we propose a brief additional clause in this section, which would make it clear that the act should not be construed as authorizing the Administrator of the new office to provide procurement and supply support for any recipient of Federal assistance or grants. We think this would eliminate our concern and clear up what we view as some ambiguity in the language which confers upon the office its specific functions.

That, I think, Mr. Chairman, in a nutshell is our concern. I would be happy to elaborate on any of those points if you like.

Senator CHILES. I would like to compliment you on your perception and understanding of the intent of S. 2510, and particularly the functions of the Office of Federal Procurement Policy embodied in section 6 of the bill. Your understanding is correct that S. 2510 was never intended to confer upon the Administrator discretionary authority to permit GSA or any other Federal agency to provide supply and procurement support for Federal grantees.

Furthermore, we are in complete accord with your position that the question of whether Federal agencies should be authorized to provide procurement support to grantees should be considered by the Congress separately, and on its own merits, and not incidental to the creation of the Office of Federal Procurement Policy.

We do intend next year to raise that question. We appreciate your suggested wording to clarify the intent of section 6(a), and we will certainly give it careful consideration.

You commented on the need for establishing an Office of Federal Procurement Policy independent of any agency having procuring responsibilities. Do you also subscribe to the other three attributes of the office advocated by the Procurement Commission, that is, that it have directive rather than statutory authority; that it be responsive to Congress; and that it consist of a small, highly competent cadre of experts?

Mr. O'CONNOR. Yes, indeed, Mr. Chairman.

Senator CHILES. What is your position on the creation of the office by executive action rather than by legislative action?

Mr. O'CONNOR. We do not have any firm position on this, Mr. Chairman. It seems to me, however, that any question with respect to the authority, for example, of the Office of Management and Budget to effect policy and to implement regulations which would have a uniformity would be removed by legislation which specifically confers upon an office that precise authority.

Senator CHILES. I think you had an opportunity to listen to the witness from the Department of Defense describe the manner in which they are operating. Do you think we can be assured that all the changes recommended by the Commission will be carried out by voluntary action?

Mr. O'CONNOR. I do not think so, Mr. Chairman. I think that unless there is an expression of congressional will here, that there is no reason to believe that the Office of Management and Budget would agree with these recommendations or implement them with the wholehearted enthusiasm necessary, or that various subsequent administrations would do so.

Senator CHILES. Senator Nunn, do you have any questions?

Senator NUNN. No questions.

Senator CHILES. Thank you very much. We appreciate your testimony.

Our next witness is David Palmetter, of the National Office Machine Dealers Association. Is he here? Would you come forward?

STATEMENT OF N. DAVID PALMETER OF WASHINGTON COUNSEL, THE NATIONAL OFFICE MACHINE DEALERS ASSOCIATION

Mr. PALMETER. Thank you, Mr. Chairman. I submitted a brief statement for the record, which I would be happy to summarize.

Senator CHILES. Fine. Without objection, we will have your statement included in full in the record.

[The prepared statement of Mr. Palmetter follows:]

PREPARED STATEMENT OF N. DAVID PALMETER

Mr. Chairman, Members of the Committee: My name is N. David Palmetter of the law firm of Daniels & Houlihan, Washington Counsel to the National Office Machine Dealers Association, on whose behalf I appear.

NOMDA is the recognized spokesman for approximately 10,000 office machine dealers located throughout the United States. We are small businessmen, selling and servicing a wide variety of business machines, including typewriters, adding machines, calculators, bookkeeping machines, photo-copy machines, duplicating machines, cash registers and data equipment. The Federal Government is a large consumer of such equipment and a major customer for NOMDA members. We

are therefore vitally interested in the procurement process and the legislation presently before the Committee.

It is NOMDA's firm belief that a policymaking entity independent of the procurement process and able to make objective policy decisions responsive to the will of the Congress is an absolute essential. As independent businessmen, it is important to use that such an independent office be established so that our views might be considered by those neither dominated by budgetary considerations nor the process of procurement itself.

Accordingly, we strongly endorse the creation of an Office of Federal Procurement Policy within the executive office of the President as set forth in S. 2510.

We note that both GSA and OMB recommend that this matter be deferred for some time in order to evaluate policymaking and coordinating measures which have been initiated by the executive branch. We also note disagreement as to where the procurement policymaking function should be located. Perhaps these are meritorious contentions but we wish to record our strong preferences for the creation of an independent office as a matter of some urgency.

We would like, however, to take very strong exception to a provision of the Bill which appears to us to be extraneous to its main purpose and to raise controversial questions that are better left to separate treatment after thorough investigation and evaluation. We refer to section 6(a)(B) of the bill which would direct the Administrator to prescribe policies, regulations, procedures, and forms which shall be followed by executive agencies:

"In providing for or in connection with procurement of items specified . . . to the extent required for performance of Federal assistance programs."

Mr. Chairman, while this language differs from that of section 5(a)(B) of H.R. 9059, it opens the door to the same thing: GSA sales to grantees.

As the Committee is aware, GSA, in 1972, terminated its program of sales to grantees. NOMDA strongly supported this decision. Regardless of one's position on the question of sales to grantees, however, we believe that the subject is far too important to be treated legislatively in this manner. Too many interests—we believe legitimate interests—would be adversely affected by its adoption. Surely this Committee should not adopt it without thorough and complete study.

As the Committee will recall, termination of the program of sales to grantees was initiated by a letter from the Honorable Frank Carlucci, Associate Director of the OMB, dated May 16, 1972, to the Honorable Rod Kreger, Acting Administrator of GSA. In the course of this letter, Mr. Carlucci stated:

"The above authorizations are not consistent with the purpose of the Administration's policy of reliance on the private enterprise system and is particularly objectionable in this sense because the burden of GSA competition falls more heavily on small businesses throughout the country."

NOMDA, by letter of June 28, 1972 to the Honorable M. S. Meeker, Commissioner, Federal Supply Services, General Services Administration, supported this policy, stating in part:

"The continuation of the policy permitting grantees to purchase from GSA stores would be highly injurious to our members. Beyond this, however, we believe there is no ascertainable budgetary benefit to the Government from this program.

* * * * *

"The fact that small businesses, scattered throughout the country, would be the major victims of a continuation of the policy of permitting grantees to use GSA as a source of supply would add other costs to the program. Not only would the Federal Government lose the taxes paid by these businesses, as GSA absorbed their functions, but localities would lose revenue and employment as well."

In addition to their other advantages, the Committee should bear in mind that large companies themselves are potential "grantees" under contractual relationships with Government enabling them to purchase their supplies and equipment at the special price extended to the Government. This unfair purchasing advantage not only affects suppliers to such large companies, but allows the giants of industry to undercut small businesses in their quotations to Government and industry.

It appears to us that the inclusion of section 6(a)(B) in the bill before the Committee constitutes a back-door method of reversing present policy on sales to grantees. The provision as it stands could be interpreted as a Congressional endorsement of sales to grantees, and, under such interpretation, be dispositive of a complicated and controversial issue. Regardless of the merits, we do not

believe that this section has any place in this legislation, which is organic in nature in establishing a new Federal office. In this regard, we entirely agree with GSA's views presented to the House Committee on Government Operations, discussing the appropriate section of H.R. 9059, in which they state in Attachment 1 to Mr. Sampson's statement:

"Section 5(a) (B) provides that grantees may procure from Federal sources of supply.

"In general, we feel that the proposed statute should be a basic enabling act for an OFPP and that it should not attempt to establish specific procurement policies."

We believe the point is well taken. While we would welcome a Congressional statement *opposing* sales to Federal grantees, we simply do not believe that this is the appropriate place to accomplish this objective. By the same token, we hope that the Committee in its wisdom will see fit to delete Section 6(a) (B) from S. 2510 as not germane to the Bill.

We greatly appreciate the opportunity of presenting our views to the Committee and would appreciate it if the Committee would take our position into consideration as it proceeds in its deliberations on this important legislation.

Mr. PALMETER. My name is David Palmetter of the law firm of Daniels & Houlihan, Washington counsel for the National Office Machine Dealers Association, on whose behalf I appear.

NOMDA is the recognized spokesman for approximately 10,000 office machine dealers located throughout the United States. These are small businessmen selling and servicing a wide variety of business machines, including typewriters, adding machines, calculators and so on.

It is NOMDA's belief that a policymaking entity independent of the procurement process and able to make objective policy decisions responsive to the will of Congress is an absolute essential.

Accordingly, we strongly endorse the creation of an Office of Federal Procurement Policy within the Executive Office of the President as set forth in S. 2510.

We would like, however, to take very strong exception to a provision of the bill which appears to us to be extraneous to its main purpose and to raise controversial questions that are better left for a separate treatment after thorough investigation and evaluation, that you mentioned might occur next year. We refer to section 6(a) (B) of the bill which would direct the Administrator to prescribe policies, regulations, procedures and forms, which shall be followed by executive agencies. And I quote from the bill: "In providing for or in connection with procurement of items specified" and it concludes by saying, "to the extent required for performance of Federal assistance programs."

While this language differs from that of section 5(a) (B) of House 9059, we are afraid it opens the door to the same thing that the previous witness mentioned, GSA sales to grantees.

We believe, Mr. Chairman, that this is a very complicated question and very important and is better left to separate treatment.

We are afraid that the provision as it stands could be interpreted as congressional endorsement of sales to grantees.

In this regard, we agree with the statement of Mr. Sampson of the GSA in House hearings where he felt that the proposed statute—and this is a quote—and he said:

Should be a basic enabling act for an OFPP and it should not attempt to establish specific procurement policies.

We believe that the point is well taken, and, while, of course, we would, in one sense, welcome a statement of this bill as indicated in

your colloquy with the previous witness, we have our doubts as to whether that would be appropriate in an organizational act setting up a Federal agency and we feel the subject is just better left alone.

I want to take this opportunity to thank you and answer any questions you may have.

Senator CHILES. We thank you and appreciate your concern over procurement by grantees. We are in agreement with your position, and we are certain it was not the intent of the bill, as we said, to try to do that at all. We will certainly be studying that proposition.

Senator NUNN?

Senator NUNN. No questions. I appreciate also your appearance, and I am also concerned about the problem the chairman outlined. Thank you.

Mr. PALMETER. Thank you.

Senator CHILES. Thank you very much.

Our next witness is Mr. George Coburn.

STATEMENT OF GEORGE M. COBURN, SECRETARY, SECTION OF PUBLIC CONTRACT LAW, AMERICAN BAR ASSOCIATION; ACCOMPANIED BY JOHN J. GROSSBAUM, SECTION OF PUBLIC CONTRACT LAW, AMERICAN BAR ASSOCIATION

Mr. COBURN. Good morning, Mr. Chairman.

I submitted a statement yesterday afternoon which I hope you received?

Senator CHILES. Yes, we did. For the record, we know you are an attorney-at-law, but would you introduce yourself and on what basis you are testifying today. Then we would appreciate it if you could summarize your statement for us, and we will include your statement, in full, in the record at this point.

[The prepared statement of George M. Coburn, Esq., follows:]

PREPARED STATEMENT OF GEORGE M. COBURN

Mr. Chairman and Members of the Subcommittee: I am George M. Coburn. I am a Washington lawyer engaged in the practice of procurement law, and appear today in that capacity. Although my attendance is prompted by an invitation from Senator Chiles to the Chairman of the American Bar Association's Section of Public Contract Law—of which I am Secretary and appear in the absence of our Chairman, Harold Gold, who regrets that commitments elsewhere prevent his being here today—I should like to emphasize the fact that as of now I do not speak for the American Bar Association. However, the Council of our section yesterday morning voted to support S. 2510 in major part and is in the process of petitioning the policy-making body of the American Bar Association for approval of the section position on behalf of the Association.

Accordingly, if and when that approval is forthcoming, I request that the Subcommittee permit my furnishing the results of the Section's Council action, and that of the American Bar Association, bearing on S. 2510 to the Subcommittee for its consideration and for inclusion in the record of these hearings.

Accompanying me is John Grossbaum, a Bethesda, Maryland lawyer who chairs the Public Contract Law Section's Committee on the Federal Procurement Regulatory Process and who, likewise, will present only his personal views.

LEGISLATION NOW

Turning now to our so-limited comments on S. 2510, I should perhaps first say that we strongly support the idea of legislation now to create the statutory framework for central, Government-wide direction and control of the formulation of procurement policy and on the basis of a fair and timely opportunity for

members of the public to participate in that formulation through submission of written materials and with appropriate opportunity for oral presentation. In this respect, we favor the evolution of a single, comprehensive Government-wide procurement regulation.

In this connection, we note the comments made by agencies of the Executive Branch last July before the Holifield Subcommittee, and we cannot agree that action by the President or the OMB, without enabling legislation, can overcome the problems of the procurement regulations so well identified by the Report of the Procurement Commission and in the recent Holifield Subcommittee Hearings.¹

CONSIDERATION OF A REGULATORY BOARD OR COMMISSION

Perhaps our major comment on S. 2510, apart from our view of the necessity for its enactment (or something like it), goes to the question of what type of organization Congress should establish to make and direct procurement policy throughout the Executive Branch.

A principal concern and complaint about the present system of procurement regulations and policies is the fact that they tend to be one-sided and go too far in favoring the Government in its capacity as a buyer. There are many examples of this one-sidedness in pricing policies, in contract clauses putting unreasonable risks on contractors, in so-called anti-claims clauses, in specifications restrictive or reasonable competition, and so on. I should like to read from a recent article by two private practitioners, Herman M. Braude and John Lane, Jr., published in the Spring, 1972 Federal Bar Journal that well expresses this concern. I quote:

"... In drafting procurement regulations, the Government is not a disinterested outsider acting for the public good, but is actually a party with a direct economic interest in the content of the regulations, even though still presumably acting for the public good. This is probably not a completely unique situation—e.g., the ICC may pass on special freight rates for shipment of Government property—but it is unique when we add the factor that it is typically the very same operational agencies of the Government with the economic interest in procurement that are drafting the procurement regulations. As historically recognized, the Government has not only a sovereign interest in its contracting but also a direct proprietary interest.

"There is not the slightest attempt to segregate the procurement rulemakers as a quasi-independent body in organization, personnel selection, and chartered objectives, like the boards of contract appeals which adjudicate in a fair and judicious manner. Rather, the rulemakers at all levels are simultaneously functioning as part of the functional procurement process in an avowedly partisan manner.

"The dangers inherent in this marriage of sovereign and proprietary interests in the same agencies exist notwithstanding that procurement regulations are almost always cast in the form of instructions or directions to Government personnel and almost never purport to bind anyone outside the Government directly. For there are many important procurement regulations which, as seen above, do 'bind' non-Government persons just as directly and effectively as the regulations of other administrative agencies bind their objects. The chief areas where regulations affect contractors are: (1) solicitation and source selection, including all aspects of eligibility and evaluation; (2) contract terms; (3) contract performance, including all aspects of administration other than purely internal paperwork and reporting; and (4) remedies.

"Particularly with respect to contract terms, the Government possesses enormous economic leverage because it is spending vast sums of public funds acquired through the sovereign taxing power, which leverage renders it impossible as a practical matter, in many cases, for contractors to decline to enter into contracts and in most cases, for contractors to negotiate effectively over the terms of the contracts. A contractor is just as badly off if he is forced by economic pressure into an unconscionable contract containing onerous clauses prescribed by regulation as he is if the Government improperly and without due process debars him from receiving any future contracts—an action which has been held reviewable in court.

"Apart from the 'force and effect of law' accorded to some regulations, the Government, as a sovereign, operates by actual authority only. Therefore, if a

¹ See also Grossbaum, *Procedural Fairness in Public Contracts: The Procurement Regulations*, 57 Virginia L. Rev. 171, 181-189, 209-227, 255-263 (1971).

contractor enters into a contract with a Government agent which is contrary to the requirements of procurement regulations, the contract may be void, or voidable at the Government's election, because the Government agent acted beyond his authority—so the contractor may be forced to regard the contract either as totally void or as enforceable only as it should have been written, including onerous provisions he may not have been aware of. As seen earlier, this would be the case with respect to any regulation either directly implementing a particular statute or major procurement policy or arguably of some benefit to contractors as well as the Government.

"In summary, unlike other administrative regulations, procurement regulations as currently developed represent an inherent conflict of interest. The heart of the matter is money. In drafting procurement regulations and especially the boilerplate clauses to be required by regulation, the basic motivation of the Government (though not in all cases the only one) is to conserve appropriations rather than to act for the public good. In the short run these two goals may coincide, but there is a serious question whether they coincide in the long run, or even whether they necessarily coincide in the short run.

"Thus, there is not only the possibility of but the *motive for arbitrary administrative practice in issuance of procurement regulations*; and some limited examples of such abuse have been noted recently." Braude and Lane, *Modern Insights on Validity and Force and Effect of Procurement Regulations—a New Slant on Standing and the Christian Doctrine*, 31 Fed. B.J. 99, 122-24 (1972) (Emphasis in original; footnotes omitted).

Mr. Lane, a co-author of what I have just read, I should add, was formerly Air Force Legal Member of the Armed Services Procurement Regulation Committee and is currently a member of the Armed Services Board of Contract Appeals.

We understand that a major purpose of S. 2510 is to redress this one-sidedness in the policies expressed in the procurement regulations, as Clause (11) of the Declaration of Policy explicitly recognizes. And likewise we applaud the recent statement of Chairman Holifield in the course of the hearings on H.R. 9059 that the "Government should set a standard of fairness as a buyer."²

Our concern is that the proposed legislation may not achieve those fundamental reforms. Specifically, we question whether the proposed Administrator and his Deputy would have the time to give the necessary personal attention and consideration to grasp and fairly resolve, amidst growing administrative routine, the competing claims of affected interests on significant and often difficult procurement policy issues. And this need for the exercise of independent personal judgment in the light of the opposing considerations may be too much of a policy formulation burden to place on two men, no matter how highly they may be qualified and motivated, and no matter how competent the help they have from the professional staff.³

We therefore ask that you also give careful consideration to the concept of legislating the establishment of a regulatory Board or Commission in the Executive Branch as an alternative to the proposed Office of Federal Procurement Policy. Such a Federal Procurement Policy Board or Commission could have three to five members for fixed and staggered terms, appointed by the President and by and with the advice and consent of the Senate. The members could represent the principal interests concerned in formulation of procurement policy—big business, small business, the construction industry, the Department of Defense or other dominant Government procurement interest, and hopefully a disinterested member representing solely the public interest. Such a Board or Commission would of course have an appropriate professional staff and would discharge the functions otherwise committed to the proposed Office of Federal Procurement Policy by S. 2510. We are talking about a very large function and we think it unrealistic to suppose, as some witnesses have suggested, that the job can be done by a handful of specialists.

When you consider the vast economic impact of federal procurement policies and their effect on national employment with the swings in procurement awards and cutbacks, with the tendencies to concentration of large awards geographically in a few states and in a handful of major corporations; when you consider the

² See Hearings on H.R. 9059 before the Holifield Subcommittee (July 12, 1973; Exchange during testimony of Matthew Perlman, Esquire).

³ The ASPR Committee has 9 members, for whom the ASPR work is largely a full-time job. In addition, much of the initial ASPR work is done by a large number of standing or *ad hoc* subcommittees.

low dollar percentage of procurement by competitive bidding and the small potatoes for small and minority business; when you consider the economic dislocations resulting from contract terminations—it becomes obvious that there is much vitally important work of procurement policy formulation or revision in these areas that such a Board or Commission should undertake in the public interest. And it seems plain that the interests at stake at least match the economic interests affected by the regulation of business in the public interest we associate with the customary work of the several regulatory agencies. Added to this of course is the whole matter of the procurement terms on which the Government buys and about which we have heard so many complaints of unfairness and one-sidedness.

Of course the Executive Branch will probably say, "Don't do it since such a Board or Commission would unduly interfere with or impair carrying out our procurement mission." I think you can rightly be skeptical of those objections. But we would also suggest that such a Board or Commission should have great flexibility to devise a variety of procedural means for dispatching its business that are appropriate to the substance and the importance of the policy matters that come before it. Finally, in the consideration of the pros and cons regarding the establishment of a regulatory Commission or Board in lieu of an Office of Federal Procurement Policy, it might be helpful to review the analagous history of the Cost Accounting Standards Board, created three years ago as an agent of Congress under the Chairmanship of the Comptroller General and with four members representing various interests appointed by him.⁴ However, the Federal Procurement Policy Board or Commission we envisage should be in the Executive Branch and could perhaps assume the functions of the Cost Accounting Standards Board.

We have, if I may, several additional comments that are more specifically addressed to the language of S. 2510 in its present form.

INDEPENDENCE OF THE WHITE HOUSE

With respect to Section 5(a), should Congress decide upon creating an Office of Federal Procurement Policy rather than a Board or Commission such as we have suggested, then we question whether the Office would not have more prestige, independence and effective authority if established as an independent agency in the Executive Branch and thus less subject to pressures, political and otherwise, from the White House, than if located in the Executive Office of President as the bill would put it.

PROCUREMENT POLICIES AS INSEPARABLE FROM PROCEDURES AND FORMS

Unlike the H.R. 9059, S. 2510 in stating the functions of the Office of Federal Procurement Policy attempts to separate procurement policy from procurement procedures and forms, leaving authority over the latter largely with the executive agencies. In our view, it is generally very difficult to distinguish procurement policy from procurement procedure, and creating such a jurisdictional difference would likely lead to unproductive, bureaucratic controversy. I am reminded of my own experience as a Navy lawyer some 20 years ago. In those days the Navy was fighting the concept of a single procurement regulation applicable to the military services. Then we argued that the ASPR, then in its formative stage, should be confined to broad statements of policy, and that the Navy would continue to control its procurement procedures and forms. We were then fearful that people as far removed from the scene of Navy procurement operations as the writers of the ASPR could not understand our problems and needs and would likely hinder or impair effective Navy procurement if they were permitted to prescribe how we did it. I think experience has shown that fear was unfounded and that the Navy and the other services were able to adjust to a very detailed ASPR. And we see no reason why the proposed Office of Federal Procurement Policy, or the alternate Federal Procurement Policy Board or Commission, cannot equally well come to grips with the details of procurement policy, procedure and form and evolve a comprehensive Federal Procurement Regulation. We also believe that the strong public interest in uniformity of procurement forms to the extent practicable is better served by giving authority over forms to the new agency.

⁴ See 50 U.S.C. App. § 2168 (1970).

PROCUREMENT POLICY AND PROCUREMENT SPECIFICATIONS

I come now to a sensitive, difficult and perhaps controversial area, namely, the question of the authority the new agency should have over procurement specifications. This appears to be an area without detailed policy regulation. The Armed Services Procurement Regulation does rightly state that—

"Plans, drawings or purchase descriptions for procurements shall state only the actual minimum needs of the Government and describe the supplies and services in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers."⁵

Yet under Section 6(d) of S. 2510 and comparable provisions of H.R. 9059, the new agency would appear to be precluded from dealing with a most fundamental means of carrying out, or frustrating, basic procurement policies—the drafting of procurement specifications. As a minimum, we suggest that the new agency should have authority to regulate the extent to which the development or revision of procurement specifications, as with procurement policies, regulations, procedures, and forms, should be made subject to an effective method of soliciting the viewpoints of interested parties. We are not aware of any widespread or institutionalized practice of industry consultation in this respect, and we are aware of the many protests to the Comptroller General complaining of specifications restrictive of competition on the one hand or in violation of patent or trade secret rights on the other. Likewise, we are mindful of the many contract disputes involving issues of defective Government specifications. In addition, we believe that the new agency should at least have some means of insuring that procurement specifications comply with the procurement policies of the agency. It would thus seem that the area of specifications would be one for the new agency and the public to get into a limited extent if these kinds of problems are to be resolved more satisfactorily and with greater public confidence in the fairness and openness of the Federal procurement process.

Hand in hand with this suggestion and equally applicable to the public rulemaking function involving procurement policy, it is our further thought that the public acceptability and understanding of the choices made by the new agency or by the Executive agencies acting under delegation, after receiving statements or arguments of opposing views, will be enhanced if provision is ordinarily made for a statement of the considerations that led to the adoption of the particular result. Judge Harold Leventhal has made this point well:

"John Adams once said: 'If indeed there is no rule, no standard, all must be accident and change. If there is a standard, what is it?' My personal experience with businessmen in government during World War II and the Korean conflict recalls their insistence that their judgment rested solely on institution. It happens that we were governed by maximum price legislation, which required that our regulations be accompanied not by findings but at least by a 'statement of consideration'. That was a useful discipline, and it usually turned out that the considerations could be probed and stated rationally. Perhaps that would be the beginning of wisdom here—to require a statement of the considerations in case of action with such huge public consequences as termination orders, even though calling for extensive judgment on the part of officials in the procurement system."⁶

A STANDARD OF FAIRNESS

In the course of the House hearings on H.R. 9059 last July before Chairman Holifield, a private practitioner, Matthew Perlman, representing the Federal Bar Association, made a suggestion for establishing a specific standard of balancing efficient and effective procurement with fairness to contractors and their employees, for the new agency to follow. His language was:

"The Administrator, in carrying out the Act, shall seek to promote efficient and effective procurement consistent with fair and equitable treatment of contractors and their employees."⁷

⁵ ASPR 1-1201(a) (16 April 1973).

⁶ Leventhal, *Public Contracts and Administrative Law*, 52 A.B.A.J. 35, 40-41 (1966) (Footnote omitted.)

⁷ See Hearings on H.R. 9059 before the Holifield Subcommittee, Statement of Matthew S. Perlman (7/12/73).

We support such an addition to S. 2510 whether in the context of governing an Office of Federal Procurement Policy or a Federal Procurement Policy Board or Commission, as we have discussed. In addition, we think this concept of fairness should also be stressed in the preamble of Declaration of Policy, and we suggestion insertion of that word in line 7 of Page 1 of the bill, after the word "efficiency" and before the word "effectiveness."

A related point concerns our endorsement of the Declaration of Policy set forth in Section 2 of the bill. We think that the effect of that policy statement will be strengthened if Section 6 of the bill states that the functions of the new agency will be carried out in conformity with the policies set forth in Section 2 of the bill.

COORDINATION OF FEDERAL ASSISTANCE POLICIES

We would like to add a word of encouragement and support to those provisions of S. 2510 and its counterpart in the House that would give the new agency policy direction and control over procurement by recipients of federal grants or other federal assistance and would call for a study of the feasibility of providing overall guidance and direction of federal assistance programs. There can be no question that billions of dollars of federal funds are expended every year under contracts made by recipients of federal grants or other forms of federal assistance. Much of this money is spent by public authorities at the State and local government levels. It would seem imperative that Congress should insist on full regulation of and accountability for the policies and procedures that govern this growing class of procurements that are not made by the federal government itself but with its public funds.

CONCLUSION

In sum, we believe Congress now has a splendid opportunity through the enactment of S. 2510 along the lines indicated to take a big step toward major improvement of the procurement process at every level of our society where federal funds are expended by public contract. Indeed, this is the first and foremost recommendation of the Procurement Commission.

Thank you, Mr. Grossbaum and I will be happy to try to answer any question you may have.

Mr. COBURN. Thank you, Mr. Chairman. I am George Coburn and I am an attorney at law, practicing procurement law in Washington, D.C. I am here in response to the committee's invitation to the chairman of the section of public contract law of the American Bar Association, who regrets he can't be with us. I have to make it clear that so far I am not yet authorized to speak for the American Bar Association. We have fairly elaborate internal clearance procedures. I want to assure the chairman that we have taken the necessary steps to get this statement cleared on behalf of the American Bar Association and we should know the results of that effort within a week or 10 days.

[Correspondence reflecting the American Bar Association's approval follows:]

AMERICAN BAR ASSOCIATION,
Washington, D.C., November 30, 1973.

HON. LAWTON CHILES,

Chairman, Subcommittee on Federal Procurement, Senate Committee on Government Operations, Washington, D.C.

DEAR MR. CHAIRMAN: On Friday, November 16, the Administration Committee, for the Board of Governors of the American Bar Association, adopted the attached resolution which had been submitted by the Section of Public Contract Law.

This is to advise you that the Association now formally supports, in principle, S. 2510, with the stated qualification that, "... consideration be given to the establishment of an independent regulatory Board or Commission as an alternative to the proposed Office, that any new agency be non-political and independent of the White House, and that such agency should have appropriate authority to insure public consultation on the development of procurement specifications involving competitive procurement."

I would appreciate your including this letter in the printed volume of hearings on S. 2510 for the specific purpose of incorporating as a statement of Association policy the November 14 testimony of George M. Coburn.

Sincerely,

JAMES K. GROVES,

Chairman, Administration Committee of the Board of Governors.

AMERICAN BAR ASSOCIATION

(Report to the Administration Committee, Board of Governors, Section of Public Contract Law on S. 2510)

RECOMMENDATION

The Section of Public Contract Law recommends adoption of the following:

Be it resolved, That the American Bar Association expresses its support in principle of S. 2510, 93rd Congress, 1st Session, and related bills designed to establish an Office of Federal Procurement Policy for the purpose of establishing direction and control of procurement policy for the Executive Branch of the Federal Government and for recipients of Federal assistance programs, subject to the qualification that consideration be given to the establishment of an independent regulatory Board or Commission as an alternative to the proposed Office, that any new such agency be non-political and independent of the White House, and that such an agency should have appropriate authority to insure public consultation on the development of procurement specifications involving competitive procurement; and be it further

Resolved, That the President or his designee is authorized to present the substance of the foregoing resolution to appropriate committees of Congress.

REPORT

On November 19, 1969, Congress created a Commission on Government Procurement to study and recommend to the Congress methods to "promote the economy, efficiency and effectiveness" of procurement by the Executive Branch of the Federal Government. The Commission, a 12-member bi-partisan body, made its report to the Congress early in 1973, recommending some 149 administrative or legislative changes.

The first and foremost of the Commission's recommendations, known as "Recommendation 1," calls for the statutory establishment of a central "Office of Federal Procurement Policy" in the Executive Office of the President, "with specialized competence to take the leadership in procurement policy and related matters."

The Senate Bill 2510 (93rd Cong., 1st Sess.) respond to this principal recommendation of the Procurement Commission. The Bill would establish such an Office of Federal Procurement Policy in the Executive Office of the President and give it power to direct federal procurement policy, including procurement made by recipients under Federal assistance programs.

Federal procurement for several years has involved expenditures of Federal funds annually at a rate in excess of \$60 billion, and procurement by recipients of Federal grants and other forms of Federal assistance is estimated to be at the rate of an additional \$40 billion annually. Virtually all of this procurement proceeds without central, or uniform direction or control either by Congress or by the Executive Branch of the Federal Government.

It is thus obvious that the proposed legislation is of great importance both in terms of Federal procurement itself, and of the impact of Federal procurement policies on the National economy.

It is thus important that the American Bar Association take a position on legislation such as S. 2510, to declare its general support of such legislation.

As stated in the above Resolution, three qualifications to Association support are made. First, we think that Congress should very carefully and fully explore the question of whether a regulatory Commission or Board would be a more appropriate agency for the formulation of procurement policy than the Office contemplated by the Procurement Commission and by the pending legislation. Closely related to this is the question of location of the proposed new agency in the Executive Branch. Because we believe the formulation of procurement policy should be free from political influence, we strongly urge that such a new agency not be located in the Executive Office of the President but be established

as an independent agency in the Executive Branch. The third qualification goes to the point that the new agency should have appropriate authority to provide for public consultation in the development of procurement specifications designed for use in connection with competitive procurement so that public confidence in the fairness and openness of competitive procurement may be enhanced.

The above Resolution and Report were adopted by the Council of the Section of Public Contract Law at its meeting on November 13, 1973.

Respectfully submitted.

HAROLD GOLD,

Chairman, Section of Public Contract Law.

AMERICAN BAR ASSOCIATION,

Washington, D.C., November 30, 1973.

HAROLD GOLD,

Chairman, Section of Public Contract Law, American Bar Association, Beverly Hills, Calif.

DEAR MR. GOLD: Pursuant to the November 16 approval by the Administration Committee, of a recommendation supporting, in principle, S. 2510, I designate you or an officer of the Section of Public Contract Law, to present the substance of the attached resolution before the appropriate committees of Congress.

Sincerely,

CHESTERFIELD SMITH,

President, American Bar Association.

Senator CHILES. Our records will probably still be open at that time. If you receive that clearance and you will notify us, the record will so indicate.

Mr. COBURN. Thank you.

With me today is John Grossbaum, attorney at law, who happens to be the chairman of the committee most concerned with the work of the Procurement Commission in terms of your consideration of S. 2510. And, after I summarize my statement, he and I will be, in our individual capacities, glad to try to answer any questions you might have.

Senator CHILES. Very good.

Mr. COBURN. First let me say, in the limited capacity in which we now speak, that we most strongly support the idea of legislation now to create the statutory framework for central, Governmentwide direction and control of the formulation of procurement policy and on the basis of a fair and timely opportunity for members of the public to participate through the submission of written materials or appropriate opportunity for oral presentation of views.

And I will make a related point. We particularly favor the evolution under the auspices of this new agency of single and comprehensive Governmentwide procurement regulations that would, in time, replace and displace and supersede both the ASPR and the FPR.

And responding to some questions the chairman has asked previous witnesses today, we cannot agree that action by the President or the OMB without legislation, such as you have proposed, can overcome or would overcome the problems of the procurement regulations that have already been so well identified.

Now I come to what I call our principal comment on the bill, S. 2510. As you know and as the witness before the Holifield subcommittee testified, a major complaint about the present system of procurement regulations and policies is the fact that they tend to be one-sided and go too far in favoring the Government in its capacity as a buyer. And we refer to an article published in the Federal Bar Journal, that set forth the inherent bias and conflict of interest that arises from the

present commingling of the policy with the procurement operation function.

It is also very well to talk about ASPR as being DOD or an Office of the Secretary of Defense regulation, but the reality is it is mostly written by persons engaged in procurement operations. That, we submit, has tended to create a bias in favor of the Government in its capacity as a buyer and tended to make the regulations in a number of important ways that affect the public and affect the public interest, too one-sided. We have given you citations that develop that point.

Now we understand a major purpose of this bill is to redress that imbalance. We recognize the concept of fairness; the concept of fairness as opposed to the concept of one-sidedness in the evolution of procurement policy.

We thought that Mr. Holifield put that very well in the impromptu exchange in his hearings last July, when he said, in the colloquy with this particular witness: "The Government should set a standard of fairness as a buyer," and we wholly subscribe to that proposition.

Our concern about this legislation and its counterpart in the House is whether this problem of one-sidedness can be adequately dealt with and redressed under the concepts of the this bill. In this bill, you are talking about an administrator and a deputy, both of whom will be responsive, personally, to the Congress, but we ask whether this may be too big a job for them. We question whether a smaller staff, no matter how competent, can get on top of this; can get on top of this huge system of procurement regulations where detail is what matters, not broad general statements. Thus we ask that you give very careful consideration to the concept of legislating the establishment of a regulatory board or commission in the executive branch as an alternative to the proposed Office of Federal Procurement Policy.

When you consider the vast economic impact of Federal procurement policies and their efforts on national employment with the swings of procurement awards and outbacks, the tendency for a concentration of large procurement award geographically in a few States and in a handful of major business corporations, when you consider the low dollar percentage of procurement by competitive bidding, when you consider the economic dislocations as a result of contract terminations, it becomes obvious that there is much vitally important work in procurement policy formulation or revision in these areas that such a regulatory board or a commission should undertake in the public interest.

It seems plain to us that the interests at stake in the procurement process at least match the economic interests affected by the regulation of business in the public interest we associate with the customary work of the several regulatory agencies. And added to this, of course, is what I have already mentioned, the whole matter of the procurement terms on which the Government buys and about which there are many complaints of unfairness and one-sidedness.

Of course, the executive branch, we assume, would oppose any serious proposals for a regulatory board or commission. I think one important factor that should be borne in mind in considering those objections and in the evaluation of pros and cons is that such a board or commission should have great flexibility to devise a variety of procedural means for dispatching its business that are appropriate

to the substances and to the importance of the policy matters that would come before it.

We go on to suggest several additional comments that deal more in terms with the bill as proposed and I will briefly address them, too.

We think strongly that the new agency should not be in the Executive Office of the President. It should not be in the Office of OMB. We think that it should, in any event, be an independent agency but if it is located in the Executive Office of the President, we are fearful of political influence. We think this agency should be non-political or, at least, bipartisan and that the procurement process is much too important to leave to political influence.

We make the point that we believe that procurement policy is inseparable from procurement forms and procedures. The House bill and your bill differ in those respects and we respectfully suggest that that attempted separation of policy from procedures and forms be reconsidered.

We now make a fairly important point that the framers of this bill give very serious consideration to bringing procurement specifications at least within what we would call the public consultation process. As the bill is drafted and the way we read the House bill, the new office or the new agency, it seems to me, is without any kind of procurement policy authority in the area of procurement specifications. The records of the Comptroller General are replete with complaints by industry of the unfairness of certain competitive procurement specifications as tending to favor the product or the service of one particular firm or a small group of firms to the detriment of competitive bidding at large.

The boards of contract appeals and the Court of Claims reports are also replete with cases in which procurements have failed because specifications for competitive procurement have been defectively written. What we are suggesting is that at the least this new agency should have the procurement policy authority in appropriate cases to require public consultations and public comment in the formulation of procurement specifications which are drafted independently of any particular procurement, but are drafted with the objective of being utilized in future competitive procurements.

We, of course, support strongly the concept of the bill that there be an opportunity for public comment in the formulation of procurement policies and regulations. We make the further point, however, that—and based upon our experiences in dealing with the ASPR function—that if the policy formulators have to explain to the public why they make the changes they did and why they chose to disregard or not adopt a particular comment or comments, which were carefully and thoughtfully presented, it is a very useful discipline. Many judges find that a particular opinion wouldn't write the way they want to go, so, therefore, they change their direction.

If reason and close reasoning can be brought to bear in the explanation of the policy choice made—and there will be often very difficult and close questions of policy choice—we believe the public confidence in the fairness or the openness of the means employed to adopt or to revise procurement policies will be greatly strengthened.

Lastly, we have a word of encouragement and support for the creation by the bill of authority to regulate procurement using Federal

funds by recipients of either grants or other forms of Federal assistance. I am a little confused by the recent comments this morning, as to whether that is or is not intended by the bill. We strongly favor that form of policy regulation of procurement by those recipients and we likewise firmly support the study of the whole subject of grants and other forms of Federal assistance and what form of centralized regulation and control may be needed.

In conclusion, Mr. Chairman, we think the Congress now has a splendid opportunity through the enactment of S. 2510, along the lines indicated, to take a big step towards major improvement of the procurement process at every level of our society where Federal funds are expended by public contract. Indeed this is the first and foremost recommendation of the Procurement Commission.

Thank you, Mr. Chairman. Mr. Grossbaum and I will be happy to try to answer any questions that you may have.

Senator CHILES. Thank you, Mr. Coburn.

I want to thank you and congratulate on a very thoughtful and professional statement. It is obvious that a great deal of study and deliberation by knowledgeable people went into this statement. We will look forward to the result of the action by the American Bar Association.

With respect to S. 2510, let me just say at the outset that if there was some confusion from the colloquy we had today, we do expect that the Office of Federal Procurement policy, as provided under this legislation, would try to centralize policy in regard to grants as well as contracts. We were trying to clear up a fear that has struck the hearts of a lot of people representing small businessmen that this would be a back door approach to granting some authority to GSA to be, in effect, the buyer for grantees. We said that is a specific question of the report that needs to be dealt with in specific legislation.

Your treatment of the advantages of a regulatory board or commission are very persuasive and do indeed present a number of issues which the subcommittee must thoughtfully consider. One of the things the subcommittee feels is we shouldn't wait, we shouldn't do as some of the executive departments would have us do, wait for 5 months or a year or whatever period of time they think would be appropriate and then see whether they have done a reasonable job. I think the commission never envisioned that we should wait, but felt that we should grant directive authority by statute to wherever we are going to have this office and then we would wait and see whether the statutory authority worked. If that did not work then we probably would consider, they felt, a congressional agency, something like GAO, that would be directly responsive to the Congress.

Perhaps that is going in the same direction that you are talking about with your independent agency. Our concern on the commission, and I think now on the committee, is how and where do you get the clout for this office? How are you going to get the clout, unless it is political and you tie the President in or unless you have his support, because unless you do that it is not going to do anything, no matter where you house it in the Executive Office. Can I have your views on that?

Mr. COBURN. May we both respond?

May I say it seems to me that clout has to come from the Congress. The clout, in my view, is a matter of draftsmanship of the terms of the substantive powers given a new agency.

I think that the Department of Defense, for instance, would favor that authority to be limited to a coordination type of authority. I would say contrary to that, that this new agency should be plainly and unmistakably and principally the controlling authority in the formulation and monitoring of procurement policy for the entire executive branch in the Federal Government.

And it seems to me if Congress puts it in those terms, as I think S. 2510 essentially does, there should be no question of the clout, which I think comes from that type of language rather than where or in which part of the executive branch the office happens to be situated.

Mr. GROSSBAUM. Senator Chiles, the committee which I have the honor to Chair is called the Committee on Federal Procurement Regulatory Process and its members were polled shortly before Mr. Hollifield introduced his bill. They were polled and gave quite extensive comments on Commission Recommendation A-1.

There was a rather unanimous agreement with regard to having this office or agency or regulatory board divorced from the procurement operating agencies. There was almost similar uniformity of views with regard to divorcing the office from the Executive Office of the President. The views on this covered a number of concerns. One is that historically OMB's involvement in procurement policy, its track record, so to speak, has not been particularly impressive. OMB's performance has been quite limited and it has exercised authority, if any, in a coordinative fashion rather than the directive fashion envisioned in S. 2510.

Based on the Comptroller General's report, as to how the executive agencies are progressing and implementing, or even working up executive branch positions on, the Procurement Commission recommendations, there has not been much demonstration of leadership to date, either from the OMB or from the Office that has been placed in GSA.

Other concerns related, as Mr. Coburn has said, to possible political pressures in the situation of the office in the Executive Office of the President, and to the experience of other offices within the Executive Office of the President; an experience which shows that with such placement in the Executive Office of the President the Office can fall into disuse. An example is the Office of Science and Technology.

Senator CHILES. Can you think of an example that had statutory backing that has fallen into disuse as opposed to one that was created by Executive order?

Mr. GROSSBAUM. No, but the possibility that exists here is one of wearing several hats within the Executive Office. Now, that could be prevented by statute. But, for example, in the plans discussed in the Comptroller General report, it would appear that the principal executive branch authority for procurement policy would be an Assistant Director of OMB and he might be wearing several hats, which would mean he would not be giving the full attention and the full force of the office and power and prestige of the office to the formulation of procurement policy.

So the rather broad consensus of our committee was that the office not only be divorced from operating procurement agencies, but also from the Executive Office of the President.

A last concern of our committee was with regard to the clout possessed by the new office. Having taken the office away from existing

institutional structures, we are left with a concern regarding the adequacy of staffing of the office. The Commission recommendation seemed to concentrate on, so our committee felt, and perhaps over-emphasized the smallness of a highly skilled cadre of experts.

Senator CHILES. How big do you envision the office?

Mr. GROSSBAUM. We envisioned the office to be staffed adequately to perform the statutory function. I think, as a minimum, this transcends the notion of a highly skilled small handful of specialists because that would throw us back to the experience currently existing for coordinating procurement policy by means of Committees of Correspondence, such as the Interagency Procurement Policy Committee, which was set up in GSA to be responsible for formulating the Federal procurement regulations.

To a large extent, if you limited staff to what is less than needed to perform a good deal of the formulation responsibility in-house, you will make the office dependent again on inputs from the executive agencies that is, those same operating procuring agencies from which the proposed OFPP is intended to be independent.

Senator CHILES. Isn't there a danger if we give the office authority over forms that the office will be buried in minutia and not be doing the task we really want to assign it; that is, to establish some uniform policies?

Mr. COBURN. You can be bogged down in minutia so that you lose your perspective, but at the same time to have effective policy control and authority, you need to have control over the details of policy. It is a matter of leadership.

Senator CHILES. Leadership is one thing, but it is another thing if every person that deals with the Government has an office they can go appeal to, and so on. Then, you are going to have another bureaucratic agency. I think that would cut into what the intent was and what we were trying to in this legislation—prescribe only those forms and procedures necessary to insure consistency in the implementation of governmentwide policies and procedures.

Mr. COBURN. It is like invading China. The procurement regulatory process that now exists is a mammoth and huge enterprise and I purposely analogize it to the invasion of China. If you are going to get on top of this, you are going to have to have some manpower, some determination, some perspective. If you put these kinds of restrictions and restraints out of size considerations or out of fear of a large bureaucracy, I think you are going to get the short end of that trade-off.

Senator CHILES. I think it would be just like if we thought we could occupy China, and I don't want to be in the position of trying to occupy China, nor do I want to be in the position of trying to have every form and every procedure established by this agency. Then I think we would be talking about another agency we would have to put on top of this one to try to get that done.

Mr. GROSSBAUM. Without even getting down to the minutiae of forms and structure of forms, but just considering overall policy and broad regulations, the statutory authority of the Administrator of General Services for non-military-procurement policy is quite enormous under section 206 of the Federal Property Act. Yet, you have an enormous number of regulations issued by various civilian agencies,

to a large extent without any oversight by the Administrator of General Services, simply because GSA's Interagency Policy Committee operates only as this Committee of Correspondence, devoting its efforts solely to the FPR and not able even to read the separate regulations or separate policies of the various individual civilian procurement agencies, which under the statute come under the bailiwick of the Administrator of General Services authority.

The staff of the proposed OFPP should be of sufficient size to be at least capable of being aware of and getting a handle on the policies of the several agencies to assure that they are consistent with the broad policies that are being formulated by the office.

Senator CHILES. Thank you. Senator Nunn?

Senator NUNN. Just one observation. I think overall this is very comprehensive and a very thought-provoking statement. The regulatory agency aspect of it I do question from the point of view of how many functions can we afford to remove from politics? We can go on and on I suppose to everything if you assume the politicians are going to misuse the procurement power they have. I suppose you could make that same case for everything in Government, could you not?

Mr. COBURN. Well, I would say—

Senator NUNN. Where do you draw the line? I am suggesting that there are many political choices in the procurement field and many of them should be taken out by this legislation. But beyond that, I just think you get better accountability to Congress and the public and better opportunity from public participation if the affected interests have their say and so forth. But if you set up a regulatory agency then you leave it to an administrator and a deputy and a handful of so-called experts.

Doesn't what you are saying mean, in effect, that when someone runs for the Presidency, and one of his major platforms is to do something about the waste in procurement, that he would have his hands tied in many respects, or do you see this as a limitation on Executive power; or how do you see it?

Mr. COBURN. What I am proposing certainly would be, yes, a limitation on Presidential power. The President now, I suppose, doesn't have very much say over the policies of the SEC or ICC or the Federal Aviation Administration. I assume that the President's hands are tied there and I am suggesting the same thing for the procurement process.

Senator NUNN. Are you saying that, in effect, part of the problem we have now is because of politics in procurement or inefficiency in procurement? I haven't heard the allegation that politics is the problem.

Mr. COBURN. Oh, I think we know of instances where who got the contract had a lot to do with politics.

Senator NUNN. Does this permeate the system or are these isolated instances?

Mr. COBURN. I think they are isolated as far as I know. And I think we want to keep it that way. I don't think the selection of contractors for a particular program should have anything to do with politics.

Senator NUNN. I agree with you completely on that. I am just wondering if you are aiming at a problem that does not exist. In other words, to think you ought to remove procurement from the executive

branch and put it under a regulatory agency, in effect, is at least insinuating that the problem with procurement relates to political influence?

Mr. COBURN. No, the principal reason for that, sir, at least my concern that you can't redress the one-sidedness. You cannot redress the one-sidedness of procurement policy today in favor of the Government as a buyer without regard to fairness, in my view, unless you take this step toward the establishment of a regulatory agency, which we would hope would, through the membership of the agency, would be representative of the divergent views on the one hand, and, second, assure adequate public consultation in the formulation of the policies they adopt.

Senator NUNN. I certainly agree that Federal policies should be fair, but your statement, in effect, suggests that it is not fair to businessmen. Does it follow that the Government is getting a good deal and the businessmen are getting a bad deal? In that case it would seem to follow that we, under the present system, are saving money because we are not fair to businessmen and, therefore, we don't have a problem, but I don't think that is the case.

Mr. COBURN. I think you have to take a longer range view of that. It may be that the contractor may have a heavy loss on a particular contract because the policy says to use a particular clause, which disclaims, for example, governmental responsibility for something they should have had responsibility for.

Senator NUNN. Right. Well, our major thrust here, I think, is to try to not only have fairness but also a little more efficiency in the process. I am just trying to follow your line of reasoning in a one, two, three simplified version.

Mr. COBURN. In the long run, Senator, fairness and efficiency are opposite sides of the coin. We cannot, in the long run, have efficiency on terms that are unfair, in my opinion.

Senator NUNN. In the long run, they come together, in other words?

Mr. COBURN. Yes, sir.

Senator NUNN. Would you also say that our present system is wasteful? I mean, is what you are advocating going to have anything to do with saving taxpayers' money by putting it under an agency rather than the President? In other words, is your proposal aimed more to fairness? I am trying to see what your major thrust is. Is it to fairness or efficiency?

Mr. COBURN. I think, both, Senator Nunn. We favor efficiency and we favor fairness in working together with each other. And it seems to me that both concepts have to be pursued with equal determination.

Senator CHILES. I would like to comment briefly on two of the other comments that you made. One was the linkage of procurement policy and procurement specifications, and it highlights one of the complex facets of procurement. For this reason, I think maybe we would be remiss in trying to deal with a limited aspect of specifications in this legislation. Again, you will recall, the Commission's report is a pretty broad thing, and this is our first crack at a bill. We are not going to try to put every recommendation into this bill, realizing that we can't. That might be something we will look at separately.

Second, I think you make a valid comment in your promotion of the ethic of fairness in Government contracting. I happen to believe

that that really, in the long run, is something in the best interests of the Government. I believe that in too many instances, where because of the specifications and how they were drawn, what appeared to be a good deal for the Government turned out to be a very bad deal for the Government. Just like in any other relationship, there has to be a fair relationship for both sides. I think the Government in too many instances has ended up having to pay a lot more than they would have had the contract and the agreement been fair to start with.

Mr. COBURN. I can give an illustration of that, Mr. Chairman. As the Congress knows, there have been major overruns in the naval ship-building procurement. For example, the destroyer escort 1052 program. As a matter of fact, a prize essay for the U.S. Naval Institute proceedings was written by a naval officer almost 3 years ago, bringing up the problem of premature ship design. That program was rushed into procurement before the specifications were ready for competitive bidding. There was a new process called shock and dynamic analysis. It was a new concept to try to improve the quality of the ships by testing for shock and dynamic analysis. The problem was the specifications had been not properly developed to achieve those results and the Navy was faced with \$300 or \$400 million in claims on that program, and cost overruns on that program because there was premature procurement.

And the proposal that our statement, for instance, makes; namely, that specifications of that type be submitted to public consultation before being adopted, in my opinion, would avoid that very large cost overrun to the Government.

Senator NUNN. Taking that as an example, how would this independent agency operate once the Navy made this proposal?

Mr. COBURN. Well, what I have in mind, Senator, would leave to the Navy the detail of getting public coordination and public comment on its competitive ship specifications. This new agency, I would think, would keep out of operations. It would have no competence to evaluate the technical responsiveness to that proposed specification, but it would see to it that the Navy, for example, had a proper procedure for soliciting public views.

Senator CHILES. Well, thank you very much for your testimony.

Our next witness is Mr. John Magnotti, Jr., secretary-treasurer, National Council of Professional Services Firms in Free Enterprise. It would be helpful if you could summarize your statement.

**STATEMENT OF JOHN F. MAGNOTTI, JR., SECRETARY-TREASURER,
NATIONAL COUNCIL OF PROFESSIONAL SERVICES FIRMS, AC-
COMPANIED BY PAUL S. McAULIFFE, COUNSEL**

Dr. MAGNOTTI. Yes, sir, we have a summary statement.

Senator CHILES. Your statement will be placed in full in the record.
[The prepared statement of John F. Magnotti follows:]

PREPARED STATEMENT OF JOHN F. MAGNOTTI, JR.

Mr. Chairman and Members of the Committee: My name is John F. Magnotti and I am appearing today to testify on behalf of the National Council of Professional Services Firms in Free Enterprise ("Professional Services Council"). I currently serve as Secretary-Treasurer of this group.

BACKGROUND

The Professional Services Council is an incorporated association formed in 1971 to seek reform of Federal law and policies which create unfair preferences for not-for-profit and in-house government sources in providing professional services to the government. The Council's membership includes the following associations representing particular segments of the professional services industry:

- American Consulting Engineers Council.
- American Council of Independent Laboratories.
- American Institute of Consulting Engineers.
- American Society of Agricultural Consultants.
- American Society of Consulting Planners.
- Professional Engineers in Private Practice of the National Society of Professional Engineers.
- Software Industries Association/ADAPSO.

In addition, over five hundred individual firms are members of the Council. In total, over 4,000 firms employing more than 150,000 professionals in various disciplines are represented by the Council and its member associations.

The professional services industry consists of for-profit private sector firms engaged in research and development, testing, design, and consulting work for clients in both the private and public sector. These firms are not engaged in any physical aspects of construction or manufacturing. The industry today, about \$11 billion in size and composed of over 11,000 firms, is one of the largest in the United States. It includes management consultants, systems analysts, computer software firms, testing laboratories, research and development firms and many specialty firms engaged in social studies, environmental studies, transportation studies, and other special study areas. Currently, approximately half of the industry's activity involves performing services for Federal, State and local clients. Within the public sector portion, approximately 70 percent is sponsored by Federal and 30 percent by state and local governments.

SUPPORT ENACTMENT OF S. 2510

The Professional Services Council favors establishing a central office within the Federal government with authority to develop and implement a Federal policy of reliance upon private sector capabilities to provide necessary professional services. We support the Office of Federal Procurement Policy ("OFPP") established by S. 2510 because we believe this office will have the attributes necessary to perform this function effectively. Certain amendments to S. 2510 would, in our view, enhance the effectiveness of OFPP in enhancing government reliance upon the private sector; and we strongly urge the passage of S. 2510 with these amendments.

ORGANIZATION AND AUTHORITY OF OFPP

OFPP would be established within the Executive Office of the President and thus be independent of any agency with operating and procuring responsibilities. This is essential if the office is to function effectively. The question whether to provide necessary professional services in-house or through procurement is extremely sensitive to agencies which must seek support from Congress and from the public in order to fulfill their designated mission. To procure a professional service from a private sector firm is to forego the opportunity to augment a particular area of the in-house expertise which represents an important source of the agency's political power.¹ Accordingly, it is not surprising that operating agencies demonstrate a preference to perform such activities in-house. Thus were OFPP placed within an operating agency it would inevitably be confronted with numerous conflicts of interest in its efforts to enhance government reliance upon the private sector for needed goods and services. By establishing OFPP within the Executive Office, above the plane of the operating agencies, S. 2510 enhances its capability to develop a meaningful and effective policy of reliance upon the private sector.

Secondly, it is important that OFPP's broad authority under S. 2510 to establish uniformity in Federal procurement policies and regulations be subject to the ultimate role of Congress in setting basic procurement policies. The Commission

¹ See F. E. Rourke, *Bureaucracy, Politics, and Public Policy*, 69-72 (1969).

on Government Procurement recognized that Congress has by statute established certain fundamental procurement policies and that the role of OFPP would be to implement and supplement these rather than to override Congressionally-determined policy. This is the role envisioned in S. 2510's statement of purpose:

The purpose of this Act is to establish within the Executive Office of the President an office to provide overall leadership and direction for the development of procurement policies and regulations for executive agencies *in implementation of procurement statutes.*

§ 3(b) (*Italics added*)

However, certain operative sections of S. 2510 as currently drafted could be construed as a delegation to OFPP of authority to set procurement policies that may conflict or be inconsistent with statutory provisions. Thus section 6(a) provides that:

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 which shall be followed by executive agencies * * *

Similarly, section 9 provides that

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.

and section 10 provides, without restriction, that

Procurement policies, regulations, procedures, or forms in effect as of the date 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.

Read literally, this language could be construed to vest in OFPP broad authority to contravene specific statutory policies. We submit that, in context, the more reasonable interpretation is that OFPP is bound by implication to follow Congressionally-determined procurement policy. Nevertheless, to avoid future confusion concerning the scope of OFPP's authority, the Professional Services Council recommends that specific language be incorporated recognizing the paramount role of Congress in determining procurement policy. Accordingly, we suggest, first, that section 6(a) be revised to read:

The Administrator shall provide overall guidance and direction in the implementation of procurement statutes, and to the extent he considers appropriate and with due regard to the program activities of the executive agencies, shall prescribe policies and regulations implementing such statutes which shall be followed by executive agencies. . . .

and that section 10 be amended as follows:

Procurement policies, regulations, procedures or forms established by executive agencies and in effect as of the date of this Act shall continue in effect, as modified from time to time until superseded by policies, regulations, or forms promulgated by the Administrator; provided however, that policies, regulations, procedures or forms promulgated pursuant to this act shall not impair or interfere with executive agency procurement policies and practices specifically required by statute.

These amendments would, in our view, leave OFPP with sufficient flexibility to consider and revise as appropriate policies and regulations set by executive agencies and to formulate new procurement policies and regulations, while recognizing that statutory policies would control in the event of any conflict.

STATEMENT OF POLICY OF RELIANCE UPON THE PRIVATE SECTOR

OFPP is entrusted with the function of 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 to meet public needs.

§ 6(b) (1)

These examples demonstrate that the guidelines contained in OMB Circular A-76 do not, as a practical matter, effectively implement the policy of reliance upon the private sector. There is a need for a clear statutory mandate stating the policy of the Federal government to rely upon private enterprise for needed goods and services. *See Recommendation 22, Report of Commission on Government Procurement.* OFPP, in implementing this policy, must move both to revise the general standards currently set forth in OMB Circular A-76 in favor of

more reliance upon the private sector and to require strict compliance by individual agencies with procurement responsibilities.

S. 2510 recognizes the significance of OFPP's role in this regard by listing this as the first of its enumerated functions. The Professional Services Council suggests that this objective would be further emphasized by incorporating a clear statement of a Federal policy of reliance upon the private sector for needed goods and services within section 2, "Declaration of Policy." Accordingly we recommend that a new subsection to section 2 be added as follows:

() establishing policies and regulations which require the government to rely upon the private sector to provide needed goods and services to the maximum feasible extent.

Such a declaration of policy by the Congress would provide considerable impetus to OFPP's efforts to enhance utilization of private sector capabilities.

RELIANCE UPON THE PRIVATE SECTOR IN FEDERAL ASSISTANCE PROGRAMS

Section 6(a) of S. 2510, in relevant part, directs OFPP to prescribe policies and regulations which shall be followed by executive agencies (A) in the procurement of (1) property other than real property in being; (2) services, including research and development; and (3) construction, alteration, repair, or maintenance of real property; and (B) in providing for or in connection with procurement of items specified in (1), (2), and (3) above, to the extent required for performance of Federal assistance programs. However, in the case of programs to provide Federal assistance to States and political subdivisions, this authority shall not be construed to authorize any procurement contrary to State and local laws.

This section, in authorizing OFPP to regulate the procurement of property, services, and construction by recipients of assistance under Federal aid programs, significantly strengthens the ability of OFPP to enhance government reliance upon the private sector for needed goods and services.

The absence of such guidelines in this significant area of Federal spending has significantly diluted the effectiveness of the policy of relying upon the private sector. OMB Circular A-76 establishes guidelines for use by Federal agencies in determining whether goods or services they require should be provided in-house or procured from the private sector; this Circular, however, has no direct application to the use of Federal funds distributed to state and local governments under assistance programs. Section 302 of the Intergovernmental Cooperation Act of 1968 extended the A-76 policy to provision of services by Federal agencies to state and local governments. This section authorizes Federal agencies to provide certain specialized and technical services to state and local units of government, but only those services:

Which the Director of the Bureau of the Budget through rules and regulations determines Federal departments and agencies have special competence to provide. Such rules and regulations shall be consistent with and in furtherance of the Government's policy of relying on the private enterprise system to provide those services which are reasonably and expeditiously available through ordinary business channels.

OMB Circular A-97 establishes specific guidelines for when a Federal agency may provide specialized or technical services to state or local governments. As one condition under which services may be provided, the regulations state:

Such services will not be provided unless the agency providing the services is providing similar services for its own use under the policies set forth in Bureau of the Budget Circular No. A-76. "Policies for acquiring commercial or industrial products and services for Government use" (Revised August 30, 1967). In addition, in accordance with the policies set forth in Circular No. A-76, the requesting entity must certify that such service cannot be procured reasonably and expeditiously by it through ordinary business channels.

However, no comparable restriction upon the utilization of Federal grant funds to enhance in-house capability at the state and local level exists. OMB Circular A-102 prescribes certain controls over procurement conducted with Federal funds by recipients of assistance; it does not, however, embody the policy of reliance upon the private sector stated in Circular A-76 nor specify any guidelines concerning the recipient's initial make-or-buy determination. In the professional services field, this absence of Federal controls has permitted state and local units of government to utilize Federal funds to develop in-house capability in areas where sufficient private sector capability exists. This development has been of major concern to the Professional Services Council, and the Council

therefore endorses those provisions of S. 2510 which authorize OFPP to extend the policy of reliance upon the private sector for needed goods and services to procurement by recipients of Federal assistance.

For sake of clarity, however, the Professional Services Council recommends that the final clause of the first sentence of section 6(a) be revised to read:

(B) in providing in or in connection with Federal assistance for procurement of items specified in (1), (2), and (3) above to the extent required for performance of Federal assistance programs.

This minor revision would express more clearly what we perceive to be the intent of this section.

AUTHORITY OVER USE OF GRANTS

Section 15 of S. 2510 provides, in relevant part, that:

The Administrator, in cooperation with the executive agencies and the Office of Management and Budget, shall undertake a study to determine the feasibility and desirability of authorizing his Office, or another Federal office or agency, to provide overall guidance and direction for Federal assistance programs and the relationship of policies and regulations governing the use of contracts, grants, and cooperative agreements.

The bill thus fails to authorize OFPP or any other agency to supervise and coordinate a uniform Federal policy in this regard pending the completion of this study, which could take as long as two years. Even at that point it is conceivable that no central office would be designated, but instead that each executive agency would retain its individual authority to develop policies and regulations. Such a situation would frustrate OFPP in its efforts to enhance Federal reliance upon the private sector for professional services; it would in addition contravene the recommendations of the Commission on Government Procurement. The Professional Services Council submits that OFPP, in order to exercise its mandate effectively, must be vested at a minimum with authority over the policies and procedures utilized by Federal agencies in choosing between the grant and contract instruments in funding research, development and related programs.

In order to exercise its mandate to increase government reliance upon the private sector, OFPP must of necessity concern itself with use of the grant instrument by executive agencies to unfairly favor not-for-profit sources in the selection of performers of research, development and related services. In many cases, funding of Federal research programs is limited by statute to grants to not-for-profit or public sector organizations. In other cases, where the statute in addition provides the agency with discretionary authority to use the contract instrument to fund public, not-for-profit, or for-profit performers, discretion is frequently exercised to utilize the grant instrument and thus favor the not-for-profit performer. (The Department of Health, Education and Welfare, for example, uses its discretion to make 80% of such funds available through the award of grants and only 20% through contracts.) Often such grants are awarded in situations where appropriate resources are available in the private for-profit sector and the contract instrument could have been utilized. Frequently, the decision to proceed with the grant is grounded solely in administrative convenience, i.e., a grant may be awarded more quickly and is subject to fewer regulations than the contract. The net effect of this system is to tilt the balance in favor of the not-for-profit organization. The Professional Services Council therefore believes that the coordination of Federal policy concerning utilization of the grant instrument is an essential part of the task of increasing reliance upon the private sector, and that OFPP should be given full authority to undertake such coordination.

The need for uniform criteria in selection of the grant or contract instrument has been recognized by the Commission on Government Procurement (Part F, Recommendation 1) and by H.R. 9060, the "Federal Grants Act of 1973". Each designates the contract as the appropriate instrument for procurement relationships between the Federal government and other parties, as opposed to assistance relationships. In view of the considerable difficulty inevitable in applying such a distinction to particular transactions, it is difficult to see how any semblance of uniformity can be achieved unless a central office is vested with authority to develop specific regulations and procedures for all executive agencies to follow.

Finally, the Commission on Government Procurement itself noted the necessity for OFPP to establish uniform policies concerning the grants process:

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:

* * * * *

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

Report of Commission on Government Procurement, Vol. 1, 12-13 (1973)

The Commission did note, in its discussion of grant programs, the difficulties inherent in establishing a comprehensive system of guidance for Federal assistance programs, in light of existing statutory restrictions, and recommended that OFPP study the feasibility of such a system. (Part F, Recommendation 2). The Professional Services Council agrees that further study is required before such a comprehensive system of guidance could be established. However, such a study should not operate to deter OFPP from implementing those controls over the grants process whose feasibility and desirability has already been established, namely controls over contract-grant selection practices.

To more accurately reflect the recommendations of the Procurement Commission and to enable OFPP to fully implement its mandate to enhance reliance upon private sector resources, the Professional Services Council recommends that S. 2510 be revised to vest OFPP with certain authority over use of the grant instrument.

First, OFPP should be authorized and directed by S. 2510 to prescribe policies and regulations to be followed by executive agencies in selecting the contract or grant instrument to fund a particular project or program.

Second, the study required by Section 15 should be limited to the scope envisioned by the Procurement Commission. The study should inquire whether a comprehensive system of guidance for Federal assistance which goes beyond those elements prescribed in Part F, Recommendation 1 of the Procurement Commission is feasible. The report to Congress should emphasize those statutory and administrative changes which would be necessary for the implementation of such a system, including vesting OFPP with full authority over the use of grants similar to its authority over the use of contracts for procurement.

DELEGATION OF POLICY-MAKING FUNCTION

As noted previously, the Professional Services Council believes that the independence of OFPP from operating agencies is essential to effective fulfillment of its mandate to implement an effective policy of reliance upon the private sector. Accordingly, we are concerned with the broad authority to delegate provided by section 12:

The Administrator may delegate and authorize redelegation of *any authority under this Act* to any official in his office or, with the consent of the agency or upon direction of the President, to *any executive agency*. (Italics added)

Under this provision OFPP could delegate to other executive agencies the responsibility to develop Federal policies and regulations in a particular area of procurement. Such action would be inconsistent with the basic concept of OFPP embodied in S. 2510. Further, there is little need to involve other executive agencies so directly in performing OFPP functions, since OFPP's authority extends solely to policies and regulations, and adequate provision is made in section 6(c) for soliciting the views of other executive agencies in the formulation of policies and regulations. The Professional Services Council recommends, therefore, that the authority of the Administrator under section 12 be limited as follows:

Provided however, that the Administrator shall not delegate to any other executive agency his responsibility under this Act to formulate and promulgate procurement policies and regulations.

CONCLUSION

The Professional Services Council supports the enactment of S. 2510 with the amendments noted above. An Office of Federal Procurement Policy with central authority over government utilization and procurement of professional services can greatly assist in developing a rational, uniform policy of reliance upon the capabilities of the private for-profit sector.

Dr. MAGNOTTI. Mr. Chairman and members of the committee, my name is John F. Magnotti and I am appearing today to testify on behalf of the National Council of Professional Services Firms. I currently serve as secretary-treasurer of this group. I am accompanied by Paul S. McAuliffe of the law firm of Gadsby & Hannah, our counsel. I am submitting a prepared statement which I ask be included in the record. In my testimony this morning, I would like to highlight the council's major concerns with the passage of S. 2510.

Senator CHILES. Mr. Magnotti, it might be better to interrupt you right now. The vote light just flashed on. We will return and pick up from there.

Dr. MAGNOTTI. All right, sir. Thank you.

[Brief recess.]

Senator CHILES. You may proceed.

Dr. MAGNOTTI. I would like to give you a word on the council itself for the moment.

The Professional Services Council is an incorporated association formed in 1971 to seek reform of Federal law and policies which create unfair preferences for not-for-profit and in-house Government sources in providing professional services to the Government. The council's membership includes several associations representing particular segments of the professional services industry as well as over 500 individual firms.

The professional services industry consists of for-profit private sector firms engaged in research and development, testing, design, and consulting work for clients in both the private and public sectors. These firms are not engaged in any physical aspects of construction or manufacturing. The industry today, about \$11 billion in size and composed of over 11,000 firms, is one of the largest in the United States. It includes engineers, architects, management consultants, systems analysts, computer software firms, testing laboratories, research and development firms, and many specialty firms engaged in social studies, environmental studies, transportation studies, and other special study and design areas. Currently, approximately half of the industry's activity involves performing services for Federal, State, and local clients. Within the public sector portion, approximately 70 percent is sponsored by Federal and 30 percent by State and local governments.

The Professional Services Council favors establishing a central office within the Federal Government with authority to develop and implement a Federal policy of reliance upon private sector capabilities to provide necessary professional services. We support the Office of Federal Procurement Policy established by S. 2510 because we believe this office will have the attributes necessary to perform this function effectively. We strongly urge the passage of S. 2510 with certain amendments to enhance the effectiveness of OFPP, and to increase Government reliance on the private sector.

In exercising its authority over Federal procurement OFPP must in the first instance concern itself with the make-or-buy determination. While OMB circular A-76 currently states a general policy of reliance upon private enterprise to supply to Government's needs, confusion and disagreement exist in the application of this policy by individual executive agencies, and implementation is incomplete and not uniform.

Several recent surveys demonstrate that the guidelines contained in OMB circular A-76 do not, as a practical matter, effectively implement the policy of reliance on the private sector. The Professional Services Council feels that congressional guidance concerning the policy of the Federal Government to rely on private enterprise for needed goods and services is necessary. Thus, OFPP should be directed, either in the act itself or in the legislative history, to revise the general standards currently set forth in OMB circular A-76 in favor of more reliance on the private sector, and to require strict compliance by individual agencies with procurement responsibilities. We also suggest that this objective would be further emphasized by incorporating a clear statement of a Federal policy of reliance on the private sector within section 2, "Declaration of Policy." Such a declaration of policy by the Congress would provide considerable impetus to OFPP's efforts to enhance utilization of private sector capabilities.

Second, the Professional Services Council supports authorizing OFPP to regulate the procurement of property, services, and construction by recipients of assistance under Federal aid programs, as provided by section 6(a). This authority strengthens the ability of OFPP to enhance Government reliance on the private sector. The absence of such guidelines in this critical area of Federal spending has considerably diluted the effectiveness of this policy.

I might say, in addition, that we do not construe the bill as authority to extend Federal supply sources to non-Federal entities, such as grantees and other recipients of Federal assistance.

In the professional services field, this absence of Federal controls has permitted State and local units of government to utilize Federal funds to develop in-house capability in areas where sufficient private sector capability exists. This development has been of major concern to the Professional Services Council, and the council therefore endorses those provisions of S. 2510 which authorize OFPP to extend the policy of reliance on the private sector to procurement by recipients of Federal assistance.

Third, we are concerned that the bill fails to authorize OFPP or any other agency to supervise and coordinate a uniform Federal policy with respect to the use of grants pending the completion of a study which could take as long as 2 years. Such a gap would frustrate OFPP in its efforts to enhance Federal reliance on the private sector for professional services; it would, in addition, contravene the recommendations of the Commission on Government Procurement. The Professional Services Council submits that OFPP, in order to exercise its mandate effectively, must be vested at a minimum with authority over the policies and procedures used by Federal agencies in choosing between the grant and contract instruments in funding research, development, and related programs.

Inappropriate use of the grant instrument by executive agencies tends to unfairly favor not-for-profit sources in the selection of performance of research, development, and related services. In many cases, funding of Federal research programs is limited by statute to grant awards to not-for-profit or public sector organizations. In other cases where the statute, in addition, provides the agency with discretionary authority to use the contract instrument to fund any qualified

performer including public, not-for-profit, or for-profit firms, discretion is frequently exercised to utilize the grant instrument and thus favor the not-for-profit performer.

Often such grants are awarded in situations where appropriate resources are available in the private for-profit sector and where the contract instrument could have been used. Frequently, the decision to proceed with the grant is grounded solely in administrative convenience, in that a grant may be awarded more quickly and is subject to fewer regulations than the contract. The Professional Services Council therefore believes that the coordination of Federal policy concerning utilization of the grant instrument is an essential part of the task of increasing reliance on the private sector, and that OFPP should be given full authority to undertake such coordination.

In conclusion, let me re-emphasize that the Professional Services Council supports the enactment of S. 2510 with the amendments noted above. We believe that an Office of Federal Procurement Policy with central authority over Government use and procurement of professional services can greatly assist in developing a rational, uniform policy of reliance on the capabilities of the private for-profit sector.

Thank you.

Senator CHILES. Thank you.

We are pleased to have a spokesman for an organization representing such a large segment of the services industry give us his organization's position on our legislation to establish an Office of Federal Procurement Policy.

The professional services industry is becoming an increasingly large supplier of the needs of the Government.

Our intent in the legislation under consideration is to establish an organizational framework to provide a focal point for procurement policy within the Federal Government rather than to just create the policy itself. Accordingly, we will give special attention to your suggestions relating to the organization and authority of the Office of Federal Procurement Policy.

As you have correctly concluded in your statement, the purpose of S. 2510 is not to update all statutory policies, but where conflicting statutes exist, we hope the office would be responsible for bringing this to the attention of Congress with recommendations for correction.

With respect to your concerns about the implementation of OMB circular A-76, it is contemplated that the Office of Federal Procurement Policy would bring policy and practice into harmony. This subcommittee considers reliance on the private sector to be one of the most important aspects of the Procurement Commission report. The views on this subject, which are expressed in your testimony, will be especially valuable when the subcommittee considers this.

Rather than have the Office of Federal Procurement Policy establish policies and regulations requiring the Government to rely on the private sector to provide needed goods and services, we believe that the more practical and lasting solution is to have the Office of Federal Procurement Policy carry out the mandate of Congress. We would expect this mandate to be expressed with clarity in specific legislation, and it would be part of the subcommittee's task to bring up some legislation on this subject next year.

As I am sure you are aware, the Procurement Commission did not investigate or report on the grant function in the degree that it warranted.

Dr. MAGNOTTI. Certainly.

Senator CHILES. What we said in the legislation was that we did provide for coordination over the grant process in connection with the procurement of items required for performance of grants. Then we said we thought that we should have an in-depth study as to the rest of the process. What we tried to specifically speak to was that portion we thought the OFPP would be qualified to work on right away. But, in view of the fact that the Commission did not spend sufficient time in regard to the overall process of grant assistance, it was our feeling that probably would be something we should go into in greater depth.

We anticipate that the study called for in section 15 will provide the detail Congress would need to guide it in its decisions with respect to the legislation governing Federal assistance programs.

You raise a very valid question about the language of the bill, as to the delegation by the Administrator of his authority. This is the first time this point has been brought to our attention. So as to be perfectly clear on it, is it your feeling that the Administrator of the Office of Federal Procurement Policy might, if so desired, delegate away the leadership?

Dr. MAGNOTTI. That is our concern, sir, that it could be delegated away completely, and we agree with you that there should be a statutory base for this Office of Federal Procurement Policy with a clear delineation of the responsibility of the office to maintain a central focus, as you put it, for procurement policy.

Senator CHILES. We will take that into consideration because it certainly wouldn't be our intent to permit a dilution of authority.

Thank you very much for your testimony.

Dr. MAGNOTTI. Thank you, sir.

Senator CHILES. Our next witness will be Mr. Stephen A. Koczak, director of research of the American Federation of Government Employees.

**STATEMENT OF STEPHEN A. KOCZAK, DIRECTOR OF RESEARCH,
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ON BE-
HALF OF CLYDE M. WEBBER, NATIONAL PRESIDENT, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES**

Mr. KOCZAK. Mr. Chairman, I am Stephen Koczak and I am director of research for the American Federation of Government Employees. Mr. Webber is out of town and I shall deliver the statement on his behalf.

Senator CHILES. I see.

Mr. Koczak, if you would place all of the pertinent parts of the prepared statement in the record, that would help expedite these hearings. I understand that your concern covers a broad range of issues concerning contracting out services and so on. I hope you understand, as we said previously, the subcommittee will be directing its attention to these in their own right in the near future.

Mr. KOCZAK. Yes, sir.

I would like to put the entire statement in the record and summarize it. I just have a short summary here.

Senator CHILES. Very well. Without objection, the statement will be printed in the record.

[The prepared statement of Clyde M. Webber, as presented by Mr. Stephen Koczak, follows:]

PREPARED STATEMENT OF CLYDE M. WEBBER, NATIONAL PRESIDENT, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES

The American Federation of Government Employees, affiliated with the AFL-CIO, is grateful for this opportunity to submit its views on that one area of Federal government personnel operations which is today the least regulated by law—the contracting out of support services. Representing 625,000 Federal employees under exclusive recognition units, our organization has members serving in every department and agency of the Federal government. And in every one, we have evidences of the presence of large numbers of contractor employees whose conditions of work, pay, recruitment, promotion and termination are radically different than those prescribed by law for Federal employees. Yet, the work they do is often similar to, sometimes identical with, the work done by Federal employees. Since the main legal difference between them and Federal employees is the interpositioning of a “contractor” between them and the Federal government, they can be considered for all practical purposes to be “indirect hire” Federal employees.

The numbers of these contractor, or “indirect hire”, employees is so large and their conditions of hire so different from that of direct hire Federal employees that they almost constitute in fact, if not in law, a fourth branch of our government operations. Their numbers certainly exceed all the members of Congress plus all the employees in the legislative and judicial branches. They far outnumber all the non-appropriated fund employees of the Federal departments and agencies. It has been alleged that, during the peak of the Vietnam War budget years, their numbers at times exceeded the total employment in the then Post Office Department, for example, or the total of all Federal wage grade employees on direct hire. We are, of course, unable to confirm or deny these allegations, absent a central statistical repository on contractor personnel.

And yet, despite this situation, there is no centralized depository even today to ascertain their actual numbers. No statistics are published on their classifications, pay rates, fringe benefits, labor-management agreements, productivity, mobility, or compliance with statutes on Veterans Preference and equal opportunity. They take no Constitutional oath of allegiance; they are not subjected to rigid clearances or checks on their professional competence; they take no Federal entrance examinations. Your Subcommittee is therefore rendering one of the greatest services to our nation in beginning this comprehensive study regarding all the facts of contracting out support services.

ISSUES OF PUBLIC POLICY, NATIONAL INTEREST, EQUITABLE ADMINISTRATION OF LAW
AND PROTECTION OF CONSTITUTIONAL SEPARATION OF POWERS

We respectfully submit that the tenor and the crisis of the times call for greater insistence, greater vigilance, and greater dedication to the principles that those who do the government's work serve only one master—the public interest.

This is no attack on private enterprise—what is private is private—what is government is public, and we believe that the protection of the public interest must be paramount when methods of conducting that business is under consideration.

As you most certainly recall the adoption of the civil service system was remedial to rid the Federal government of graft, corruption and wholesale political patronage. Contracting out in many respects pose once again the very evil which the civil service laws were passed to prevent. It is ironical indeed that the practice of contracting out not only subjects the conduct of public business to these same evils, it tends to destroy the system which Congress nearly a hundred years ago established to protect the integrity of government operations, namely the civil service merit system.

I am aware of the arguments as to efficiency and economy allegedly achieved by contracting out government functions. Indeed, in some circumstances, little can be found to be objectionable where this is in fact the case. However, more often than not, this is a mere surface justification for letting the contract and once the business is out for bids in the private sector a different standard and different ethics apply. Profit becomes the motive, getting the business becomes a matter of influence, connections, political contributions and the public interest is quickly lost sight of.

We ask that you consider specifically and in depth the following which our experience convinces us pose serious policy implications from improper contracting out affecting the effectiveness, the integrity, and the impartiality of public administration.

The destructive impact upon the career civil service of contracting practices, particularly as they destroy or erode lawful rates of pay and career tenure rights of civil service employees, including veterans.

The effect of contracting out upon the principles underlying the concept of a career civil service based upon merit, particularly as such effects erode the safeguards against patronage, corruption and accountability in the public interest.

The magnitude of contracting out, under impetus of the OMB and the policies of the present administration which seem to ignore the congressional mandates in the civil service laws, the Veterans Preference Act, and the Federal pay system pose for this subcommittee the very fundamental question as to how much of the public trust is to be given over to private employers as opposed to being left in the hands of career employees who meet merit system standards both as to their personal competency to do the job and their personal integrity and honesty which warrants their holding a position of public trust.

THE TREND WORSENS—DISCRIMINATION AGAINST VETERANS

Rather than improving, the trend toward the employment of "indirect hire" Federal employees is worsening. Almost every day, I am in receipt of an additional letter informing me of plans by yet another Department or Agency to convert ever more positions, traditionally and historically performed by Federal employees, to contractor operations.

For example, I recently received a letter from the Office of the Secretary of the Air Force of a decision to convert custodial services at Randolph Air Force Base, Texas, from "inservice to contractor operation effective on or about July 1, 1973." That date was, of course, the beginning of fiscal year 1974.

We filed a suit in this case. On November 8, 1973, a hearing was held in the U.S. District Court for the Western District of Texas, San Antonio Division, on AFGE's Motion for a Preliminary Injunction, Defendants' Motion to Dismiss and Motion for Summary Judgment. Although Judge D. W. Suttel denied Plaintiff's Motion for Preliminary Injunction, he also denied Defendant's Motion to Dismiss and, in his Memorandum and Order, directed the exhaustion of administrative remedies before the Civil Service Commission.

Judge Suttel specifically ordered the Commission to determine whether or not the U.S. Air Force violated the Veterans Preference Act by reducing in force veterans preference eligibles who were performing custodial work at Randolph Air Force Base, when the RIF was occasioned by the contracting out of the custodial service functions; whether or not the RIF taken in this case was for any of the proper purposes for taking a RIF as set forth in FPM 351.201(a); whether or not the Air Force violated any Civil Service Commission Laws and Regulations by contracting out the custodial service functions at Randolph Air Force Base; whether the implementation of any of the provisions of OMB Circular A-76, DOD Directive 4100.15 or DOD Instruction 4100.33 by the USAF violated any rights of the plaintiffs employees under any applicable Civil Service Commission laws and regulations; and whether a monetary wage rate determination issued by the Secretary of Labor under the Service Contract Act, which is less than the prevailing wage rate for the Civil Service Commission custodial employees determined under the Prevailing Wage Rate Systems Act violates any rights of the plaintiffs employees under applicable Civil Service Commission laws and regulations, including tenure rights.

Thus, the Court has ordered the Civil Service Commission to make administrative determinations upon the above-mentioned specific issues which are in dispute in this case. Heretofore, the Civil Service Commission has disclaimed the jurisdiction to look beyond an individual's procedural RIF rights in a RIF

appeal. Now, based upon the Court's order in this case, the Commission will have to render decisions on these very specific and most important issues. Following the exhaustion of these administrative remedies, the Court will "resume" jurisdiction of this case, if necessary, and rule on the merits of this action.

I must state as frankly and clearly as possible that I am shocked that precisely the armed services departments are in the forefront, vying with the General Services Administration, as the most serious violators of the Veterans Preference Act in their rush to contract out those positions which Congress has reserved by law to veterans. The United States Code, title 5, Section 3310, based on Public Law 89-554, September 6, 1966, 80 Stat. 420, states explicitly the following:

"§ 3310. Preference eligibles; examination; guards, elevator operators, messengers, and custodians.

In examinations for positions of guards, elevator operators, messengers, and custodians in the competitive service, competition is restricted to preference eligibles as long as preference eligibles are available."

Nothing can be more clear. This is a commitment of conscience made by the Congress of the United States to veterans. Yet, today, with almost 500,000 veterans unemployed, the armed services' departments are disregarding this national commitment to the very men and women who had been serving under their jurisdiction by the subterfuge of contracting out to indirect hire employees the jobs which Congress has reserved to them.

There is no point in passing public laws if the Office of Management and Budget and the Federal Department managers can put them out of force simply by evading them through contracting out.

I most strongly beseech your Subcommittee to ascertain from the White House and from the Civil Service Commission why this practice, depriving our veterans of their rights to Federal employment, has been tolerated so long.

THE CRITICAL SITUATION AT THE GENERAL SERVICES ADMINISTRATION

The General Services Administration, as the major custodian of Federal buildings is one of the prime violators of the Veterans Preference Act provisions reserving Congressionally designated positions to preference eligibles.

Employing approximately 38,000 employees in the competitive services, almost equally half in the white collar and half in the blue collar area, the General Services Administration is a major employer of guards, elevator operators, messengers and custodians. In its budget submission for FY 1974, GSA has indicated that its Buildings Management Fund provided employment in 1972 of 21,498 positions with an average GS grade of 5.6; and that for 1974 it plans to provide 20,961 positions with an average grade of 5.9. These are precisely the grade levels filled by employee positions which have been reserved by Congress for veterans. Yet, these are the ones being threatened most of all by contracting out.

We were seriously concerned with the practices and policies of the GSA even prior to the issuance by President Nixon of Executive Order 11717, dated May 9, 1973, and appearing in the Federal Register, Vol. 38, No. 91, Friday, May 11, 1973, pages 12315-12316.

Executive Order 11717 transferred to the Administrator of General Services all functions that were being performed in the Office of Management and Budget on April 13, 1973 by:

(1) The Financial Management Branch, the Procurement and Property Management Branch, and the Management Systems Branch of the Organization and Management Systems Division; and

(2) The Management Information and Computer Systems Division with respect to policy control over automatic data processing (except those functions relating to the establishment of Government-wide automatic data-processing standards).

WHO REALLY ADMINISTERS CIRCULAR A-76?

We have been informed that the Office of Management and Budget continues to retain basic policy responsibility for OMB Circular A-76 even though some of the operational functions appear to have been transferred under E.O. 11717 to the General Services Administration. But this division of labor patently is only minimal if not nominal, since neither OMB nor GSA appears to have any genuine central power or staff to make the Departments and Agencies account-

able. As evidence of this impotence, it appears that there is only "one person"—I repeat, "one person"—in the entire Office of Management and Budget to administer Circular A-76.

This person appears to have no title although he is now with the Organization and Special Projects Division of OMB. He has no deputies at this time. He was formerly attached to the Procurement and Property Management Branch of OMB. At that time he and one other man who worked part time on A-76 matters were responsible for administering the Circular. The Procurement and Property Management Branch has since been transferred to GSA; however, policy duties with regard to A-76 remain in OMB. At this time, these duties are primarily interpretation and following up on complaints. Apparently OMB feels that this policy rule does not require more personnel or time. GSA has no liaison with regard to these functions at this time.

OMB works with the agencies of which seven normally constitute a so called Task Group which was organized for evaluating and developing the Executive Branch position on the Procurement Commission's recommendations on A-76. The agencies which participate on the Task Group are AEC, DOD, GSA, VA, HEW, DOT, and NASA.

Despite the proclaimed obligation of OMB to effect economies and to coordinate budgetary requests, we have received no satisfactory response to our repeated proposals for a centralized depository which could serve as the basis for reviewing centrally the effectiveness of current contracting-out practices. We have no evidence in OMB of the existence of a program to ascertain where the derogation of Federal laws regarding Federal employees or the protection of the public might arise through contracting out practices. The apparent indifference of OMB to these issues is a matter of great mystery and concern to us; and we would welcome every measure to bring effective policy and administrative control over contracting-out practices into the purview and jurisdiction of an effective central Federal body, which has the right to order inspections and to conduct investigations.

DOES S. 2510 ESTABLISH AN OFFICE SUFFICIENTLY STRONG TO ENFORCE A NATIONAL PROCUREMENT POLICY

From the foregoing, it is manifest that our union is strongly in favor of establishing a central office which properly supervises all procurement contracts. We have, of course, an immediate and direct interest in the procurement of technical and support service personnel, that is, the employment of indirect-hire Federal employees who will be competing for Federal jobs with direct-hire Civil Service employees. For this reason, I should like to orient my testimony particularly to exploring the nature of the impact which the creation of the Office of Federal Procurement Policy might have on Federal employment practices. This impact can, and will, be different, of course, depending on the prescience with which your Committee legislates the explicit authorities with which the Administrator can act.

I should hope that one of the main roles of the Administrator of this new Office of Federal Procurement Policy would be to guarantee that all Federal statutes, as well as the Constitution itself, will be observed by all Federal procurement officers; further, that the Administrator will have the authority, the will, and the staff to prohibit any Federal authority whatsoever from taking actions in the budgetary field which would result in selectively disregarding certain statutes while selectively enforcing others.

The question which I am raising can be restated as follows: Will the Administrator have the legal authority, the political independence, and the staff effectively to enforce not only the explicit provisions of this Bill, if enacted, but also to assure compliance with other statutes?

Specifically, I believe that to answer this question it is important to know the likely effectiveness of the Administrator of the Office of Federal Procurement Policy in asserting his authority when confronted by the Director of Office of Management and Budget; by the Civil Service Commission; and by the so-called Interagency Group.

To indicate the kinds of situations with which the Administrator might be confronted, I should like to review the history of several disturbing developments in the last decade which have both created some of the more pernicious aspects of present contracting out policies and produced conditions highly detrimental to the employment, classification and pay of Federal employees.

THE HARMFUL EFFECTS OF REORGANIZATION PLAN NO. 2 OF 1970

The harmful effects of "contracting out" under Circular A-76 have existed since March 3, 1966; similar regulations were in force even under an earlier document, Bureau of the Budget Bulletin No. 60-2, dated September 21, 1959. This situation has been with us therefore for almost 13 years now.

The powers of the Office of Management and Budget were enormously increased, however, under Reorganization Plan No. 2 of 1970, submitted by the President to Congress on March 12, 1970. This Plan further undermined the still uncompleted structure of the Federal employee merit system. Our union testified in Congress against the Plan. Unfortunately, the Congress did not reject it and now only legislation can redress the harm it has brought to the Federal civil service, including the Civil Service Commission and the regulatory agencies.

On April 30, 1970, President John Griner testified as follows for our union:

"... I am very much afraid, if Reorganization Plan No. 2 is allowed to stand, that all of us will find ourselves confronted with totally different roles for the Civil Service Commission and for the Bureau of the Budget, to be renamed the Office of Management and Budget."

(With your permission, I should like to enter the full text of the AFGE statement of April 30, 1970, into the Record as Appendix I.)¹

Our statement, given two and a half years ago, has been prophetic. Today, the Office of Management and Budget is deeply involved even in classification matters, supposedly reserved exclusively to the supervision of the Civil Service Commission. I should like to enter into the record official documents of the Office of Management and Budget and of the Department of Labor clearly demonstrating that the classification grades of Federal employees were arbitrarily altered, contrary to the Classification Acts of 1923 and 1949, by the Office of Management and Budget. These documents are OMB Bulletin No. 72-4, August 5, 1971, entitled, "Control of grade escalation in the General Schedule"; OMB Bulletin No. 72-5, August 25, 1971, entitled "Federal civilian employment reductions" and U.S. Department of Labor Memorandum, September 3, 1971, entitled "Government-wide Program for Cost Reduction." They appear as Appendices II, III, and IV² respectively.

The effect of these instructions was made to reduce below the statutory level the proper classification of jobs held by Federal employees. The alleged grounds for this action was the so-called "escalation" or "upward-creep" of grades. Actually, this "upward-creep" was itself a fiction. Because the Office of Management and Budget ordered "contracting out" of many of the lower grade jobs, the apparent proportion of grade relationships appeared to change. The "escalation" appeared only because large numbers of grade positions were "contracted out".

OFFICE OF MANAGEMENT AND BUDGET AND FEDERAL LABOR-MANAGEMENT RELATIONS

As the chief policy advisor to the President, the Office of Management and Budget has a major role in Federal labor-management relations under executive orders. This role takes place not only in its chambers in the Executive Office Buildings. The Office of Management and Budget in fact has a seat on the top Federal Labor Relations Council, in matters concerning E.O. 11491, governing labor-management relations for civil service employees. And under E.O. 11636, governing Employee-Management Relations in the Foreign Affairs Agencies, the Representative of the Office of Management and Budget is the Chairman of the Employee-Management Relations Commission, outranking the Civil Service Commissioner, Mrs. Jayne B. Spain, who is also a member.

With the intimate daily control which OMB exercises over the executive departments so far as budget goes; with its control of the jobs contracted out under Circular A-76; with its role on the Federal Employee Pay Council, where its director acts officially as the President's Agent jointly with the Chairman of the Civil Service Commission on pay matters; with its intervention in classification matters; with all these powers, the Office of Management and Budget, in fact, undermines the ability even of the Civil Service Commission to act in any meaningful enforcement role over the other Federal agencies and departments. The diminution of the power of the Civil Service Commission has eroded one

¹ See p. 189.

² See pp. 192, 195.

of the institutional mechanisms on which Congress, the American public and Federal employees had expected to rely in the employment of Federal Service employees.

SUGGESTED STRENGTHENING OF THE PROVISIONS OF SECTION 6 OF S. 2510

In order to strengthen the authority and role of the Administrator of the Office of Federal Procurement Policy, I earnestly recommend the addition of language to the "Functions" of the Administrator at the very end of Section 6(b)(3), which appears on line 13, page 6 of the printed text of the Bill. That section would then read as follows (the proposed added language is italicized):

"Sec. 6(b)(3) monitoring and revising as necessary policies, regulations, procedures, and forms concerning reliance on the private sector to provide needed property and services *consistent with the maintenance of a strong viable civil service and of wages, benefits and working conditions established for the civil service or pursuant to collective bargaining*".

Our reasons for proposing this additional language are multiple. First, we believe that the only way the Administrator can maintain a "national policy", as distinguished from an "executive branch" policy, is by upholding all national statutes. In the past, the application of OMB Circular A-76, combined with other actions taken by the Office of Management and Budget has seriously and unnecessarily eroded the civil service merit principles established as "national policy". They have also adversely affected the ability of civil service personnel to administer other "national policies" established by statutes, especially in the regulatory agencies and services instituted to protect the public against financial fraud; contamination and adulteration of foods; and marketing of dangerous pharmaceutical and narcotics and of unsafe products, including unsafe automobiles and dangerous chemical and electrical consumer goods.

We are especially distressed by the fact that these OMB policies have often resulted in removing or diminishing the essential core of expert and competent civil service professional and technical cadres needed to protect the government's own direct interest in dealing with private industry both in the enforcement of laws and in the procurement of goods and services.

We have witnessed the use of contracting-out to depress wage rates, fringe benefits and working conditions in derogation of national labor policies against substandard wages and unsafe working conditions.

We have deplored the creation of a public relations fiction that the Federal government is practicing economy through the use of lowered personnel ceilings while actually it was increasing appropriations under so-called research and development programs at greater costs to the taxpayers for the same services Federal employees could provide with lower expenditures.

It is therefore clear that the purpose of our amendment is not to oppose reliance on private enterprise, but it is to assure that there will be no toleration of conditions which themselves are unacceptable to Congress as a matter of "national policy". As examples of some of these intolerable conditions which came to exist under OMB Circular A-76, I should like to call your attention to some facts with which we are familiar.

WHAT CONDITIONS PREVAIL IN SUPPORT SERVICE CONTRACTS

The kinds of conditions which have prevailed in support service contracts, at least until October 1972, were clearly documented in hearings which the House Committee on Education and Labor conducted prior to the enactment of P.L. 92-473, amending the Service Contract Act of 1965. Although that Act will correct some of the incredible conditions, including defrauding of wages, imposed by some of the more unscrupulous support service contractors on custodial and building maintenance employees, it will do little to overcome the inefficiencies and lack of economy which contracting out entails. One of these is the high turnover rates among service contractors, which, in some cases, is alleged to be at a 95 per cent annual rate.

I should like to quote to you the comments made on this situation by Mr. Thomas R. Donahue, then the Executive Secretary of the Service Employees International Union. He said: "In New York City our Union represents over 65,000 buildings maintenance employees in all types of commercial buildings and apartment houses. We represent 86 to 97 percent of the building maintenance employees of the city's commercial buildings. . . ."

Others have commented on these hearings on the high turnover rates among service contractors, which the Air Force, I understand claims runs at a 95-percent rate.

No responsible business manager could long tolerate this kind of condition and yet there are no significant government voices being raised in complaint. It seems to me obvious that the agencies have concluded that, like the sweatshop owners of old they profit by the turmoil and confusion, by the constant turnover of contractors and employees, and they are therefore, willing to continue the system.

It is also obvious that the responsible contracting firms which work in the private sector are completely unwilling to enter into this maelstrom and be sucked down into its lowest level.

I have discussed this question with a number of the largest and most efficient maintenance contractors and the attitude is almost universal. The result is that the field is totally occupied by firms which do nothing but government contract work, and go in and out of business as the circumstances warrant and/or as the small business set asides dictate.

One of the terrible consequences which flows from this kind of system is the outright cheating of workers of wages to which they are entitled under the act. In fiscal 1970, the Department of Labor made 1,874 investigations under the Service Contract Act and found that 13,570 workers had been underpaid \$1,463,872.

I do not know how much of that money might have been recovered by the Department of Labor but I would estimate the amount would be relatively small. In one instance, I know that the recovery was less than 10 percent of the amount due.

In this situation a contractor came up from Atlanta and low bid the contract at the Aberdeen Proving Ground in Maryland. After a short time he could not even meet the payroll and defaulted, leaving the workers short by \$44,000.

The contracting agency had withheld only \$4,000 and that was the total amount available for distribution to the cheated workers—less than 10 cents on the dollar.

DO SUPPORT SERVICE CONTRACTS SAVE THE GOVERNMENT ANY MONEY?

The main claim in favor of support service contracts is that they save the Federal government money, that is, they cost less than performing the work with Federal employees.

The facts show that in the overwhelming number of cases this is not true; "indirect hire," contractor obtained support services cost the government much more money.

In this connection I should like to call to your attention the studies which the General Accounting Office is now conducting jointly with the Office of Management and Budget and the Civil Service Commission regarding productivity in the Federal Sector. Last year, in June 1972 those offices issued a joint report, which indicated in a provisional way those factors which are incentives to higher productivity and those factors which are disincentives, that is, impair or reduce productivity.

That report and subsequent comments made by the participating agencies regarding disincentives, indicates that the major causes of lowering of productivity wherever it has occurred have been generally the following: High turnover, especially when associated with the loss of skilled employees through the imposition of personnel ceilings or a program to reduce average grades and average salaries; these two factors have almost invariably resulted in a loss of employee efficiency requiring an increase in non-productive time necessary for training of new or unskilled personnel.

These disincentive factors, I should like to note, are the concomitant conditions which one finds associated almost universally with support service contracts.

I should like to read into the record of your hearings the following remarks which were made by the Honorable Elmer B. Staats, the Comptroller General of the United States at the Conference Board of the Conference on Productivity on May 23, 1973, just one week ago. Speaking on disincentives to productivity, he said:

"In our discussions with several hundred Federal managers during the past two years, we have been told that managerial initiative is sharply reduced:

When arbitrary personnel ceilings make it impossible to maintain adequate service standards, or result in the accumulation of intolerable backlogs.

When the requirement to reduce average salaries results in employing less qualified personnel who have higher attrition in the first year, and less promotion potential.

When savings achieved are withdrawn and made available to less efficient activities or,

When mandatory personnel cuts are applied, equally, to those who have achieved greater efficiency and to those who have not."

"Our studies reveal that activities experiencing continuous growth in workload—such as those involved in maintaining citizens' records, grant programs, power-generating activities, transportation, Postal Services, and the Regulatory Agencies—have also showed steady improvement in their output per man-year. The pressure of continuous growth appears to foster systems improvements and to provide incentive for innovation which increase the output per person. We find real concerns, however, among some of these activities as to whether proper standards of service to the recipient, or minimum levels of quality, are being maintained. Analysis of this concern must be one of our continuing study objectives.

"On the other hand, we find that a steadily declining workload makes its difficult to avoid deterioration in productivity.

"In terms of reduced payroll costs, including fringes, the average savings resulting from productivity improvements has been \$300 million per year—accumulating to \$1.5 billion in fiscal year 1972."

Other factors, besides workload increases, which normally lead to increases in worker productivity are stability of the workforce and predictability of work assignment, managerial continuity, and predictability of mission goals. Almost all of these positive incentive factors are concomitants of performing work "in-house," that is, by Federal employees. Obviously, these conditions lead to greater economy and to greater efficiency.

WHAT GETS TO BE CONTRACTED OUT—MANIPULATING THE COST FIGURES

If the normal prevailing conditions of performance of work by Federal employees accentuate the incentives to productivity and the normal prevailing conditions of contracted-out work results in disincentives, why do so many people genuinely believe that it is cheaper to contract out? The answer is simple. It results from the manipulation of statistics, resulting in incorrect conclusions.

First of all, let us see what kind of work is contracted out and what kind is kept "in house."

Those jobs which are simple and easy, with no tight schedules, with no mandatory short-time deadlines are generally contracted out. For example, a printing job which can be done anytime by a commercial printer when he is slack of work usually is contracted out. The complex work, requiring great skill, which is needed immediately is usually kept "in house." In other words, the hard jobs, requiring great skill and supervision, are performed by Federal employees. Obviously, this more difficult work is more expensive than simple work. But the fact is that the Federal employees could do the simple work even at a lower cost.

There is also a second, contributory factor reinforcing the contracting out of the simpler work. In many of these contracts, the procurement officer is required to receive competitive bids. Since complex work, especially of low volume, requiring skilled employees is not desired by private contractors, they will not bid on them. Consequently, procurement officers will seek to contract out simpler, more routine functions for support services.

A by-product of this is that the Federal employees do the more complex work, requiring higher skills and higher classification and pay; and the contractors bid on support service projects where the skills are relatively low and where quantity rather than quality counts. This means that, with the lower skilled jobs contracted out, there is an apparent upward grade escalation in the universe of Federal jobs, leading to charges that Federal employees are overpaid, and that there has been an "upward creep" in Federal grades. Consequently, though Federal employee productivity is increasing, while contractor "indirect hire" productivity is declining, the public is left with the impression that Federal employees are overpaid. Unfortunately, some of the major contractors, who benefit most from these support service contracts, are not at all reticent in circulating this misinformation as widely as possible.

SOME CURRENT CASES WHICH WE SHOULD LIKE TO HAVE INVESTIGATED

We should like to transmit to your Subcommittee for review several recent cases regarding contracting out support services which we believe merit review.

<i>Location</i>	<i>Air Force</i>	<i>Type of contract</i>
Reese AFB, Texas		Janitorial Services
Griffis AFB, New York		Custodial Services
Andrews AFB, Maryland		Custodial Services
Hill AFB, Utah		Painting and Landing Gear
Wright-Patterson AFB, Ohio		Data Processing Services
Keesler AFB, Mississippi		Custodial Services
Mather AFB, California		Janitorial Services
Travis Air Force Base, California		Janitorial Services
McGuire AFB, New Jersey		Custodial Services
<i>Army</i>		
Fort Gordon, Georgia		Food Service
Fort Wolters, Texas (Dempsey Heliport)		Structural Fire Protection
U.S. Army Armor Center, Fort Knox, Kentucky		Mess Hall Attendants
Pueblo Army Depot, Colorado		Security Functions
Tulsa District, Corps of Engineers, Oklahoma		Janitorial Services
Fort Bragg, North Carolina		Printing, Motorpool, Janitorial Services, Electrical Repairs, etc.
U.S. Army Safeguard Systems Command, Huntsville, Alabama		Logistics
<i>Other agencies</i>		
General Services Administration		Custodial Services
Federal Home Loan Bank Board		Consultants
Environmental Protection Agency, North Carolina		Maintenance Work

THE EVIDENCE OF WASTE UNDER CIRCULAR A-76 IS OVERWHELMING

The national experience with "contracting out" of support services has clearly identified the wastefulness of this system. Yet Circular A-76, issued on March 3, 1966, has not been revised for seven years, despite the findings of the House Government Operations Committee uncovering serious flaws in its so far as support services are concerned. That Committee's findings and recommendations for improvements were published more than five years ago, in House Report No. 1850, Union Calendar No. 754, entitled "Criteria for Support Service Cost comparisons." But the waste continues.

As evidence that the Executive Branch is fully aware of this waste, I should like to include in the record of these Hearings the report of the NASA Management Audit Office, Southwest Region, which recently completed an audit of support service practices in selected areas at the Manned Spacecraft Center (MSC), Houston, Texas. Its findings are startling and again confirm our contention that millions of dollars are being wasted annually.

The survey indicated that:

As of September 30, 1971, Manned Spacecraft Center had 35 support contracts composed of 24 service contracts, five hardware contracts with support requirements and six repetitive support contracts. The MSC POP 71-2 reflects a cost estimate of \$155.3 million for fiscal year 1972 support contract requirements. This represents 6,807, many years of effort of which almost 50 percent is furnished by three contractors, Brown & Root-Northrop, Lockheed Electronics, and Service Technology Corporation.

In the matter of "Support Contractor versus Civil Servants," the audit report stated the following:

Theoretically, every support service should be made to pass the acid test of a cost profile to see whether it is cheaper to go the contract route or perform the services inhouse. Even though a number of support contracts have been extended and the packaging of functions to be procured changed, MSC has not made a comparative cost analysis since 1968. MSC elected to not incur the burden and expense of such studies in view of the NASA and Government-wide downward pressure on civil servant spaces. We recognize the impracticality of making extensive comparative cost studies if the resulting action depends upon obtaining additional NASA civil servant spaces. However, with the completion of major programs such as Apollo, NASA

should have some flexibility in obtaining the most effective utilization of its personnel spaces. In 1968, MSC selected 15 of the 28 support contractor efforts for comparative cost studies on the basis that cost should be a major factor in the performance in the areas covered by the 15 contracts. The results of the studies showed that NASA could provide the services with civil service personnel on 14 of the 15 areas at an annual savings to NASA of about \$11,200,000 or 15.76 percent below the funded cost base if performed by contract. The cost difference on three of the areas exceeded 20 percent. However, the contract source was used to obtain the support services in all 14 areas.

With specific reference to the issue of "Support Contractor Performance versus Offsite Contract Procurement" the report contended the following:

Our audit of the MSC Technical Services Division (TSD) showed TSD was contracting offsite for 38 percent of the fabrication and repair work requested by other MSC organizations while at the same time its facilities onsite were being utilized at less than 50 percent of one shift's capacity. The work contracted out could be performed onsite with the TSD facilities and an additional 98 support contractor employees at a savings of about \$700,000 per year to NASA. The Center reply to this recommendation was: "While it may appear that certain cost savings may be realized by increasing the number of onsite personnel, it must be recognized that the Center is operating under severe civil service and contractor manpower restrictions. Decisions to increase civil service or onsite contractor personnel must also relate to other onsite support requirements. Such tradeoff decisions are under frequent review and analysis." We were unable to locate any documentation indicating a comparison was made between the benefits from the Staffing/workload of the approximately 1,200 support contractor spaces allowed the E&D Directorate or any other MSC organization and the savings possible by reallocation of 98 of the spaces to TSD.

THE RECOMMENDATIONS EMERGING FROM THE AUDIT

As a result of its investigations, the NASA Management Audit Office, Southwest Region made the following clear and specific recommendations:

1. The Center-wide manpower Planning Program indicated by Manned Spacecraft Center Instruction 7710.1 be implemented immediately.

2. MSC develop long-range plans, recruitment, and retraining programs to replace contractor personnel in highly skilled areas with civil service employees where spaces are due to become excess through long-range changes in programs.

3. MSC periodically review the staff/workload for the support contractor spaces assigned to each organization and compare the results with the benefits that can be obtained by using the spaces in other functional or program areas.

I wish to call your attention specifically to recommendation number 2, which confirms and sustains similar findings by the House and Senate Government Operations and Post Office and Civil Service Committees. This recommendation states that Manned Spacecraft Center should: "develop long-range plans, recruitment, and retraining programs to replace contractor personnel in highly skilled areas with civil service employees where spaces are due to become excess through long-range changes in programs."

FIRING FEDERAL EMPLOYEES WHILE WASTING TAXPAYERS' MONEY

When the Technical Services Division, to which I referred above, announced a reduction in force or "firing" program for Federal Employees, effective October 1, 1971, Mr. Leslie A. Ghetzler, the President of our Local 2284 at Houston orally raised the findings of the Audit Office regarding this Division with Mr. Jack R. Lister, the Chief of the NASA Personnel Office in Houston, Texas. Mr. Ghetzler pointed out specifically that the Audit indicated that "the work contracted out could be performed onsite at a savings of \$700,000 per annum," by "reallocation of 98" of the contractor slots to civil service positions to be established within the Technical Services Division.

Nevertheless, the "contractor" personnel, wasting \$700,000 per annum, were not eliminated. Instead, NASA proceeded, on October 1, to implement the "firing" of Federal employees through the reduction in force program. This deprived loyal Federal employees of job security at the cost of \$700,000 waste of taxpayers

money. I call this a scandalous situation that should not be allowed ever again to recur.

NASA MANAGEMENT ITSELF HAS CONCEDED THE AFGE POSITION

I can cite no better authority for our position than the judgment of the NASA top administration in correspondence between themselves. On April 28, 1971, Mr. M. L. Raines, the NASA Manager of Houston for Reliability and Quality Assurance and for Safety addressed a letter to Lt. General Frank A. Bogart, the Associate Director at Houston. In this memorandum, which I am attaching as Annex I to my Statement, Mr. Raines concluded with the following two sentences:

This office could operate effectively with one-third less than the total personnel presently provided on the support contract if the remaining two-thirds were civil service personnel. A large amount of money could be saved which is now spent in overhead and paperwork systems required to manage a support contractor.

RECOMMENDED DELETIONS IN SECTION 7 OF S. 2510

We recommend the deletion of Sections 7(a)(2) and 7(a)(3) of S. 2510 as unnecessary and as contrary to principles of good public administration.

Section 7(a)(2) which provides for the utilization of the services, personnel and facilities of private agencies and instrumentalities is, in our opinion, unnecessary in view of the authorities granted in 7(a)(1) to appoint advisory committees and in 7(a)(4) to employ experts and consultants, and in 7(a) to use the services of executive agencies. If the intent of 7(a)(2) is to utilize the services of non-profit, academic or public interest agencies for the purpose of assisting the Administrator, the language should be expressly drafted to this end.

Concerning 7(a)(3) authorizing the acceptance of voluntary services, it is our strong position that the Office charged with formulating procurement policies and regulations should be completely and totally protected and insulated from the compromising effect that the acceptance of free or donated services may entail. We are sure that the Committee will recognize from the facts of economic life that those with the greatest interest in government procurements would be financially in the best position and psychologically the most motivated to "volunteer" and to "contribute free services."

MATTERS TO BE INCLUDED IN SECTION 8 OF S. 2510

From the foregoing, it is clear that we believe that the only hope for a consistent rational policy on support services rests with Congress. The Executive Branch has tarried for more than seven years, without modifying Circular A-76, despite recommendations by the House Committee on Government Operations.

I have already indicated to you our support for those provisions of S. 2510 which will enable the Administrator to require all contracts for technical and support services to be let only by rigorous legal standards, conforming to "national policies." We urge that, to this end, Section 8 be amended so that the Administrator will establish a central repository for the collection of all contracts, where his staff and outside researchers can analyze these contracts both for fiscal propriety and for compliance with "national policies." We request that the Administrator's report to Congress be made an annual one, and that each year he include a section detailing the total amounts of support service contracts awarded; the number and categories of personnel employed by the contractors, by agency and department; the pay, including range of pay by job classification; and the relationship of fringe benefits to pay rates. Further, that the Administrator indicate which contracts raised issues of "national policies" regarding both the Civil Service statutes (including Veterans Preference) and the Service Contract Act (as amended by P.L. 92-473, October 12, 1972).

COMMENTS ON SECTION 15, "COORDINATION OF GRANTS POLICY"

Our reading of Section 15 of S. 2510 is that this section merely authorizes a study of the feasibility and desirability of coordinating Federal grants policy. We would like to withhold specific comment on this section, apart from stating that we believe it should be amended to require the Administrator to consult with labor unions during this study and to afford them timely opportunity to have their views incorporated in any report the Administrator makes to Congress.

THE VIEWS OF THE AFL-CIO ON CONTRACTING OUT

On May 31, 1973, I had the privilege to testify on "contracting out of support services" before the Subcommittee on Manpower and Civil Service of the House Post Office and Civil Service Committee. That Subcommittee did not have any Bill before it and my testimony was addressed to the general subject of "contracting out."

Our organization was most pleased to have the support of the AFL-CIO for our position regarding contracting out. As evidence of that support I should like to place into the record as Appendix V³ to my statement the text of a letter sent to Subcommittee Chairman Congressman David Henderson by Andrew Biemiller, the Legislative representative of the AFL-CIO.

FURTHER LEGISLATION NEEDED

However, our experiences with the Executive Branch has also led us to a further conclusion. It is not enough to have laws and statutes since they do not implement themselves. Even today the intent of Congress regarding the reservation of certain positions for preference eligibles under the Veterans Preference Act is being subverted by contracting out. We therefore believe it will be essential that every Appropriation Bill should include explicit language which expressly prohibits the expenditure of any funds for the contracting out of positions reserved for preference eligibles.

Furthermore, our experience with NASA indicates that all Appropriation Bills which have provisions for Research and Development should include express language to the effect that whenever a Department, Agency or Administration has reason to conclude that any support service under the Research and Development portion of its budget could be done at less expense by "in-house" performance rather than by "contracting out," that Agency must allocate the funds authorized and appropriated for Research and Development to be expended for work performed "in-house" by Federal Civil Service personnel without regard to manpower or dollar limitations or ceilings placed on the budget for salaries and expenses or Civil Service employees.

In this way, the Congress and the American taxpayer would have the best of both worlds. The budget for salaries and expenses of civil service employees, as today, would still be controlled stringently by Congress. The program budget, as heretofore, would still be stipulated explicitly. However, unlike today, the American taxpayer would have the assurance that the private contractors, when submitting bids to perform support services, would know that simultaneously the various elements within NASA itself would also be evaluating what it would cost the government to perform the work with Federal personnel. Taking the current NASA appropriation Bill, as an example, this laudatory goal could be achieved simply by inserting language modeled along the following lines into the Bill, at the end of Section 1(c) which deals with research and program management:

This subsection is not to be construed to exclude or limit payments made to Federal employees for functions performed by them under appropriations in this Act for research and development provided that competent executive or judicial authority ascertains that the performance of these functions by Federal employees is in the national interest or will result in economies.

This arrangement would have the merit of keeping support service bids competitive between private contractors. It has the further merit that if the program budget work could be done cheaper by Federal employees, the government would save its taxpayers money by doing the work "in-house."

AFGE OPPOSITION TO WEAKENED FINANCIAL CONTROLS OVER CONTRACTS

The Commission on Government Procurement made the following Recommendation:

Recommendation 23. Revise BOB Circular A-76 to provide that Federal agencies should rely on commercial sources for goods and services expected to cost less than \$100,000 per year, without making cost comparisons, provided that adequate competition and reasonable prices can be obtained.

We are opposed to this proposal and recommend that all contracts involving over \$10,000 be let competitively and only after a cost comparison has been done.

³ See p. 197.

A copy of the contract and cost comparison should then be filed with the central repository.

A second recommendation which seriously concerns us is the following:

Recommendation 26. Increase the minimum cost differential for new starts to justify performing work in-house from the 10 percent presently prescribed to a maximum of 25 percent. (Of this figure, 10 percent would be a fixed margin in support of the general policy of reliance on private enterprise. A flexible margin of up to 15 percent would be added to cover a judgment as to the possibilities of obsolescence of new or additional capital investment; uncertainties regarding maintenance and production cost, prices, and future Government requirements; and the amount of State and local taxes foregone.) New starts which require little or no capital investment would possibly justify only a 5-percent flexible margin, especially if the new starts were high-risk ventures.

We do not feel that it is in the public interest to raise the minimum cost differential from 10% to 25% or even to the 15% suggested in a Dissenting Recommendation also found in the Commission's Report.

SUMMARY AND CONCLUSION

In summary, the area of contracting out support services is the least regulated of all Federal government personnel operations. Today, the numbers of these contractor, or "indirect hire", employees is so large and their conditions of hire so different that they almost constitute in fact, if not in law, a fourth branch of government operations. We welcome the hearings of your Subcommittee on S. 2510 and we request your giving consideration to our recommendations regarding Sections 6, 7, 8 and 15.

We believe legislation should require all contracts for technical and support services to be let only by rigorous legal standards; that they be deposited in a central repository; and that they be properly monitored by a central authority for compliance with all statutes establishing "national policy". The central repository agency would submit an annual report to Congress as to the total amounts involved; the numbers and category of personnel employed by contractors by agency and department; the pay, including range of pay by job classification; and the relationship of fringe benefits to pay rates.

In their rush to contract out additional positions, agencies and departments of the Federal government are often violating Federal statute. One such statute is § 3310 of title 5, U.S.C., which grants preference to veterans when seeking positions as guards, messengers, elevator operators and custodians, the most often contracted out positions.

We urge your Subcommittee to ascertain from the White House and the Civil Service Commission why this practice, depriving our veterans of their rights to Federal employment, has been tolerated so long.

We further urge your Subcommittee to join us in requesting that Congress write into every appropriation bill a rider forbidding the expenditure by contract of any funds for the procurement of support services for any position which has been reserved either by law or regulation to preference eligibles.

We recommend further that all appropriation bills which have provisions for research and development should include express language to the effect that whenever a department, agency or administration has reason to conclude that any support service under the Research and Development portion of its budget could be done at less expense by "in-house" performance rather than by "contracting-out", management must allocate the funds authorized and appropriated for Research and Development to be expended for work performed "in-house" by Federal Civil Service personnel without regard to manpower or dollar limitations or ceilings placed on the budget for salaries and expenses of Civil Service employees.

In concluding, I wish to thank the Subcommittee once again for the opportunity to present our views on S. 2510 and on the issue of contracting-out support services in the Federal government.

[Appendix I]

STATEMENT OF JOHN F. GRINER, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

The American Federation of Government Employees, AFL-CIO, representing over 650,000 Federal employees in exclusive recognition units and having a dues-paying membership of more than 325,000 is firmly committed to the merit system

of Federal employee service. For this reason we look with great fear at, and oppose, any plan which would destroy the merit system of Federal employment, whether that plan does so directly or indirectly.

We are opposed to that portion of Reorganization Plan No. 2 of 1970, submitted by the President to Congress on March 12, 1970, which would seriously undermine and, perhaps, irreparably shatter the still uncompleted structure of the Federal employee merit system. The portion we oppose is entitled "Part I. Office of Management and Budget."

It has taken, up till now, eighty-seven years to build the present institutions dealing with the Federal employee merit system. The central administrative management institution in that system is the Civil Service Commission. Until the growth of Federal employee unions, the merit system was defective because the Civil Service Commission tended to take the position it spoke for employees as well as management. No one really spoke for the employees. Recently, however, the Civil Service Commission has been undergoing a transformation in the direction of seeing itself as an institution with rights and duties, functions and programs, and with experience and attitudes which may yet lead to true labor-management negotiations on government-wide personnel policies. Such a development will, in our view, both strengthen and improve the entire Federal personnel system. Much is left to be learned, of course, but much has been achieved.

In the last ten years, progress has been especially rapid following President Kennedy's Executive Order 10988 and President Nixon's Executive Order 11491 on labor-management affairs. Today Federal employees are contributing, through their unions, as employees to developing a better merit system than we have ever had.

Thus, the merit system is finally beginning to take deep roots.

In addition, the Congress now has recently enacted legislation for a major study of the reorganization of classification standards. Moreover, Bills are before Committees of the House and Senate for legislation to provide a basic law regulating wage board employees. Other Bills are before the Congress for labor-management relations. And, we all know that the Executive Branch itself, together with the Postal Unions and the Committees of Congress, is actively working on postal reorganization.

All these activities of the executive and legislative branches and all the assumptions of employees union representatives cooperating in these activities have been based on the expectation that the roles of the Civil Service Commission and the Bureau of the Budget would not be changed in any way during this time except through specific acts of Congress, following public Hearings. Consequently, I am very much afraid, if Reorganization Plan No. 2 is allowed to stand, that all of us will find ourselves confronted with totally different roles for the Civil Service Commission and for the Bureau of the Budget, to be renamed the Office of Management and Budget. If we are faced with this situation overnight, we may find that our positions on every single item to which we have already agreed may have to be revised.

This would be unfortunate. But I'm afraid it would be unavoidable because we may find that many Federal employees will feel that faith has not been kept with them by the government because the Federal merit system, as they have come to know it up till now has been destroyed.

THE DESTRUCTION OF THE MERIT SYSTEM

Part I of Reorganization Plan No. 2 of 1970, of course, does not set out in so many words to destroy the Federal employee merit system. In fact, the formal text of the Plan is completely silent on this subject. The words, "Federal merit system", even the words "Civil Service Commission" do not appear at all in the formal text of the Plan.

The intention of the Reorganization Plan is revealed, however, in the President's transmittal letter of March 12, 1970. In that letter the President wrote (page 5 in the version released by the White House) that the new "Office will also take the lead in devising programs for the development of career executive talent throughout the Government". He wrote further that the "Office of Management and Budget will be charged with advising the President on the development of new programs to recruit, train, motivate, deploy, and evaluate the men and women who make up the top ranks of the civil service, in the broadest sense of that term."

If I may take a phrase from that letter, "in the broadest sense of that term", all Americans, but most of all the Congress of the United States, and the Federal

employees themselves, in all ranks and grades and classes, are vitally interested in "the development of new programs to recruit, train, motivate, deploy and evaluate the men and women who make up the top ranks of the civil service" because these "new programs" will set the pattern for everybody else. Certainly, the American Federation of Government Employees, since its foundation, has been directly and vitally interested in these "new programs". I myself have appeared to testify before Congress on this aspect of the Federal employee merit system as often as on any other single subject concerning our members. My file of correspondence with the Civil Service Commission on this subject is more voluminous than that on any other single substantive matter.

Let us be frank about it. The way one selects the top career levels of the civil service, "in its broadest terms", will decide the way one selects the intermediate and lower levels. If the top levels are selected in a manner essentially different than the lower levels, no one with any drive and initiative will want to come in at the intermediate or lower level. Political influence, special interests, manipulations, exceptional criteria will creep into the system, whether we like it or not, and no matter how upright the administrators are.

The career employees at the intermediate and lower levels will feel that the caste system has been introduced. They will feel that there are first class civil service employees and that there are also second class, and perhaps third and fourth class. And they will feel and say they suffer discrimination.

THE SECOND FLAW IN THE PLAN

There is also a second flaw which Reorganization Plan No. 2 contains which will contribute to the destruction of the merit system.

This Reorganization Plan No. 2 is based on the assumption that Federal employee personnel administration can be divided into two essentially different compartments—in short, that setting policy, developing standards, and supervising operations can be effectively separated from hearing and deciding appeals, investigating complaints, developing classifications, supervising the application of wage rates and participating in labor-management agreements. It is based on the radical and, I believe it is fair to say, on the irrational philosophy that the protection of the Federal employee merit system and the granting of fair treatment to Federal employees is in basic conflict with good management.

I am impelled to speak as clearly and frankly as I can on this Plan, both because I believe it is self-contradictory and because I know what the reaction of Federal employees will be. If this idea, embodied in the Plan, that the protection of the merit system and the effective personnel operation of the Government at its top levels are contradictory goals is allowed to come into force this government will see unrest and demoralization in the Federal service such as we have not seen in our lifetimes.

We will have dark days before us then. For this reason, our union rejects completely any idea, concept or formula which states or implies that Federal management interests, Federal employee interests and the interests of the public are incompatible. They are all compatible, providing all of us seek equity.

THE THIRD DEFECT OF THE PLAN

Reorganization Plan No. 2 of 1970 has a third defect. Instead of adding clarity, it will produce confusion, by assigning to a second body, the Office of Management and Budget, authority over functions with which the Civil Service Commission will still have to be concerned. This will result in competition, conflict, and added costs.

In effect, the Plan splits responsibility for Federal personnel management between two supervisory and operating organizations, the Office of Management and Budget and the Civil Service Commission. On the one hand, the agencies of the Government would be required to observe, and participate in, the policies and directives of the new Office and, on the other hand, they will have to abide by the decisions of the Civil Service Commission on appeals. Many of these appeals are of a precedent-making role. For example, on such an issue as in-house promotion versus outside-recruitment for the top executive positions, appeals would have to be brought before the Civil Service Commission. Its decisions on these cases might be in line with standards which it itself had set for the intermediate and lower levels. In this event the Commission might be open to the possible charge by the Office of Management and Budget that it was subverting the latter's program.

I have given one example of possible conflict. I could add many more kinds. In any case, I believe I speak with good sense when I tell you that there is enough confusion, conflict, dissension and disagreement already. Let us not go out and create more by such innovations as the creation of an unnecessary Office of Management and Budget.

SUMMARY AND CONCLUSION

Our organization, with its membership spread throughout the Federal service in every agency and department at home and overseas, is opposed to "Part I. Office of Management and Budget" of Reorganization Plan No. 2 of 1970.

We are opposed to it because it would destroy the Federal employee merit system through the introduction of three major flaws it incorporates. First, it destroys the organization of the Civil Service Commission, which is finally emerging, after eighty-seven years of trial and error, as a responsible institution representing management in the administration of the Federal employee merit system. Second, it introduces the false concept that good management and the Federal employee merit system are contradictory. Third, it produces confusion and increases costs by assigning to two separate agencies, the Office of Management and Budget and the Civil Service Commission apparent ultimate administrative jurisdiction over Federal employee personnel policies.

These three flaws or defects, if allowed to stand, will demoralize the Federal employee service and produce tensions and conflicts detrimental to the good of management, employee and the general public.

Under these circumstances, we most urgently request this Subcommittee to bring a Resolution to the floor of the House as soon as possible disapproving Reorganization Plan No. 2 of 1970.

In conclusion, I wish again to thank the Chairman and members of this Subcommittee for the opportunity you have given me to testify today.

[Appendix II]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., August 5, 1971.

(Bulletin No. 72-4)

To: The heads of executive departments and establishments.
Subject: Control of grade escalation in the general schedule.

1. *Purpose.*—This Bulletin establishes a plan for controlling excessive grade escalation of employment under the General Schedule. These instructions supplement those in OMB Circular No. A-64, Revised, "Position Management Systems and Employment Ceilings," June 28, 1965.

2. *Background.*—Over the years there has been continuing increase in the average grade of employees under the General Schedule, Government-wide. This upward trend has persisted in recent years so that the average grade level for classified employees has risen from 7.4 in 1968 to 7.9 in 1970. Between 1969 and 1970 the total number of employees declined by nearly 12,000, but the number in grades GS-11 through GS-15 increased by 14,600. Preliminary estimates indicate that the 1971 data will also show a significant increase over 1970 in the average grade.

At 1971 salary rates each one-tenth increase in the average grade of the General Schedule adds \$100 million to the basic payroll. It also results in increased costs of Federal Employees Group Life Insurance, as well as additional past service liability in the Civil Service Retirement System.

During the past three decades there has been a gradual increase in the proportion of professional, technical and managerial employees, in the Nation's labor force. The same factors that produced this trend in the total labor force also have affected the grade distribution of the Federal workforce. It can be expected that technological change, for example, will result in some grade escalation in the Government; however, changes in the grade distribution of the General Schedule since 1968 have greatly exceeded normal trends.

There is considerable evidence that many Federal agencies have failed to exercise adequate controls over their staffing patterns for higher level positions. In many agencies the number of employees in grades GS-7 and GS-9 has declined. In view of the ample supply of new college graduates with bachelor and masters degrees and the fact that Federal salary rates are now competitive

with the private sector, increases in the population of these grades would have been expected.

3. *Coverage.*—This Bulletin applies to all executive agencies having employees paid under the General Schedule or whose salary rates are set administratively in accord with the General Schedule.

4. *Objective.*—The objective of this plan is to reduce, Government-wide, the average grade of the General Schedule by at least—

1/10 by the end of FY 1972.

2/10 by the end of FY 1973.

5. *Reduction plans.*—In order to achieve the overall objective stated above, each agency head is asked to prepare a plan to effect changes in the grade distribution of his employees as follows:

a. If the average grade of the agency has increased by 0.4 or more between June 30, 1968, and June 30, 1971, the agency plan should provide for a reduction from its June 30, 1971 average of 0.15 in FY 1972 and an additional 0.15 in FY 1973.

b. If the average grade of the agency has increased less than 0.4 between June 30, 1968, and June 30, 1971, the agency plan should provide for a reduction from its June 30, 1971 average of 0.1 in FY 1972 and an additional 0.1 in FY 1973.

c. If the average grade of the agency has remained level or decreased between June 30, 1968, and June 30, 1971, the agency plan should provide for a staffing pattern which will not exceed its June 30, 1971 average grade during the next two fiscal years.

Agency plans for achieving the required reduction in average grade will be submitted to the Director of the Office of Management and Budget on or before September 15, 1971, in the format shown in attachments A and B. Plans will be reviewed and either approved or revised in connection with the development of the budget for FY 1973.

6. *Guidance.*—It is intended that each agency shall have wide flexibility in developing a plan which will achieve the stated objective. Responsibility for development and implementation of the plan should be assigned to an appropriate officer who will also serve as liaison with the Office of Management and Budget.

Since the plan requires a specified reduction in average grade by the end of the current fiscal year (i.e., June 30, 1972) it would be expedient to consider the immediate imposition of some restrictions on the filling of vacancies, especially those occurring in grades GS-11 through GS-15.

Specific measures which agencies may wish to consider, consistent with the provisions of chapter 51 of title 5 of U.S. Code, include:

a. Careful review of all programs to determine which low priority activities can be reduced or eliminated.

b. Review of the organizational structure of each unit to determine if existing staffing patterns are still appropriate in view of program changes.

c. Review of supervisory levels, with particular attention to the extent of "layering" and the need for deputies or assistants.

d. Evaluation of each position that becomes vacant to determine whether it could be eliminated or restructured at a lower grade.

e. Planning of the staffing of new programs in a manner that will tend to lower the average grade.

f. Exploration of feasibility of using technicians where professional staff is not being utilized at their full skill level.

g. Consideration of the opportunity of eliminating certain positions through increases in productivity.

h. Limiting of promotions above the journeyman level to those necessary to fill vacancies in positions of greater responsibility.

i. Reorganization of work so that it can be accomplished with lower grade employees.

j. Strengthening of position management system as prescribed by OMB Circular A-64.

7. *Reports.*—Agencies will prepare semi-annual reports showing the number of full-time employees in each grade of the General Schedule and the grade average (computed to four decimal places) for the agency as of June 30 and December 31 of each year. Grade averages will be computed by (a) multiplying each grade number by the number of full-time employees in the grade, (b) totaling the results so obtained, and (c) dividing the total by the number of positions involved.

Data reported should be identical with that reported to Civil Service Commission in the Annual Report of Salary and Wage Distribution of Federal Civilian Employees.

The first report for June 30, 1971, will be submitted to the Director, Office of Management and Budget by August 23, 1971. Subsequent reports will be submitted within 45 calendar days after the date of reference.

8. *Budget Guidance.*—Later instructions will provide for the identification and use of savings resulting from the reductions in grade averages pursuant to this Bulletin in the absorption of pay raise costs in FY 1972.

9. *Effective date.*—These instructions are effective upon issuance of this Bulletin.

10. *Inquiries.*—Inquiries should be addressed to Office of Management and Budget, phone 395-3894 (Code 103—Ext. 3894).

GEORGE P. SHULTZ, *Director.*

Attachments.

ATTACHMENT A.

DEPARTMENT OF GOVERNMENT, PLAN FOR REDUCTION OF AVERAGE GRADE

Grade	Number of full-time employees		
	June 30, 1971, actual	June 30, 1972, estimated	June 30, 1973, estimated ¹
GS-1	103	113	
GS-2	410	456	
GS-3	1,188	1,332	
GS-4	1,695	1,674	
GS-5	2,144	1,949	
GS-6	1,298	1,208	
GS-7	1,830	2,250	
GS-8	826	780	
GS-9	3,089	3,070	
GS-10	471	412	
GS-11	2,221	2,254	
GS-12	2,543	2,449	
GS-13	2,353	2,333	
GS-14	1,708	1,639	
GS-15	1,223	1,133	
GS-16	224	224	
GS-17	84	84	
GS-18	30	30	
Total	23,440	23,440	
Average grade	9.1744	9.0744	
Reduction		— .1000	

¹ Report estimated data for this date.

DEPARTMENT OF GOVERNMENT

DESCRIPTION OF PLAN

- A. *Organizational changes* (examples of subjects to be addressed).
 1. Programs or activities which can be reduced or eliminated.
 2. Organizational units for which the staffing pattern can be changed.
 3. Evaluation of each position that becomes vacant to determine whether it could be eliminated or restructured at a lower grade.
 4. Positions to be eliminated through increased productivity.
 5. Plans for increasing number of positions at grades below the present average grade.

- B. *Implementation*¹ (examples of actions that might be taken).

- | | |
|---------------|----------------|
| -----
Name | -----
Phone |
|---------------|----------------|
1. Restrictions on the filling of vacancies.
 2. Fill vacated positions by interagency transfers rather than new hires.
 3. Staff new or expanding activities so as to reduce agency-wide average grade.
 4. Identify employees who would qualify for involuntary retirement if positions were abolished.
 5. Lower entry levels for selected occupations.

¹ Indicate which actions have already been put into effect. Name and phone number of responsible officer to whom questions should be addressed.

[Appendix III]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., August 25, 1971.

(Bulletin No. 72-5)

To: The heads of executive departments and establishments.
Subject: Federal civilian employment reductions.

1. *Purpose.*—This bulletin provides initial guidance on the 5% reduction in Federal civilian employment directed by the President on August 15, 1971, in connection with the economic program he announced on that date.

2. *General.*—New ceilings will be established on June 1972 employment. In addition a ceiling will be placed on dollar totals for civilian personnel compensation and benefits for fiscal year 1972. As soon as data are developed, the Office of Management and Budget will send letters to the heads of departments and agencies establishing *specific* employment and dollar amounts required to meet the President's directive.

In the meantime, agency heads should take whatever action may be prudent and refrain from taking any action that would inhibit the President's intent to secure the planned employment reduction. The Presidential directive should be carried out in an orderly and nondisruptive manner.

The President expects the active and positive cooperation of all executive agency heads and officials in these essential reductions.

3. *Specific Guidance.*—To assist agencies in their immediate planning, the following guidelines are furnished:

Every effort should be made to insure that employment reductions occur substantially by attrition.

Reductions will be made by agencies in such a way that vital and basic services, including those affecting health and safety, will not be interrupted. Personnel reallocations within agencies will be made, as required, to meet the needs of the highest priority programs.

Agency hiring plans should be reviewed to determine whether temporary suspension of hiring new employees is indicated.

Reductions will be required in both full-time permanent employment and total employment. This will result in the issuance of new and lower employment ceilings for June 30, 1972.

The average grade reduction in the General Schedule prescribed in OMB Bulletin in No. 72-4 will be accomplished, even though the employment base is lowered.

4. *Budget Submissions.*—The fiscal year 1973 budget submission for each agency will be required in accordance with the time schedules set forth in OMB Circular No. A-11. Savings resulting from the reduction in employment and in the average GS grade should be reflected in the budget submitted if this can be done without delaying the submission. If this is not possible, the budget request should be submitted based on the previously planned 1972 employment level. Such requests are to be amended as soon as practicable after submission to reflect the required reductions.

These savings will be reflected in both the 1972 estimates and in the base used in deriving the 1973 estimates. The 1972 estimates will also reflect dollar savings resulting from the 90 day freeze on periodic (within-grade) increases.

GEORGE P. SHULTZ, *Director.*

[Appendix IV]

U.S. DEPARTMENT OF LABOR,
OFFICE OF THE UNDERSECRETARY,
Washington, D.C., September 3, 1971.

Memorandum for: Assistant Secretaries, Office of Labor, Commissioner of Labor Statistics, Deputy Under Secretary for International Affairs, Deputy Under Secretary for Economic Affairs and Program Coordination.

Subject: Government-wide program for cost reduction.

As you know, the President has recently set out goals to decrease expenditures within the Government. Specifically, he has ordered a reduction of approximately 5 percent in payroll costs and employment strength. In addition, we are required to roll back the average GS grade within the Department.

It is our objective to avoid a reduction-in-force. Therefore, while we are still waiting for OMB clarification on specific DOL requirements in connection

with these programs, we have sufficient information to begin preliminary action. Therefore, effective immediately, we must take the following steps:

A. Hiring Controls.—All hiring is suspended except as follows:

1. The minimum essential requirements for administration of EEA, OSH, the Welfare Reform Task Force and other new programs.
2. The minimum necessary to fill key management positions approved by the Office of the Secretary.

3. The hiring of individuals to whom a definite commitment has been made and an acceptance received prior to the date of this memorandum.

4. Actions necessary to fill essential clerical and professional vacancies created by separation, transfer, retirement or other personnel action. To accomplish this, each A&O should follow the general guideline of filling not more than one of every two clerical and professional vacancies.

B. Grade Escalation Control.—In addition to personnel cutback it is essential that we reduce the average GS grade within the Department of Labor by at least three-tenths of one grade over the next two fiscal years. This requirement is extremely difficult in the light of our personnel reduction efforts. If we stop hiring at the lower grades but continue to fill jobs at higher grades by promotion within, the average grade will increase instead of decrease. Therefore, we must take the following steps, effective the date of this memorandum:

1. Promotions to grade GS-12 and above should be accomplished only if they are essential. The head of each A&O is asked to insure that all promotions are reviewed at the highest levels and rejected if they are not required to continue effective program functioning. For example, should a GS-14 position become vacant, we must be absolutely certain that the position cannot be filled at grade GS-13 or below and still retain program efficiency.

2. No promotions, including career ladder promotions, are to be made unless the employee in each case:

(a) Has had at least the minimum amount of time in the lower grade shown in the enclosed tables, and

(b) Has demonstrated conclusively that he can effectively perform the work of the higher level to which he is being promoted. The increasing complexity of the work of the Department requires that employees be fully trained and prepared to assume journeyman and higher level duties and that managers are well equipped to carry greater responsibilities. In all cases therefore it should be established that the employees involved have demonstrated their capability to perform effectively at the higher level.

3. Each A&O should review its organizational structure to determine if existing positions can be designated for reduction in grade when they become vacant.

4. Each A&O should review supervisory jobs with particular attention to the layering of Deputies and Assistant Deputies and Assistant Assistant Deputies with only a few employees to supervise.

5. The staffing of new programs should be planned in a way which will lower the average grade.

C. Underfilling Higher Grade Positions.—The imposition of the above time-in-grade controls should not result in the preclusion of well qualified candidates from consideration and selection. A position may be underfilled at a lower grade if this fact is stated in the vacancy announcement so that candidates are aware that selection may lead to further promotion. The selected employee may not be promoted, however, until he meets the cost reduction time-in-grade restrictions or until these restrictions are removed.

We are required to submit to OMB by September 15, 1971, a plan for accomplishing this reduction in average grade. You will be receiving from OASA more specific information concerning the average grade information in your A or O and the steps needed to comply with the OMB directive.

I recognize that these general controls must be followed with specific goals for each A & O. Assistant Secretary Zarb is presently working with OMB to establish targets for the entire Department of Labor. Just as soon as these negotiations are completed, he will work with each A & O to establish more specific goals and plans of action to achieve both the cost reduction and grade de-escalation objectives.

The above requirements may be modified with experience in their application. In the meantime, questions concerning this memorandum or requests for waivers in cases of extreme hardship should be submitted to the Assistant Secretary for Administration.

LAURENCE H. SILBERMAN,
Under Secretary of Labor.

TIME-IN-GRADE COST REDUCTION RESTRICTIONS

Table I. Advancement to a position in grade GS-5 and below.

a. For promotion at one grade above his present grade, a candidate must have completed at least 6 months of service at his present grade.

b. For promotion at two grades above his present grade, a candidate must have completed at least one year of service at his present grade.

Table II. Advancement to positions at GS-6 through GS-11 classified at one-grade intervals. Candidates for advancement to a position at GS-6 through GS-11 which is in a line of work properly classified at one-grade intervals must have completed the following time in service:

From, to, and time-in-grade restrictions

GS-5—GS-6	12 months
GS-6—GS-7	12 months
GS-7—GS-8	12 months
GS-8—GS-9	12 months
GS-9—GS-10	18 months
GS-10—GS-11	18 months

Table III. Advancement to positions at GS-7 and above classified at two-grade intervals. Candidates for advancement to positions involving two-grade intervals must have completed the following time in service:

From, to, and time-in-grade restrictions

GS-5—GS-7	12 months
GS-7—GS-9	12 months
GS-9—GS-11	18 months
GS-11—GS-12	18 months
GS-12—GS-13	24 months
GS-13—GS-14	24 months
GS-14—GS-15	24 months

NOTE. In addition to meeting the above time-in-grade cost reduction restrictions, candidates must meet the minimum qualification requirements for the position and the time-in-grade restrictions of the Whitten Amendment.

[Appendix V]

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, D.C., July 18, 1973.

HON. DAVID HENDERSON,
Chairman, House Subcommittee on Manpower and Civil Service, Post Office and
Civil Service Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that the Subcommittee on Manpower and Civil Service of the House Committee on Post Office and Civil Service is undertaking a comprehensive study concerning the facts and implications of contracting out support services. This is a study that has been long overdue.

The Executive Council of the AFL-CIO has had occasion to consider the problems raised by the contracting out of support services. At its meeting in February 1973 the Executive Council resolved to:

Oppose any contracting out of work traditionally and historically performed by federal, postal, state, county or municipal employees which would disturb established work relationships.

Obviously, the contracting out system provides a means whereby standards for federal employment with respect to classification, pay rates, fringe benefits, collective bargaining agreements and compliance with statutes relating to such matters as veteran preference and equal employment opportunity can be seriously undermined. The practice, which has long been used by the Armed Services, has under OMB Circular A-76 been extended throughout the federal government.

Detailed factual information and explanation of the serious implications of contracting out procedures were furnished to the Subcommittee on Manpower and Civil Service by Mr. Clyde M. Webber, National President of the American Federation of Government Employees, AFL-CIO in testimony before the Subcommittee on May 31, 1973. On behalf of the AFL-CIO I would like to express our strong support for Mr. Webber's testimony and recommendations.

The study which the Subcommittee on Manpower and Civil Service has undertaken is of great importance. We will, of course, be glad to cooperate with the Subcommittee in any way in which we can be of assistance in carrying out the study.

I would appreciate it if you would include this letter in the record of your hearings on this matter.

Sincerely yours,

ANDREW J. BIEMILLER,

Director, Department of Legislation.

Mr. KOCZAK. Thank you, sir. Our union represents approximately 650,000 Federal employees performing all kinds of work for the Federal Government in every department and agency throughout the world. And we are fundamentally concerned with the problem of contracting, especially the contracting out of support services. This involves the acquisition by the Federal Government of the services of human beings, rather than of goods.

The area of contracting out support services is the least regulated of all Federal Government personnel operations. Today, the numbers of these contractor, or "indirect hire," employees is so large and their conditions of hire so different that they almost constitute, in fact if not in law, a fourth branch of Government operations. For these reasons, we welcome the hearings of your subcommittee on S. 2510. We believe that legislation should require all contracts of technical and support services be let only by rigorous legal standards; that they be deposited in a central repository; and that they be properly monitored by a central authority for compliance with all statutes, establishing "natural policy."

We feel that, in the administration of contracts for technical and support services, there should be a central authority which supervises the administration of all of the other laws that Congress has enacted so as to oversee that these contracts are let in conformance with all laws.

We make a special point of this because we have found, most recently, that the General Services Administration, the Department of Defense, the subdepartments of the Air Force and the Army and Navy have, in fact, violated the Veterans Preference Act in the contracting out of support services. At a time when, in fact, 500,000 veterans are unemployed or are on relief rolls, we find that inconsistent with the intent of Congress. We find that, in addition, there are large numbers of other considerations that apply to the employment of human beings which are not being supervised by the Federal Government, thereby creating a fourth branch of the Government unregulated by any central authority, or supervised in any way.

In their rush to contract out additional positions, agencies and departments of the Federal Government are, in our view, repeatedly violating Federal statutes. Most recently, just 2 days ago or 3 days ago, we received a court order requiring the Civil Service Commission, for the first time in history, to review whether a contract issued by the Air Force violated the rights of the Federal employees who are entitled under the Veterans Preference Act to specific positions in Federal employment. The Civil Service Commission originally denied that it had any jurisdiction over this, inasmuch as it was a contracting-out function. The Commission has now been ordered by the court to assume jurisdiction and to make a finding. Had there been some central authority, this situation would not have arisen.

We do believe that, given the tenor and the crisis of the times, the situation calls for greater insistence, greater vigilance, and greater dedication to the principle that those who do the Government's work serve only one master, the public interest. We believe that it is not only in the interest to the U.S. Government, from the standpoint of effective management, but in the interest of the entire Federal Government's relationship to the American public that an act such as this be considered seriously and passed into statute.

Then there is the issue of a feeling in the general public that some of the operations of Government are not understood and that there is a need for clear standards as well as equal opportunity and access to contracts.

We do not attack private enterprise in taking this position. As a matter of fact, it is our feeling that, unless there is a scrupulous alertness by some central Federal authority to see that all of the acts of Congress relating to personnel matters are, in fact, enforced; that unless there is an appeals procedure, a grievance and appeals procedure, all can invoke, we will all have difficulties. The people who let these contracts themselves are sometimes under either policy or budgetary constraints which led to their being willing to engage in such questionable operations.

Now I have one last comment, and I would really like to refer in this summary to one section of our statement which relates to the current situation.

Who really administers Circular A-76? We have been informed that the Office of Management and Budget continues to retain basic policy responsibility for OMB Circular A-76, even though some of the operational functions appear to have been transferred under Executive Order 11717 to the General Services Administration. But this division of labor patently is only minimal, if not nominal, since neither OMB nor GSA appears to have any general central power or staff to make departments and agencies accountable. As evidence of this situation, it appears that there is only one person—and I repeat one person—in the entire Office of Management and Budget to administer Circular A-76.

This person appears to have no title although he is now with the Organization of Special Projects Division of OMB. He has no deputies at this time. He is not able to discharge the kind of policy supervision and management needed.

Now I appreciate the lateness of the hour, and we are at the end of these hearings. We do have our full statement. Perhaps I can conclude at this point, and if you have any questions, I shall be glad to answer them.

Senator CHILES. We will certainly consider your statement and your remarks. I am not sure that they aren't going to be more appropriate as we get further into some of the Commission's recommendations than they are to the Office of Federal Procurement Policy, depending on what happens with this legislation. I doubt very seriously that this office is envisioned to monitor contract provisions of any kind or to hear appeals on contract provisions. It is, primarily to try to coordinate some of the hodgepodge of procurement regulations and authority that now exists.

As we go forward in shaping the legislation, we will certainly bear your statement in mind, and I think that at the time we begin to look more specifically at the Commission's recommendations, some of your comments will be more in focus.

Mr. KOCZAK. We were most concerned that there be no derogation of the other statutes that are already in force through the device of contracting out. That is really the thrust of our statement here.

Senator CHILES. Fine. I think, again, that as we get into some of the specific concerns of the Commission in regard to what private enterprise's role should be, then it might very well be that we will need to take another look at this.

Thank you for your appearance today.

The next witness will be Mr. Michael Forsey, representing the legislative counsel of the National Federation of Federal Employees.

Mr. Forsey, if you could summarize your statement, we would include it in full in the record.

STATEMENT OF MICHAEL FORSEY, REPRESENTING THE LEGISLATIVE COUNSEL OF NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. FORSEY. I will be glad to do so.

The major point that we would like to make today is our feeling that it is very important that the Office of Federal Procurement Policy be independent of the executive branch. We think that it should either be set up as an arm of the General Accounting Office, or as an independent agency. I think that the body of our testimony refers to the problems that we think will occur if, in fact, the Office of Federal Procurement Policy is set up in the executive branch.

If I may simply read one or two paragraphs?

We believe that an effective oversight function under present conditions cannot be performed in the executive branch. No office in the executive branch can have any greater freedom than does OMB presently. Indeed, in all probability, it would be less.

Directive authority is presently given in the Civil Service Commission, yet is there anyone who believes that the Civil Service Commission's directive authority is exerted independently of the Office of Management and Budget? We do not. Will a procurement office in the executive branch function any differently?

We believe that Congress has no intention of permitting the continuation of the status quo in the procurement field by permitting OMB to revitalize the program.

Also, in our testimony, we refer to the manner in which the Office of Management and Budget has thus far conducted its oversight function in the procurement field. I think that the previous witness also testified to this.

We have also had some discussion of the role of the private sector in the procurement of goods. I know that you don't want to go into this area at this point, but I would like to refer for a moment to section 6(1) of the bill. It states "the authorities of the Administrator shall not be construed to impair or interfere with (1) the determination of executive agencies of their need to procure and their use of properties, services, construction, and so forth."

We think the question of whether or not it is appropriate for private contractors to furnish personal services is an open one. This is because there is a distinction between material procurement, a function which the Government has no capacity to perform, and personal services where you have Federal employees performing functions for which the private sector really has no inherently greater capacity. We are concerned that the use of the term "services" under section 6(d)(1), can be construed to close that question, and we think that is something that should be studied very carefully.

Senator CHILES. We thank you for your statement.

Locating the new Office is one of the main issues that we must resolve, and we appreciate your arguments for making it an independent agency. Our concern is whether it will have the necessary clout and access as an independent office. It might lose some of its effectiveness in the process of being independent and separate from the OMB, for instance.

Mr. FORSCEY. I recognize that problem and I think if you are going to have an agency with directive authority over the other departments of the executive branch, you might run into problems if it is set up as an independent regulatory agency.

Senator CHILES. The other thing is, as I said, as we went through this evolution, there are those in the executive branch that say to wait and don't do anything and give us a chance. Your statement seems to cover that pretty well, that you agree with the feeling of the Commission, and I think the feeling of the subcommittee, that we have waited too long already. There is another school of thought that maybe with directive authority the executive branch, wherever we locate the Office, can set up a central office that will be able to coordinate Government-wide. Then in the event this attempt at cooperation fails—and as I said, I think it takes the cooperation of the executive branch, no matter what kind of statute we pass—the next step would be a GAO-type of agency in which Congress, itself, would assume the guiding role. We very definitely have to have cooperation.

Mr. FORSCEY. That is, of course, why I made the comment about the difficulty of having an office in the executive branch which is supposedly going to be independent of OMB, but I have serious doubts about whether it will.

Senator CHILES. I think if there is any "wait and see" attitude on the part of the Congress, it should be to wait and see whether this can be done in the executive branch with our directive authority. If it can't, then we are going to see that it is done. If it takes a congressionally authorized agency to do it, then we will go to that, but there is not going to be a "wait and see" whether it can be done voluntarily because we have been waiting since 1955.

Mr. FORSCEY. Yes, I agree.

Senator CHILES. Fine. Thank you.

[The full prepared statement of Mr. Forsey follows:]

PREPARED STATEMENT OF MICHAEL FORSCEY

Mr. Chairman and Members of the Subcommittee, my name is Michael Forsey, Legislative Counsel of the National Federation of Federal Employees. I appear before you today to present our views on S. 2510, a bill which would create an Office of Federal Procurement Policy within the Executive Office of the President.

This bill is the first attempt by the Congress to enact one of the major recommendations of the Procurement Commission—that is, the establishment of an office to oversee the development and application of procurement policy while leaving contracting agencies with responsibility for individual procurement actions.

In its report, the Procurement Commission listed a number of criteria it deemed critical to the effective operation of an Office of Federal Procurement Policy. Two of these are of particular importance. First, the agency should be independent of any agency with procurement responsibility. Second, the agency should operate at a level once removed from the procurement agencies and have directive rather than merely advisory authority.

We think these criteria are sound and note that S. 2510 takes the concerns embodied in them to heart. However, previous testimony before this committee makes it clear that the Office of Management and Budget, as well as subordinate federal agencies are not in agreement with the Commission's recommendations in this regard. 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.

The General Services Administration obviously fails to meet either of the two criteria cited above. Beyond that we have recently learned something about the conduct of business at GSA. Preliminary evidence indicates that some very lucrative contracts have been granted under something less than laboratory conditions. In addition, GSA has initiated a program for contracting out the guard services at GSA operated buildings. While we have no definitive court ruling on this practice as yet, it seems certain that this violates the Veteran's Preference Act. It is this kind of conduct which requires the establishment of an independent procurement office. Prudence dictates, we believe, that one of its first duties should be an investigation of GSA. One can imagine how vigorous such an investigation would be if conducted by GSA.

The Office of Management and Budget has a somewhat more legitimate claim in asserting the right to have overall procurement policy conducted under its auspices; it does operate one level above the procurement agencies and it does have directive authority. However, it has had that authority for well over ten years, a period during which we have witnessed case after case of poor procurement management by the Executive Branch. In 1959 the Bureau of the Budget issued circular A-49 (as distinguished from circular A-76) which was intended to govern so called "management and operating contracts". That circular urged agencies to begin to evaluate the work of contractors and tried to define when their use would be appropriate. While this circular remains in effect to this day, a Nader Study Group investigating the contractor industry discovered in 1971 that OMB had not only forgotten about enforcing it, but furthermore, no one could be found who would acknowledge responsibility for it. It developed that the agency had neglected to implement A-49 because it was too much to handle. Since the time of that decision, the contractor process has been in limbo, neither controlled by existing civil service regulations or by OMB. The result is that we have no systematic records of past contractor performance nor criteria to apply to future performance.

Given this past history we see no reason to believe that OMB will be any more vigorous in protecting public money in the future than it has been in the past. And yet, even with this dismal record, OMB contends it should retain its present authority.

A possible explanation for this past nonfeasance is that OMB has been awaiting the Procurement Commission's guidelines. In testimony before this committee, Mr. Frank Zarb of OMB saw the problem as one merely calling for fine tuning of the present system. "The solution to our problems," he said, "is not so much an organization solution as it is a revitalization of the structure we already have and a commitment to get on with the task of improvement of Federal procurement along the road which the Procurement Commission has already pointed out to us."

This is pure cant. The problem is organizational. If the bill before us today or something similar is not enacted you can rest assured we will have heard the last of any talk of revitalization.

Prof. John Cibinic, Director of Government Contracts Program at George Washington University Law School, in testimony before this committee, cataloged the actions of the Executive Branch with regard to procurement policy

over the past six or seven years. In summing up he states "... the past track record of the Executive Branch certainly does not instill confidence that ((a) procurement office) would be created and maintained ... (U)nless there is continuity (of purpose) in a short time we will be back where we started from."

Professor Cibinic concluded that of Office of Federal Procurement Policy should be created as an independent agent of Congress. In this we concur, and we believe S. 2510 should be so amended. When we testified on similar legislation before the House Government Operations Committee earlier this year, we stated our belief that OFPP should be established as an arm of the General Accounting Office. Since that time we have modified our position somewhat. While we still believe establishment in GAO would be best, any independent agency, accountable primarily to Congress, will serve the purpose. This late in 1973 our reasons for this position should need no explanation. We believe an effective oversight function, under present conditions, cannot be performed in the Executive Branch. No office in the Executive Branch is going to have any greater freedom than does OMB presently. Indeed, in all probability it would have less. Directive authority is presently given to the Civil Service Commission. Is there anyone who believes that CSC directive authority is exerted independent of OMB? Why would a procurement office in the Executive Branch function any differently? 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. Establish the procurement office in the Executive Department and the same problems arise that we described concerning OMB.

It will either be under OMB's thumb or become precisely what OMB is today—an instrument of political power in the Executive Branch. Quite possible those guilty of the greatest transgressions in the procurement field will rapidly take effective control of the OFPP.

In our view the purpose of the OFPP is the systematic study of the procurement process in a scholarly, professional manner, with a view toward rationalizing that process. Only if we have a procurement office insulated from outside pressures can we expect the failures of the past—the extensive delegations of authority, conflicts of interest, abuse of the civil service system, the use of marginal labor in the personal service contracts and the lack of performance records, to be properly analyzed. This can best be assured by creating an agency primarily beholden to the Congress, not to the Executive Branch.

Mr. Chairman, I want to thank you for giving us the opportunity to present our view on these important matters.

Senator CHILES. Our next witness is Mr. William C. McCamant, executive vice president, National Association of Wholesaler-Distributors.

STATEMENT OF WILLIAM C. McCAMANT, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

Mr. McCAMANT. My name is William C. McCamant and I am here today as executive vice president of the National Association of Wholesaler-Distributors. Because wholesale distribution serves as a major channel for the procurement of goods and commodities for Federal agencies, our Association has long been concerned with the policies and practices of Government procurement. We appreciate the opportunity to express our views on S. 2510, a bill to establish an Office of Federal Procurement Policy.

Senator CHILES. We are delighted to have you and we will include your statement, in full, in the record. If you could summarize it for us, it might expedite the hearings.

Mr. McCAMANT. Thank you, Senator.

[The prepared statement of Mr. McCamant follows:]

PREPARED STATEMENT OF WILLIAM C. McCAMANT

Mr. Chairman and members of the subcommittee, my name is William C. McCamant. I am appearing here today as Executive Vice President of the National Association of Wholesaler-Distributors. Because wholesale distribution serves as a major channel for the procurement of goods and commodities for Federal agencies, our association has long been concerned with the policies and practices of government procurement. We appreciate the opportunity to express our views on S. 2510, a bill to establish an Office of Federal Procurement Policy.

NAW is a federation of 89 national commodity line wholesaler-distributor associations representing approximately 30,000 merchant wholesaler establishments in the 50 states. Over \$300 billion worth of goods and commodities now go to market either to consumers or business and industrial users through merchant wholesaler channels. Approximately one out of every 20 employed persons in the United States works for the wholesale distribution industry.

Before commenting on some specific aspects of S. 2510, I would like to commend the Commission on Government Procurement for its comprehensive and objective study. The Commission deserves outstanding recognition for its work and many worthwhile recommendations to improve government procurement.

In response to a Commission recommendation, S. 2510 has as its objective the establishment of an Office of Federal Procurement Policy in the Executive Office of the President. We believe the establishment of such an office will provide for a more logical system for numerous government agencies for their procurement of needed commodities. Such legislation provides a central authority to set the tone of federal procurement and clarify the many discrepancies presently existing between agencies of the government in their procurement policies. We support the establishment of such an office in the Executive Office of the President.

We are delighted to see the declaration of policy as contained in Public Law 91-129 which established the Commission on Government Procurement is included as Section 2 of this bill. The declaration of policy will act as a guideline for the Administrator in establishing policies and procedures governing procurement.

We should like to make one suggestion regarding the first principle in the declaration of policy contained in Section 2(1). Presently, this section reads, "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 competition to the maximum extent practicable." We urge this be changed to "lowest total economic cost" instead of "lowest reasonable cost". The term "total economic cost" would mandate consideration of the *cost* of the product, the *cost* of the system support, and costs arising through the use and disposal or consumption of the product. In its report, the Commission cited the failure of government to focus on the long-term costs of satisfying a government requirement. We believe this alteration in wording would bring into consideration the total cost of providing a product to a federal user instead of simply the price paid for it.

Far too often government procurement is based on the price alone and not on total economic cost. Large quantities of goods and commodities are purchased directly from manufacturers simply because the manufacturer can extend a lower price as a result of the size of the order. These items are then stored in a warehouse and repackaged and reshipped to using agencies as needed. The Commission found taxpayers are paying a very large overhead cost for these operations. If the using agencies were permitted to purchase common use items which are instantly available from local suppliers, the total cost of government procurement would be reduced substantially. Every year we see the federal government disposing of vast quantities of excess and surplus property which had never been used and should not have been ordered in the first place.

We find Section 6(a) (B) the most disturbing provision of S. 2510. This section might be interpreted to give congressional endorsement for the sale of goods by government agencies to federal grantees—called Federal Assistance Programs in the bill. The section would require the Administrator of the Office of Federal Procurement Policy to provide overall guidance and direction of procurement policy not only for executive agencies for their own use but also "in connection with procurement of items . . . to the extent required for performance of Federal Assistance Programs". We are fearful, as worded, Section 6(a) (B) would be used by the General Services Administration to once again attempt its expansion policy in selling to grantees. Twice in the past, GSA has attempted to launch massive merchandising programs to sell to state and local governments,

and to grantees. Using the Intergovernmental Cooperation Act as "legislative authority" in 1969, GSA began an intensive program to sell to state and local governments. NAW, in company with a number of other associations, filed suit in the Federal District Court for Northern Illinois. On August 29, 1969, the Bureau of the Budget issued Circular No. A-07 which limited GSA activity in this area to covering "technical advice on improving logistical and management services".

In September, 1969, the U.S. District Attorney assigned to our suit in the Federal District Court in Chicago, advised the court that GSA was not engaged in providing procurement services to state and local governments and would not do so under existing law.

In using the Intergovernmental Cooperation Act as its legislative authority, GSA countered its own previous testimony given to the Subcommittee holding hearings on the Act. The GSA Administrator at that time, Lawson B. Knott, Jr., in submitting the agency's views on the Act, stated in part:

"The bill is subdivided into nine titles. GSA's comments are confined to the provisions of Titles VII, VIII, IX, which relate to the acquisition, use, and disposal of land by federal agencies, as these are the only portions of the bill which would appreciably effect the responsibilities of GSA. We are in accord with the overall purposes of these titles."

After a close study of the Act, we found no mention of the words "purchase", "procurement", "supplies", or "commodities" in any section of the bill. As we agreed with Administrator Knott that the bill did not in any way pertain to the procurement operations of the General Services Administration, we sought relief in court.

At that time, we thought we had seen the end of GSA's encroachment into the private sector, but we were wrong. Following elimination of the Intergovernmental Cooperation Act as statutory authority, GSA adopted a policy of what could be termed "following the federal dollar". This program would permit any agency, public or private, which received a federal dollar to purchase through GSA sources. Following this policy, the agency adopted a very aggressive program of selling GSA services. Their salesman called on grantees urging them to discontinue their purchases from local suppliers and to purchase from GSA. Once again, we filed suit January 6, 1972, in the Federal District Court of the District of Columbia seeking relief. In the fall of 1972, GSA discontinued this service following a request to do so from the Office of Management and Budget.

As you can see, following two previous GSA ventures into competition with private enterprise, we are understandably wary of any wording in S. 2510 which could be construed by the agency as authority for them to again begin their program of sales to grantees. Section 6(a)(B) by its very language may be construed by GSA as authority for the Administrator of the Office of Federal Procurement Policy to develop regulations for sales to grantees and immediately begin urging he do so.

This is too important a problem to be included in this bill in its present form. Section 15 states the Administrator will "undertake a study to determine the feasibility and desirability of authorizing his office, or another federal office or agency, to provide overall guidance and direction for Federal Assistance Programs and the relationship of policies and the regulations governing the use of contracts, grants, and cooperative agreements." It is our opinion that if Congress is going to legislate the authority for GSA to sell to grantees, it should be through separate legislation following a study and report by the Administrator of the Office of Federal Procurement Policy. Such authority should not be given in a roundabout manner through inclusion in the definition of the Administrator's functions.

Also we believe the possibility of GSA's interpreting Section 6(a)(B) as authority to sell to grantees would be in direct conflict with Section 2(9) which states as one of the policies, "Minimizing possible disruptive effects of government procurement on particular industries, areas, or occupations; and Section 2(11) "Promoting fair dealings and equitable relationships among the parties in government contracting."

We believe that Congress in establishing GSA had as its intent to provide a service agency to all departments of the federal government and not to establish a gigantic wholesaler to sell to every public school in the nation, virtually every university, hospital, mass transit system, railroads, and a host of other recipients of federal funds.

Mr. Chairman, in summary we urge the Congress to:

1. Establish an Office of Federal Procurement Policy in the Executive Office of the President to be confirmed by the Senate.
2. Delete Section 6(a) (B) which could allow sale of merchandise to grantees and other non-federal users and thus reaffirm reliance on the private sector of the economy.
3. Establish the concept of "lowest total economic cost" in all procurement decisions.

We also take note of S. 2198 introduced by Senator Brock on July 18 and his later amendment to that bill introduced on September 18. As with similar bills, some might conclude that the language would permit the Administrator to authorize GSA to sell to federal grantees. The amendment offered later erases any possibility of such an interpretation.

We support that objective. Selling to grantees is not procurement but merchandising. It sprung from the desire of the General Services Administration to expand its services. It would have no limits.

It is also appropriate for us to comment on the present position of the Administration with respect to establishing the Office of Procurement Policy by legislation. Basically, the Administration witnesses have concurred with the objectives, but not the method. Stated briefly, their position is to urge the Congress to wait and see what steps the Administration takes to meet the objectives.

We have already seen some of the steps. Indeed they are counter to the objectives. If this new office is not established through congressional authority—if the Administrator is not confirmed by the Senate as provided—it would be a signal that nothing has changed and that the old ways will continue. What is needed is a new package—not a new wrapping. The Administration's approach will provide a new facade to mask the old operation. This bill, S. 2510, will establish the foundation for bringing about the reforms identified by the Commission on Government Procurement.

Our industry wants the Congress identified with these reforms. This is not a situation where the Congress should permit the executive branch full authority. The Administration's failures of the past led the Congress to establish the Commission on Government Procurement. It is important to remember that the Commission was a Congressional initiative. The review of government procurement policies and practices was a congressional initiative. Let the establishment of the Office of Federal Procurement Policy be a congressional initiative. The Congress should not abandon its initiative. The track record is excellent. Let Congress finish the course.

Mr. McCAMANT. We first want to say that we believe that the report of the Commission on Government Procurement was excellent. It was a congressional initiative that established the Commission on Government Procurement. The executive branch opposed the establishment at that time, but they did cooperate and I think rather fully, after the Commission was established.

Senator CHILES. They did.

Mr. McCAMANT. But it was congressional initiative all of the way that established the Commission.

We support the report of the Commission to establish an Office of Federal Procurement Policy; we support the concept that it should be headed by someone who is confirmed by the Senate; and we support the fact that he should be in what we call a neutral agency.

For example, the General Services Administration was set up to serve the other departments, but when the servant suddenly develops the directives and issues the orders, the first thing you know, the executive departments it was established to serve, really has to follow the directions of the General Services Administration. We feel that this has been bad all along.

We also think that one of the major things that the Commission on Government Procurement pointed out was the need for examination of procurement on a total cost basis, and not on a price basis. Some of the examples of overhead cited in the report are absolutely horrendous. I might say it costs a lot of money to maintain warehouses—

even if you are maintaining tax-free warehouses—and it costs a lot of money to deliver. Even if you don't pay gasoline taxes, it still costs a lot of money. The Commission, I think, identifies that very well.

I noticed that other witnesses have expressed their concern about certain language in the bill which refers to "Federal assistance" and the fear that section 6 might be interpreted to give congressional endorsement for the sale of goods by Government agencies to Federal grantees which is known as the Federal assistance programs in the bill. While I wouldn't make that interpretation, the track record of the General Services Administration to misinterpret the laws of Congress is quite excellent. They have a fine record.

I have given the counsel a publication which NAW issued back in 1969. In the publication's centerfold, there is a letter which was issued by the purchasing agent of the State of New Mexico to all boards, commissions, and departments, and it says that the General Services Administration had met with representatives of the State of New Mexico, and that State and local governments would be permitted to buy directly from GSA. They further stated that they were doing this under the Intergovernmental Cooperation Act of 1968. The Senator from New Mexico, Senator Montoya, presided at some of those hearings, and Senator Montoya never realized that that bill would do such a thing. And I might add that if you check the language of the Intergovernmental Cooperation Act of 1968, you can't find the word "purchase" or "procurement" or "supplies" anywhere in the language. And yet they relied upon that.

We filed suit in the Federal district court in Chicago, and the Office of Management and Budget later issued a directive stating that the Intergovernmental Cooperation Act did not authorize this activity.

Then later in 1970, GSA started to sell to grantees. The only authority that Congress ever gave on Government procurement being available to grantees was toward certain agencies which received grants from the Office of Equal Opportunity. That was the only provision, but the next thing we knew, all colleges, school systems, universities, were called upon by the General Services Administration to discontinue their contracts with private agencies and buy from GSA. Now, GSA said that the purpose of this was to make the Federal dollars go further. We found, for instance, they would try to sell cleaning supplies to the public school system. The Federal Government gives grants to public school systems for vocational education, teaching of mathematics, school lunch programs, and many different programs but the Federal Government doesn't give them the money to buy cleaning supplies. It is completely outside the purpose of it.

Well, the Office of Management and Budget discontinued that type of operation.

Now, we find that the National Institutes of Health and the Office of Equal Opportunity have jointly financed a study in order to get around the ban on the sale to grantees and that study is now being conducted by a private organization. In other words, they are going to set up a "superwholesaler" with Federal funds but outside GSA if this pilot study proves feasible. I think it shows the ingenuity of these people to misinterpret what the law should be.

Lastly, I would like to say that we feel that Congress should press through on this and that the administration's position is simply a

delaying action. We are not the least impressed with what the administration has done so far. The report that they gave to the Congress and to the public that progress has been made in the last few months, we feel, is misleading. We believe that there has been no progress. We feel that there have been steps taken backwards.

I would like to end with a comment which is not on the bill, Mr. Chairman, but perhaps could be a subject of future consideration by your subcommittee.

The Government tells business to abide by the rules of the marketplace. Yet when the Government goes into the marketplace as a buyer or seller, it doesn't abide by its rules.

Now I realize this is outside the perimeter of this bill; but, for instance, when the post office truck goes down the street, it has to obey the stop signals. When the Government goes into the marketplace and uses its vast purchasing power to disrupt the market and perform acts which would be illegal by other large buyers, we feel that the Government should cease those practices. We believe that the Congress should study that situation as a separate issue.

Thank you very much.

Senator CHILES. Thank you for your testimony and your support of this legislation and the work which the subcommittee has before it. You and several other witnesses today are all rightfully concerned with the issue of procurement by grantees from Federal supply sources. Let me say, again, that, as you know from your meeting with the staff, we are in full accord and only a bill that leaves no question about this will be reported out. It was never intended to authorize such procurement.

After telling us of your past experience with GSA on the grantee issue, would you care to comment more specifically on the executive branch plan for improved procurement policy which gives the GSA such a central role?

Mr. McCAMANT. Well, I am afraid I might make a comment that might not be liked very much, but it is sort of like putting the fox in the henhouse. I am afraid in regard to putting the fox in the henhouse, I really don't understand the basic philosophy behind it.

There was some discussion of the economics of distribution and we feel, as the National Association of Wholesalers-Distributors, we have a great deal to offer in that. We have, you know, the greatest distributors in the Nation as a part of our membership.

And every time we've gone down to the GSA to discuss the economics of distribution, we have always been met with a battery of lawyers. The whole concept seemed to expand authority. It was all based upon authority and not on economics. Now we just feel that when the General Services Administration is given these authorities by the administration, they are really giving it to the agency which has created the conditions which the Commission on Government Procurement has found. We are not here today to say that all centralized procurement is bad. Sometimes it is good; sometimes it is excellent; but each commodity which is purchased needs to be analyzed as to its use, and the GSA simply does not study at all the economics of distribution, the functions of distribution and its role in total costs.

For instance, General Electric buys from thousands of wholesalers.

I know of a General Electric factory that buys General Electric products from a wholesaler. It is an air-conditioning and refrigerating equipment type product, and they must buy by bulk from an electrical distributor.

The U.S Postal Service buys automotive parts and stores them in Kansas City. Then if a post office truck in Boston needs a part, they must get it from there.

Now, when I asked about the economics of the Postal Service's doing that, they gave me an interesting answer. First, the warehouse didn't cost anything, because the Government owns the warehouse. Second, the telegraph system for sending these orders halfway across the continent doesn't cost anything, because the Government owned that. The computer to keep track of the inventory doesn't cost anything, because the Government had one in Dallas, Tex., with spare time. Most amusing of all, it didn't cost anything for transit costs because the Postal Service operated the parcel post system. So, this is the economics.

I must add that it was not the men who have made a career of maintaining Postal Service vehicles that devised this system. It was a group of consultants that they brought in.

Now, Avis has thousands of trucks and they don't have any centralized procurement system. A.T. & T. has hundreds of trucks, and another one is United Parcel Post which has given the Postal Service a pretty good run for its money, and it doesn't—

I am sorry that my answer was so long.

Senator CHILES. That is all right.

As you perhaps know, S. 2510 is an improvement over the House bill which officially recognized procurement by grantees from Federal sources. S. 2510 merely intended to be sure that the Office of Federal Procurement policy would have some authority over how Federal grant money is used for procurement. That is our specific intent.

Of course, the witnesses this morning seem to fear, that based on past experience, that someone might read into S. 2510 implied authority where there isn't any.

We have several alternative changes in language under study, and the Legislative Counsel's Office is studying the problem right now. We, of course, are going to delve into this whole area of Government competition with the private sector as a priority matter next year, as a matter for possible specific legislation.

Have you had an opportunity to look at the language recommended by the witness from the Scientific Apparatus Manufacturers Association, in which he said he wanted to include the statement that "Nothing in this act shall be construed as authorizing the Administrator to provide procurement or supply support to any recipient of Federal assistance or grants"? If you haven't would you look at that and give us your views?

Mr. McCAMANT. I think we will look into that, and we will submit a statement on that.

Senator CHILES. Thank you very much.

Mr. Rukin of the Smaller Business Association of New England was called out of town unexpectedly, so we will put his statement in the record.

[The prepared statement of Michael B. Rukin follows:]

PREPARED STATEMENT BY MICHAEL B. RUKIN, PRESIDENT, ANALYTICAL SYSTEMS ENGINEERING CORP., AND A DIRECTOR OF THE SMALLER BUSINESS ASSOCIATION OF NEW ENGLAND

My name is Michael Rukin. I am President of Analytical Systems Engineering Corporation, a small business research and development company, concerned with Communications, Navigation and Environmental Systems. I am appearing here on behalf of the Smaller Business Association of New England (SBANE), in response to the invitation of Chairman Chiles, to present our Association's view of S. 2510. I additionally serve as a Director of the American Association of Small Research Companies.

The Smaller Business Association of New England, also known as SBANE, as approximately 1,000 small business members from the six New England States, many of whom do business with various Government agencies. Our Procurement Committee, of which I am a member, reviews proposed procurement legislation as it affects our members and we are pleased to have this opportunity to present our views on S. 2510. I have some material with me describing the purposes, the activities, and the membership of the Association and this material is submitted with this statement by way of information.

Our Association commends the Commission on Government Procurement for its excellent Report. We were pleased and honored to have one of our members, Mr. Paul W. Beamer, serve on the Commission. The Procurement Committee of our Association studied closely the recommendations of the Commission and our Association supports a great majority of these recommendations.

In particular, our organization supports the creation of the Office of the Federal Procurement Policy (OFPP)¹. We also have some important reservations about the Bill as submitted on October 1, 1973. I shall first indicate our hopes for the Bill so that our concerns can be better understood against that background.

Our hopes for the Bill are that OFPP will become a high level policy-setting forum in which contractors can get a fair hearing whenever they believe changes are needed in the procurement policy and its implementation. Our hope is that this Office, itself not engaged in procurement activity, will establish new standards for annually measuring the performance of procuring agencies and their prime contractors in using small business. Our hope is also that this Office will seek to simplify and unify regulations where possible. Finally, our hope is that this Office will serve to review reports and statistics of procurement actions of Federal Agencies to see that the policies set forth by Congress are being implemented.

In light of these expectations, we support the location of the OFPP within the Executive Office of the President (Sec. 3(b) of the Bill), as opposed, for example, to assigning such a role to the General Services Administration which has a vested interest in enlarging its own procurement responsibilities. We support also the fact that the Administrator is authorized to appoint advisory committees including private citizens (Sec. 7(a) of the Bill). We strongly support Section 8 of the Bill whereby the Administrator is required to submit reports to Congress.

I shall now enumerate some of our concerns.

1. FAIR DEALINGS

Our first concern is with the entire philosophy of the OFPP Office. We believe it critical that the Bill establishing the Office list *fair dealings* with vendors as one of the key policies of Congress to be promoted by the Office. The Bill as submitted lists in Sec. 3(a) the finding that OFPP is to improve economy, efficiency, and effectiveness in the procurement of property and services. We believe these findings to be incomplete. The important principle at issue here is that procurement regulations should serve to protect the vendor as much as to achieve "economy, efficiency and effectiveness" for the Government. The economic power of the Government vis a vis the individual supplier is enormous. The Federal Government is frequently the only, or the largest, customer of many small business vendors. Without the protection of the regulations, the supplier is entirely at the mercy of the buying agency. Regulations are not always equitable. Consider, for example, the fact that the Government usually has the right of immediate unilateral termination of contracts, but the regulations do not permit interest on delayed payments and do not prescribe the schedule of payments. At present, the

¹ Hereinafter referred to as OFPP or Office.

contractors have no place to turn which is specifically charged with the responsibility that regulations be equitable. We recommend that OFPP be given this responsibility. Our recommendation in this regard is supported by the Policy Goals stated in Section 1 of Public Law 91-129 which established that Commission on Government Procurement.² One of these Policy Goals is the attainment of equitable procurement practices.

Since PL 91-129 has expired, we urge that you incorporate in the Bill the entire Declaration of Policy contained in Public Law 91-129 so as to give the Administrator and his Office an explicit policy direction.

2. SMALL BUSINESS

Our next vital concern is that small business interests be represented in structuring the Office. The Bill as introduced on October 1, 1973 makes no reference whatsoever to small business and the stated policy of Congress to aid, counsel, assist and protect insofar as possible the interests of small business in order to ensure that a fair proportion of the total purchases and contracts or subcontracts be placed with small business enterprises (Public Law 85-536, Sec. 2(a); U.S.C. 631(a) (1970)).

The Report of the Commission on Government Procurement is very explicit regarding the role of the Office in relation to small business. The Bill is, however, silent on any function of the Office relative to small business such as providing a high-level forum for small business interests and focal point to consider the view of the small business community on procurement policy.

We urge that a requirement for promoting small business policies of Congress and a close liaison with SBA be written into the Bill. The best way to ensure that the Administrator clearly understands the will of Congress in regard to the small business is to add in Section 6(b) of the Bill that one of his functions be the implementation of the small business policy of Congress.

We further urge that the Bill explicitly implement Recommendation 47 of the Commission (Vol. 1, Part A, Ch. 12, p. 128) and require the Administrator to establish new standards for annually measuring the performance of procuring agencies and their prime contractors in using small business.

We also wish to draw your attention to Recommendation 49 of the Commission's Report (Part A, Ch. 12, p. 133) which asks that OFPP review procurement programs in cooperation with Small Business Administration with the objective of making small business participation in Government procurement more effective and assuring that small business have a full opportunity to compete for Government contracts.

We support this Recommendation and suggest that Section 6(c) of the Bill be amended by identifying the Small Business Administration as that agency the administrator is required to consult, regarding the needs of small business.

3. GRANTEE PURCHASES FROM FEDERAL SOURCES

Our next recommendation is to strike out of Section 6(a) of the Bill any reference to procurement by grantees accomplished by placing orders under contracts or supply schedules entered into by executive agencies. Along with the dissenting minority of the Commission, we strongly object to any policy allowing grantees to acquire commercial products from Federal sources (Report Vol. 3, Part D, Chapter 4, p. 41). We believe that to allow such a practice is to make the Government into a funnel between the grantee and large suppliers. We see no rationale for the Government providing a hidden subsidy to the grantee and none for the Government injuring the local supplier to whom the grantee would have normally turned. We fear that the Bill as written, would allow the Administrator to put the Government into the position of a giant mail order merchandiser for the benefit of grantees.

4. AUTHORITY TO EXPERIMENT

Our next recommendation again, concerns Section 6(b) of the Bill, the functions of the Administrator. We believe, along with the Commission, that complete uniformity of procurement regulations is not attainable, and not even desirable (Vol. 1, Part A, Ch. 2, p. 12). We believe simplicity, consistency, and fairness of regulations to be also important goals envisioned by the Commission

² Hereinafter referred to as Commission.

and by Sec. 1 of Public Law 91-129. We have stated already that the Administrator should be required to use broader criteria than just uniformity in the establishment of policy. In particular, we would like to see the Administrator have ample latitude for initiative and experimentation (see Report, Vol. 1, p. 12) which is not explicit in the Bill. We believe the authority to introduce experimental regulations in some but not all agencies, to some but not all procurements, to be a necessary assurance that the Office will not become another bastion of bureaucracy where no change is possible. Without the explicit authority to mandate experimentation, we foresee a great difficulty in achieving changes because of the enormity of the Federal procurement system and difficulty to achieve inter-agency coordination.

5. INTERPRETING APPLICATION OF REGULATIONS

Our next recommendation concerns the desirability for the OFPP to have the function of clarifying regulations. We frequently find that the same regulation is applied or interpreted differently by different agencies. For example, in procuring research and development, one agency will allow the technical man to decide the best interest of the Government among cost-wise acceptable bidders, another agency will let the contracting officer do the deciding among the technically acceptable bidders. The difference in emphasis totally changes the procurement practice within the same regulation. As another example, the Armed Services Procurement Regulations are very clear on the weighted guidelines for computing the fee. Yet negotiation practices make such a computation a mockery.

We recommend that interpreting application of policies, regulations and procedures be one of the functions of the Administrator under Sec. 6(b) of the Bill.

6. REGIONAL HEARINGS

Our last recommendation concerns the accessibility of the decision-makers to small business. We believe that one of the most commendable procedures of the Commission on Government Procurement was its regional visits. Small business on the West Coast, in the South, or even the Northeast has difficulty presenting its views in Washington. Many of our colleagues cannot afford to take the time to bring their concerns and share their experiences here in the Capital. For this reason, we support the notion that OFPP be required to hold periodic regional hearings in different parts of the country to provide for the broadest exposure to views of vendors and procurement agencies at the field level across the country.

SUMMARY

In summary, our Association supports the Bill but seeks the following specific modifications:

1. An explicit statement of policy of fairness to vendors,
2. An explicit function of implementing small business policies of Congress,
3. Deletion of authority to allow grantee purchases from Federal sources,
4. An explicit authority to allow experimental regulations,
5. An added function of clarifying application of regulations, and
6. Added requirement for periodic regional hearings.

It should be clear from my remarks that we support OFPP because we view OFPP as the Office which will continue and implement the work started by the Commission in the same spirit of objectivity and fairness displayed by the Report of the Commission.

Mr. Chairman, SBANE, through me, wishes to thank the Committee for an opportunity to present its views on this Bill.

Senator CHILES. Tomorrow's hearings will continue at 9 o'clock. We will have two key witnesses. We have the Comptroller General and the Administrator of the General Services Administration.

This will recess our hearings until 9 tomorrow morning.

[Whereupon, at 12 noon, the subcommittee recessed to reconvene at 9 a.m., Thursday, November 15, 1973.]

ESTABLISHING OFFICE OF FEDERAL PROCUREMENT POLICY

THURSDAY, NOVEMBER 15, 1973

U.S. SENATE,
Ad Hoc SUBCOMMITTEE ON FEDERAL PROCUREMENT,
COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C.

The subcommittee met, pursuant to recess, at 9:05 a.m., in room 3302, Dirksen Senate Office Building, Senator Lawton Chiles presiding.

Present: Senators Chiles and Roth.

Also present: Lester A. Fettig, staff director; Loren Murray, professional minority staff, Bob Harris, administrative clerk; and Elizabeth Aiken, clerical assistant.

Senator CHILES. Today's testimony will conclude our scheduled hearings on S. 2510, a bill to create an Office of Federal Procurement Policy.

In the previous 4 days of hearings, the subcommittee has heard a uniform request for deferral from the executive agencies, along with uniform support of the bill from industrial and trade associations, small business and independent experts, together with suggestions for improving the bill.

We have heard no testimony so far that disagreed with the objectives of the OFPP.

The testimony from the preceding 22 witnesses and the 2 here today will make as good a base for our action on this legislation as I can imagine.

Today we have two key witnesses: The Administrator of the General Services Administration and the Comptroller General, Mr. Elmer Staats, who will lead off.

Before you proceed with your testimony Mr. Staats, I would like to express to you personally what I said in my opening statement to these hearings.

Congress and all members of the Commission are greatly indebted to you for the dedication you and key members of your staff gave to the work of the Commission, as well as the considerable know-how of the General Accounting Office, which you placed at the disposal of the Commission.

I would also like you to know that the reports of your monitoring of the executive branch actions on the Procurement Commission's recommendations have been invaluable to this subcommittee.

We are determined that the good work of the Commission will be put into practice, so that the potential benefits of this work will become a reality.

STATEMENT OF HON. ELMER B. STAATS, COMPTROLLER GENERAL OF THE UNITED STATES, ACCOMPANIED BY THOMAS D. MORRIS, ASSISTANT COMPTROLLER GENERAL; RICHARD W. GUTMANN, DIRECTOR, PROCUREMENT AND SYSTEMS ACQUISITION DIVISION; AND PAUL G. DEMBLING, GENERAL COUNSEL

Mr. STAATS. Thank you very much, Mr. Chairman. I appreciate those remarks.

I also appreciate your willingness to hold these hearings at 9 a.m. instead of the original scheduled time to accommodate my schedule.

We are pleased to be here to present the views of the GAO on Senate bill 2510. Like you, I have a deep personal interest in this bill to create an Office of Federal Procurement Policy. This was the first recommendation of the Commission on Government Procurement, and it was unanimously adopted. The recommendation was aptly characterized by Congressman Holifield, chairman of the House Government Operations Committee, as "the centerpiece of the Commission report."

At the request of Chairman Holifield, we have been monitoring executive branch actions on the Commission report since March 1973. Progress reports were submitted on June 19 and September 19, and we expect to issue a third report by next January. In addition, we testified on July 30 before the House Government Operations Committee on House bill 9059—the House version of Senate bill 2510.

In all these efforts our objectives are to keep Congress informed and to make suggestions which will foster optimum progress by the executive branch in acting on the 149 recommendations in the Commission report.

In studying the testimony before the House committee last July and before this committee in the past 2 weeks, it appears that there are three key themes.

First, there is virtually unanimous acceptance of the need for stronger central leadership. The statement by Mr. Frank Zarb, Assistant Director, OMB, states this theme succinctly, "The main message which the Procurement Commission report conveys to us is that our procurement process must have stronger central leadership and guidance than we have provided in the past."

He goes on to say "I think there is little debate over the need for improvement in the central procurement leadership in the executive branch."

Second, executive branch witnesses generally contend that the current structure of the executive branch is adequate to provide this leadership and simply needs to be revitalized. In Mr. Zarb's words "The solution to our problems is not so much an organization solution as it is a revitalization of the structure we already have, and a commitment to get on with the task of improvement of Federal procurement."

Executive branch witnesses expressed concern that a statutory Office of Federal Procurement Policy might become an additional independent organizational element and thus cause duplication and competition for authority.

Third, witnesses outside the executive branch are virtually unanimous in urging that a strongly empowered OFPP be established by statute.

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 the revitalization steps proceed—including the building of an OMB staff and further review of the Commission's 149 recommendations. 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.

It is our position, Mr. Chairman, that a clear congressional mandate, with the stature and continuity which this would confer, is essential and that the views described above need not be in conflict.

I would like to devote the remainder of my statement to discussing this conclusion and the following matters: A statutory OFPP appears essential, both to obtain adequate action on procurement Commission recommendations and to build public confidence in the procurement process; Senate bill 2510 has incorporated revisions proposed in House bill 9059 and meets the Commission's objectives; the strong leadership role to which OMB is committed should be encouraged and would be greatly enhanced by Senate bill 2510.

First, a statutory OFPP appears essential to obtain adequate action.

After more than 2 years of study, the Commission produced a massive set of findings and recommendations, the first of which was to establish, by statute, an Office of Federal Procurement Policy.

These findings resulted from the work of 500 participants who consulted approximately 12,000 persons engaged in procurement. The recommendations were formulated by a 12-member bipartisan Commission during 50 days of formal meetings.

Of 16 Commission study groups, 13 recommended either a central organization for policy setting or some form of central oversight.

An analysis of the Commission's 149 recommendations indicates that over two-thirds will require coordinated action—either by legislation or by regulations issued by a central point of authority—and that less than one-third can be implemented by individual agency action.

The study groups concluded that a central mechanism should be created, capable of effecting coordination among some 20 separate procurement agencies, many of whom generate independent procurement regulations. A witness before this committee from the Small Business Administration described the result—from the point of view of the small businessman—as a “puzzling labyrinth of procurement regulations.”

One consequence of inadequate coordination has been the proliferation of laws with differing provisions. Among the examples cited by the Commission are 80 separate provisions on access to records, 110 different provisions on experts and consultants, 46 laws redundant to other statutes, and more than 30 troublesome inconsistencies between the two basic procurement statutes on such key policies as competitive discussions, truth in negotiations, and negotiation of research and development contracts. Statutory reform is the second recommendation of the Commission report. Such reform will require strong leadership from an executive branch focal point. As a practical matter, the Commission recognized that the initiatives to bring about legislative change would have to come largely from the executive branch.

You will recall, Mr. Chairman, from our discussions in the Commission, one of the key points involved was that within the Congress itself there is no one committee concerned with procurement as a whole. Therefore the rationalization of the statutory differences that I'm referring to will probably have to come initially from the executive branch if they are ever to be brought about.

Second, no senior official in the Executive Office of the President is concerned with standards of performance in Federal procurement organizations.

These activities employ some 80,000 personnel, and in fiscal year 1972 contracted to spend \$57.5 billion for goods and services.

The figure for 1973 is just about the same level. Even a small percentage savings in the expenditures of these organizations could be quite significant. Anyone can visualize what a 1, 2, 3, 4, or 5 percent savings, which would be in reason, would amount to against a total of this magnitude.

Public misunderstanding and distrust of Federal procurement practices is widespread today. One requirement to build public confidence is a visible improvement program, directed by an Administrator who is on a plane above and independent of Government buying activities, responsive to both the President and the Congress, and whose role is to insure integrity and efficiency in Federal procurement.

In summary, the evidence amassed by the Procurement Commission demonstrates, we believe, that correcting the problems noted cannot be accomplished, with credibility, simply by a low-key revitalization of the present structure.

I would like to turn now to the changes which are incorporated in Senate bill 2510. This bill incorporates many of the changes which were discussed on the House side.

First, we join with other witnesses in endorsing the insertion of the declaration of policy, section 2, which sets out the 12 objectives originally enunciated by the Congress in establishing the Commission on Government Procurement.

In our testimony before the House Government Operations Committee on July 30, we offered the following suggestions—and other minor ones—which are incorporated in Senate bill 2510:

(1) That the OFPP Administrator's directive authority should flow from the President and be subject to his direction rather than have statutory authority independent of the President.

(2) That the Administrator's functions should include sponsoring research in procurement policy and procedures; upgrading the status of procurement personnel through improved programs for recruitment, training, career development and performance evaluation, which is a very important part of the Commission report; and developing a system for collecting and disseminating Government-wide procurement data. There is no such system today.

(3) That the OFPP should not be involved in decisions affecting individual procurements.

(4) That the emphasis on procedures and forms, which occurred in several sections of House bill 9059, be removed so that it is clear that OFPP's principal concern is with policies and regulations, not the details.

In addition to these improvements in the bill, Mr. Chairman, I would like to note the excellent summation contained in your opening statement of October 31, in which you highlight the four principal features desired in OFPP—independence, directive authority, responsiveness to the Congress, and a small but highly competent staff. This summary also notes that the key objectives of the OFPP should stress reliance on the private sector; fostering a uniform system of Government-wide regulations; insuring solicitation of the viewpoints of interested parties in the development of policies and procedures; leadership in the areas of personnel development, research into improved policy and practices, and a uniform data system.

The provisions of Senate bill 2510 and the emphasis contained in your summation should reassure both procuring agencies and industry that their proposals concerning the authority and functions of OFPP have been considered. This includes particularly the desire of procuring agencies to avoid interference by OFPP in procurement decisions (specifically covered in section 6(d) and industry to be assured that its views will be solicited and considered in formulating Government-wide policies and regulations (specifically covered in section 6(b)).

The strong leadership role to which OMB is committed will be significantly enhanced by enactment of Senate bill 2510.

Executive branch witnesses expressed concern that the creation of OFPP at this time would add a third, independent element to the existing OMB/GSA structure. It is our conclusion that this need not be the case. As Assistant Director Zarb testified on October 31, it will be necessary to build a stronger staff within OMB if it is to perform the OFPP policy-setting and leadership role. Senate bill 2510 permits the President to assign OFPP to OMB, or elsewhere within his Executive office, where it would perform the functions required by the bill. We also conclude that establishing OFPP would not preclude the assignment of appropriate responsibilities to GSA or the assignment to other agencies of a lead or participating role in developing proposed Government-wide policy in their areas of expertise. Such assignments are, in fact, encouraged in section 6(c) of this bill and suggested in the Commission's report.

The bill would require that the Administrator and Deputy Administrator be nominated by the President and confirmed by the Senate. We believe that this adds to the stature of these positions and emphasizes their responsiveness to the Congress.

Enactment of Senate bill 2510 will also remove any question concerning OFPP's authority to issue regulations and/or policy guidance binding on DOD and other agencies covered by the Armed Services Procurement Act.

Whether Senate bill 2510 is passed immediately or not, we wish to commend and encourage the commitments by Assistant Director Zarb to promptly and vigorously revitalize OMB's procurement policy leadership role. The structure which has been established during the past several months to evaluate the Procurement Commission's report has been a constructive step, but a revitalized OMB is essential to provide authoritative leadership, produce new initiatives, accelerate decisionmaking, and establish priorities for action.

Finally, we will continue to monitor executive branch actions and report our findings and suggestions to the Congress at least semi-

annually. In this connection, this committee and the House Government Operations Committee may wish to request the executive branch to submit an outline of the principal objectives to be achieved on the Procurement Commission recommendations by June 30, 1974, and at semiannual intervals thereafter. This would enable us to correlate our monitorship with the submission of these reports. This approach would give meaning to section 8 of the Senate bill 2510 which requires that the Congress be kept "fully and currently informed" of OFPP activities, including "proposed changes in policies and regulations."

Before concluding, Mr. Chairman, I would like to read a paragraph from a letter I recently received from Mr. Perkins McGuire, who chaired the Procurement Commission. He is out of the country and unable to appear at these hearings. The occasion for his letter to me was to comment on the last report that we sent to the Congress on the status of activities of the executive branch. It says:

I have had an opportunity to read the last report you made to the House Government Operations Committee regarding the progress the Executive has made in implementing the recommendations of the Commission on Government Procurement. Your report does not indicate to me that very much progress has been made by the Executive in following the Commission's recommendations with respect to the creation of an Office of Federal Procurement Policy in the Executive Department. Therefore, I am more convinced than ever that Congress must take specific action in passing a law creating an Office of Federal Procurement Policy in the Executive Department.

Mr. McGuire has asked me if I would read this part of his statement so that you would be apprised of his view, and he regrets very much that he is not able to be here to present them directly.

Senator CHILES. We thank you for your excellent statement in clear support of Senate bill 2510.

I am delighted that you pointed out that Senate bill 2510 and the executive branch plans are not necessarily in conflict, that the passage of Senate 2510 certainly should not conflict with the steps and plans they are taking. In fact, you brought out further that Senate bill 2510 would help OMB's commitment to a strong procurement leadership role and the part that GSA can play also within the legislation.

We have been wrestling a little with where we should house the office. Your statement certainly brings out, what has not been brought out as clearly until now, that while the legislation proposes that it be set up within the Executive Office of the President, this would not preclude placing a separate office in OMB.

Mr. STAATS. That is correct. We think that is desirable. We think that is exactly what the Commission was suggesting. They did not want to tie the hands of the President if he wanted to set up a new office or if he chose to elect, to establish it in the OMB itself.

Senator CHILES. I wonder if you would comment on the present plans of OMB to seek someone, I think it is a GS-18, or a level 5, as the Deputy Assistant Director for Procurement Policy within the structure, and, in general, the structure as set forth now, involving GSA and OMB?

Mr. STAATS. Mr. Tom Morris has been in frequent contact with Mr. Zarb of OMB. I would like to have him respond to your question.

Mr. MORRIS. Mr. Chairman, as we understand the current thinking and testimony of Mr. Zarb, the immediate objective is to set up the post of Deputy Assistant Director for Procurement, which Mr. Zarb

indicated he would fill on an acting basis until he could find an incumbent. We have not been informed of other plans as to the staffing of that office or its specific functions. That still lies ahead to be worked out, including the relationships with GSA.

Certainly, the obtaining of this top policy official is an extremely important step. We all recognize it is essential to get the whole process of leadership in a more affirmative posture. We question whether that GS-18 or level 5 is adequate to attract the right person. The bill would provide for a level 3; that was the Commission's proposal.

Senator CHILES. The Commission also was concerned, as you said, that we try to get someone who would have considerable clout and prestige to head the office.

Mr. MORRIS. That is correct, sir.

They proposed that the equivalent of a Deputy Director of OMB be considered, if it were placed within OMB. That would be level 3.

Senator CHILES. Would you comment as to where it looks like this Deputy Assistant Director would fit in the table of organization, where he would stand in the hierarchy of the decisionmaking policy?

Mr. MORRIS. As we understand it, sir, he would be reporting directly to the Assistant Director, Mr. Zarb. Therefore, he would be four levels down—the levels being (1) Director, (2) Deputy Director, (3) Assistant Director, and then (4) the Deputy Assistant Director.

Senator CHILES. Do you think that envisions, again, what the Commission was trying to do in making this a leadership role?

Mr. STAATS. No, sir, Mr. Chairman. We have discussed this at great length within the GAO. We also have had considerable discussion with OMB. We believe that this does not measure up to the task that the Procurement Commission saw the need to fulfill.

It seems to us that perhaps there is still not sufficient appreciation in the executive branch of the importance of the subject of Government procurement. It is not only the magnitude of procurement itself which is, of course, roughly a fourth of the total Federal budget, and the opportunities for saving, which seems to us are quite significant, but it is also the impact of Government procurement on the private sector. So much of what the Government does in its buying practices and buying policies has what people call the ripple effect in the whole private sector of our economy.

Take the issue of "Buy American" alone, where the Defense Department has one policy and the other departments have other policies. Private concerns have told us that they find them difficult to deal with. It affects their competitive relationships with foreign countries. This is an issue that needs top level attention; it cannot be dealt with at some lower level within the OMB.

What we see the need for here is not only the statutory recognition of the importance of this function, but also the visibility that the creation of this office would provide in the executive branch, and a focal point of accountability and responsibility to both the President and the Congress. There is no officer of the executive branch today that this committee or any other committee can call before it on these divergences of policy, and in a sense, hold them accountable for procurement policy.

The OMB cannot do it today, because they have not given it the attention that it needs. They have not been involved.

Senator CHILES. Do you think the President, the executive branch, or an arrangement splitting responsibility between GSA and OMB with their respective advisory groups and councils, would satisfy the criteria the Commission set up concerning independent directive authority with responsiveness to Congress?

Mr. STAATS. I would like to comment generally, and then ask Mr. Morris to comment further.

We believe that the GSA can provide a great deal of support in this field to the OMB. As we conceive the staffing for this office, it would be largely done in the agencies by people who are detailed or serve on task forces or other groups of this type. A great deal of the staff work can be done in the agencies themselves. As you know, we have emphasized the need to staff the office with high-caliber people but keep it small in number.

Senator CHILES. We have figures here from 1 to 100 on that. Do you have any figures?

Mr. STAATS. Our figure would be more in the range of 1 to 20. This is not just an idle kind of speculation. We have tried to plot this out in terms of how it could be done with a staff of this size. We would tend to put an outside figure of 20 professional people and rely as heavily and as extensively as possible on the staff work that can be provided in the agencies.

Mr. MORRIS. Sir, to comment additionally on your question as to the split, as you know, the Executive order of last May, I believe it was 11717, transferred functions and staffing then existent in OMB to GSA, leaving since that time a vacuum in the capability of OMB to exercise a leadership role. To that extent, the split as it now exists would not be a satisfactory one.

We were very encouraged with Mr. Zarb's testimony and his vigorous plans to build a capability within OMB. We think it important to stress the four criteria which were laid out in your opening statement in defining the proper status and role for the OMB activity. Just to repeat, those criteria were independence, directive authority, responsiveness to Congress, and a small but highly competent staff.

Senator CHILES. I think you said you concurred with S. 2510 in limiting the Office of Federal Procurement Policy involvement in procedures only to such an extent as would be necessary to insure effective implementation of policy and regulations. Again, from the standpoint of size implications would we be able to hold the size of the office down?

Mr. STAATS. We think so. We think it would be a mistake for this office to get too deeply involved with detailed procedures. We do not think that is really necessary or a function of an agency in the Executive Office of the President. We are happy to see that provision in the House bill deleted in the Senate bill.

Senator CHILES. Yesterday a Department of Defense witness favored increased cooperation and coordination on a government-wide basis to improve the procurement process. The OMB witness said the same thing.

Of course, the key question is whether leadership can be provided best by legislation or voluntary coordination. As the Department of Defense described it, the Office of the Secretary of Defense now provides the same procurement policy leadership for the Department of Defense as the Office of Federal Procurement Policy would provide for the executive branch as a whole.

Is it not true that the only reason the Department of Defense has central leadership is because they have statutory authority in title 10 of the United States Code, section 2202, which gives directive authority to the Office of the Secretary of Defense so it can function as a focal point for procurement policy over all the military departments and defense agencies?

Mr. STAATS. Yes, sir. You are correct. This was a case where Congress took the initiative in enacting legislation so the Secretary of Defense could coordinate the policies of the services. Prior to that time, the statutory powers were directly in the three services. The Secretary of Defense was in a position where he had a responsibility but no authority.

We have a somewhat similar situation in this case, as we see it. Today, as the result of 10 U.S.C. 2202 and legislation enacted in 1965, exempting DOD from regulation by the Administrator of GSA under title III of the Federal Property and Administrative Services Act, the Secretary of Defense has independent authority to issue procurement regulations involving defense procurement. As a practical matter, we realize that the President's directives would probably be complied with by the Defense Department. It would still be a source of irritation and friction.

Senator CHILES. It would make it kind of hard for some level 5 or GS-18 to be telling the Department of Defense, in the face of their statutory authority, what they could or could not do.

Mr. STAATS. It would be subject to challenge, and disagreements would be difficult to be worked out; it is a source of continuing irritation and friction, without any question.

Senator CHILES. If you wanted to be technical, under the present statutory framework, OMB does not have the same directive authority that the Office of the Secretary of Defense exercises in its policy role in procurement for the Department of Defense.

Mr. STAATS. That is right.

Mr. Dembling might want to elaborate here.

Mr. DEMBLING. I believe that is correct, Mr. Chairman.

There is one question; that is, whether the authority runs only to issuing of directives and regulations, or whether it concerns policy. Of course, we know policy and directives and regulations are intertwined and each becomes difficult to separate out.

As you indicated and Mr. Staats indicated, to be legally correct, this is true. The OMB would have difficulty issuing regulations under that authority.

Senator CHILES. The argument looks to me like it runs similar to what we heard on some of the impoundment questions. The President had the absolute right to impound, and we kept trying to find out what check Congress had on the President. At one time we were told by the Attorney General that our only power was to impeach the President.

Now, it looks like we would say that the President's authority is to remove the Secretary of Defense, which would be kind of hard to do when you are in a little squabble about procurement policy.

Senator Roth.

Senator ROTH. Thank you, Mr. Chairman.

I do want to compliment and thank the Comptroller General for his excellent presentation today, as well as his continued interest in this

most important matter. I would like to ask you a few more questions about the authority of the agency to help us determine whether or not it is adequate.

One thing that concerns me a little bit is this question of procedures and forms. I agree with what you say, that we do not want this policymaking group to get too involved in detail. But one of my concerns, generally, with Government is that we have added so many complicated forms for people doing business with the Government. I think this essentially increases the cost.

Is there any way of giving any sort of veto power, perhaps, to the agency or the policymaking group, so that we do not have a dozen different forms for the same purpose throughout Government? For example, we have had small business coming in, complaining that it is impossible for small business to understand how to do business with the Government.

One of our prime objectives should be simplification of procurement policy. By saying the Office of Federal Procurement Policy has no forms or procedures authority, would that not be cutting off their power?

Mr. STAATS. I would like to respond to that. We recommend revision in the provision in the House bill that would have involved the OFPP in the detailed procedures themselves. We see no reason, though, why the OFPP could not concern itself with this to the extent of being certain that someone had done something about the problem of small businesses.

For example, to take a hypothetical situation, it could ask GSA to head up a task group to look at all the procurement forms and procedures that affect small business and come up with a recommendation. That would not mean that the OFPP itself would have to issue those procedures in its own name. The main thing would be to achieve the objective of reducing the reporting in order to simplify the procedures affecting small business procurement. I use that as a hypothetical case.

Senator ROTH. You are not talking about just small business, I take it?

Mr. STAATS. I simply used that as an illustration.

Senator ROTH. What I am trying to say is that, to the maximum extent possible, it is a desirable objective to have one form for all agencies to follow and not for each one to have their own little pet project. That is true not only with small business but even big business.

Why should we impose familiarity with a dozen different forms when this really does not add to the effectiveness of the procurement?

I would just like to make sure that this policymaking agency has enough clout, that if it wants to, it can say, one form in this area is sufficient. Maybe it should not be the one who should do the actual work of devising the form, but it should have the authority to direct its use.

Mr. STAATS. It should have that clout under the Senate bill, and I think it ought to be a matter on this agenda of things that need to be done. As we visualize it, the carrying out of these 149-odd recommendations, there are going to be quite a number of that type, where the OFPP could delegate the leadership responsibility to an agency to resolve some of these problems which the Commission itself identified.

Senator ROTH. As I follow your testimony, in the same area, an agency will not have sufficient clout without a legislative mandate.

Mr. STAATS. I would like to add this. There is a great deal that could be accomplished in the committee report and in the legislative history, as contrasted with spelling it all out in the statute itself.

Senator ROTH. I would agree with you on that.

Do you feel that the present language of the bill—I think this question has been raised—gives adequate power to the agency? It says the Administrator shall prescribe policies and regulations which shall be followed by executive agencies.

Do you think they need any enforcement authority, or do you think this goes as far as we need to?

Mr. STAATS. We think it goes as far as it needs to. We do think it is important that the effect of 10 U.S.C. 202 should be overcome. I do not know if I read that into my statement or not. It says, "Notwithstanding any other provision of law, an officer or agency of the Department of Defense can obligate funds for procuring, producing, warehousing, or distributing supplies only under regulations prescribed by the Secretary of Defense."

That is pretty sweeping and pretty categorical. I think the important thing is to eliminate that as the argument whether Defense Department can technically issue regulations independent of the central authority.

Senator ROTH. There is one other area that has been giving me cause for concern; that is, the authority of the Congress. Looking ahead, how broad do you think the authority of this agency should be, beyond what has been prescribed by statute?

In other words, this raises a question that has been very controversial in the past as to whether or not procurement should be used as an instrument to pursue socially desirable objectives. Do you think this agency should have that authority?

If it should, should the Congress try to retain any overruling power of veto? If you would care to comment on that—

Mr. STAATS. These provisions of law today which the Commission described as having social objectives as well as procurement objectives are for the most part—if not exclusively—in the statute. It would require a statutory action to modify them.

The Commission has debated this general subject at great length and, subject to correction from my colleagues or from the Chairman, who was also a member, it was our view, I believe, that the OFPP should not be concerned with these kinds of issues; that these should be matters for the Congress to pass upon in the form of modifications and legislation, rather than wiping the slate clean and delegating that kind of role to OFPP itself.

This gets back, in part, to what we were talking about a few minutes ago. There must be an initiative somewhere in the executive branch in a great many of these cases before Congress itself can act effectively. The social objectives are written through a great many statutes. The list is very long. But the initiative could come from a central point, and a coordinated executive branch position could be developed as a way of raising the question in the Congress on both existing procurement legislation and new procurement legislation.

Senator ROTH. To make sure I understand, I appreciate the fact that much of the current legislation or regulations involving social objectives are written in the laws. It seems to me that it is pretty clear in those circumstances that this agency would have to make its recommendations and Congress would have to act.

I assume that in the future we will have new social objectives come to the foreground, and there may be a desire to break new ground. I have no idea what they will be or whether I will be personally for or against them, because I am talking in the abstract.

The question I am directing to you—in those situations, if I understand what you are saying, it would be the responsibility of the policy-makers to make recommendations to the Congress, and Congress may in turn act, rather than this legislation granting authority to the agency to move forward on its own?

Mr. STAATS. I do not believe there is anything in S. 2510 which, as we would see it, would give them authority through its policymaking and regulation activities to create new social objectives which it would carry out through the procurement process.

Mr. DEMBLING. There is one area, I might point out, involving the environmental laws and their relationship to procurement. There is controversy at the present time as to how those laws should be enforced through the procurement process. How should Government contractors who violate the environmental laws be treated.

For example, should contractors found guilty of violating environmental laws be barred from Government work for a certain period of time?

The question is a specific one at present. The environmental agency has proposed regulations which will do just that under the Clean Air Act. The broader question, of course, is should this be the approach taken for all the environmental statutes, and should they be handled by all agencies in the same way? That has not been solved, and each agency is solving its own problem.

Senator CHILES. If you will yield on that point.

Senator ROTH. Yes.

Senator CHILES. Would you say the legislation we are talking about here, if passed, would make the duty of the Office of Federal Procurement Policy to try to bring some uniformity in the way acts set up by statute are exercised by each of the departments in its procurement policy. We know that is not true now. We know that different departments are exercising and doing different things with many of the acts.

Mr. STAATS. It seems to me that this example brings out Senator Roth's point. The statutory basis for the EPA's action comes from its own authority. It does not have authority to work out a consistent overall policy which applies to procurement statutes affecting other agencies.

Senator CHILES. S. 2510 might give authority to coordinate existing statutes, but it would not give the office any authority by rule- or regulation-making powers for them to go forward on their own on social objectives. I think we want to point this out and make sure that we are making legislative history, and are not giving it that kind of authority. If it wants to make recommendations to the Congress, that is one thing.

Senator ROTH. That is my feeling, that essentially the role in this area should be recommendations to the Congress. Too often in the

past, we have given broad delegations of authority to the executive branch, and these have been used for purposes that were never intended in the original legislation.

Along the same lines, I propose, not here but in other areas, that any agency, say, once every 5 years should have its charter renewed. It should come back to the Congress and be reviewed so as to determine whether or not it is achieving its objectives. There has been a lot of criticism in recent years of agencies that were set up to monitor certain activities becoming the handmaiden of those activities. Whether or not that is a justifiable complaint or not, that depends on the individual facts.

Nevertheless, it does seem to me desirable to make agencies come back every 5 years to have their charter reviewed. In that way, we can see whether or not it is doing the job we think it should. If it is, continue it; if it is not, take a second look at it. Would you care to comment on that?

Mr. STAATS. In general, I think it is a good principle. My own feeling about it is that it applies more cogently to programs that involve substantial outlays of Federal funds and where there needs to be some reappraisal as to the effectiveness of those programs, whether they are accomplishing the objectives that Congress had in mind in the enactment originally.

As you know, we have been very active in trying to encourage more of this kind of evaluation, both by Congress and the executive branch.

With respect to applying that principle in this case, I can see no real objection to it. In fact, I do not think I would see too much objection as long as this would not become an annual affair.

Senator ROTH. We have taken the position that 5 years is a reasonable period of time.

Mr. STAATS. We have the same question, I might add, with the Procurement Commission recommendations on renegotiation. We found 2-year authorization for the Renegotiation Board to be detrimental to making any plans for the future. It does need a longer life. The renewal of that life ought to come a year in advance of the expiration date, so we do not have the crisis situation that could develop otherwise.

Senator ROTH. I think that is correct.

I do want to thank you for coming here today, in view of your very busy schedule.

Thank you, Mr. Chairman.

Senator CHILES. There is an objection from the executive branch, generally, to having legislation, primarily because they feel it is not necessary.

If the Congress were to see fit to establish the Office and give it statutory authority, do you think it could function properly if the Executive Office still is in opposition to it; in other words, it is an unwanted child?

Mr. STAATS. I think it would. It would be different if there were disagreement on the need for stronger leadership. But as far as we know, there is no one who questions that.

I think the question goes more to whether the legislation is really necessary to accomplish the objective. It is with this aspect that we have the disagreement with the OMB's position. We think the statutory basis for this office would be helpful to them. In fact, it would

give the function more status, make it easier to attract new people, and it would eliminate a lot of the delays in getting agreement with the agencies, if they have a direct statutory mandate from the Congress. I think for all these reasons it would be beneficial and not detrimental to accomplishing what I believe we all agree is an important objective.

Senator CHILES. Would the oversight function that the GAO has over Government procurement be affected by the establishment of an Office of Federal Procurement Policy?

Mr. STAATS. Indeed it would. Many of the recommendations we make involve more than one agency. And, as you know, we have no directive powers at all. We can only inform and recommend to the Congress and to the President on actions that we think would improve the process.

So many of these problems are problems which need some attention by a central agency in the executive branch, it would make our recommendations, we think, not only more useful, but we would be stronger if we did have this strong leadership from the executive branch. We could give you a long list of illustrations of what we are talking about. It might be useful.

Senator CHILES. For the record, I think it would be useful. If you could supply it to us, we would be delighted to have it.

[The material referred to follows:]

ILLUSTRATIONS OF INCONSISTENCIES IN POLICY IMPLEMENTATION OR APPLICATION OF A POLICY, PRINCIPLE OR REGULATION BY TWO OR MORE EXECUTIVE AGENCIES

1. Differences in cost principles and administration of the principles at GOCO's—DOD and AEC (B-124125, 4/20/67).
2. Differences among Government agencies in payment of corporate expenses at GOCO's—DOD, NASA and AEC (B-124125, 11/14/68).
3. Significant variation in calculating fees paid to sponsored nonprofit contractors by DOD and other agencies (B-146810, 2/10/69).
4. Differences in indirect costs allowed on research grants (B-117219, 6/12/69).
5. Differences in treatment of IR&D—DOD, NASA and AEC (B-164912, 2/16/70).
6. Differences in guidelines for profit objectives—DOD, NASA, AEC and Coast Guard (B-159896, 3/17/71).
7. Various agencies did not follow GSA guidelines for renting accounting machine equipment which resulted in increased rental costs (B-115369, 7/15/71).
8. Need for uniform policy for fees allowed nonsponsored not-for-profit contractors by various Government agencies (B-146810, 11/26/71).
9. Need for coordinated consideration of buy-national procurement program policies—Office of Management and Budget (B-162222, 12/9/71).
10. Inconsistent agency handling of budget estimates of the impact of inflation on the costs of procurement programs (B-176876, 12/14/72).
11. Means of transferring technology for urgent public problems—DOD, OMB, and other civil agencies (B-175132, 12/29/72).
12. Procurement organizations contracting with foreign firms followed different practices in selecting a currency to price and pay contracts—Department of Defense (B-146749, 7/6/73).

Senator CHILES. One of the provisions, of course, of the Commission report was cooperation with the Congress, the Congress being tied into procurement policy. We have been talking whether we could strengthen the congressional access if we capitalized on the experience of the Joint Committee on Atomic Energy as set forth in their legislation; particularly the provision in section 202 of their act which allows Congress direct access to what is going on in the Commission itself.

Mr. STAATS. You are speaking here of the provision of keeping the joint committee fully and currently informed.

Senator CHILES. That is correct.

Mr. STAATS. Is that not incorporated?

Senator CHILES. I do not think we have expressed it in quite the same way.

Mr. STAATS. In any event, we think it would be important. And there was a suggestion in our testimony with respect to a 6 month's type of plan, a long-term type of plan by the executive as to areas in which it is going to be working. This would help a great deal in keeping Congress up to date as to what activities they are engaged in. This plan would address itself to task forces to be set up, legislative recommendations to be made, and acted upon, things of this type. It would be helpful.

Senator CHILES. Did you have something further you wanted to add?

Mr. STAATS. Section 8 does relate to keeping Congress informed of its activities.

Senator CHILES. From the monitoring you have done to date, what kind of progress would you say OMB, which is the lead agency on implementing the Commission recommendation to establish an Office of Federal Procurement Policies, is making.

Mr. STAATS. I would prefer Mr. Morris to answer that.

Mr. MORRIS. I think the situation, as Mr. Zarb testified, has been such that they have been in transition in their own organization and staffing. Therefore, the capability to take more extensive action has been somewhat limited. The progress has not been very great with respect to those particular things.

Senator CHILES. Another proposal of course, another amendment that we are talking about proposing to the act is to open all meetings of the Office of Procurement Policy to the public in which official action is to be considered.

Do you see any objections to that type of legislation?

Mr. STAATS. You are talking about the Freedom of Information Act, that type of provision?

Senator CHILES. Yes.

Mr. STAATS. I think that would be covered under the Freedom of Information Act.

Senator CHILES. The Freedom of Information Act would relate more to copies of what was done. This would be to say that you would not be holding secret meetings in which you would be making Commission policy. Such meetings would be open.

Mr. STAATS. I would find it a little difficult to speculate on it absent a little more knowledge as to what the procedures would be. We had not visualized, I believe, a formal procedure on the part of the OFPP in relation to the procurement industry and those affected by the regulations. It was a recommendation, if I am not mistaken, of the Commission that this should take place to the maximum extent at the procurement agency level, rather than at the OFPP level.

In turn, the problems and issues, to the maximum extent, should flow from the OFPP to the procurement agency, rather than the procurement agency being in the position of developing regulations in the first instance.

Senator CHILES. We do want to thank you again for your testimony and appearance today.

Mr. STAATS. Thank you for having us. We appreciate being here.

Senator CHILES. Our next witness will be Mr. Arthur Sampson, Administrator of the General Services Administration. Like Mr. Staats, Mr. Sampson was an exceptionally dedicated member of the Procurement Commission, who devoted himself to the job the Commission had to perform. I am personally pleased that Mr. Sampson is now deeply involved in the executive branch plans to implement the Commission recommendations because of his extensive experience and knowledge on the subject of procurement and his service on the Commission.

I am also delighted, Mr. Sampson, that we are finally able to get together.

STATEMENT OF HON. ARTHUR F. SAMPSON, ADMINISTRATOR OF GENERAL SERVICES, ACCOMPANIED BY WILLIAM THYBONY, ACTING DIRECTOR OF PROCUREMENT MANAGEMENT; AND H. S. (TED) TRIMMER, ASSOCIATE ADMINISTRATOR FOR FEDERAL MANAGEMENT POLICY

Mr. SAMPSON. Mr. Chairman, I thank you for helping me keep my schedule last week.

With your permission, I would like to submit my formal statement for the record and summarize my thinking on this matter.

Senator CHILES. So ordered.

[The prepared statement of Mr. Sampson follows:]

PREPARED STATEMENT OF HON. ARTHUR F. SAMPSON

Mr. Chairman and members of the subcommittee, I am pleased to have this opportunity to give this committee my views on S. 2510, which would establish an Office of Federal Procurement Policy (OFPP) as a separate entity within the Executive Office of the President. Having had the privilege of serving along with you, Mr. Chairman, as a member of the Commission on Government Procurement during the period when the Commission was most involved in considering an OFPP, I have continued to be deeply interested in all aspects of what is certainly one of the most important of the Commission's recommendations.

I also welcome the opportunity to appear before this subcommittee because it gives me the opportunity to report on the course of recent GSA thinking and action relative to the general thrust of S. 2510—that is, the centralization of authority and responsibility for the development and coordination of Federal procurement policy.

We last testified on the subject of an OFPP before Congressman Chet Holifield on July 11, 1973, regarding proposed bill H.R. 9059. At that time our views could be summarized as follows: We said that the relationships established between OMB and GSA resulting from Executive Order 11717 and the subsequent establishment of the Office of Procurement Management, coupled with the structure we were then completing for direction of executive branch effort in response to the Commission on Government Procurement report, were essentially directed toward achievement of the main objectives of an OFPP.

We expressed strong reservations about the creation of a new and separate office of the Executive Office of the President. We felt that without effective integration into the real procurement power structure, such an office might well wither on the vine rather than become the strong, sturdy force which would be required to meet the objectives intended for an OFPP.

In July we said that the most effective and speedily implemented OFPP would be one which utilized in-place structure and personnel to the greatest extent. We still feel that such an approach is apt to be more successful more quickly than one which creates a separate and independent office—placing a new and uninitiated bureaucratic layer over the existing process.

Mr. Chairman, in July I told Mr. Holifield and his subcommittee that I was deeply concerned about committing ourselves to a specific definition and form for meeting the objectives of an OFPP without first having an opportunity for broad discussions with the people who would be most deeply affected by such a structure, and for testing the adequacy of the mechanisms devised by the executive branch to deal with the COGP recommendations. We felt that the structure then being completed for directing executive branch action in response to the 149 recommendations of the Commission on Government Procurement would have to withstand the same pressures as would confront an OFPP, and that this experience would be valuable to us. But I must admit that I was distressed at that time by our inability to come before the Congress with more definitive recommendations.

Mr. Chairman, the question I have continually raised in executive branch discussion is whether we should not move forward now in meeting the fundamental objectives of the Commission's recommendation, while still preserving some necessary options which will enable us to ultimately meet the real—but differing needs—of all the entities to be served by an OFPP.

I have also been acutely conscious of the desires of the members of Congress to see the responsibility, the authority and other primary characteristics of the OFPP statutorily fixed. I am as aware today of the importance of the primary characteristics of an OFPP as I was as a commissioner, when I helped hammer out the basic criteria on this and other recommendations. The concept for an OFPP was clear:

The policy-making authority should be independent of any agency having procurement responsibility,

It should operate on a plane above the procurement agencies and have directive rather than merely advisory authority,

It should be responsive to Congress, and

It should consist of a small, highly competent cadre of seasoned procurement experts.

From a pragmatic viewpoint, however, in order to make the concept of an OFPP work, I know it is also necessary that there be a basic consensus among the agencies which would form its constituents as to its breadth of authority, its leadership and its decision-making process. From our experience to date, I think it is apparent that further discussions and feeling out of relationships in this regard is needed. I am nevertheless convinced that, if we avoid dogged commitment to overly simplistic organizational approaches, we *can* develop a system for the development and control of government-wide procurement policy that will be responsive to the main thrusts of the recommendation. I believe we *can* design a system which will enable us to take full advantage of existing capabilities in the executive branch and be responsive to the legitimate concerns of affected agencies and Congress.

Mr. Chairman, the recommendations of the COGP represent, in part, the kind of projects I would expect an OFPP to be engaged in. As you know, GSA is responsible pursuant to executive order 11717 for the direction of executive agencies in forming an appropriate response to the COGP report. The scope of the resulting effort is—so far as I know—unprecedented in the executive branch for an activity of this kind. Some idea of its dimensions can be obtained from the following:

There are 14 agencies performing lead roles.

In the 14 lead agencies are 73 task groups doing the work to develop positions and, where appropriate, implementations for each of the 149 recommendations.

More than 300 people are directly involved with many more involved indirectly.

An interagency procurement policy group has been formed and a smaller planning staff has been drawn from it to assist in management-level considerations arising from the proposed positions and implementation.

To date, 39 of the task groups have reported, the planning staff has considered 16 recommendations, and has recommended that formal agency views and/or public views be solicited for seven of the proposals. In addition, one recommendation has been adopted administratively.

Based on present expectations, we should have proposed executive branch positions and/or implementations, as appropriate, for over 50% of the recommendations by the end of December.

We have not run the gamut of potential controversy or difficulty in this exercise by any means, but the kinds of problems we have encountered and their disposition makes me very hopeful of overall success.

We are sitting down on a biweekly basis with OMB and upper management-level representatives of the agencies having major procurement operations (DOD, GSA, NASA, AEC, HEW, DOT and the Veterans' Administration), and we are reaching interim agreements on a wide range of policy matters and procedures. While many of the more difficult issues have yet to be reached, the mechanism is working. GSA is performing basic analyses of the completeness and consistency of task group products in support of the planning staff and is generally furnishing the continuum of oversight to keep the activity moving forward. We are consulting with the Office of Management and Budget in the resolution of major issues. The underlying premise that makes the system workable is that we have agreed on a requirement for all agencies to work together in this matter. The key ingredient in these meetings is the mutual desire of the participants to make the process work and to make Federal procurement more effective—to move forward with something worthwhile.

While this on-going process continues, I believe we should also push forward with high level discussions and negotiations with agencies and the Congress with the objective of:

First, arriving at a better definition of the functions and responsibilities for the management of procurement policy within the executive branch,

Second, agreeing upon a high-level organizational structure which will be responsible for seeing that the job is performed and which will be responsive to Congress,

Third, developing the best mechanism for providing the kind of specific, directive authority the commission recognized as being so necessary and which we believe to be imperative.

There is much that is good in S. 2510 and in earlier proposals H.R. 9059 and S. 2198 as well; but because S. 2510 would too soon, too rigidly close off options which should be explored, I urge that action on S. 2510 be deferred.

Mr. Chairman, I would like to have your indulgence to return to this committee with specific recommendations in the spring. I am speaking of specific recommendations in the areas of both substantive procurement legislation and the organizational form and authority best suited to achieve the objectives which were recommended by the commission. I would be less than candid if I did not express my personal belief that many of these objectives may best be achieved by legislation. But I also believe any such recommendations must be carefully designed and conceived and the way in which it will work must be carefully defined. With your approval, this would be the charter we would set for ourselves and about which we would report to you in the spring.

Mr. SAMPSON. I would like to state clearly and strongly I am for an OFPP. I do feel it has to have a very specific directive authority, and I am convinced now that at some point we are going to have legislation to support the OFPP.

I do agree with the OMB position that you do give us some time to try to straighten out some of our problems within the executive branch. I would like to speak on some of these problems. I believe OMB asked that you wait several months before acting on legislation, and then they would return and have a position from the executive branch.

We have about three significant problems right now. First, there was an issue about OFPP which has not been fully solved. If you will ask several people in the executive branch at high levels as to what they thought each should do relative to an OFPP, you would get several different opinions.

Second, there is a feeling at very high levels that an OFPP could be another "Commission," another layer of management which would not result in reforms that we are talking about.

Third, the major procurement agencies have not come to agreement on the specifics of what should be done to implement the Procurement Commission report. It is my judgment that without an OFPP—substituting any form of the status quo, modified, invigorated, or whatever you want to call it—the time frame required to implement needed reforms would change from perhaps for maybe 5 to 7 years to maybe 100 years. I do not think we are going to get the major reforms that are required by maintaining the status quo, no matter how you change it.

I agree with the Commission, and as a Commissioner that you have to have an OFPP. It has to have directive authority. This is the only way we are going to reform Government procurement.

We are going to try in the next 3, 4, 5 months to bring the involved agencies together to develop a unified position, because it is our judgment that should legislation be passed prematurely, so much in-fighting will take place that, the legislation will not be operative in time and would be seriously compromised.

But, repeating my basic position, I am for the OFPP. It has to have directive authority. And I am convinced at this point in time it will require legislation.

Senator CHILES. I am delighted to have your testimony. From your experience on the Commission and also from your vast experience in the procurement process, I can well understand how you would reach that position.

I think that is what Mr. Staats is pointing out, too. We are certainly not far apart with respect to the objectives that Congress wants to accomplish. I am sure the executive branch wants to accomplish the same objectives. It is a question, perhaps, of form or procedures.

You say 3, 4 or 5 months is the period of time. I want to find out from your testimony today if you think we necessarily should suspend what we are doing now in going forward with legislation?

Mr. SAMPSON. No, I do not. I think you should proceed.

Senator CHILES. The House Committee is tremendously occupied in a lot of very important pieces of legislation, and I do not know when they will be able to get back to this. They held the initial hearings during which they developed a lot of points that we have tried to pick up in S. 2510.

The best I can see happening now is, we could report a bill and maybe pass it in the Senate, before we go out for Christmas, and that bill would be on the House side for further hearings, if they wanted to have other hearings. Or, they may still need to mark up their bill, I do not think they have actually reported their bill; they have just held hearings.

We would be into next year before we have a final product, which would fit well within the time scale you are talking about to see how the agencies would come together.

Mr. SAMPSON. I also feel that there is a possibility that you could arrive at a composition of the OFPP which would be of such a nature that the agencies could come together on OFPP. Now, we are not describing what it is going to consist of, or specifically what it is going to entail.

But in these problems that are so difficult to solve, many proposals can be put forth to overcome or to ameliorate the fears that people have. Agencies have great fears about the OFPP, some of them, which are unfounded. We are in a clear situation as far as this is concerned. I think thorough discussion, thorough analysis of alternatives could place us in a position early next year where there could be some administration legislation that might be somewhat different from what has been proposed. That would solve the whole problem.

It might be better for you to consider waiting for legislation until we do have something to come to you with.

Senator CHILES. Your observations on this are very cogent and very sound, and you recognize that there is a need for statutory directive authority. We have not received that kind of signal before.

Mr. SAMPSON. I am saying I am convinced of that today. I see nothing in the making, and I see no alternatives but that at the present time.

Senator CHILES. At the same time, you set forth with great logic the need for us to really have the cooperation and the information that would come from the agencies as to how this Office should be made up. We really feel we needed that kind of information from each of the witnesses that came before us from the agencies. We have tried to elicit their help in getting it.

I really think the point we are at today is, we need a signal, very loud and very clear, that we are going to have an Office of Federal Procurement Policy, that Congress is going to have it. I am only talking as one Senator, but I feel that signal is strong in the Congress. I think we are going to have that.

Then the question is, if we are going to have it, if it is going to be statutory, does the executive branch want to have something to say on how we should shape it—what its authority should be and how it should be made up? I think that would be very helpful, and I think if we could get into that kind of situation we could develop meaningful legislation that would not turn out being punitive or duplicative of other efforts that are going on.

So far, we have had a little trouble in trying to convey that signal or making sure there was that kind of understanding. As I say, if we could reach that in the next 4 or 5 months, we could well develop some legislation that would be very meaningful.

On this committee, we have not been wedded to at any particular place or any particular makeup for the office, although we think the general attributes as set forth in the Commission report are sound. Also we have not found anybody that has disagreed with the Commission objectives. The disagreement before was in the executive agencies telling us it could be done on a voluntary basis; that seems to be the written testimony you submitted. We totally disagree with that; it does have to have some direct authority. If it does, how can we get together and work that out?

Senator Roth?

Senator ROTH. I have very little to add at the present time, except to reemphasize what the chairman says. I am new in the field of procurement; I did not serve on the Commission. I must say, the more I read and the more I hear, the more I become persuaded that there must be some kind of legislative mandate, that is, something for the

executive branch to recognize. I would hope that we would have their cooperation, because I think the Office of Federal Procurement Policy will have to come.

That is all I have.

Senator CHILES. We would like to take you up on your offer of coming back and giving us your information on the office even if we report a bill out, and I think we should personally. I think that may be the kind of signal we need to send. If we could have the Senate pass a bill and send it over to the House, we would not be precluded from taking other testimony and looking at the matter further, because it would still be going down the line.

We would like very much to hear from you after you have a chance to develop some details.

Do you have any idea when that might be?

Mr. SAMPSON. Again, I think early spring is when we would shoot for. I also said before, and I will say again, if we are not ready by then, we have had our chance.

I would like to make one further comment, Mr. Chairman. That is, publicly and otherwise, one of the problems that exists is the fear that GSA is trying to take over the OFPP. I want to state for the record very clearly that I voted for the criterion in the Procurement Commission report that says the OFPP cannot be located in an agency that has a procurement responsibility. As long as GSA has a procurement operation responsibility, I would oppose the OFPP being there.

If you would move procurement operations out of GSA, which I think is quite unlikely, then you might have a different position. Therefore, no one can state that Mr. Sampson or GSA wants the OFPP. I do want that made clear.

Senator CHILES. One other fear that we had expressed on which your comments might be helpful is language in the bill concerning Federal assistance programs. Although we did change the House bill, we still have language giving the Office of Federal Procurement Policy certain authority with respect to these programs. As you know, the Commission did not have much time, as it really should have, to spend on the problems of grantees and grantors.

One section of the bill relates to direct procurement by grantees—that certainly would come within the functions of the Office of Procurement Policy. And further, we said in the bill that the office should undertake and report back to the Congress on a 2-year study in this field.

There have been some fears expressed that this is going to give GSA authority to get back into supplying grantees of the Government with goods and services. I just wonder if you had a chance to look at those provisions, and whether you see anything giving you that kind of authority?

Mr. SAMPSON. We have not seen anything like that. We do not contemplate getting back into the business.

Senator CHILES. That may allay some fears that have been expressed in that regard.

Again, we do want to thank you for being here, and for being as frank as you have been about the report. We understand your position, but we think this kind of frank and candid approach is what will allow the executive and the legislative branches to shape this legis-

lation together. In this way, we will be able to accomplish the objectives of the Commission, which everyone seems to be in favor of.

Thank you.

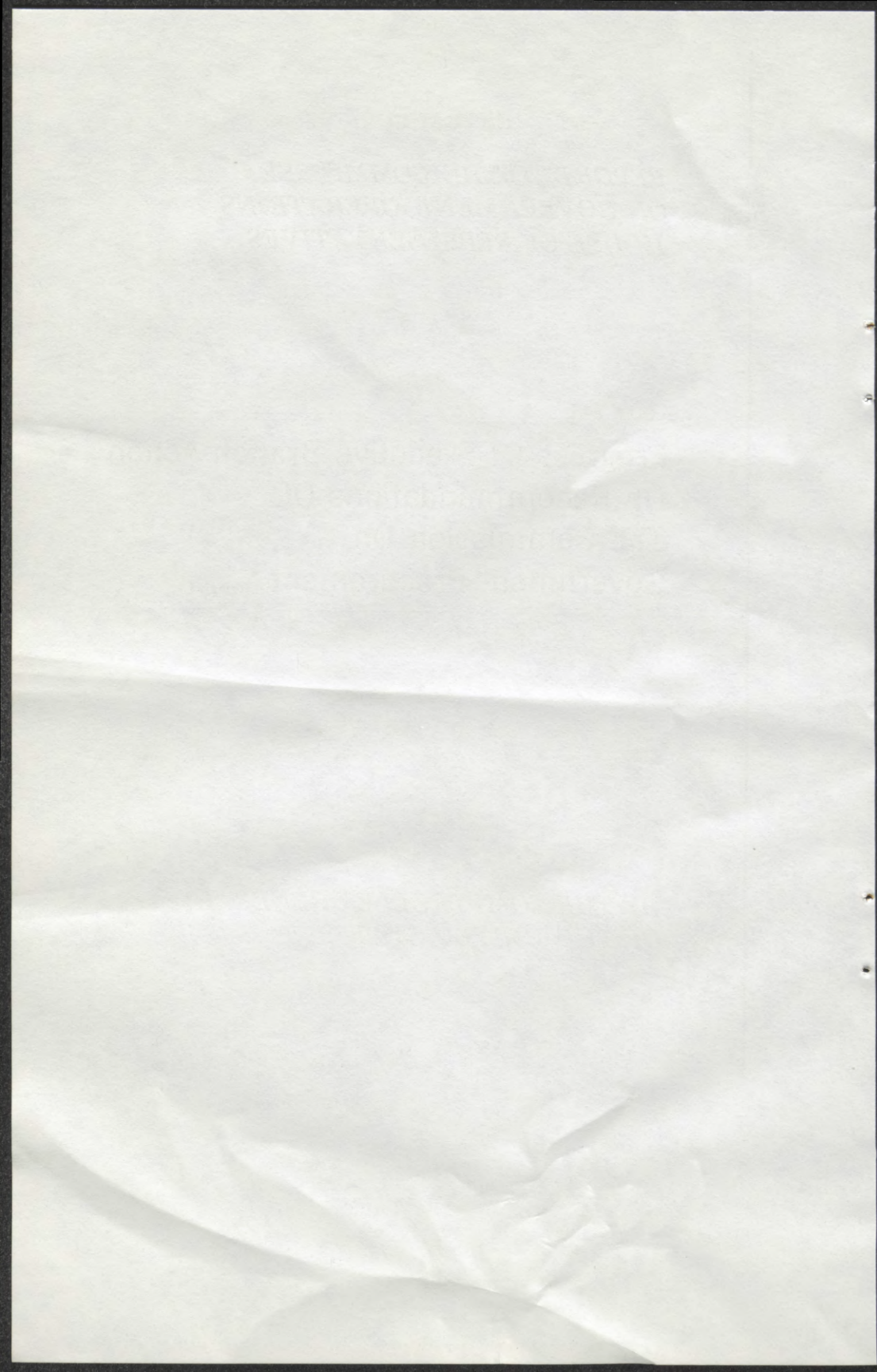
Mr. SAMPSON. Thank you.

Senator CHILES. This concludes our scheduled hearings on S. 2510. The record will be left open for a period of approximately 10 days for any further material or comments to come in, and the subcommittee can schedule a time it will be able to go forward in marking up a bill which, hopefully, we can take to the full committee and try to get some kind of action before the end of this year. With this, we will conclude our hearings on S. 2510.

[Whereupon, at 10:20 a.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

(235)



[EXTRACT]



*REPORT TO THE COMMITTEE
ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES*

Progress Of Executive Branch Action
On Recommendations Of
The Commission On
Government Procurement

B-160725

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

(237)



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-160725

The Honorable Chet Holifield, Chairman
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This is our second report responding to your request that GAO monitor progress of executive branch action on recommendations of the Commission on Government Procurement. Our first report, B-160725, June 19, 1973, described the executive branch plan for acting on Commission recommendations, some initial steps taken to provide a management structure for Government-wide procurement policy, and several matters deserving agency or congressional consideration.

This report (1) updates the executive branch plan for acting on Commission recommendations, (2) shows the new management structure for Government-wide procurement policy, (3) describes congressional activity on the recommendations, (4) summarizes executive branch progress and the status of the recommendations, and (5) identifies matters needing agency or congressional consideration.

In summary, this report points out that:

- Executive branch structure for Government-wide direction of procurement policy is still developing.
- Executive branch program to act on the Commission recommendations is of considerable magnitude and complexity, as indicated by 73 lead agency task groups and 330 participating agency assignments in support of 14 lead agencies.
- Following your Committee's hearings in July, GSA doubled its staffing of the Office of Procurement Management, appointed an acting director, and furnished additional guidance to the 14 lead agencies.

B-160725

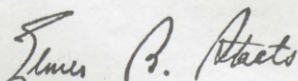
--A few lead agency positions have been submitted to GSA; first drafts have been completed on about 40 of the recommendations, and work on about 100 has not reached the first draft stage.

--Five matters presented for agency or congressional consideration concern the need to:

1. Set priorities on Commission recommendations.
2. Strengthen monitoring of lead agency assignments.
3. Arrange for industry participation.
4. Give special management attention to assignments on which limited progress has been made.
5. Expedite legislative action to establish an Office of Federal Procurement Policy, with interim executive branch action to fully empower such an office.

As you requested, we are sending copies of this report to the Chairmen of the new Senate Subcommittee on Federal Procurement and the congressional committees which have expressed interest in procurement matters, the Director of the Office of Management and Budget, the heads of the 14 agencies having lead agency responsibility for acting on Commission recommendations, and each of the Commissioners of the Commission on Government Procurement.

Sincerely yours,



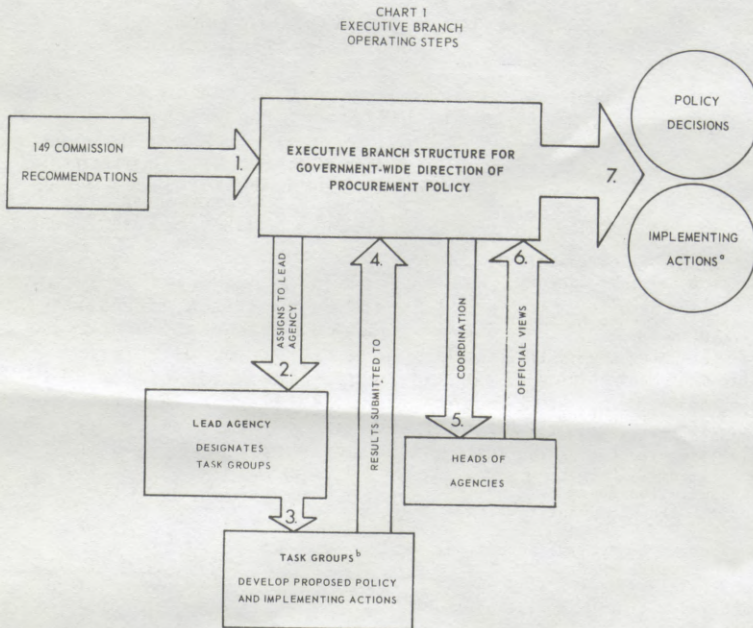
Comptroller General
of the United States

PROGRESS OF EXECUTIVE BRANCH ACTION

ON RECOMMENDATIONS OF THE

COMMISSION ON GOVERNMENT PROCUREMENT

Our first report discussed the executive branch program for developing policy decisions and implementing Commission recommendations. The operating steps specified in the program remain in effect and are shown in chart 1.



^a Regulations published after coordination with Industry

^b Comprised of lead agency and participating agency personnel

The number of task groups and participating agency assignments involved indicate the magnitude and complexity of the executive branch program for developing proposed policy and implementing actions. A task group comprises lead agency and participating agency personnel, the number depending on the nature and number of recommendations assigned to the group. Participating agencies are those invited or volunteering to participate in actions on a recommendation assigned to the lead agency. Currently, there are 73 task groups and 330 participating agency assignments.

The number of recommendations assigned to each of the lead agencies, together with the number of related task groups and participating assignments supporting the lead agencies as of August 1973, are listed in table 1.

Table 1

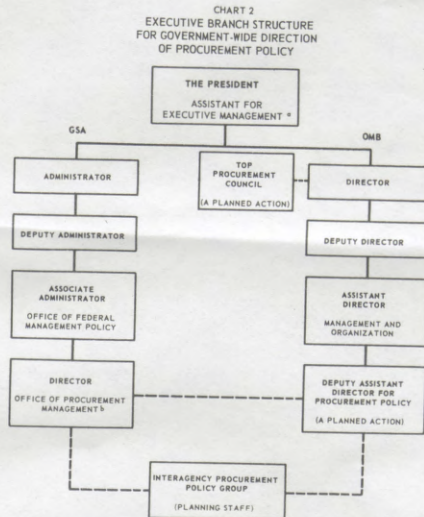
<u>Lead agency</u>	<u>Number of recommendations assigned (note a)</u>	<u>Number of task groups</u>	<u>Number of participating assignments supporting lead agency</u>
Department of Defense (DOD)	52	24	85
General Services Administration (GSA)	24	14	52
National Science Foundation (NSF)	17	4	26
Atomic Energy Commission (AEC)	16	5	22
Office of Management and Budget (OMB)	8	4	27
National Aeronautics and Space Administration (NASA)	8	5	23
Civil Service Commission (CSC)	7	5	31
Department of Labor	4	4	36
Renegotiation Board	4	1	1
Small Business Administration (SBA)	3	1	7
Department of Health, Education, and Welfare (HEW)	2	2	12
Department of Agriculture (USDA)	2	2	4
Department of Transportation (DOT)	1	1	3
Department of Justice (DOJ)	<u>1</u>	<u>1</u>	<u>1</u>
Total	<u>149</u>	<u>73</u>	<u>330</u>

^aSix recommendations have been reassigned from OMB to GSA since our first report.

UPDATING EXECUTIVE BRANCH MANAGEMENT STRUCTURE

Our first report discussed the May 1973 Executive order which transferred several functions, including procurement management, from OMB to GSA. In late June, an implementing memorandum to the heads of departments and agencies announced the transfer of responsibility for directing and coordinating executive branch action on Commission recommendations to GSA. The memorandum provided for forming a procurement policy group to assist GSA and OMB in coordinating and expediting development of policy positions and implementing actions and specified that OMB would retain a strong interest in resolving major policy matters.

The executive branch management structure for Government-wide procurement policy direction is still emerging. Although identified as one entity on chart 1, the management structure actually has a number of parts, as shown in chart 2.



* The Assistant to the President for Executive Management and the Director of OMB is the same individual wearing two hats.

^b Includes responsibility for Federal Procurement Regulation.

--- Portion of structure which will interact on procurement policy.

Responsibilities for parts of the management structure and their interaction with one another has not yet been spelled out; they will probably vary, depending on the degree of importance or controversy covered by each policy issue. Also, as noted in chart 2, some parts of the management structure are still planned actions. Based on discussions with OMB and GSA officials, we will attempt to describe how the parts may work together.

The products of the lead agency task group efforts, that is, proposed policy positions and implementing actions (chart 1), will be submitted to GSA's Office of Procurement Management (chart 2). This office will review the submissions; and when they are deemed adequate, a summary evaluation will be reviewed with the interagency Procurement Policy Group (chart 2). This group, representing 20 or more agencies having procurement operations, will be composed of top procurement policy technicians. Normally, only a small planning staff of that group, representing the major procuring agencies, will be consulted.¹

After coordination with the planning staff has been completed, proposed policy positions and implementing actions will be sent to the concerned agency heads for official review. After these reviews, agency head comments will be sent to GSA's Office of Procurement Management for consideration. If the agencies generally agree on the proposed policy, an implementing document will be forwarded for the appropriate authority to issue. The implementing document may be proposed legislation, an executive order, an OMB circular, a regulation, or an agency directive.

If a proposed policy on a Commission recommendation is of major importance or is seriously opposed by one or more agencies, the matter will be taken up with OMB. If the policy decision is highly sensitive, OMB, in turn, will ask for recommendations from its Procurement Council (see chart 2), comprising officials at the assistant secretary-deputy administrator level of the major procuring agencies. Presumably, all major policy differences will have been resolved through this process. If not, they may be referred to the President.

¹These agencies are DOD, NASA, AEC, HEW, GSA, DOT, and Veterans Administration (VA).

The management structure being developed by OMB would, in its view, accomplish the same purpose as the organization to be created by House bill 9059, an Office of Federal Procurement Policy (OFPP). The OMB position on the bill was that legislation should be deferred until its recent organizational changes have been tested. OMB testified that it expected these organizational changes to be operative by the end of August 1973.

Those organizational changes not implemented as of early September are labeled in chart 2 as "planned action." They are the new Deputy Assistant Director for Procurement Policy in OMB and the Procurement Council. The interagency Procurement Policy Group has been named but not yet activated. A first meeting with its planning staff was held on September 11.

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.

CONGRESSIONAL ACTIVITY

In June 1973, four bills responding to major recommendations of the Commission were introduced in the House by Congressmen Chet Holifield and Frank Horton.

- House bill 9059 to create an OFPP within the Executive Office of the President.
- House bill 9060 to clarify the distinction between contract and grant-type assistance transactions and to standardize legal instruments for these transactions.
- House bill 9061 to revise, consolidate, and simplify the basic procurement statutes.
- House bill 9062 to establish an integrated system for resolving contract claims and disputes.

Hearings held in July on the OFPP bill will be summarized later in this report.

On July 20, 1973, the Senate Committee on Government Operations, by Senate resolution 131, formed an ad hoc subcommittee on Federal procurement to study or investigate Government procurement practices "including a review of recommendations submitted to Congress by the Commission on Government Procurement." Senate bill 2198, to create an OFPP, was immediately introduced. The subcommittee is chaired by Senator Lawton Chiles¹ and is currently developing operating plans.

EXECUTIVE BRANCH PROGRESS AND
STATUS OF RECOMMENDATIONS

This section of the report presents an overview of executive branch progress in acting on Commission recommendations as of August 1973. Additional information highlighting the status of each recommendation is in the appendix. The schedule in the appendix lists

- the major thrust of each of the 149 Commission recommendations,

¹Other members are Senators William Roth (ranking minority member), Bill Brock, Walter Huddleston, and Sam Nunn.

- the lead agency and its responsible component, and
- the name of the task group leader.

Also shown in the appendix schedule are the major milestones in reaching policy decisions and the estimated or actual dates for reaching them, when available. Once the policy decision is made, the schedule will show whether the recommendation was accepted, rejected, or modified, and, in the latter two cases, the reasons why. Similarly, later schedules will describe the implementing action proposed for each recommendation and record the major events preceding issuance of an implementation action.

To determine current progress and status at a more detailed level than that in the appendix, we obtained information from the lead agency task groups responsible for developing executive branch positions. Table 2 summarizes progress reported by the task group leaders as of August 10, 1973.

Table 2

	<u>Number of recommendations</u>
Lead agency task group level:	
Limited activity	21
Review and analysis underway	30
Review and analysis completed	40
General agreement on proposed position(s) reached	8
First draft of proposed position completed	34
Proposed position in process of submittal	13
Executive branch management structure level:	
Proposed position received by GSA	3
Proposed position submitted to agency heads for official views	-
Commission recommendations accepted, rejected, or modified by executive branch	-
Total	<u>149</u>

^aOne of these positions pertains to proposed legislation in the Congress on which action was initiated prior to the Commission report (recommendation A-36).

As can be seen, all assignments are in varying stages of progress at the task group level except for submissions to GSA on three of the recommendations. It is difficult to measure overall progress due to the differing degrees of difficulty associated with individual recommendations or groups of recommendations and due to the varying levels of part-time efforts being undertaken by task group members.

A special problem occurs with the OMB lead assignments in attempting to determine progress. It is our understanding that OMB will not submit action plans, completion dates, or task group proposals to GSA for review as called for in the executive branch operating plan. In our discussions with OMB officials, they would not commit themselves to target dates as to when proposed positions would be developed. Therefore, we have shown their completion dates in appendix I as unknown. However, in the case of recommendation A-1 (establish an OFPP), OMB did state that a position has been developed and communicated in connection with the recent hearings before your Committee on this recommendation.

Another problem with the executive branch effort was the initial lack of formal guidance to task groups of what was wanted in their submissions and to the lead agency focal points of what their review responsibilities were. This problem is discussed further in the next section of this report.

A few trends are emerging which indicate the timeliness and level of effort of the lead agencies. Some lead agencies--namely DOD, AEC, NASA, and NSF--have completed first drafts of proposed positions on a number of recommendations. On the other hand, limited activity has occurred on other recommendations, as indicated by few or no task group meetings, no action plans or completion date submissions and an incomplete initial review and analysis phase. Task group meetings are summarized in table 3.

Table 3

<u>Number of task group meetings</u>	<u>Number of recommendations</u>
-	12
1 to 2	76
3 to 4	32
5 to 7	24
8 to 12	5
	<u>149</u>

These data show that few or no task group meetings have taken place on over half the recommendations.

As stated earlier, the foregoing data is based upon information furnished by the task group leaders as of August 10, 1973. We obtained the following information from GSA, as of the end of August, concerning task group submissions received.

Submissions targeted for end of August	a30
Submissions received end of August	12
Submissions returned to lead agency for rework	4

^aOn September 10 GSA advised us that 15 of these targets were recently changed to a later date at the request of the lead agency.

Over three-fourths of the task group positions are targeted for submittal to the GSA Office of Procurement Management during the next few months (see app.).

MATTERS FOR AGENCY OR CONGRESSIONAL
CONSIDERATION

Our first report set forth for agency or congressional consideration the need to (1) set priorities on Commission recommendations, (2) strengthen the monitoring of lead agency assignments, and (3) arrange for industry participation. We will first update these matters. Other issues to be discussed here are the need to give special management attention to task groups whose progress has been limited and expedite action to establish, through legislation, an Office of Federal Procurement Policy.

Status of matters discussed in prior report

Setting priorities

Priorities would indicate the more urgent recommendations and identify those, such as basic legislation, upon which others must wait. At its first meeting on September 11, the interagency Procurement Policy Group determined that recommendations will be selected for priority attention.

System for monitoring lead agency assignments

Initially, executive branch guidance did not require each lead agency to administer its own assignments or to review the adequacy of proposed policy and implementing actions which emerged from the task groups. In this review, we noted also that lead agency task groups have lacked guidance as to the content expected in their submissions. We observed that lead agency focal points vary from active to passive in overseeing task group assignments. Some initial submissions are being returned by GSA to task groups because they were incomplete or of marginal quality. With such close proximity to the task group activity, it would seem that the lead agency is in a better position than is GSA to monitor task group efforts.

Also, in our testimony before your Committee in July, we observed that the new GSA responsibility for directing and coordinating the work of the 14 lead agencies was staffed with three people--with the head yet to be appointed. We testified that additional staffing was needed before meaningful review and policy guidance could reasonably be expected.

In August, GSA assigned three additional people to this activity, one as acting director, and he is currently recruiting two more. In late August, the acting director held an initial meeting with the 14 lead agency representatives and discussed an enlarged monitoring role for them. A reporting format and guidelines were furnished to the lead agency for the content of task group submissions. Guidance on lead agency monthly status reporting was also provided, including a requirement for explanations of slippages in target completion dates. These actions should help to improve the quality and timeliness of lead agency submissions on Commission recommendations.

In view of major changes in organizational responsibility and guidance that have occurred since OMB published the March 1973 memorandum on Procurement Commission recommendations, that document probably should be updated.

Industry participation

Our first report noted that industry participation and views would not be solicited until executive branch positions approached final form. The Commission found that industry normally becomes involved too late in the policy and rule-making process. We thought that, as a minimum, the task groups assigned recommendations impacting heavily on industry should solicit assistance or comments from knowledgeable industry sources.

GSA held an initial meeting with industry representatives on this subject in early September and GSA plans to

- work with the lead agency to expedite action on the Commission recommendation involving industry participation,
- publish in the Federal Register a list of the lead agencies' assignments and task group leaders so that industry may volunteer inputs to the task groups, and
- consider the need for soliciting industry views when a proposed executive branch position is ready for agency head review.

Management attention needed on
selected lead agency assignments

Most of the lead agency positions are targeted for submittal to GSA by the end of this calendar year. However, in some cases, limited progress is indicated to date. In other cases there is disagreement as to whether the task groups are required to prepare action plans, submit completion dates, and report their results to the executive branch focal point in GSA. We believe special management attention is required to insure both progress in these instances and adherence to the executive branch operating plan.

Accelerate action to establish OFPP

A primary Commission recommendation is that an OFPP be established to (1) fill an existing void in leadership and coordination among the major procuring agencies and (2) work with the Congress in considering and implementing the major statutory changes. In short, the purpose of the Commission recommendation is to provide an organizational focus for basic policy action--a single point within the executive branch structure where fundamental policies can be debated, developed, and finally published with some reasonable degree of consistency and supporting authority.

In commenting earlier on the existing executive branch management structure, we diagramed the organizational changes recently instituted or planned by OMB. There are two branches--one in GSA and one in OMB--and two interagency groups--a Procurement Policy Group of advisors to OMB/GSA and a higher level Procurement Council to assist OMB in resolving major issues (see chart 2).

In response to the Commission's recommendation, initial congressional hearings were held in July on a bill to create an OFPP in the Executive Office of the President. The new Office's primary purpose would be to provide overall guidance and direction to the Federal agencies on procurement policy. The bill provides that the new Office would have directive authority, be responsive to the Congress, and otherwise include the main attributes of an OFPP suggested in the Commission report.

Testifying on the bill were OMB, GSA, DOD, NASA, AEC, HEW, DOT, SBA, industry associations, outside experts, the Chairman of the Commission on Government Procurement, and the Comptroller General. Table 4 summarizes the testimony on selected aspects of the bill.

Table 4

<u>Witness</u>	<u>Need for OFPP</u>	<u>Need for legislation</u>	<u>OFPP location</u>	<u>OFPP functions</u>
OMB	Yes	Defer	OMB/GSA	No comment
DOD	No	No	No comment	No comment
SBA	Yes	Now	Defer	Simple and uniform regulations
Other agencies	Yes	Defer	OMB/GSA	No comment
Industry associations	Yes	Now	Separate office	Confine to principles and policies
Outside experts	Yes	Now	Separate office	Add cost accounting standards
Procurement Commission	Yes	Now	Separate office	Per Commission
Comptroller General	Yes	Now	Let President decide location in Executive Office within 1 year	Add research, personnel oversight, data system

Except for DOD, there was general agreement on the need for establishing an OFPP. However, OMB and the executive agencies generally favored deferral of any legislation, believing that additional time was needed to test the OMB/GSA organizational changes and to define the roles, relationships, and functions of such an office. All other witnesses favored legislation now.

As to the location of the OFPP, OMB and the executive agencies favored experimenting with the current OMB/GSA arrangement; others generally favored a separate office or agency in the Executive Office of the President. GAO favored leaving this question open until January or July 1974 to allow the President latitude to decide the best location of the office within the Executive Office.

As to functions of the OFPP, several witnesses agreed that principles and policies should be emphasized rather than detailed regulations.

Questions raised during the testimony were whether the current administration plan, in the absence of legislation, can provide the required clear responsibility, sufficient stature, authority, independence, continuity, and responsiveness to the Congress.

1. Clear responsibility--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.

2. Sufficient stature and resources--the rank in OMB of a Deputy Assistant Director for Procurement Policy is substantially lower than that suggested by the Commission and provided for in the proposed legislation. It would not provide the status and prestige needed and would make it difficult to attract the necessary resources and a nationally recognized authority to head the management structure.

3. Authority--as stated earlier, the procurement management function has been transferred to GSA. If GSA were to issue policy guidance binding on DOD and other agencies covered by the Armed Services Procurement Act, such issuances could be regarded as conflicting with applicable statutes. For example, legislation (10 U.S.C. 2202) states that funds for procurement may be obligated "only under regulations prescribed by the Secretary of Defense." This provision could be construed as a congressional mandate to the agency to establish its own regulations without regard to policy issuances from other sources. Moreover, it is questionable whether the larger agencies will respond to GSA leadership and direction in the procurement field, particularly those which feel, rightly or wrongly, that they have more important missions than does GSA.

4. Independence--it is difficult for any agency heavily involved in procurement to be impartial in policymaking. The Commission felt that OFPP should operate on a plane above any procurement agency and be independent of any agency having procurement responsibilities. We believe that GSA, as the leading civilian agency purchaser of commercial items, should play a major role in supporting a properly constituted OFPP.

5. Continuity of effort--any organization created by Executive order can be reconstituted or eliminated as a result of changing administration priorities and emphasis. Legislation, on the other hand, imparts a major impetus to a new organization, helps to insure continuity of effort, and provides better accountability for results.

6. Responsiveness to the Congress--the currently proposed statutory approach specifically provides for responsiveness to the Congress, strongly urged in the Commission report, and facilitates special assistance to that body in the formidable task of consolidating and modernizing the many procurement laws.

RECOMMENDATION

OMB believes that its recently instituted organizational realignments can fill the void in central leadership and has requested that legislative action be deferred until it has had an opportunity to test its approach. If the current administration plan is not successful, establishing effective policy leadership will be seriously delayed. Such a delay would adversely affect Government-wide policy direction, including development of actions on Commission recommendations.

We believe one executive branch office should have a clear congressional mandate as the President's agent to bring about long overdue and fundamental improvements in the procurement process. To be effective, this Office must be given clear responsibility and sufficient stature, authority, and permanence necessary to carry out its mandate.

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.

FEDERAL PROCUREMENT PRINCIPLES

**A Proposal
in the National Interest**

A Publication of

**AEROSPACE RESEARCH CENTER
AEROSPACE INDUSTRIES ASSOCIATION OF AMERICA, INC.
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The mission of the Aerospace Research Center is to engage in research, analyses and advanced studies designed to bring perspective to the issues, problems and policies which affect the industry and, due to its broad involvement in our society, affect the nation itself. The objectives of the Center's studies are to improve understanding of complex subject matter, to contribute to the search for more effective government-industry relationships and to expand knowledge of aerospace capabilities that contribute to the social, technological and economic well being of the nation.

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PROPOSED FEDERAL PROCUREMENT PRINCIPLES

The procurement of goods and services by federal agencies from private enterprise is a significant factor in the national economy and contributes substantially to the economic growth and world leadership position of the United States. To foster the continued growth and strength of the nation, it is declared in the public and national interest that certain principles be set forth defining the fundamental relationships between the public and private sectors of our society in all federal procurement actions. These principles shall have precedence unless otherwise barred by law:

_____ • _____
The Government favors the use of and will procure to the maximum extent from private enterprise to fulfill its needs for goods and services.

_____ • _____
All Government procurement actions, including those resulting from actions of sovereignty, shall be based on a doctrine of fairness and equity.

_____ • _____
The Government shall abide by the same business principles that govern others in the field of commerce.

_____ • _____
The Government, when its procurements comprise the sole or dominant share of a market, shall recognize and avoid the use of its monopsonistic leverage to exact unfair or inequitable contractual arrangements or conditions.

_____ • _____
The opportunity to earn a reasonable profit shall be fostered in government procurement commensurate with the risks assumed and comparable to similar commercial endeavors.

_____ • _____
Government procurement shall acquire the benefits of competition through the use of either formal advertising or negotiation.

_____ • _____
The Government shall pay fair prices for goods and services by accepting all ordinary and necessary costs, consistent with accepted commercial practices.

_____ • _____
The Government shall issue procurement regulations as required to establish equities and protect the public interest while at the same time assuring that regulations are not excessive, conflicting or impose undue costs.

_____ • _____
Formal criteria for the content, development and approval of all procurement policies, regulations and procedures shall be established by each agency, be common among agencies where possible, and be consistent with these Federal Procurement Principles.

_____ • _____
The Government recognizes and shall protect the rights of affected parties to participate in the procurement regulatory process and to seek independent review of such regulations for amendment or repeal based on these Federal Procurement Principles.

THE CONCEPT

This is a public proposal, presented in the national interest. It hopefully will generate dialogue among and action by those directly involved with government contracting. The proposal also should be of interest to all concerned with its impact on our society.

The importance of this proposal is found in the fact that government procurement involves a major segment of the national economy, large numbers of public and private institutions, and all taxpayers. As a proposal, it is offered with full recognition that promulgation is the responsibility of others and that acceptance of its suggestions will depend on the viewpoints of many.

The proposal, simply stated, is to enact into law a set of Federal Procurement Principles which will establish the framework for governing, with fairness and equity, the fundamental contracting relationships between the Federal Government and the private sector.

No such set of explicit principles currently exists. This void is believed to be an underlying reason for many of the troublesome problems being experienced in government contracting and for serious inefficiencies in the economy which, in the national interest, should be corrected.

Government contracting with private enterprise has been called the world's largest business. This may well be. Federal expenditures for goods and services currently amount to about \$100 billion per year,¹ which is three times greater than the entire budget for Great Britain and comprises almost one-half of the U. S. national budget. Such expenditures have become a towering force and a major element of our economy. By way of further comparison, such expenditures today are 5½ times higher than in 1950. They have doubled in just the last ten years and by 1975 will probably exceed the equivalent of the entire federal budget of only five years ago.² Yet no clearly defined

¹ "Special Analyses, Budget of the United States Government", 1971.

² Based on National Planning Association projection data.

set of principles exists to provide guidance and long-term national direction for such an overwhelming economic undertaking.

What does exist are over 4,000 statutes which directly or indirectly affect such transactions; scores of Executive Orders and Circulars; hundreds of Board and Court decisions; thousands of policies spread among the various agencies; and innumerable procurement regulations, procedures, management systems, and reporting requirements—all developed and administered largely in piece-meal fashion and often conflicting and duplicative.

Within this mass of paper, initiated by and residing in offices throughout all levels of government, some principles can indeed be found. But more often than not they are only implicitly stated and were generated from different viewpoints for different needs at different times. This is not an indictment but rather recognition that government contracting has grown fitfully and rapidly, and without benefit of a strong and explicit foundation.

Stresses and problems associated with government procurement are legion and appear to be growing even more rapidly than expenditures. The symptoms of cost growth and cost overruns, growing numbers of Court cases, more and more red tape, and charges of waste and inefficiency, clearly indicate that national policy on government procurement has become an increasingly critical public issue.

Recognition of the growing importance and complexity of procurement problems, and broad public concern about them, led the Congress to establish in 1969 the Commission on Government Procurement to review all aspects of federal contracting. Such recognition is also the reason this proposal is being offered at this time. It appears that the nation is in a period where such fundamental guidelines *can be* established based on broad experience and *should be* established based on obvious need. The future form, efficiency and well-being of the national economy will in many ways be dependent upon whether this need is met and how well it is met.

As important as developing and installing such a sound foundation for the future may be, the task will not be easy. Widely acceptable Federal Procurement Principles will have to take into account not only the best of the past but also the realistic requirements of today and the needs of tomorrow.

They will have to be forged with recognition of our traditional concepts, institutions and values and with understanding of the underlying nature of current social, economic and political trends. They will have to take into account the complex factors of conflicting goals and objectives and such issues as public interest vs private independence, political exigencies vs national long-term needs, and sovereign powers vs equity, among many others.

The challenge to both government and private enterprise will be considerable, but it is earnestly believed that this proposal will provide a good starting point for the job to be done. Its validity is believed to be substantial on at least two counts. First, it addresses fundamentals which, by their very nature, exclude subjective bias or selfish interest. Second, it represents a set of standards comprising the essentials of sound and enduring business relationships, developed over the long history of commercial jurisprudence.

Assuming that the need is recognized and the concept is accepted as worth exploring, this paper is dedicated to a broad examination of government procurement and a search for clear statements of basic principle. Key factors are identified ranging from statutory, economic, legal and philosophical to related principles from which our society has developed. Much is drawn by way of example from defense procurement because of its size and influence on the practices of other federal agencies. Each chapter examines major aspects of government procurement and, through analysis and synthesis and with an eye to the future, proposed Federal Procurement Principles are set forth.

Chapter 2 reviews the basic and essential roles and responsibilities of the Federal Government as they

relate to procurement by its agencies, and of private enterprise which serves to fulfill government needs. The evolution of government contracting is discussed and key historical events and their implications are cited. The emphasis is on only the most significant and fundamental factors and the perspective is on the broad framework of government and industry relationships. Seven proposed principles are derived.

Chapter 3 looks at the regulatory aspects of federal procurement. The need for regulation is reviewed as well as the scope of regulatory actions and the magnitude and nature of their impact. Receiving particular attention are the costs of regulation to both

the public and private sectors, and both in monetary and in broader terms. Underlying deficiencies in the regulatory system are identified and possible solutions examined. Three proposed principles are derived.

Chapter 4 recognizes the challenges and difficulties in moving a proposal of this magnitude from concept to promulgation and suggests alternative approaches.

Chapter 5 provides a composite set of all Federal Procurement Principles being proposed, preceded with an appropriate legislative preamble.

THE BASIC FRAMEWORK

The Constitution

The Federal Government has bought equipment and services it needs from private industry since its earliest days. The Constitution, however, contains no direct delegation of power to the Federal Government for such contracting. Thus, although the Constitution enumerates many powers, such as "to raise and support armies" and "to provide and maintain a navy", there is no explicit guidance for the relationship between the Federal Government and the private sector in the course of any resultant procurement.

It has therefore been accepted that the power of the United States to contract is incident to the general powers granted by the Constitution.³ Accordingly, one must look elsewhere for guidance on such matters as the relative rights of the contracting parties, whether federal or private sources are to be utilized, the use of sovereign power, protections against abuses, regulatory authority and similar basic guidelines.

Early Laws

The first 100 years of the nation's development provide few helpful clues in this regard, and understandably so. Life was comparatively simple and needs were largely met in either the open marketplace or by the government's own yards and arsenals. In 1809, a rudimentary system of procurement was established by statute, and except for subsequent limitations on actions of government officials to prevent abuses in the letting of contracts, little of contemporary significance is found in the law until 1875.

At that time the Supreme Court, in what must be considered a landmark case, addressed the question of limitations on sovereign power when the government contracts with private enterprise. The Court's decision stated that when the government "comes down from its position of sovereignty and enters the domain of commerce, it submits itself to the same

³ U.S. vs Tingley, 30 U.S. 114 (1831); U.S. vs Allegheny County, 322 U.S. 174 (1944).

laws that govern individuals there."⁴

While subsequent decisions have upheld this basic premise,⁵ certain exceptions have been made in recognition that the same government agent must sometimes perform functions and acts in both a sovereign and contractual capacity. In such cases, for example to terminate a contract for convenience of the government, basic sovereignty is considered paramount. Also related is a limitation placed on the private sector in that a contractor is not to gain a better position than in the commercial marketplace by virtue of having contracted with the government.⁶

On balance then, it would appear that the Courts over time have recognized and endorsed a basic concept of the government adhering to the same rules and practices of the commercial marketplace as an individual, except where clearly necessary to protect the sovereign interest. This suggests a good starting place for the development of a set of Federal Procurement Principles, in that a fundamental definition of the relationship between the government and private sector can be derived. The proposed principle would be that:

The Government shall abide by the same business principles that govern others in the field of commerce.

Sovereign Powers

Such a principle would not clear up the matter of when and how sovereign powers should be exercised, which is an area requiring clarification. The question is not only important, but most difficult. Actions taken in the name of sovereignty, and more particularly in the elusive cause of "public interest", unfortunately are too often self serving.

This is at least partially due to the competition

among and within agencies for funds, authority, control and so forth, which often result in actions more in the agency interest than in the public interest. Further, the environment of public contracting provides strong incentives for the natural inclination of sincere and dedicated people to find and use every advantage which sovereign power provides. Acts purportedly based on sovereignty, when such is not absolutely clear and obvious to all, are more apt than not to land on the wrong side of fairness and equity.

Such powers, by their very nature, are readily available to those in the lower tiers of bureaucracy where the bulk of contracting decisions are made. Their positions, far from the seats where power is checked and balanced and perspectives are broader and farther ranged, are nevertheless close enough to borrow added strength when this is deemed useful or necessary. This is not to suggest malicious intent, but rather to recognize human behavior and the sheer size and complexities of managing what, in the Department of Defense alone, amounts to about 10 million procurement actions per year. It is also recognition that it is very easy to assume mistakenly that an agency's needs and desires are synonymous with the "public interest."

This gray area in which, somewhere, sovereignty ends and normal business relationships begin is not only elusive but probably the cause of much of the stress and strain between government and private enterprise. The courts are not too helpful. They have usually found acts to be in a sovereign capacity where they:

- Are public and general, not directed to the contractor;
- Would equally affect dealings of private parties;
- Have an indirect rather than direct effect on the contract;
- Are in the public interest.⁷

⁴ Cook vs U.S., 91 U.S. 389, 398 (1875).

⁵ U.S. vs Allegheny County, 322 U.S. 174 (1944); In Re American Boiler Works, 220 F2d 319 (1955).

⁶ Horowitz vs U.S., 267 U.S. 458 (1925).

⁷ Government Contract Principles, A Manual of the U.S. General Accounting Office, November 1970.

The first three conditions are very broad and would not affect a particular contract to the exclusion of others. "In the public interest", of course, brings us full circle as it is in the main indefinable except in specific cases. Vague and general as the concept may be, nevertheless it is broadly supported by almost all citizens and is central to sovereign functions.

How then to provide clarity and reasonable restraint without creating undesirable effects on matters truly in the public interest; to provide beneficial improvements without impairing necessary responsibilities?

If this is not possible with a single statement of principle, it can probably be achieved through a composite of several and their resultant interaction. Part of the job could be done by adopting a principle which would be an article of good faith while providing accommodation to actions based on the recognized changing needs of the government, whatever their source. It would also provide a basic guideline to the thousands of government employees far from the top councils as they weigh their countless decisions. It could read like this:

All Government procurement actions, including those resulting from actions of sovereignty, shall be based on a doctrine of fairness and equity.

While certainly a step in the direction of ensuring balance in procurement actions and benefiting further by openly subscribing to accepted tenets of our society, this simple statement is inadequate alone.

Since government procurement is such an important element of our economy, more can be added by considering the theories and laws of the economist. Two areas appear worth exploring: Monopsony and the question of direct government competition with industry to provide goods and services.

Monopsony

Monopsony is the opposite of monopoly. In a mo-

nopoly the single seller can warp the market price to his advantage unless his leverage is controlled. In a monopsony, the single buyer has commanding leverage over the seller unless, again, control is maintained. Both conditions are considered by the economist to be extremes of imperfect competition and undesirable imbalances for an ideal marketplace.

The undesirability of monopolies has long been recognized by the government, which has long controlled and prevented monopolistic advantage to protect the public.⁸ Curiously, monopsony has escaped more than casual examination and almost totally avoided formal controls to prevent abuses. Since monopsony is just as subject to abuses as monopoly, this lack of attention would appear odd until one realizes that the government itself is virtually the only monopsonist of significance in existence.

This situation comes about because the government is virtually the sole market for products such as space vehicles and defense systems, and the dominant share of the market in many other areas. Nevertheless, government or not, this unique market is a monopsony and, to prevent abuses, should be controlled.

How does monopsony power relate to sovereign power in the government marketplace? The best explanation may be that it is an extension. Both are special powers, neither is clearly distinguishable as it moves away from the absolute condition, both are interrelated. Who can say with certainty that the reason a price or contract term is more advantageous to the government is because the customer is the sovereign, or because the customer is a monopsonist? But one can ask whether or not government contracts should be let with inequities, regardless of the source of power. The answer, in all fairness, should obviously be no. What then has occurred to blur the obvious?

Years ago, when federal contracts affected a much smaller sector of society, the answer could be ig-

⁸ 15 U.S. Code Sec. 1-7; 15 U.S. Code Sec. 12-27.

nored, at least politically. Before such a major share of our national resources was devoted to serving the government's needs, human and capital, the need for attention may have escaped the economist. Further, there is an economic law which says that as long as an enterprise can exit a particular market and enter another, no harm is done. The market will automatically correct itself and the balance between buyer and seller will be restored. The lawyer had little basis for concern because government contracts are contracts of adhesion and if one does not like the terms, he does not have to sign the contract.

These viewpoints may partially explain why monopsony in the government marketplace has not raised undue concern. The lawyer and the economist agree, but for different reasons; one advises not signing the contract and the other advises entering another market. Unfortunately, these are no longer viable options to many companies. As they have grown they have had to tailor themselves to the government's particular requirements. Thus, in large part, there is no other market to enter as long as the capability to fulfill large scale, complex defense, space and other advanced technology needs of the nation is maintained.

Regardless of history or rationale, in principle the only proper answer has to be that the government errs when it permits its power to be used to exact undue contract terms. Too much is at stake for the nation, its taxpayers and its society, today and tomorrow. The national economy must move forward if it is to continue to provide jobs for an increasing population. It must move forward to raise the levels of its citizens' well-being. It must remain competitive internationally. It can do none of these well, or even adequately, if significant segments of the private sector are exposed to monopsonistic leverage which saps their vitality and erodes their independence.

In the evolution of government procurement, the time has come to recognize the presence of monopsony, measure its effects carefully, and control it as necessary. The following procurement principle would provide an initial step.

The Government when its procurements comprise the sole or dominant share of a market, shall recognize and avoid the use of its monopsonistic leverage to exact unfair or inequitable contractual arrangements or conditions.

While this principle gives proper direction, by itself it is still not enough to control adequately the possible misuse of monopsonistic advantage. Two major related areas directly susceptible to monopsony power are prices and profits. These should be examined further and, while profit is a function of price, they can be considered separately. Their criticality lies in the fact that both relate directly to the long term viability of a firm, and in the composite, to the nation's economic well-being.

Contract Prices

In an ideal market—that is, a market where both buyers and sellers have equal powers—prices tend to meet the level at which the buyer gets a product at a fair value and the seller gets a fair profit. The market is in equilibrium and both share attendant benefits equally. In imperfect markets, equilibrium is lost. In the case of a monopoly the seller can exact an unfair price and dictate terms to his advantage. In a monopsony the buyer can force low prices and inequitable contract terms.

These pressures have become commonplace in government procurement and the trend is increasing. One prime example is the unilateral shift of risks to contractors without commensurate opportunity for profit.⁹ Another is the refusal by many agencies to reimburse contractors for certain costs necessarily incurred in the performance of a contract, as well as certain ordinary costs of doing business. This means that these government agencies are using their monopsonistic leverage to get advantageous prices by

⁹ F. Trowbridge vom Baur, "Shifting the Risk to Government Contractors—and the Flight of Capital," *NCMA News Letter anthology*, Vol. No. 1, pp. 23-26.

"Cost Disallowances: Causes and Effects," AIA, May 1971.

not paying for all ordinary and necessary costs the contractor must incur in delivering the product.

In the case of the aerospace industry, the impact of this trend has quadrupled in DoD contracts in just the past eight years to reach the equivalent of 30% of before-tax profits. Examples of such unaccepted costs include interest on loans, independent research and development, leasing and patents—all costs which are included in the product price in the commercial marketplace, and paid in full by the buyer.

Why should the government, for example, not accept interest charges incurred necessarily to produce its product, just as it pays for that interest charge when it buys "off the shelf" from the commercial market? To do otherwise is to declare for itself preferential treatment, and to reduce arbitrarily the fair price it should have paid. Such should and would be prevented with adoption of this principle:

The Government shall pay fair prices for goods and services by accepting all ordinary and necessary costs, consistent with accepted commercial practices.

Profits in Government Work

The profit opportunity is an integral and vital element of the free enterprise system which drives our capitalistic society. Profit, if not the engine of our economy, is the fuel on which it runs. Adequate profits are just as essential for work conducted in the public marketplace as for work in the private marketplace.

Most would agree completely with the first two foregoing statements, yet the third is questionable in the minds of some and even rejected by others. The reasons, the effects and the facts are worth examining.

Government procurement has become too important in too many ways to be unduly saddled with either myths or values of bygone eras. Yet, to a degree, such appears to be the case regarding profits in government work.

The act of doing business with the government has often been portrayed as synonymous with profiteering. The past has indeed seen isolated horror cases but these are neither of recent vintage nor in sufficient numbers to draw a sweeping and lasting indictment. Yet the myth lingers on and is raised periodically, usually successfully, and often for journalistic sensation or political gain. Successfully, that is, if measured in terms of keeping profit levels as low as possible.

There is no doubt that some opportunists made excessive gains out of wartime exigencies from the time of the Revolutionary War through World War I. After World War I, however, such became a matter of top attention in Congress and a series of statutes and amendments followed, starting with the Budgeting and Accounting Act of 1921. Further protection was built into law in 1934 with passage of the Vinson-Trammell Act.¹⁰ The first allowed for an examination of all claims and accounts and the second set profit ceilings on various types of procurement. Later, a Renegotiation Board was established to determine whether excess profits may have been made.¹¹

Today, the protections in statutes and regulations are so formidable that in fiscal 1970 out of the 4,400 contractor filings required with the Renegotiation Board, 1,029 showed that a contractor had sustained a loss—a total of \$461 million worth. This compares, in the same period, with only 123 where a determination was made of excess profits, which totaled \$33 million.¹² Yet the myths remain.

The effect of this attitude about profits and what it portends for the future are important issues. Several recent studies have verified that profits in defense work and in other contracts with the government are not only on a dangerously steep declining curve, but are well below the average of commercial business. The trend is in its sixth year and has reached the

¹⁰ Act of March 27, 1934, Ch. 95, 48 Stat. 503.

¹¹ The Renegotiation Act of 1951, as amended.

¹² "Fifteenth Annual Report," The Renegotiation Board, 1970.

point where after tax profits in 1970 were only 1.75 percent of sales.

The inadequacy of such levels can be readily seen when compared in the same year to the 3.4 percent average for all manufacturing, or the 6.5 percent average for the 50 top regulated utilities. Something obviously is wrong. If anything should be clear in this complex field it is that the future viability of this sector of private enterprise is in jeopardy unless sound and long-lasting improvements are made. If not accomplished, serious and widespread degradation of vital national capabilities in this important segment of our economy can be expected. Unfortunately, too many either do not recognize or choose to ignore the vital role of profit in our capitalistic economy.

What should be the profit levels for work done for the government? Again there is no simple answer for such a complex subject, but there can be a principle.

It is a generally accepted investment rule that profits should be in reasonably direct relation to the extent of risk involved. This economic principle is straightforward and has worked well and long: the higher the risk, the higher should be the profit potential. If this rule is not followed, the consequences also are straightforward. Inevitably available capital will move to ventures which provide a better balance between risk and profit opportunity. If capital deserts an enterprise, it is equally inevitable that the deserted business will suffer, though the effects may be slowly felt. Such is the path of much government business today.

Proof? Not neat and clean and precise; such is seldom the case. Indicators? Numerous. The profit trend is one. Another is a recent poll¹³ of top financial and business leaders from the 500 largest U. S. manufacturing companies and the 50 largest banks. The statistics are revealing. The survey found that 83% of manufacturing executives interviewed were not interested in seeking additional defense con-

tracts and 48% of these considered defense business as in their line of work. In the case of the bankers, 72% were not interested in increased involvement in financing defense work.

The answer and equity, then, must lie in the direction of tying profit levels to the relative values the government contracting market must provide if government is to continue to use private business to meet its procurement needs. Correct as this appears to be, tools to measure these values precisely are not yet in hand. While some theoretical work has been done, little has been accomplished, unfortunately, in the area of empirical measurement. This means, simply, that no one today in government, industry, or the academic world can show that a given contract is, for example, 3.2 times as risky as another and should therefore have 3.2 times the profit opportunity.

Lacking precision, one is limited to coarse measurements such as "low" or "high," and facing uncertainty, is emotionally drawn to a safe evaluation. Add monopsonistic leverage or let the situation seek its own level and it is not surprising that destructively low profit levels result, even though much higher levels in areas expressly subject to government regulation are currently authorized.

A solution, not in absolute terms but at least in direction, would be to adopt a principle which would recognize the degree of risk in the profit equation and temper imperfect judgments by tying profits in government work to a sound base which would clearly express recognition of the necessity of adequate profits in maintaining free enterprise as a viable institution, e.g.:

The opportunity to earn a reasonable profit shall be fostered in government procurement commensurate with the risks assumed and comparable to similar commercial endeavors.

Government vs Private Enterprise

The discussion of monopsony and how to cope with it to meet tests of fairness and equity have been

¹³ Opinion Research Corporation, Caravan Survey, November 1970.

lengthy but necessary. Another basic subject, mentioned earlier, is whether government should contract with private enterprise for needed goods and services, or perform the work itself.

History does not prove useful if pursued beyond the turn of this century. Circumstances prior to the industrial age make comparisons relatively meaningless. Suffice it to say that the trend toward more dependence upon the private sector was slow but sure and accelerated rapidly in times of war.

Meaningful developments in terms of contemporary policy can be considered as beginning midway between World Wars I and II. Starting in 1932 and periodically since then, the Congress has formally endorsed the concept of government reliance on the private sector as being beneficial to the public interest and integral to our free enterprise economy. Further, practical experience with the lower economic efficiency of arsenals hastened their virtual demise. Although the government still maintains certain facilities and levels of capability in selected areas, experience has made it abundantly clear that the government arsenal is no match for the efficiency, economy, diversity and dynamism of profit-motivated private enterprise.

The Executive Branch issued its first firm policy in this area in 1955 by stating: "The Federal Government will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be procured from private enterprise through ordinary channels."¹⁴ Four years later the policy was restated almost verbatim and strengthened with this elaboration: "Because the private enterprise system is basic to the American economy, the general policy established a presumption in favor of Government procurement from commercial sources. This has the twofold benefit of furthering the free enterprise system and permitting agencies to concentrate on their primary objectives."

Unfortunately, such clear words of purpose have not found their way into statutes so as to provide

legislative intent to this particular vital area of government-industry relationships. As a result, increasing erosion has gradually taken place in both policy¹⁵ and practice. In addition, during times of budget reductions and economic slowdown government agencies retain more work "in-house" in lieu of contracting with private firms.

Competition by government with industry also has been unduly complicated and confused by permitting justification of government operations on the basis of cost comparisons which, by their very definition, favor the government.¹⁶ General Accounting Office interpretations have added to the "in-house" bias to the further detriment of the private sector.

The erosion of private enterprise in favor of a growing government bureaucracy is not in the public interest. There is clear need for a principle that would provide for government operations where absolutely required, yet clearly state a preference for the use of the private sector. Such a statement of principle should provide that:

The Government favors the use of and will procure to the maximum extent from private enterprise to fulfill its needs for goods and services.

Industry Competition

Competition by government with the private sector in fields of commerce is not compatible with our economic system, but competition among firms most certainly is. Commercial competition has long been fostered as the spark that kindles the fires of innovation and assures fair prices in the marketplace. The Federal Government, particularly in the Congress, has long recognized the need for and the benefits of competition, especially for military procurement.

In 1809 the first federal statute appeared¹⁷ requiring advertising for bids to promote competition

¹⁴ Bureau of the Budget Bulletin 55-4.

¹⁵ OMB Bulletin A-76, as amended.

¹⁶ For elaboration, see CODSIA letter to The Director, Office of Management and Budget, dated March 5, 1971.

¹⁷ Act of March 3, 1809, 2 Stat. 536.

among suppliers (though it gave equal standing to purchases on the open market). Subsequent statutes during that century developed specific ground rules for advertised bidding, including "award to the low bidder." An 1860 statute¹⁸ subsequently set the basic pattern for all government procurement until World War II. It provided, in pertinent part, that: "All purchases and contracts for supplies or services, in any of the Departments of the Government, except for personal services, shall be made by advertising a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service."

Thus advertised bidding to assure competition became the norm for government procurement, with the two noted exceptions. A third exception soon followed, which recognized that the existence of only one competent source precluded the need for advertising. This pattern prevailed for the next eighty-five years except during wartime.

Negotiated procurements were authorized, to varying degrees, during such periods from the time of the Civil War until World War II. At that time the War Powers Act of 1941 waived all existing provisions of law in order to meet the national emergency. Soon afterward, an Executive Order¹⁹ was issued which went further and prohibited formal advertising, unless specially authorized. Advertising had to give way to get the job done. The great bulk of military procurement during World War II was conducted through negotiation.

At the close of World War II, a study was conducted by a special committee of the War Production Board to consider the lessons of wartime procurement experience, which had coped with more complex and sophisticated requirements than ever before known. The result was a proposed Bill which was finally enacted as the Armed Services Procurement Act of 1947. This Act, still governing defense

procurement as amended lists 17 exceptions where authority is granted for negotiations rather than formal bidding. It would serve little purpose here to review the background and reason for each exception—that has been done by others²⁰—but each is based on sound economic reasons.

About \$14 billion worth of negotiated procurements were made by the Department of Defense alone in FY 1970. Does that mean that formal advertising as a competitive tool is extinct? Not if the fact that 498,339 DoD contracts were formally advertised in the same year is an indication. It means only that experience has proven that high cost, sophisticated products and services cannot be wisely and effectively procured except through negotiation, and that the bulk of smaller and commercially available goods is still amenable to formal bidding procedures.

The main point is that even though the world has moved on, and the experience of over thirty years and of billions upon billions of dollars worth of contracts has proven the necessity and value of negotiated procurement, another federal procurement myth lingers on. That myth, simply stated, is that the presence of negotiation means the absence of competition.

Because the notion is so deep-seated, policy makers are continually forced into a defensive posture over the use of negotiated contracts, as countless pages of Congressional testimony will attest. The press often builds up such reactions, if only to add punch to their stories. Even the General Accounting Office shows a measure of addiction to the myth.

All of this, of course, inevitably affects the attitudes of those responsible for government contracts, and their decisions. Attitudes are important but fragile commodities; positive ones, which cannot be based on doubt or mistrust, are vital to success. If a sound framework for all future federal procure-

¹⁸ Act of June 23, 1860, 12 Stat. 103-104.

¹⁹ No. 9001, December 27, 1941.

²⁰ For example, Statement of February, 1960, before the Procurement Committee of the Senate Armed Services Committee by the then Assistant Secretary of Defense (Supply & Logistics) E. Perkins McGuire.

ment is to be established, the myth that negotiated procurements are not competitive should be dispelled.

This problem has long been recognized and a correction recommended by many.²¹ It is simply to raise the stature of competitive negotiation to a position equal with formal advertised bidding in the law, rather than relegate it to an exception. This would readily and appropriately recognize that the benefits of competition are what is important and desired, rather than preference for one procedure over another to attain them.

As anyone with personal experience will attest, negotiated contracts can be not only highly competitive, but in many ways are superior to advertised bids. In fact, negotiation has been partially adopted in the advertising system in what is called "Two-Step Advertising" where the first step is to conduct negotiations prior to advertising for bids.

It is also broadly known that private enterprise favors negotiation in its own procurements.²² It seems self-evident that free enterprise, which can choose any method, would prefer negotiation only if the results in terms of better products at better prices are superior to those of other methods.

As a practical matter there is no effective alternative to negotiated contracts for the development of sophisticated technological products, because of their complex nature. While this has been recognized in law even before enactment of the original Defense Procurement Act, what has not been generally recognized is the degree of additional competition that has been achieved in negotiations through administrative action.

Even less recognized is the fact that such a high degree of competition exists today in negotiated

contracts that all of it is not necessarily beneficial. For example, the term "reverse auction" has come into being as a result of intensive rounds of concurrent negotiations among competing contractors. The fact that so descriptive a term exists is a disturbing testimonial to the government's misuse of monopoly power. Further, one need only consider the increasing problem of contractors in meeting the terms of negotiated contracts to understand the detrimental impact occurring.

The fact, not the myth, is that negotiation can realize the full benefits of competition just as well as can advertising. The recommended principle is that:

Government procurement shall acquire the benefits of competition through the use of either formal advertising or negotiation.

The purpose of this chapter has been to address those principles which would establish the basic framework for the procurement relationships between private enterprise and the Federal Government. Every attempt has been made to hold to that which is truly basic, to discard the superfluous while retaining the important, whether for traditional, philosophic, legal or economic reasons. It has not been felt necessary to cite existing laws against criminal actions as these are supported fully by all of good intent and should remain on the books for all who are not.

Thus, principles are proposed which would define the basic government-industry procurement relationships as to:

- When government will procure from private enterprise;
- How government will conduct itself when it does;
- How the benefits of free enterprise can be fostered and preserved.

The next chapter will turn to regulatory matters which are perhaps more administrative than structural, but nevertheless of basic importance.

²¹ For example, "Task Force Report on Procurement", 1955, by a study group of the "Hoover Commission", and "The Armed Services Procurement Act of 1947 Should be Reformed", Robert B. Hall, *NCMA Journal*, Vol. 3, No. 1, Spring 1969.

²² Testimony to this effect has been provided Congress as far back as hearings to amend the Armed Services Procurement Act of 1947.

THE REGULATORY PROCESS

Federal procurement has become the most heavily regulated business in the American economy. Many believe that Defense procurement is seriously over-regulated and that many other agencies are headed that way, some with dismaying speed. If current trends continue, the future is bleak indeed in terms of greater inefficiency and unnecessary costs to the taxpayer.

By way of example, today it takes more than 3,000 pages to record the Armed Services Procurement Regulation (ASPR), and that is only the tip of the iceberg. In addition, having equal force and effect of law when required by contract, are hundreds of directives, instructions, procedures, manuals, reports, management systems and data requirements.

Surmounting all of these, in terms of hierarchical relationships, are over 4,000 Federal Statutes either directly or indirectly applicable. Under them, usually four to five layers deep, are reams of "flow-down" documents which interpret and expand higher-level requirements. All of this paper and the tiers of bureaucracy required to administer it are more than just worrisome to those who must comply with it; the problem is central to their ability to perform well, or not.

In this critical area, it would appear that four hard and important questions need to be faced today for the benefit of tomorrow. If addressed at the level of fundamentals with the knowledge of experience, the details can be left to others. If not faced squarely and soon, the inevitable result will be severe atrophy of the federal procurement process. This is because the vast bulk of current regulations has come about in the last twenty-five years and most of the complexity and seemingly endless details in the last ten. The four underlying questions are:

- Is all this regulation necessary, or even desirable? If not,
- What is the proper level?
- What caused the excesses?
- What basic corrections are needed to achieve and stay at a proper level?

All of this, of course, presupposes that regulations are needed and are integral to the federal procurement process. This as well as the four other basic questions will be the main topics in this chapter.

The Need for Regulations

Procurement by government agencies, as has been shown, constitutes in many ways a special, even unique marketplace. In many instances it comprises the sole market for a particular product; because of the size of purchases, it often may dominate or at least greatly influence the timing, prices or nature of the market. Insofar as a special marketplace is created, some regulations are undoubtedly needed to substitute for natural forces inherent in the open marketplace. An example is the establishment of rules for competition. A major void in this category, as noted earlier, is control over undesirable monopolistic advantage.

A second category of need for procurement regulations arises from the fact that the government customer, unlike its commercial counterpart, has reserved special rights for itself. It can be sued, for example, only with its consent. Thus, regulations are required to alert the potential seller to such limitations on his ability to protect his rights.

A third category of government needs derives from its role as sovereign. Included are such obvious necessities as statutory implementations, the right to decide what is required and when, to unilaterally cancel or change requirements to meet changing needs, and rules to account for the federal budgeting process, including auditing of expended funds. This category also covers regulations made "in the public interest."

As noted in Chapter 2, it is in this last area where valid sovereign need gradually disappears and monopoly appears, but under a more noble banner. This is becoming of great concern due to increasing misuse. It is a rare public servant who will not almost automatically defend any regulation, old or proposed, as being in the public interest. This is a convenient,

even warming reason, but not necessarily a correct one. It is also a virtually endless road.

The fault, however, lies less with people than with a system which does not provide specific, objective, criteria for evaluation of what should be, but depends instead on subjective application of detailed rules and procedures, justified on what vaguely is deemed good for the distant and largely uninformed public.

Procurement regulations are needed for good and valid reasons. But so, too, is protection against excessive regulation and overly zealous or self-serving application. Such protection is also solidly in the public interest. A principle recognizing both needs would declare:

The Government shall issue procurement regulations as required to establish equities and protect the public interest while at the same time assuring that regulations are not excessive, conflicting or impose undue costs.

Here again, a single principle cannot cope with all significant aspects of a situation; excesses from other causes must be further discussed.

The Costs of Excessive Regulation

Procurement regulations are seldom viewed by legislators as important enough to warrant more than cursory attention. The general view is that they are obviously needed, the needs are being satisfied and responsibility lies elsewhere. If a particular problem surfaces, a new law or amendment to fix it is hammered out and the subject of regulations is set aside again.

The attitude toward regulations among Executive Branch policy makers is much the same. An exception sometimes occurs following changes in Administration when policy changes often are announced, but too many times without substantial penetration down into the standing bureaucracy. At these high levels an attitude of unconcern is perfectly reasonable if the system below is functioning well. If it is

not, abuses are bound to occur. What has been and is happening?

By way of primary example, let us turn again to the Department of Defense, though the situation is generally the same in other agencies, differing only in degree. And let us take a broader view of procurement "regulations" than usually taken, because such is necessary to place the real problems in perspective. In the case of DOD, the Armed Services Procurement Regulation is automatically thought of as the DOD regulation system. It is central, but it is far from being the sole source of procurement regulations. The correct perspective is to consider, as well, every DOD policy, management system, report, procedure, etc. that bears on the DOD procurement system and upon the contractors serving it. It is only from this perspective that the total impact can be seen.

The multiplicity of players can also be seen more clearly. They are not just the nine men on the ASPR Committee or those participating on ASPR subcommittees. They include, at the level of the Office of the Secretary of Defense, the many offices involved with procurement documents under the Assistant Secretaries for Installations & Logistics, Comptroller and the Director of Defense Research & Engineering, as well as special joint offices. They include those in the offices of each Service Secretary and many others in the several functional offices serving them.

Principal contributors to the regulatory network are also found within each of the Services at each command and lower offices. The pyramid grows geometrically until it reaches its base, the program managers and contracting officers who must comply with all the regulations, however titled, and finally at the level of the contractor who also must comply. The government employees in the chain number in the thousands. Given this perspective, the effects can be seen more clearly.

Witness a hypothetical but representative case for illustration. A fourth-level employee in an office of the Defense Comptroller is assigned the job of pull-

ing together a periodic report never before requested. Looking at what is readily available, he finds that much of the data he needs is not at hand or is not in the form in which he needs it. He determines that it must be obtained directly from DOD contractors. In the process he also decides that if some additional management requirements were set forth in the same general area, a problem in subordinate offices that had been brought to his attention earlier on two or three contracts also could be solved.

Three months later a draft of a new management system is routed for coordination. It is readily "signed off" since it does not appear to affect other offices much, if at all. It is issued and a new procurement requirement is born. It may comprise two pages, or 200. When placed in contracts it will have the same authority as an ASPR clause. It must be followed. It is a control. It will cost money to comply with. Contractors will be audited for compliance. It is a procurement regulation whatever its title.

From this single example, here are the typical effects. Since it is issued from the Office of the Secretary of Defense, every subordinate office will be required to implement it, more than likely by rewriting it within 90 days to tailor it to their formats or missions, down through at least three levels—in each Service, not just one.

In the process, other requirements as well as greater amounts of detail are often added. By the time it reaches the bottom of the chain there will be at least a dozen and perhaps two dozen formally issued versions among the three Services and other components, their several subordinate echelons and various procurement branches. Sometimes the document is handed down without rewriting it, but this is not the general pattern. It has now reached the procurement and contractor level. The costs already incurred are significant, but pale in comparison with what is to come.

Since the document is from the top of the pyramid and requires data from all DOD contractors, it can be placed on all applicable future contracts.

Within a few months it may well involve one hundred prime contractors and ten thousand subcontractors.

Because the data to be reported is not likely to be available to each contractor in the form required, he must rearrange his data collection method, or develop a new one. This may mean changing his manuals, information flow, paperwork—possibly adding people or departments. Not one contractor, but all 10,100 contractors are involved. As the data is gathered, it will then wend its way upward, being reviewed, approved and re-reviewed at each higher office until it reaches the initiator. Cost? Who can say with certainty? But the multiplier effect on costs resulting from one small effort by one man can be staggering, and it can last for years.

Unfortunately, hard data on costs attributable to procurement regulations are impossible to obtain. Little research actually has been conducted. The impact on overhead costs, however, both within government and among defense contractors, has to be tremendous. For instance, it is commonly known that defense contractors usually try to physically separate defense from commercial operations because of the inordinately high overhead costs of defense work—largely attributable to government procurement requirements.

Perhaps the best estimate available²³ is that for management system costs alone: \$4.4 billion in DOD Fiscal Year 1969. This does not, presumably, include a single dollar attributable to the ASPR or the many other categories of regulation.

Some lessons can be drawn from this example which are important to the future. They certainly would include:

- The term "procurement regulation" must be viewed in its broadest context, and administered the same.
- The establishment of regulations is not centrally controlled, is fragmented, and often dic-

tated from narrow perspectives with excessive detail.

- There is no set of formal criteria that regulations must meet, which is particularly detrimental in such areas as compatibility with other policies, ascertaining actual needs, assessing effects and weighing costs against benefits.
- The decision to impose new regulations is unilateral and without adequate means provided for challenge by those affected.
- The dispersion of initiating points and lack of principles, criteria and central control result in conflicting, duplicatory and inequitable rules, and excessive and unnecessary costs.
- Poor regulation and over-regulation are inescapable so long as major reform is not initiated.

Other detriments also must be considered and may in the long run be even more important than dollar costs. Perhaps the most important is rigidity. Over-regulation and excessive detail combine to tie the hands of management in government and industry alike. Industrial managements find traditional prerogatives eroded or eliminated; their work force is saddled with imposed methods, efficient or not; their overhead costs creep ever upward, prejudicing or hampering their ability to be competitive in other fields. Flexibility to meet new opportunities and to overcome new problems is the victim.

Government management is affected similarly. The huge, structured bureaucratic machine is at times almost impossible to change, and increasingly so as it grows. It keeps moving in the ways and directions it has built for itself, and a new policy desired by management often bogs down by the time it filters just a layer or two down from the top. Pentagon managers lament that it usually takes three to five years for a policy change to be fully implemented at the bottom. Many never make it at all. Again, flexibility, the ability to meet new demands and chal-

²³ Blue Ribbon Defense Panel Report, Appendix E, July 1970.

lenges, is the victim.

The costs of rigidity are severe. The price—of substituting rules for judgment, of sustaining bureaucratic growth by allowing it to create its justification through issuance of ever spiraling requirements, of smothering innovation with needless details, of blocking new business opportunities by creating inefficiencies—is too high a price for all, including the nation.

Another major detriment is attributable to the lack of stability of regulations. This factor adds substantial dollar costs, but more important, it produces constant and unnecessary turmoil. This not only makes planning difficult but also requires excessive involvement of managerial talent that could better be used in other pursuits. Some brief illustrative examples will show the extent of this induced problem.

At the level of top policy, the pendulum has made several swings in recent years. While the current swing seems better, strains and problems caused by earlier swings are still being felt. One example is the use of prototypes in development programs. Prototypes were largely abandoned a few years ago in favor of analysis and paper designs. Created by policy were not only 20 to 30 thousand page weapon system proposals²⁴ with attendant costs, but increased frequency of technical surprises as hardware development proceeded.²⁵

The unhappy results have been headlined in the news. Today, changes in policy are again recognizing the value of prototypes and graduated levels of advanced development work. Another example, related to the first, was the turn away from dependence on management judgment in the name of management science. This led to a massive proliferation of complex and rigid management systems in just a few

short years.²⁶ Recent policy changes indicate a return to recognition of the value of experienced people exercising good judgment. Accompanying this has been some reduction in the number of management systems, but too many big, costly ones still remain.

Stability appears to be foreign to the ASPR system as well. Over 200 changes are processed each year on the average.²⁷ The possible impact of just one such change has already been shown. Over 200 changes in the approximately 230 working days available each year tells its own story, but a more specific example may be useful.

Section XV of ASPR is entitled "Contract Cost Principles and Procedures." The use of the word "principles" in the title relates very well the original purpose and intent of this ASPR section. Yet through a process of piecemeal and constant conversion, this section has undergone a ten-fold growth in wordage and has become a set of rigid rules for cost disallowances rather than principles and guidelines for determining allowability. It appears that even where principle has been established, the insatiable appetite for detailed regulations frustrates the goal of reasonable stability.

It is worthy of note that none of the above examples (and hosts of uncited ones) is basically grounded in either sovereign or practical need. Essentially, they demonstrate how monopsony power proliferates when not controlled. The belief, so often found at the top, that the foundation of the procurement system is adequate and that the regulatory store is running well, is obviously not in keeping with the realities. Costs in both direct and indirect terms are excessive and are sapping vital strengths unnecessarily.

So it would appear entirely reasonable to answer the first question, posed earlier,

²⁴ "Study of United States Air Force Requests for Proposals, Critique and Recommendations," Aerospace Industries Association, December 1969, Reprinted May 1971.

²⁵ "Essential Technical Steps and Related Uncertainties in DOD Weapon Systems Development, Phases I and II," Aerospace Industries Association, May 1968-September 1968.

²⁶ "Final Report of the Advisory Committee for Management Systems Control," Department of Defense-Council of Defense and Space Industry Associations, March 1968.

²⁷ Speech before the American Bar Association by Assistant Secretary of Defense (I&L) Barry J. Shilito, July 14, 1971.

- Is all this regulation necessary, or even desirable? with a resounding "No." Much of it is not desirable by any reasonable measure, and in fact is counter-productive. Of the rest, certainly more is due to desire or whim than to necessity. The amount of current regulation deemed to be necessary by a demanding, objective judge would, more than likely, be a very small percentage of the whole. The second question,
- What is the proper level? should be governed by the principle recommended earlier suggesting that the proper level is the minimum level—enough to protect the public interest adequately and to define the process and its limits, but not so much as to stifle private enterprise or the process itself. Only through such a guideline can a proper level be achieved and maintained. The third question,
- What caused the excesses? has been partially answered by the examples but a deeper look should be taken to answer it better, as well as the fourth question,
- What basic corrections are needed?

Regulation Criteria

One of the basic factors contributing to excessive amounts of regulation mentioned earlier is amenable to correction through adoption of a principle. It is the lack, anywhere in government procurement circles, of a formal set of criteria against which to test a proposed or existing regulation. This void, even more than in the case of principles, is hard to understand or sanction by anyone who considers it more than momentarily. It seems axiomatic, for instance, that every proposed regulation should be made to stand the test of need. If it is not truly needed, or only marginally needed, it should never be allowed to be imposed.

Costs have been discussed as being another im-

portant factor. Even if a need is shown and accepted, a regulation supporting it can take many forms with varying impact. Cost impact should be a key criterion and total costs, not just the labor of the crew developing the regulation. Costs of implementation, costs of audit, costs of compliance, costs of transmission and reviews, indirect costs, management costs, costs of alternative approaches—all such costs should be considered. Given these, then how important is the need? Is it really worth it, or has it become a luxury? This is a fitting and necessary test, but apparently too seldom used.

Other criteria also are important. Does the regulation conflict with others, or with policy? Obviously it should not, but, with the possible exception of ASPRs, many do because nothing demands a review to make sure. Is there too much procedural detail or would a broad statement of what is needed rather than how to do it be more appropriate? Such would obviously fit more situations, cause less disruption and leave more room for management flexibility.

Then there is the criterion of stability. Has the new concept and its rules been proven fruitful by adequate test before imposing it broadly by regulation? Or, is this particular revision so important it cannot wait until the whole section is reviewed and updated? The examples could continue on and on, but the job of designing criteria can be done later. What is needed first is something to cause the criteria to be formed and used. Also, it should be noted that this basic deficiency is not only common to all agencies, but the solution as well can apply commonly among agencies. The principle could read:

Formal criteria for the content, development and approval of all procurement policies, regulations and procedures shall be established by each agency, be common among agencies where possible, and be consistent with these Federal Procurement Principles.

Checks and Balances

A second fundamental problem also is caused by a void in all government procurement today. In essence, it is the absence of an adequate check and balance system in the establishment of procurement policy, regulations and procedures. Admittedly controversial, it is nevertheless a basic problem to which a solution must be found if fairness, equity and reasonable efficiency are to be achieved and maintained.

The check and balance concept is fundamental to our form of government. It is absent in the main in the government marketplace. Some lawyers will disagree and cite existence of the contractual "disputes clause" and the Board of Contract Appeals and the Courts. While it is one form of check and balance, the "disputes" procedure and recourse to the Courts are both too narrowly limited in their applicability to have any significant influence on the mass of procurement regulations. Further, it has become common practice for government agencies to expressly and effectively neutralize a Court or Board decision favorable to a contractor²⁸ by changing the regulation involved. Others will cite the legal "contracts of adhesion" argument and economists will point to the protection provided by exiting the market, but these recourses have been shown in Chapter I to be inadequate in the existing environment.

The argument of government's sovereign rights has applicability as a defense against a sound check and balance system but its limits should be recognized. Few will quarrel with actions taken in the name of sovereignty and most will support them as long as they are clearly in that category. The danger, as noted before, is using that good defense to sanctify a poor action or rationale, otherwise indefensible. Its use needs to be further tempered when the line gets vague between sovereign rights and monopoly power.

Another argument is sure to be put forth because

it has gained the favor of the Administrative Conference of the United States and is currently proposed as legislation. Over simplified, it is that great good would come if currently exempt government regulations were brought under the Administrative Practices Act (APA) and its procedures. Such proposals are not new and have long received strong opposition from the agencies, a cool reception from industry and general indifference from the private bar. Though arguments in support have been made publicly on both practical and legal grounds,²⁹ two practical points would seem to make such a solution substantially less than effective.

The first is the matter of definition mentioned earlier. A procurement regulation is not always called a regulation and therefore would continue to escape the screen of scrutiny, including the APA screen. An educated guess would be that there are ten to twenty times more procurement regulations called something else than are labeled as such, measured by sheer bulk of number of pages. In practical terms, the well-intentioned blow would miss by a mile.

The second point is more telling in that such a change would result materially only in the exchange of one procedural system for another, rather than in curing underlying problems. Some gains might accrue to broader public notice, but the benefits would probably be more cosmetic than real. The APA system is simply not designed to provide an adequate check and balance, particularly against monopoly.

What then is needed to help solve monopoly problems and ensure fair and equitable treatment to both public and private interests? The answer must be two-fold.

First, all parties to be affected by the regulations, public and private, should be afforded adequate opportunity to participate in the regulatory process. Government agencies may claim that this is not only

²⁸ Letter to Deputy Secretary of Defense Packard, AIA, November 6, 1970, (P&F 70-405).

²⁹ John J. Grossbaum, "Procedural Fairness in Public Contracts: The Procurement Regulation", *Virginia Law Review*, March 1971.

done today but that the coordination process already takes too long. Industry responds that little opportunity exists in the early stages when potential problems are most easily identified and preventable and that experience indicates most coordination time is consumed within the agencies. Both views have substance, yet the problems remain and are ever growing. A clear mandate resolving this dilemma must be expressed.

Second, and perhaps of paramount importance, is the need for some means to be provided for the regulated to seek amendment or repeal of rules set forth by the regulator. Some mechanism must be instituted that is preferably short of the courts but beyond the bias of the originator. A full judicial process would be too formal, too lengthy and too costly to cope adequately with the need. Achieving an objective review by definition removes it from the hands of the regulator.

What is needed to bring order out of what is approaching chaos is an independent, quasi-judicial body where the unfair and inequitable procurement rule can be challenged, along with the unnecessary and undesirable. Such a review would not only surface the real intent, need and rationale for a dubious regulation or change, but its very existence would be of inestimable value in preventing the development or implementation of such in the first place.

It is not the purpose here to provide a proposed de-

sign or even to argue the merits of alternative structures.³⁰ It is hoped that opportunity will come. Just as with the other proposed principles, the details can be worked out if a sound principle is adopted. What is needed is the principle:

The Government recognizes and shall protect the rights of affected parties to participate in the procurement regulatory process and to seek independent review of such regulations for amendment or repeal based on these Federal Procurement Principles.

This brings the basic concept to a conclusion. Just enough detail has been provided in the way of justification to make the proposals understandable for the non-expert yet keep them relevant for the policy maker. Enough is here for the expert as well to show the way for elaboration, based on his own experience. The next chapter will look at ways to move this proposal forward from concept to reality and at some of the difficulties of so doing.

³⁰ There have been several thoughtful proposals in this area. One of the more notable is found in a speech by John Lane, Jr. to the National Contract Management Association, August 1970, which also expresses a highly constructive critique of the existing regulatory process.

THE CHALLENGE

The foregoing chapters were designed to set forth in summary form the primary subject areas where clear statements of procurement principles would provide the greatest long-term benefits for the nation. Others may see the need for additional principles or for refinements in those proposed. Such constructive review is welcome and can only prove beneficial.

On the other hand, because government contracting has become an exceedingly complex subject, it is recognized that some will either decry the possibility that acceptable principles can be unwoven from all the details, or use the details to argue against those proposed. Such attitudes should not be permitted to prevail for the need is too great and potential future benefits too important to permit negativism to prevail.

From the perspective of history, the tremendous growth in government procurement, both in impact and complexity, has been relatively recent. The growth in the next few years is apt to be even more astounding, and, it can be reasonably assumed, the details more complex and the problems much greater. The time to provide a solid foundation of principles is now, when there is adequate experience but before the problems become insurmountable and the task impossible.

If the concept of establishing a set of Federal Procurement Principles is deemed sound and endorsed, two important questions remain: Where should such principles be embodied? Who should provide the leadership to bring them to fruition? Some observations may be helpful.

The proposed principles are intended to be applicable to all federal agencies for the procurement of all goods and services from all sectors of private enterprise. They should serve the functions of providing a national procurement philosophy and defining basic government-industry relationships in this unique marketplace. They would be the standards upon which to judge the soundness of existing and future policies and regulations and to prevent the establishment of inequitable or unnecessary ones.

For such purposes, their value would appear to be diminished to the degree that their applicability is limited or their definition restricted or specialized.

Thus it would appear that, to meet these purposes, the proposed Federal Procurement Principles should be embodied in a statute designed to provide precedence in the field of all government procurement. While no such document exists today, one may well result from the ongoing efforts of the Commission on Government Procurement. At least such could conceivably be a major recommendation resulting from this comprehensive effort.

Alternatively, such a Bill could be introduced before the Commission completes its work and be justified solely on the basis of need and growing public concern. Or, administrative steps could be taken to adopt the principles, preferably with multi-agency coordination and agreement. Several routes would appear feasible; one should be identified and broadly supported.

The question of leadership in establishing principles may prove more difficult but it seems reasonably clear, under whatever leadership, that both the federal and private sectors should be fully engaged in the proceedings. This view would seem to give an edge to the Commission on Government Procurement since it is comprised of a mixed constituency,

but certainly other options are possible. For example, several governmental groups in both the Legislative and Executive branches have mechanisms to involve private interests, as well as the responsibility for taking action in the public interest. Industry groups, on the other hand, would appear to be limited in their ability, individually or collectively, to assume leadership because of the appearance of self service. This should not limit their ability to support a particular government group, however, nor their interest in doing so.

So while the answers are not perfectly clear, the best options appear to be in the direction of legislation fostered by a quasi- or purely governmental body. The real answer, of course, can be provided only by an individual who will take the leadership; one with requisite authority and responsibility who will accept the challenge and provide the platform and initiative. Only then will the job get done.

For the purpose of providing a starting point for such action, all the proposed principles, as developed earlier, are set forth below. They are preceded by a preamble as might be found in typical legislative language of intent.

Finally, they are offered as an open proposal in recognition of national need and in the spirit of public interest.

PROPOSED FEDERAL PROCUREMENT PRINCIPLES

Set forth below are all Federal Procurement Principles proposed in this study, arranged in a logical sequence. They are preceded with a preamble which describes their intended purpose and use as might be embodied in enacting legislation.

The procurement of goods and services by federal agencies from private enterprise is a significant factor in the national economy and contributes substantially to the economic growth and world leadership position of the United States. To foster the continued growth and strength of the nation, it is declared in the public and national interest that certain principles be set forth defining the fundamental relationships between the public and private sectors of our society in all federal procurement actions. These principles shall have precedence unless otherwise barred by law:

- The Government favors the use of and will procure to the maximum extent from private enterprise to fulfill its needs for goods and services.
- All Government procurement actions, including those resulting from actions of sovereignty, shall be based on a doctrine of fairness and equity.
- The Government shall abide by the same business principles that govern others in the field of commerce.
- The Government, when its procurements comprise the sole or dominant share of a market, shall recognize and avoid the use of its monopsonistic leverage to exact unfair or inequitable contractual arrangements or conditions.
- The opportunity to earn a reasonable profit shall be fostered in government procurement commensurate with the risks assumed and comparable to similar commercial endeavors.
- Government procurement shall acquire the benefits of competition through the use of

either formal advertising or negotiation.

- The Government shall pay fair prices for goods and services by accepting all ordinary and necessary costs, consistent with accepted commercial practices.
- The Government shall issue procurement regulations as required to establish equities and protect the public interest while at the same time assuring that regulations are not excessive, conflicting or impose undue costs.
- Formal criteria for the content, development

and approval of all procurement policies, regulations and procedures shall be established by each agency, be common among agencies where possible, and be consistent with these Federal Procurement Principles.

- The Government recognizes and shall protect the rights of affected parties to participate in the procurement regulatory process and to seek independent review of such regulations for amendment or repeal based on these Federal Procurement Principles.

STATEMENT REGARDING S. 2510, CREATING AN OFFICE OF FEDERAL PROCUREMENT POLICY, BY THE COMMITTEE ON FEDERAL PROCUREMENT OF ARCHITECT-ENGINEER SERVICE

While architecture and engineering represent a relatively small percentage of all direct Federal procurement (0.3 percent in 1970), the members of those professions are deeply interested in governmental policies utilized in obtaining professional services. As a matter of fact, architects and engineers have become increasingly concerned with Federal contracting policies beginning with the adoption of the first statutes covering A-E procurement in 1939. It was at about that time that changing national objectives gave increased emphasis to defense installations, office buildings, public works, sanitation and housing. With expanding construction programs, more and more government agencies turned to private firms for design and planning services and with this growth in contracts came a mushrooming of A-E contracting rules, executive orders, circulars and memoranda by different governmental bodies that has continued to the present.

While most of the regulations and guidelines are consistent in thrust, there are often variations in their implementation. The matter of post contract audits, for example, encompasses far more detail and records-keeping in some agencies than in others; definitions of what constitutes A-E services differs between agencies in the same Department; contractual obligations required by the government vary widely between offices. All agencies differ insofar as their emphasis on particular forms, procedures or regulations.

Even the same executive policy can be interpreted differently. OMB Circular A-76, encouraging government reliance upon private enterprise for the purchase of goods and services, is a case in point. This policy has been in existence for many years, but it is subject to a wide range of involvement and application. In fact, some agencies tend to ignore it entirely.

For these and other reasons the architectural and engineering professions have historically supported legislation to improve government procurement. The societies listed on this letterhead, for example, endorsed legislation to establish the Commission on Government Procurement. A special Study Group 13-B, comprised of architects, engineers and contracting experts from both in and out of government, was named to assist the Commission. In carrying out its responsibilities, this group held more than a dozen public hearings, received private testimony from numerous Federal agencies and conducted a nationwide survey of procurement practices. As a result of this investigation, the Study Group recommended, among other things, the establishment of an interagency committee to coordinate and standardize Federal procurement policies.

This recommendation was later incorporated into the Procurement Commission's report and is, of course, now embodied in S. 2510. Accordingly, the Committee on Federal Procurement of A-E Services, representing the American Consulting Engineers Council, the American Institute of Architects, the American Road Builders Association, the American Society of Civil Engineers and the National Society of Professional Engineers, is pleased to express its support of the objectives of S. 2510. In so doing, however, we feel compelled to note some reservations regarding certain provisions of this legislation which we believe merit revision or clarification.

Our main concern centers on the extraordinary power which S. 2510 seems to impart to the proposed Office of Federal Procurement Policy. We recognize that, to be effective, OFPP must be delegated a certain degree of authority to develop and implement practices and guidelines which will serve to improve Federal procurement. But, as it is now written, this legislation seems to establish a "procurement czar" who shall, according to Section 6(a), "... prescribe policies and regulations, which shall be followed by executive agencies. . . ."

The Administrator's extensive authority is underscored in Section 9 which would, as we read it, make all existing procurement laws subject to this Act. In other words, an Administrator could dictate policies and regulations different from those already enacted into law by the Congress, if he felt such changes would promote economy, efficiency and effectiveness in purchases of property and services by executive agencies. The design professions believe that any change in existing law is the joint and undellegable responsibility of the Congress and the President who, through enactment of the present statutes, have already expressed their desires regarding specific procurement policies.

This is not to suggest that OFPP should not recommend to the Congress and to the President any changes which it feels may be necessary to improve present

law. This is, in fact, the proper approach to the initiation of revisions to existing statutes and is probably more constitutionally correct than would be the granting, under proposed Section 9, of authority over any other law.

In this same vein, Section 10 of the Bill directs that procurement policies, regulations, procedures or forms in effect as of the date of enactment shall continue in effect until superseded by policies, regulations, procedures or forms promulgated by the Administrator. We would hope that any superseding of existing regulations, procedures or forms would be the result of careful study, analysis and evaluation (including input from the private sector) and we trust that the Government Operations Committee Report will clearly describe that this is the intent of this legislation. Nevertheless, based upon our concern with the potential authority under Section 9, we would respectfully suggest amendment of Section 10 to provide at the end of line 23, the words: "Provided that such policies, regulations, procedures or forms so promulgated shall not contravene policies or procedures stipulated by existing law or the intent of this law."

Perhaps we are oversensitive to this point, but those who supply goods and services to the Federal government have become increasingly aware of a proclivity of the bureaucracy to dictate rather than administer. Accordingly, and as an alternative to the Administrator-approach, our Joint Committee favors delegation of responsibility for conducting the affairs of OFPP to a five-member commission similar in operation to various other commissions and boards of the Federal government. Such a body would, in our opinion, be better equipped to reflect and coordinate the interests of the many diverse elements involved in Federal contracting. It is apparent, for example, that there is widespread lack of understanding and misconception by persons outside the construction industry regarding different contractual arrangements, evaluation of professional services, methods of progress payments, what constitutes costs and hundreds of other items. An Administrator, or his deputy, might also be unfamiliar with this particular area of Federal procurement, but have a wealth of experience in aerospace or manufacturing.

However, with a five-man Commission setting Federal procurement policy, we might logically expect that the Members of such a Commission would be appointed to effectively represent the diverse interests of different industries and the general public. Under such an arrangement, individual Commission members could, and would, reflect a wider range of inputs, thus better assuring fairness and equity in their joint policy directives and guidelines. Certainly the Office of Federal Procurement Policy will be better able to protect the legitimate interests of both private industry and government if there is broader representation of such interests at the top.

We do not expect that the Commission-form of management will guarantee avoidance of disagreements. We recognize that the task of eliminating overlap, duplication and red tape from Federal procurement is one which will require both firmness and delicacy in approach regardless of who does it. There will undoubtedly be arguments regarding implementation of procedures and policies which result in revision of either the Federal Procurement Regulations or the Armed Services Procurement Regulations.

To this end, we believe that any effective program for improvement of Federal procurement must recognize the need to continue to allow executive agencies some latitude for initiative and experimentation designed to improve contract policies. This is particularly true in the fields of architecture and engineering where there is continuous exploration of new technology and where innovative contracting arrangements (such as construction management) are frequently necessary in order to permit productive experimentation.

One means of assuring flexibility to incorporate new techniques is to establish OFPP in a manner which makes it responsive both to the Congress and to the President. This appears to have been efficiently handled by S. 2510 and we endorse the desirability of requiring Senate confirmation of either commissioners or administrator, as reflected by Section 5(b). We also support the requirement in Section 8, to the effect that the Office of Federal Procurement Policy shall annually report to the Congress. This, plus appropriations control normally exercised by Congress, should result in OFPP being as responsive to the legislative branch as it is to the executive.

Two other elements of this legislation endorsed by the architectural and engineering professions are: (1) the stipulation that the OFPP seek out and consider public comment in developing Federal procurement policies and regulations, and (2) the encouragement in Section 6(b)(2) given to utilization of the private sector to provide needed property and services.

It has been our experience, that those who provide government with its goods and services have much to offer in the way of constructive recommendations relating to equitable contract provisions, responsibility for project management, inspection controls, workable records-keeping requirements, appropriate bonding regulations and hundreds of other project-oriented procedures. By calling for the involvement—in Section 6(b)(4) and in Section 7—of interested parties, both in and out of government, to aid in the formulation of procurement policies, regulations, procedures and forms, this Bill assures receipt of input from those persons most familiar with a particular technique, discipline or supply process.

As proposed, the Office of Federal Procurement Policy also fulfills a long-standing goal of the private business-professional-technical community: creation of a central contact point responsible for requiring government adherence to its traditional policy of relying upon private enterprise to provide needed goods and services. Section 6(b)(2) calls for “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.” We hope that this charge to OFPP includes authority to review and update OMB Circular A-76 (dealing with the matter of relying upon private enterprise) so as to modernize this policy and encourage compliance therewith by those relatively few operating agencies which seem to prefer reliance upon in-house work rather than contracting out.

We are also pleased to note that OFPP will have responsibility for correcting some of the conflicts, duplications and problems of procurement regulations related to our nation's numerous Federal assistance programs. For example, local public officials have been dismayed by the fact that four different agencies, under four different laws, have seen fit to establish varying procedures for conducting almost identical water-sewer design and construction programs, covering local wastewater pollution treatment or abatement. Our Joint Committee is pleased, therefore, to add its endorsement to Section 15 and to suggest that this provision be expanded to encompass investigation of grant programs which presently limit eligibility to participate in Federal grants (involving conduct of research and other studies) to not-for-profit organizations or institutions, or to local public agencies. We think that this policy fails to recognize the competence, experience, equipment and unique qualifications of profit-making firms which could, in many instances, provide more authoritative, comprehensive and productive research of a particular subject or problem.

One addition to the functions of the OFPP which might be considered by the Subcommittee is expanding Section 6 to include encouragement of publication of all requirements for Federal procurement. Until this year, Federal agencies seldom announced any opportunities for private A-E firms to submit qualifications or professional proposals in connection with contemplated projects. This has now been corrected through implementation of P.L. 92-582, but it is our understanding that many government procurements related to other industries continue to be negotiated on a sole source basis with no public announcement. We think this is improper and we strongly recommend the addition of language to section 6 instructing OFPP to favor public announcements of all procurements above a certain dollar level so long as such action does not endanger national defense.

While there are other provisions we might like to see added to S. 2510, most would more appropriately be handled as regulations stemming from adoption of this bill. In the meantime, there seems little doubt but that this measure will serve to improve and advance the procurement policies and practices of the United States government and, with the reservations expressed in this statement, the legislation has our support. In extending our endorsement, however, we are mindful of the fact that there are, at present, a number of ongoing activities within the Executive Branch (specifically in the Office of Management and Budget and in the General Services Administration) which are intended to achieve many of the objectives of S. 2510. It may be that these approaches will remedy the deficiencies which presently exist in Federal procurement, and perhaps, they should be given the opportunity to try. That decision, however, is beyond the purview of expertise of our profession; it is a judgment which must principally come from the Congress and the Executive Branch.

Whatever the Subcommittee decides, there is no question but what updating, consolidating and coordinating Federal procurement policies and practices could do much to expedite procedures and practices now required by the government. It is to this end that we respectfully submit this statement.

STATEMENT BY DAVE MCCURRACH, EXECUTIVE VICE PRESIDENT, NATIONAL
SCHOOL SUPPLY AND EQUIPMENT ASSOCIATION

Mr. Chairman, I am Dave McCurrach, Executive Vice President of the National School Supply and Equipment Association. Our organization has 450 member companies, either manufacturers or distributors of school supplies, instructional materials and equipment. Although our market is primarily the public schools and boards of education, our industry also markets to private schools and universities, as well as schools and educational institutions of the armed forces and other governmental agencies and departments.

We appreciate the opportunity to present our views on S. 2510 before this subcommittee and hope that they will be helpful in your deliberations.

Mr. Chairman, I would like to begin by saying that NSSEA strongly supports the objective of S. 2510—the establishment of an independent Office of Federal Procurement Policy. We agree with the Report of the Commission on Government Procurement that fairness, efficiency and economy in government procurement require that procurement policy be subjected to independent and impartial examination in an agency other than one in which actual procurement is being done. There is certainly a conflict of interest present where the same agency is prosecutor, judge and jury in its own case with regard to procurement. We are also glad to see that S. 2510 begins with a declaration of Congressional policy regarding procurement to give direction and purpose to the OFPP and to guide the Administrator in performing his duties. However, we would like to suggest a modification in the first policy, set forth in Section 2(1). At present it refers to requiring the Government to obtain goods and services at the "lowest reasonable cost." This should be changed to "lowest total economic cost" to make it clear that *all* the factors making up the cost of supplying an item to its federal user are to be considered—not merely the price tag. Thus where federal agencies become involved in the procurement process their distribution, handling, warehousing and administrative expenses, as well as effects on the national economy, must, as the Commission Report points out, be taken into account along with the initial price in computing the total cost. The change in language we propose would clarify and emphasize this important fact.

We further believe that it is vital that even better use be made of the guidelines in the Commission's Report regarding the functions and responsibilities of the new Office of Federal Procurement Policy. Without a clear, well-defined job description and the powers necessary to do the job, the Office will be ill-equipped to perform the tasks for which it is intended. The Report, in Volume 1, sets forth specific duties that the Office should perform. While S. 2510 does describe some functions of the new Office in Section 6, these descriptions should go further in specifying the functions of the OFPP and in tracking the list found in the Report.

If properly established, the OFPP will make possible much needed uniformity between the many government agencies now engaged in procurement. At present, the small businessman is confronted with a maze of different regulations among different procurement agencies reflecting conflicting procurement policies. If the policies were made uniform, then much of the problem of real and apparent conflict in the regulations would be resolved. Secondly, such a specialized office can provide small businessmen with an effective means of making their views and concerns known to procurement policy makers, thereby providing important first-hand input for the policy making process. In this regard, we feel that section 6(b)(4) of the bill should make more specific reference to industry representatives as being among those to be consulted by the administrator in developing procurement policies, regulations, and procedures.

There is, however, one provision in S. 2510 which NSSEA strongly opposes and which should be eliminated. That is section 6(a)(B) which provides for purchase of goods and services by grantees under Federal programs. On the surface it might appear that this provision merely gives the OFPP Administrator authority to prescribe regulations to govern whatever substantive authority an agency has been given elsewhere to sell to federal grantees. But since such substantive authority does not exist at present for GSA or other agencies, the provision could easily be interpreted to constitute such a grant of substantive power. It is sufficiently ambiguous to give GSA the pretense it has long sought to launch a huge program of purchasing and selling to federal grantees without express Congressional authority.

Aside from the merits of this proposal, it is totally out of place in this bill. The establishment of an independent Office of Federal Procurement Policy is a distinct

subject arising out of the Report of the Commission on Government Procurement and has nothing whatever to do with the idea of extending government procurement to federal grantees, which was dealt with in a completely separate part of the Report. This highly controversial grantee proposal should properly be faced directly and considered separately, in a separate bill.

On the merits, this provision is in fundamental conflict with long-standing congressional policy and the policy of present and past administrations against having the Government engage in competition with private enterprise. Furthermore, it has not been shown that any real savings will occur by having grantees buy from GSA rather than their own local distributors and retailers if the total economic cost is considered.

If section 6(a)(B) were to become law, the federal government would be engaged in business activity on a massive scale in direct competition with already existing private industry that is, and has been, providing good and effective service. This would be a complete departure from the traditional role of Government in our country. GSA would be purchasing, warehousing, and making deliveries from its stocks in exactly the same way that private businessmen do. GSA would have its personnel calling on grantees in much the same manner as the salesmen from private companies do. This would not be procurement for agencies of the Government—the proper and limited role which GSA has been designed to perform. It would be a vast marketing program directed at all states, cities, counties, universities, hospitals, police departments, and all other public and private institutions which receive financial aid from the Federal Government.

This program would conflict with the many statements by both the current and previous administrations to the effect that the Government should rely on the private sector to the maximum extent possible and avoid competition with private enterprise wherever possible. In addition, it would be in direct conflict with the clear sentiment expressed by the Congress against GSA undertaking to procure on behalf of state and local governments when GSA attempted to do so in 1969. In that incident, GSA, purportedly under the authority of the Intergovernmental Relations Act, announced that it was going to permit states and political subdivisions to buy from its supply sources. GSA was finally forced by the Bureau of the Budget to cease this unauthorized activity, but soon began again to develop a program whereby any federal grantee would be entitled to purchase through GSA's sources. Once again, GSA had to be stopped, this time by the Office of Management and the budget in the fall of 1972.

On the economic side, there is every reason to believe that GSA distribution in the case of school supplies and equipment is more costly than that which can be obtained from private distribution. First, GSA, unlike private manufacturers and distributors, has no competitive incentive to maintain effective and efficient operative practices. Therefore, when GSA provides the same purchasing, warehousing, and other distribution functions as do independent distributors and retailers, GSA's cost of providing such distribution is certainly no less than other distributors, and the Government Procurement Commission Report is replete with examples where the cost is greater. In contrast to private businessmen, however, GSA does not recover its operating cost from the prices its customers pay. Its distribution operating costs such as handling, personnel, supply control, billing, etc., as well as the substantial cost required for capital investment in warehouses, facilities and equipment are covered by annual appropriations provided by the Congress. The GSA mark-up is designed to cover only the cost of transporting items from its warehouses to the actual user and the cost of certain breakage and pilferage. This does not include the very substantial administrative and operating costs which GSA recovers from the taxpayers through its annual appropriation. It is, therefore, important to keep in mind that a comparison of the Federal Supply Service's prices with those of private distributors and retailers in no way indicates that the Federal Supply Service is any more efficient, or truly less expensive.

In addition to the foregoing considerations, GSA does not provide servicing of the products it sells, and this is an important aspect of the sale of many items of school supplies and equipment. Finally, to the extent that GSA supplants private businessmen in supplying federal grantees, the state and local governments involved will lose tax revenues. In addition to the state income tax they pay, private companies account for a significant amount of state and local revenue related to property, inventory, and franchise taxes, none of which are paid by GSA.

The federal government should not embark upon a large-scale program of competition with private business which might eliminate many small business-

men from the market, and any provision of this bill which would set such an effort in motion should be eliminated.

I hope the Committee will find some constructive suggestions in our reaction to S. 2510 and I wish to express our thanks to the subcommittee for affording NSSEA the opportunities to submit these views.

RADIAN CORP.,

Austin, Tex., November 13, 1973.

Hon. LAWTON CHILES,
U.S. Senate,
Washington, D.C.

DEAR SIR: The purpose of this letter is to present my thoughts regarding S. 2510 to create an Office of Federal Procurement Policy. These thoughts are based on our experiences as a small company doing research and development under government sponsorship.

Our firm has served a variety of agencies within the federal government. We have conducted technical programs for agencies which emphasize advertised procurements and agencies which have depended predominantly on sole source procurements. It is our opinion that those agencies which depend predominantly on sole source procurements offer the best opportunity for small business and at the same time return to the federal government maximum benefit for the dollars expended. The advertised Request for Proposal, often considered to be the most competitive approach, in fact is very much leveraged to the benefit of large industry. This is because large companies have extensive staffs of proposal writers and technical publication experts which inevitably make their proposals more attractive. Further, the large numbers of technical personnel available within large companies permit such organizations to better staff proposal efforts. Conversely, the advantage of small business is the flexibility, the responsiveness, and in many instances the willingness to be more intense in their efforts to procure additional business. These advantages are best realized in sole source procurements. Under these circumstances the dollars invested by the small company in the development of new ideas for presentation to federal agencies are recognized by that agency as proprietary. It is this recognition of a proprietary position which induces industry to spend its own funds to develop new concepts, obviously to the benefit of the government. The maximum competitiveness comes from the fact that all business is eligible to compete for the sole source funds. This then puts small industry on a par with large companies.

Radian Corporation is a member of the National Council of Professional Service Firms in Free Enterprise. We support the testimony presented to you and your Subcommittee by the National Council.

The topic you and your fellow committee members are addressing is of paramount importance to Radian Corporation, and we appreciate this opportunity to present our ideas for your consideration. If additional information oral or written would be helpful, we would be pleased to supply it.

Very truly yours,

DONALD M. CARLTON, *President.*

STATEMENT OF AUTOMOTIVE SERVICE INDUSTRY ASSOCIATION

Mr. Chairman, the following reflects considerable study by the Automotive Service Industry Association of the problems associated with Federal Procurement. As automotive parts manufacturers and wholesalers, our members have been utilized for years as major sources, through procurement procedures, for automotive parts to be used by Federal agencies. ASIA has for a long time been greatly concerned with government procurement practices and policies. We appreciate this opportunity to express our views on S. 2510 to establish an Office of Federal Procurement Policy.

The Automotive Service Industry Association is the automotive world's largest organization, with its membership personnel encompassing more than 6,000 independent automotive wholesalers, warehouse distributors, heavy-duty parts and equipment distributors, manufacturers and remanufacturers of replacement parts, tools, equipment, chemicals, paint, refinishing materials, supplies and accessories.

ASIA enjoys affiliation with the Automotive Booster Clubs International; the Automotive Service Councils of America; the National Congress of Petroleum Retailers; Equipment and Tool Institute; Automotive Wholesalers Association

Executives; and the Production Engine Rebuilders Association, making up a combined overall representation of more than 10,000 automotive firms.

Our comments on S. 2510 are limited to a few essential points. As an association we are in support of the establishment of an Office of Federal Procurement Policy, within the Executive Office of the President, as provided in the bill. We sincerely believe that this central office is essential to the most cost effective use of Federal money to purchase needed supplies for use by Federal agencies.

ASIA has for years fought government competition funded with our own tax money through G.S.A. sales to grantees. We are therefore greatly disappointed in the wording of Section 6(a) (B) of S. 2510 which could possibly be interpreted by G.S.A. as Congressional endorsement of the sale of goods by government agencies to Federal grantees (called Federal Assistance Programs in the bill). Section 6(a) (B) would require the Administrator of the Office of Federal Procurement Policy to provide overall guidance and direction of procurement policy not only for executive agencies for their own use, but also, "in connection with procurement of items . . . to the extent required for performance of Federal Assistance Programs." This wording we believe could be construed by the General Services Administration as authority to once again attempt its expansion policy of selling to grantees.

We strongly believe that S. 2510 is an "organizational" bill and we do not believe that "substantive" matters should be included. We believe that the possible interpretation by G.S.A. of Section 6(a) (B) as legislative authority to sell to grantees is a "substantive" issue. We believe legislation to allow sales to grantees or to prohibit sales to grantees, as Congress wishes, should be introduced as separate legislation and treated as the "substantive" controversial issue it is.

We also note Senator Brock's amendment #500 to his bill S. 2198 which would prohibit sales to grantees.

We urge that Section 6(a) (B) be deleted from S. 2510 and that the study required by Section 15 of the bill be carried out. This would give the Administrator of the Office of Federal Procurement Policy the opportunity to make a full comprehensive analysis of extending government sales to those involved in Federal Assistance Programs (grantees) and to make his recommendation to Congress. We would urge your Committee and Congress only take action in the area of sales to those receiving Federal Assistance, following the Administrator's report.

As small businessmen ready to provide our services on an instantaneous basis nationwide, we strongly oppose all efforts to expand the sale of Federal government supplies to those outside the Federal government who have only received Federal grants. We believe that it is economically unsound to expand further, in direct competition with private enterprise, the sales of government supplies to states, cities, counties, universities, hospitals, police departments and others receiving Federal "assistance."

Twice in the past the Federal government has engaged in unfair competition with privately owned tax paying business enterprises when G. S. A. attempted to extend its reach to grantees. In its first attempt, G.S.A. used as its legal authority the Intergovernmental Cooperation Act, and the second time, a policy termed "following the Federal dollar." These were used as the justification for G.S.A.'s sales to any agency, public or private, which received a Federal dollar. ASIA was an active participant in the law suits filed in September of 1969 and in January of 1972 in attempts to halt G.S.A.'s sales to those outside the Federal government.

POSTAL SERVICE

Not only is our industry faced with competition from G.S.A., but the U.S. Postal Service several years ago determined that it was going to centralize the procurement and storage of repair parts for post office vehicles, citing what they claimed were substantial savings over local procurement costs.

The U.S. Postal Service implemented its centralized procurement plan even after a report from the General Accounting Office requested by Congressman James Corman, Chairman of the House Select Committee on Small Business Subcommittee on Government Procurement. The GAO stated that their review indicated that mathematical errors had resulted in overstating by about \$500 thousand the "estimated savings" relating to the 1,011 parts proposed for initial central procurement and stockage; that current costs of parts had been "grossly overstated"; and that costs of employees as well as shipping costs had been understated. The report also indicated that no allowances were made for pilferage or obsolescence of parts, nor for the interest charges on the investment represented by the centralized inventory. Ignoring these facts, the U.S. Postal Serv-

ice implemented its program using the parcel post system to ship parts from Topeka, Kansas to their 270 maintenance facilities, located throughout the nation, to service the Department's fleets of approximately 83,000 units. A copy of the GAO report is attached as Appendix A.

Fortunately, in the Automotive Replacement Industry there is keen competition in all areas of the country. It is not necessary to build up vast nationwide supply systems with centralized purchasing, centralized inventory control, breaking bulk, and reshipping across half the continent to lower costs. There is no economy to the taxpayer in these operations. Other very large and well known operators of fleet vehicles such as Hertz, Avis, and the American Telephone and Telegraph Company (all of which operate both passenger vehicles and trucks) all purchase automotive parts from local sources of supply to reduce their investment in inventory and other costs of material. We cannot help but believe that these highly profit-oriented organizations would have gone to a centralized system if it had been more economical.

In the report of the Commission on Government Procurement, Volume 3, Page 71, Vehicle Fleet Maintenance is discussed and the report states, "The cost of station support for vehicle maintenance varies from \$27 to \$108 per \$100 parts used. Generally, lower costs are associated with high volume users."

"The average cost of this support, at \$44 per \$100 used, is a substantial cost element in meeting user needs."

The U.S. Air Force does not maintain a centralized system of procurement for automotive parts. At many air force bases contracts are entered into with a local automotive wholesaler to maintain on the base a supply of automotive parts. These are referred to as COPARS (contractor operated parts stores). Under this system the government does not purchase the part until it is actually needed to repair a vehicle. Inasmuch as the store is located on the base these parts are instantly available. Speaking of these operations the Commission's report states, "The lowest cost for support for \$100 used is \$27 at location 7. This activity has a contractor operated parts store (COPARS) support program for part of its needs. The same is true for location 8, the \$36 cost operation. Low operational costs of these activities result from the favorable support characteristics of the COPARS and other functional support contracts (discussed in Chapter 4)."

In the Commission's discussion of acquisition of commercial products in Chapter 4, Page 37, one of the conclusions of the Commission states, "Total costs are not considered in the establishment and operation of government distribution systems and alternatives . . . service contracts and leasing offer substantial advantages in satisfying particular user requirements."

All too often government procurement is based on price and not on cost. Large quantities of goods and commodities are purchased directly from manufacturers simply because a lower price is extended as a result of the size of the order. These items are then stored in warehouses and repackaged and reshipped to using agencies as needed. In its report the Commission found that the taxpayer is paying a very large overhead cost for these operations. If using agencies were permitted to purchase common use items which are instantly available from local suppliers, the total cost of government procurement would be substantially reduced.

We believe that the establishment of G.S.A. by Congress had as its intent to provide a service agency to all departments of the Federal government. G.S.A. was to serve executive departments and the regulatory agencies. We do not believe there was congressional intent for G.S.A. to become a source of supply to everyone in the United States receiving a Federal grant for one reason or another. Mr. Chairman, we strongly urge your committee implement Recommendation 22 of the Commission recommending legislation to firmly establish reliance on the private sector as public policy.

We are hopeful that the Administrator of the new Office of Federal Procurement Policy will take positive action to implement Part D, Recommendation 6 Section (a) by the Commission "to 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."

We firmly believe that even though a Federal government purpose is accomplished by a grant, it is blatantly unfair for an automotive parts wholesaler to face competition from the Federal government paid for with his own tax dollars in the sale of his products. There is no way under present circumstances (as shown by the Commission report that realistic costing of overhead expenses are not considered within G.S.A.) that the independent businessman can competi-

tively price his product. As long as an "artificially" established price for a product can be shown by the Federal government without taking into account the same overhead costs faced by the independent automotive wholesale establishment, Federal agency prices are going to "appear" to be lower. If realistic costing of overhead was included, we firmly believe that it would show the taxpayer is losing money daily in centralized government purchasing and distribution of automotive replacement parts.

We are confident that if the automotive wholesaler had the availability of tax-free land, tax-free warehouses, tax-free gasoline, tax-free trucks and did not take into account realistically his overhead costs, he could deliver automotive parts to any user in the nation at a lower price than G.S.A.

Mr. Chairman, on behalf of the members of the Automotive Service Industry Association I thank you for this opportunity to present the Association's views on S. 2510.

APPENDIX A



*REPORT TO THE SUBCOMMITTEE
ON GOVERNMENT PROCUREMENT
SELECT COMMITTEE
ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES*

*Review Of The Savings
Expected From Centralization
Of The Procurement And Storage
Of Vehicles Repair Parts* B-114874

Post Office Department

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*

FEB. 17, 1971



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-114874

Dear Mr. Chairman:

Further reference is made to your letter of May 6, 1970, that transmitted copies of correspondence from the House Post Office and Civil Service Committee's Subcommittee on Postal Operations, the National Small Business Association, and the Automotive Service Industry Association, requesting that we examine into the Post Office Department's proposed plan to centralize the procurement and storage of motor vehicle repair parts at Topeka, Kansas. We were subsequently requested to limit our examination to ascertaining the reasonableness of the Department's estimated annual savings of \$4.7 million that would be achieved under the plan.

In accordance with the arrangements made later with your office, we terminated our review before its completion, because the then-pending legislation (the Postal Reorganization Act of 1970) granted the Department broad procurement authority. We are furnishing you with a summary of the results of the limited review.

Our review was conducted at the Post Office Department headquarters and the vehicle maintenance facility in Washington, D.C., and at the office of the consultant firm that developed the historical data used by the Department in the development of the proposed procurement plan.

Because of our limited review, we cannot conclusively state what, if any, savings may result from central procurement and storage of motor vehicle repair parts. We believe, however, that the estimated savings of \$4.7 million were not realistic, because the estimate was based on faulty comparative-pricing data and questionable estimates of costs to operate a central procurement and storage system.

The Department started implementing the centralized procurement and storage plan, and, as of December 14, 1970, the Department had awarded about 100 contracts for approximately 500 different types of repair parts costing about \$1.1 million. According to a Department official, the storage area for the

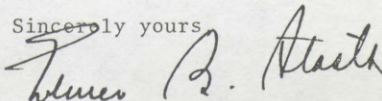
B-114874

vehicle parts at Topeka has been established and funds have been made available for employees to operate the facility.

- - - -

We have not requested the Post Office Department or the consultant firm to review or formally comment on the information in this report. We plan to make no further distribution of this report unless copies are specifically requested, and then we shall make distribution only after your agreement has been obtained or public announcement has been made by you concerning the contents of the report.

Sincerely yours



Comptroller General
of the United States

The Honorable James C. Corman, Chairman
Subcommittee on Government Procurement
Select Committee on Small Business
House of Representatives

GENERAL ACCOUNTING OFFICE REVIEW OF
SAVINGS EXPECTED FROM CENTRALIZATION OF
PROCUREMENT AND STORAGE OF VEHICLE REPAIR PARTS
POST OFFICE DEPARTMENT

STUDY MADE BY THE CONSULTANT FIRM

On April 23, 1968, the Department awarded a contract for about \$260,000 to a consultant to make a motor vehicle logistics study. According to the contract's scope of work, this study:

"Shall include development of mortality data. Establish inventory control procedures, user and depot stock levels, parts identification including assignment of Federal stock numbers, and preparation of repair parts catalogs concerning selected lines of repair parts used in the United States Post Office Department vehicle fleet."

The consultant's study covered 5,000 types of repair parts used by the Department. Because of low usage of some of the parts, interchangeability with other parts, low cost of other parts, and parts included in sets and/or kits, the consultant recommended for initial stocking at a central storage facility in Topeka, Kansas, only 1,011 types of repair parts. Under its proposed central procurement system, the Department was interested in stocking only those parts which have a high turnover-use rate and which have large retail markups. Therefore the proposed system would provide only certain parts for vehicles, and the vehicle maintenance facilities (VMFs) would continue to purchase all other parts directly from suppliers.

In April 1969, the consultant completed its initial list of parts and quantities recommended for central stockage without giving consideration to pricing data. This was in accordance with contract terms. In November 1969, the Department received pricing data from the consultant for the 1,011 repair parts. We were informed by the contracting officer's representative that the pricing data had been provided as a courtesy, without cost to the Department.

POST OFFICE DEPARTMENT'S ESTIMATED
SAVINGS OF \$4.7 MILLION UNDER
PROPOSED PROCUREMENT PLAN

The Department operates about 270 VMFs throughout the country to maintain its fleet of about 83,000 vehicles. The VMFs are responsible for procuring and storing the repair parts needed to service the vehicles assigned to them. VMFs procure about half of the repair parts by ordering them under General Services Administration contracts and procure other repair parts from local vendors.

According to the pricing data developed by the consultant, the central procurement of the recommended quantities of the 1,011 repair parts would cost about \$3.3 million annually, whereas, under the present system, the VMFs procurement of the same quantities of repair parts would cost about \$4.9 million. Therefore central procurement of these parts would result in annual savings of about \$1.6 million, or 33 percent.

On the basis of these data, the Department estimated that savings of about \$5.3 million would be realized in fiscal year 1972 by centrally stocking about 3,000 parts to support about 80,000 vehicles. The Department estimated that the annual cost of centrally procuring such parts would be \$10.7 million, whereas the estimated annual cost for VMFs to procure the parts locally would be about \$16 million. After deducting estimated costs of \$600,000 to operate the proposed centralized procurement system, the Department estimated net annual savings of \$4.7 million.

GAO'S EVALUATION OF DEPARTMENT'S
ESTIMATED SAVINGS OF \$4.7 MILLION BY 1972

Because the Department's estimated savings of \$4.7 million were based on a projection of the savings computed for 1,011 parts, we directed our efforts to evaluating the pricing data for these parts. Any deficiencies noted in the pricing of the 1,011 parts would therefore be magnified in the Department's estimated savings of \$4.7 million.

Following are the deficiencies noted in the computation of the estimated savings of \$1.6 million on the 1,011 repair parts.

Pricing data

We were advised by the Department that the consultant obtained local pricing data on the 1,011 parts from the records at 36 VMFs. At the time of our inquiry, however, the consultant had disposed of the supporting documents relating to the pricing data obtained at 25 of the VMFs.

The consultant, in computing the average VMF prices, used the Washington, D.C., VMF prices as a guide. For example, the consultant advised the Department that, when the prices extracted from records at the various VMFs appeared questionable, it made adjustments based on Washington VMF prices.

To test the savings estimated by the consultant, we selected for review 100 parts which we could readily identify in the Washington VMF parts records and on which sufficient information had been on the records to enable us to compute reliable prices. Although we could not determine the specific source of the consultant's prices for most of the 100 selected parts, we used the Washington VMF prices in our test because the consultant said that he had relied heavily on the Washington VMF prices.

The data we obtained from the Washington VMF parts records showed that the average price for most of the 100 parts was less than the average VMF price established by the consultant for these parts. Since the estimated savings to be realized through the central procurement plan were based on the difference between the anticipated central procurement price and the VMF price, any such reduction in the estimated average VMF price would also result in reducing the estimated savings.

We do not know how many of the consultant's prices were based solely on the Washington VMF prices, but we found that the prices of two parts were. The following table shows the differences between the consultant's prices for the two parts and the prices we obtained at the Washington VMF for these parts and the resulting differences in savings.

Part	Quantity	Estimated VMF price		Consultant's estimated central procurement price	Price savings		Overstatement of savings
		Consultant	GAO		Consultant	GAO	
A	25,000	\$2.15	\$1.03	\$0.63	\$38,000	\$10,000	\$28,000
B	6,000	2.26	1.02	0.62	9,840	2,400	7,440

The overstatement of savings occurred because the consultant appeared to have used the highest prices rather than the average of all prices paid for the same part over a period of time.

By comparing the estimated VMF prices with the estimated central procurement prices, the consultant computed a price differential savings of 30 percent that would be realized if the parts were purchased centrally.

The consultant obtained historical pricing data from VMF records for about 50 percent of the 1,011 parts. For the other parts, the consultant estimated the VMF prices by adding 30 percent to the estimated central procurement prices. The consultant's representative advised us that the estimated central procurement prices for parts had been obtained from suppliers' parts catalogues and informal price quotations from other automotive parts suppliers. We were unable to verify the estimated central procurement prices because of the lack of adequate supporting documentation. The consultant also used the 30-percent price differential--that is, it deducted 30 percent from the VMF prices--to estimate the central procurement price of certain parts, when central pricing information had not been obtained.

Mathematical errors

Mathematical errors resulted in overstating by about \$500,000 the estimated savings relating to the 1,011 parts proposed for initial central procurement and stockage.

Costs to operate and administer the program

The Department considered in its calculation of annual savings of \$4.7 million in 1972 that annual in-house costs of \$600,000 would be incurred in operating the centralized vehicle repair parts program consisting of centralized warehousing costs of \$100,000 (salaries, \$80,000; facility maintenance, \$7,000; operating costs, \$13,000) and shipping costs of \$500,000.

On the basis of our limited review of the Department's records and interviews with a procurement official, we question whether the Department's estimate of the annual savings was reasonable and whether it was based on a consideration of all the cost factors that would be applicable to such an operation. Our observations on the Department's estimate of operation and administrative costs are as follows:

Fringe benefits--The salary cost of \$80,000 was based on 10 employees having an average salary of \$8,000. We did not determine the reasonableness of the staffing complement, however, the Department's estimate did not include fringe benefits. On the basis of data furnished by the Department, we estimate that fringe benefits will amount to an additional \$18,000 annually.

Shipping costs--The Department included an estimated shipping cost of \$500,000 based on 5 percent of the estimated annual cost of repair parts. A procurement official told us that this cost represented the cost of shipping by commercial carrier, but he did not provide any supporting data. We question whether transportation costs can be directly related to the cost of the parts shipped, since most transportation rates are based on distance, weight, and/or volume. Department records indicate that the Department would use the parcel post system to ship the parts. Since parcel post rates are based on weight and the distance shipped, we believe that it was not reasonable for the Department to estimate shipping costs as a direct percentage of the costs of repair parts.

The Department did not include other costs of maintaining an inventory of repair parts such as obsolescence, pilferage, and interest on investment in the inventory. Although certain of these costs are being incurred under the present system, we believe that any differences in such costs that are related

solely to the centralized procurement system should be recognized in the cost comparisons.

CONCLUSIONS

Because of our limited review, we cannot conclusively state what, if any, savings may result from the central procurement and storage of the repair parts. We believe, however, that the estimated savings of \$4.7 million are not realistic because the estimate was based on faulty comparative pricing data and questionable estimates of costs to operate a central procurement and storage system.

