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REPORT TO THE COMMITTEE  
ON GOVERNMENT OPERATIONS  
HOUSE OF REPRESENTATIVES



Executive Branch Action On  
Recommendations Of The  
Commission On Government  
Procurement: Progress  
Status, Responsiveness

B-160725

PSAD-75-6

BY THE COMPTROLLER GENERAL  
OF THE UNITED STATES

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096743

JULY 31, 1974



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-160725

The Honorable Chet Holifield, Chairman  
Committee on Government Operations 401530  
House of Representatives

R Dear Mr. Chairman:

In accordance with your request, we are continuing to monitor the executive branch response to the recommendations of the Commission on Government Procurement. This fourth in a series of reports summarizes as of July 1, 1974, (1) status of the 149 Commission recommendations (2) extent to which the recommendations have been accepted, modified or rejected, (3) implementing actions initiated and completed, and (4) executive branch responsiveness to the recommendations.

Executive branch progress has been significant in the past 6 months. Overall status of the 149 Commission recommendations is (1) executive branch positions established--40 recommendations, (2) proposed positions under consideration at executive branch level--83 recommendations, and (3) interagency task group efforts still in progress--26 recommendations. Of the 40 positions established to date, the executive branch has adopted 32, modified 5, and rejected 3 of the recommendations.

We evaluated the responsiveness of executive branch final or near-final actions on 79 of the Commission recommendations and found them to be partially responsive or nonresponsive in 32 instances because of:

- Insufficient rationale for modifications.
- Unsupported statements that the recommendations were already being implemented.
- Inadequate implementation plans to accomplish recommendation objectives.

On the executive branch near-final actions, we recognize revision is still possible, and thus the degree of responsiveness shown in this report may change. Chapter 5 contains information on responsiveness and other individual problem areas, together with our recommendations for corrective measures.

The executive branch is now entering the crucial implementation phase. A number of problems are emerging, including questions of

responsiveness. The report contains recommendations to the Director, Office of Management and Budget, to insure:

- Sufficient staff support to handle the implementation "bulge."
- Establishment of relative priorities and completion dates for implementing actions.
- Evaluation and approval of the effectiveness of proposed implementing actions.
- Development of a legislative priority program for coordination with appropriate congressional committees.

At July 1, 1974, the executive branch had begun implementation action on 25 Commission recommendations and had completed implementation of 3 others. The Congress itself has initiated legislation on 33 other Commission recommendations. Legislation introduced by you and Senator Chiles to create an Office of Federal Procurement Policy is nearing enactment. Much remains to be done on other legislation.

As stated in our last report, we believe a coordinated legislative approach in the Congress will help immeasurably to expedite consideration of needed Government-wide legislation and enhance the likelihood of favorable action. The Senate has taken a major step in this direction with the establishment of its Ad Hoc Subcommittee on Federal Procurement. This Subcommittee is coordinating with other Committees and is holding joint hearings on matters of mutual interest.

S. 01509

As you requested, we are sending copies of this report to the Senate Ad Hoc Subcommittee on Federal Procurement; other congressional committees interested in procurement matters; Director, Office of Management and Budget; Administrator of General Services; heads of the 14 lead agencies involved in the executive branch program; and each member who served on the Commission on Government Procurement.

Sincerely yours,



Comptroller General  
of the United States

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## ABBREVIATIONS

|         |  |
|---------|--|
| AEC     | Atomic Energy Commission   |
| ASPR    | Armed Services Procurement Regulation                            |
| CSC     | Civil Service Commission   |
| DCAS    | Defense Contract Administration Services                         |
| DDR&E   | Director of Defense Research and Engineering                     |
| DOD     | Department of Defense  |
| DOJ     | Department of Justice  |
| DOL     | Department of Labor  |
| DOT     | Department of Transportation                                     |
| FMC     | Federal Management Circular                                      |
| FMN     | Federal Management Notice  |
| FPMR    | Federal Property Management Regulation                           |
| FPR     | Federal Procurement Regulation                                   |
| GAO     | General Accounting Office  |
| GSA     | General Services Administration                                  |
| HEW     | Department of Health, Education, and Welfare                     |
| NASA    | National Aeronautics and Space Administration                    |
| NSF     | National Science Foundation                                      |
| NSF/OST | National Science Foundation, Office of Science<br>and Technology |
| OASD    | Office of Assistant Secretary of Defense                         |
| OFPP    | Office of Federal Procurement Policy                             |
| OMB     | Office of Management and Budget                                  |
| SBA     | Small Business Administration                                    |
| USDA    | U.S. Department of Agriculture                                   |

## CHAPTER 1

### INTRODUCTION

Previous reports<sup>1</sup> in this series have told how, in 1969, the Congress created a Commission on Government Procurement and gave it a broad charter to study Federal Government procurement.

This report discusses, first, the Commission recommendation for creating an Office of Federal Procurement Policy. Next, legislative actions initiated by the Congress are brought up to date. A description of the executive branch program for responding to the Commission recommendations follows. Finally, progress, status, and responsiveness of executive branch actions through July 1, 1974, are reported upon. Schedules in chapter 5 summarize each of the 149 Commission recommendations, executive branch actions to date, responsiveness of these actions, and problem areas identified.

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<sup>1</sup>B-160725, June 19 and Sept. 19, 1973, and Jan. 31, 1974.

CHAPTER 2

PROGRESS TOWARD ESTABLISHING EXECUTIVE

BRANCH LEADERSHIP AND COORDINATION

The Commission found a leadership vacuum at the executive branch level in procurement policy. Over the years this vacuum has allowed a maze of complex, sometimes contradictory, and often overlapping procurement statutes and regulations to evolve, many of which are now out of date. In the past, procurement policy has been developed or influenced by many individual segments of Government, but these efforts have been uncoordinated--no one has been "in charge." The Commission conceived of a small but highly competent Office of Federal Procurement Policy (OFPP) established by law and responsive to the Congress. Some of the principle functions suggested by the Commission are for OFPP to:

- Serve as the focal point within the executive branch with special competence and leadership in Government-wide procurement and procurement-related matters.
- Provide for the issuance of Government-wide policies as separate instructions or for DOD issuance of such policies for defense agencies and GSA issuance for other agencies.
- Designate lead agencies to develop most Government-wide and multiagency policies and procedures in coordination with other agencies.
- Make or obtain the final decision when controversy or irreconcilable differences exist between executive agencies concerning procurement policy or regulatory development.
- Develop and promote programs for the upgrading of procurement personnel.
- Monitor and revise instructions concerning reliance on the private sector.

CONGRESSIONAL ACTION ON OFPP

In 1973, bills were introduced in the Senate and the House to create an OFPP by law (H.R. 9059 and S. 2510). These bills would locate OFPP in the Executive Office of the President. Our last two reports discussed in detail the 1973 hearings on these bills.

In brief, the hearings provided viewpoints of major executive agencies, industrial and professional associations, independent experts, and the Comptroller General. Most executive agencies, including the Office of Management and Budget contended that the objectives of the OFPP bill could be accomplished through executive action and, if that did not do the job, legislation could be considered again in the spring of 1974. The General Services Administration and the Small Business Administration were two notable departures from the general tone of executive branch testimony. They joined the Comptroller General in strongly supporting immediate legislation.

Witnesses from the private sector also supported immediate legislation, believing that the executive branch would not act decisively without a congressional mandate.

Following the hearings, the Senate Government Operations Ad Hoc Subcommittee on Federal Procurement passed a revised bill; the full Committee approved the bill and filed its report in February 1974 which stated:

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

On March 1, 1974, the Senate passed the bill unanimously and it was referred to the House Government Operations subcommittee which had held hearings on the companion House bill. The subcommittee approved a revised version of its bill (H.R. 15233) and the full Committee reported it out in June 1974. The revised House bill differs from the Senate version in that it specifically locates OFPP in OMB, with a new Associate Director in charge. Both bills require Presidential appointment and Senate confirmation of the OFPP head.

In support of the House bill, the Government Operations Committee issued its report under date of July 3, 1974. The report pointed out that the procurement policy position in OMB has remained vacant for almost a year and that, as a consequence of

further consultations, "OMB now favors creation of an OFPP by statute, along the lines provided in the bill." On July 15, 1974, the House approved this bill.

#### EXECUTIVE BRANCH ACTION

When the Commission released its report in December 1972, OMB had begun to establish a capability for overall procurement management. This capability was transferred to GSA in June 1973 following a Presidential executive order which assigned a series of management functions to GSA (see ch. 4). Under the order, OMB retained responsibilities for oversight and for resolving major policy matters.

Having transferred its staff to GSA, OMB has exercised a limited role in procurement policy over the past year. On June 17, 1974, a newly appointed official assumed the role of Deputy Associate<sup>1</sup> Director and Assistant to the Director of OMB for Procurement Policy. If OFPP legislation is enacted, OMB intends this official to head the new office.

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<sup>1</sup>Mr. Hugh E. Witt, formerly Principal Deputy Assistant Secretary of Defense for Installations and Logistics.

## CHAPTER 3

### STATUS OF CONGRESSIONAL LEGISLATION

The Commission found that the present statutory foundation for procurement policy "is a welter of disparate and confusing restrictions and of grants of limited authority to avoid the restrictions." It attributed the problem in part to weak policy leadership in the executive branch and in part to the fact that the Congress had never focused its attention on the overall procurement process..

The Commission, in pointing out that statutes provide the foundation for the whole framework of Government procurement, identified more than 4,000 procurement-related statutes. Statutes most often including procurement laws were those creating individual agencies, authorizing individual programs, appropriating funds for agency programs, and providing for methods of procurement and contract award procedures.

Two of these statutes, enacted by the Congress some 25 years ago, are fundamental to the procurement process in that they established methods of procurement and award procedures for Federal agencies. One, the Armed Services Procurement Act of 1947, is applicable to Department of Defense agencies, the National Aeronautics and Space Administration, and the Coast Guard. The other, the Federal Property and Administrative Services Act of 1949, is applicable to civilian agencies, including the Atomic Energy Commission. The Procurement Commission noted that, although both DOD and NASA are governed by the 1947 act, each relies on its separate organic act or on separate statutory provisions to issue separate and, often inconsistent, procurement regulations. AEC generally has followed the Federal Procurement Regulations (FPRs) issued by GSA under the 1949 act but, in a few cases, has decided to adopt more liberal regulations under the broader statutory authority of its organic act. The Tennessee Valley Authority has exercised its own organic act authority rather than follow the FPRs. The Commission found that many statutes, including the two basic procurement acts, were outmoded and that the whole body of procurement law included many inconsistent and redundant provisions.

Commission legislative recommendations call for modernizing and consolidating the two basic procurement statutes, enacting new legislation in several important areas, and repealing obsolete or redundant laws.

The Senate responded by establishing, in July 1973, the Ad Hoc Subcommittee on Federal Procurement under its Committee on Government Operations. The Subcommittee is coordinating with other committees and holding joint hearings in areas of mutual interest.

The House currently has not established such a focal point, legislative jurisdiction being split among several committees, such as Government Operations, Judiciary, Armed Services, and Small Business.

As of July 1, 1974, Members of Congress have introduced bills responding to 33 of the 64 Commission recommendations requiring or indicating preferences for legislative action. Table 1 summarizes the status of legislative action on these Commission-related bills.

Table 1

| <u>Bill number</u>                 | <u>Introduced</u> | <u>By</u>           | <u>Committee Referred to</u> | <u>Purpose</u>   | <u>Commission recommendation (note a)</u> | <u>Status</u>  |
|------------------------------------|-------------------|---------------------|------------------------------|--|---|--|
| S. 1-1-                            | Mar. 1973         | Chiles              | Senate Government Operations | To improve executive branch budgeting and programing and strengthen congressional control  | C-2,5                                     | Reported out of committee; partially incorporated in congressional budget reform act signed by the President July 1974 |
| H.P. 9059 superseded by H.R. 15233 | June 1973         | Holifield Horton    | House Government Operations  | To create OFPP   | A-1                                       | Hearings held 1973; reported out of committee June 1974; passed House July 1974  |
| H.R. 9060                          | June 1973         | Holifield Horton    | House Government Operations  | To clarify distinction between contract and grant-type assistance transactions   | F-1                                       | No action  |
| H.R. 9061                          | June 1973         | Holifield Horton    | House Judiciary              | To modernize and consolidate basic procurement statutes  | A-2-9<br>E-1,4<br>G-21-24 J-2             | No action  |
| H.R. 9062                          | June 1973         | Holifield Horton    | House Judiciary              | To establish integrated system for contract legal remedies   | G-2-12                                    | No action  |
| S. 2510                            | Oct. 1973         | Chiles Roth         | Senate Government Operations | To create OFPP   | A-1                                       | Passed Senate March 1974; sent to House  |
| S. 2785                            | Dec. 1973         | Percy               | Senate Government Operations | To authorize multiyear leasing of automated data processing equipment  | D-13                                      | hearings held; approved by subcommittee May 1974   |
| S. 3311                            | Apr. 1974         | Chiles Roth         | Senate Government Operations | To raise ceiling for use of simplified small purchase procedures from \$2,500 to \$10,000  | A-7                                       | Passed Senate June 1974; sent to House   |
| H.R. 14494                         | Apr. 1974         | Holifield Horton    | House Government Operations  | To raise ceiling for use of simplified small purchase procedures to \$10,000   | A-7                                       | Hearings held; reported out of committee June 1974; passed House July 1974   |
| S. 3514                            | May 1974          | Chiles Roth, et al. | Senate Government Operations | To clarify distinction between contract and grant-type assistance transactions; authorize feasibility study of policy guidance for Federal assistance programs | F-1,2                                     | Hearings in progress   |
| S. 3610                            | June 1974         | Hathaway            | Senate Judiciary             | To establish regional small claims boards  | G-4                                       | No action  |

See ch. 5 schedules for identity of these Commission recommendations.

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Senate bill 1414, the first one introduced, seeks to organize the Federal budget according to (1) primary national needs, (2) agencies and related programs to meet these needs, and (3) key program steps, taken from the framework described in the Commission report for acquisition of major systems<sup>1</sup>. The Senate Government Operations Committee favorably reported out this bill but initial Senate action was to incorporate only some provisions as amendments to the budget reform bill (H.R.7130), now signed into law.

As discussed in chapter 2, Senate bill 2510, the legislation to create OFPP, passed the Senate in March 1974. The House Government Operations Committee reported out its version in June 1974 and the bill passed the House in July.

House bill 9060, introduced last year to distinguish between contract and grant-type assistance transactions, has not been acted upon to date. Senate bill 3514, introduced in May 1974, combines the purpose of the House bill with another Commission recommendation for a feasibility study of developing policy guidance for Federal assistance programs. Hearings on this bill began in late June before the Senate Ad Hoc Subcommittee on Federal Procurement.

House bills 9061 and 9062, introduced last year to modernize and consolidate basic procurement statutes and to establish an integrated system of legal remedies, were referred to the House Judiciary Committee. No action on these bills has occurred or is contemplated during the remainder of this session. Bill 9061, the proposed new procurement statute, has suffered from a House committee jurisdictional conflict. The two existing basic procurement statutes are under the separate cognizance of the Armed Services and Government Operations Committees; but the Judiciary Committee has been assigned legislative responsibility. The Ad Hoc Subcommittee on Federal Procurement expects to introduce a Senate version of a new procurement statute this summer.

This Senate Ad Hoc Subcommittee has also taken action on bills to authorize multiyear leasing of automated data processing equipment and to raise the ceiling for simplified small purchase procedures from \$2,500 to \$10,000. The small purchase bill passed the Senate in June 1974 and a House version passed in July.

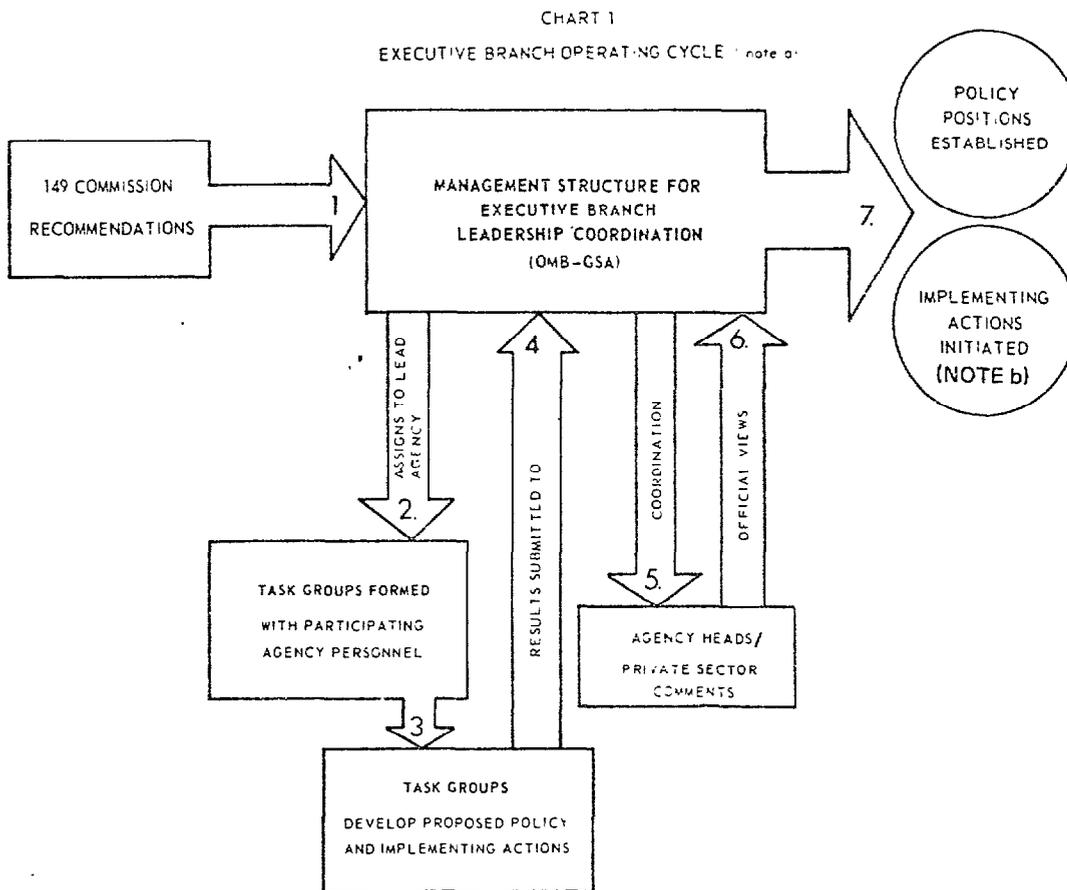
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<sup>1</sup>See Vol.2, pt. C, "Acquisition of Major Systems," particularly recommendations C-2 and C-5

CHAPTER 4

EXECUTIVE BRANCH PROGRAM

In a December 1972 letter to the executive agencies, the Director of OMB expressed the need for a coordinated executive branch response to the recommendations of the Commission on Government Procurement. In March 1973 OMB nominated the lead and participating agencies (interagency task groups) responsible for developing policy positions and follow-on implementing actions for the 149 recommendations. As finally constituted, there are 14 lead agencies, 74 task groups, and 330 participating agency assignments. The operating steps are shown in chart 1.



<sup>a</sup> Steps 4, 5, and 6 may be repeated if a task group's proposed position requires rework or if an implementing action is processed separately from a policy position.

<sup>b</sup> May be in the form of legislation, executive order, OMB circular, regulation, or agency directive and may require prior coordination with executive agencies and/or the private sector.

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As step 2 shows, the executive branch program uses the "lead agency" concept; that is, an individual agency leads the executive branch review and implementation of an assigned recommendation. The lead agencies have been directed to study the potential impact of their assigned Commission recommendations on all parties affected, in or out of Government. One or more participating agencies are invited, or volunteer, to work with the lead agencies. The lead agency and participating agency representatives constitute an "interagency task group". A lead agency representative serves as the interagency task group leader.

As step 4 shows, an interagency task group submits its proposed policy position and/or an implementing action to an executive branch management structure. Our second and third reports described the following interacting elements in this structure<sup>1</sup>.

--A GSA Office of Procurement Management

--An Interagency Procurement Policy Advisory Group

--An OMB Division of Procurement Policy

When a task group submits a proposed executive branch position to the management structure, the GSA Office of Procurement Management reviews it for adequacy and responsiveness. The submission may be returned to the task group for further work or forwarded for review by an Interagency Procurement Policy Advisory Group composed of top policy officials of the many procurement agencies<sup>2</sup>.

If this Advisory Group concurs, the task group position is coordinated by GSA, in step 5, with the heads of affected agencies and with the private sector in selected cases. In step 6, GSA evaluates the comments of agency heads and the private sector. If the comments indicate a consensus has been reached and the Inter-

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<sup>1</sup>In May 1973 the President signed Executive Order 11717 which established CSA as the principal instrument for developing better management systems under the broad policy oversight of OMB. The order transferred several management functions, including procurement, from OMB to GSA. An implementing memorandum transferred responsibility from OMB to GSA for directing and coordinating executive branch action on Commission recommendations. It also provided for an "Interagency Procurement Policy Advisory Group" to help GSA develop policies on and to implement Commission recommendations. The memorandum specified that OMB would retain a strong interest in resolving major policy matters.

<sup>2</sup>Actually, only the Planning Staff of this group meets regularly. Its membership is limited to the top policy officials of a few major agencies. These agencies are DOD, NASA, AEC, HEW, GSA, DOT and VA.

agency Procurement Policy Advisory Group concurs, a final policy position is established (step 7). If an agency dissents on a significant issue--or if a major policy matter is involved--the case is referred to OMB with GSA's recommended position and sometimes an implementing document.

When a final executive branch position has been reached, implementation may be initiated by drafting legislation, an executive order, a Federal Management Circular, or a regulation. In some cases proposed implementation has already been drafted by the task group; in others the task group is reconvened for this purpose or the regulatory bodies of DOD and GSA are asked to design the necessary implementation. In any event, the implementing document itself must be coordinated with the affected executive agencies and the private sector, dissenting views considered, and a final decision made to issue the document.

CHAPTER 5

EXECUTIVE BRANCH PROGRESS, STATUS, RESPONSIVENESS

Table 2 shows the extent to which executive branch positions have been established on Commission recommendations since our last report.

Table 2  
Positions Established

|   | <u>Number of recommendations</u> |                        |
|---|----------------------------------|------------------------|
|   | <u>At Jan. 1, 1974</u>           | <u>At July 1, 1974</u> |
| Positions in process at lead agency task group level (see table 3 for status)                   | 70                               | 26                     |
| Positions in process at executive branch review and coordination level (see table 4 for status) | 78                               | 83                     |
| Positions established (see table 5 for implementation status)                                   | <u>1</u>                         | <u>40</u>              |
|   | <u>149</u>                       | <u>149</u>             |

As shown, the majority of the interagency task group efforts are now completed and many of their proposed positions are in process at the executive branch review and coordination level. Executive branch positions have been established on 40 of the recommendations, or about 27 percent.

POSITIONS IN PROCESS AT  
LEAD AGENCY TASK GROUP LEVEL

Our last report showed that all task groups had scheduled submissions of their proposed positions by the end of June 1974. Table 3 shows the number still in process and their stages of development at July 1, 1974.

Table 3

RECOMMENDATION DOCUMENT AVAILABLE

Task Group Stage of Development  
July 1, 1974

|   | <u>Number of<br/>recommendations</u> |
|---|--------------------------------------|
| First draft not completed                     | 10                                   |
| First draft completed                         | 2                                    |
| Awaiting response from participating agencies | 7                                    |
| Processing submission or resubmission         | 3                                    |
| Preparing implementation                      | <u>4</u>                             |
|   | <u>26</u>                            |
| Targeted for submission by:                   |                                      |
| July 1974                                     | 9                                    |
| Aug. 1974                                     | 3                                    |
| Sept. 1974                                    | 5                                    |
| Nov. 1974                                     | 1                                    |
| Jan. 1975                                     | 2                                    |
| Not established                               | <u>6</u>                             |
|   | <u>26</u>                            |

About half these 26 remaining task group efforts have gone beyond the first draft stage; some are awaiting responses from participating agencies. Target dates given to us by the task groups indicate that more than half the submissions will be made to the CSA Office of Procurement Management during the next 3 months. First drafts have not been completed for 10 of the recommendations and target dates have not yet been established for 6 of them. The schedules at the end of this chapter (1) identify recommendations having task group efforts still in progress, (2) show new target dates or absence of target dates, (3) discuss problem areas warranting attention and (4) include GAO recommendations directed to OMB to

resolve these problems (see Commission recommendations A-22 through A-26, A-44, and A-46).

POSITIONS IN PROCESS AT  
EXECUTIVE BRANCH LEVEL

The executive branch level currently has proposed positions on 83 recommendations under review and coordination. Table 4 shows their stages of completion at July 1, 1974.

Table 4

Executive Branch Level Stage of Completion  
July 1, 1974

|   | <u>Number of<br/>recommendations</u> |
|---|--------------------------------------|
| Positions in GSA Office of Procurement<br>Management  | 2                                    |
| Positions out for official comment by:                |                                      |
| Agency heads  | 31                                   |
| Private sector  | 1                                    |
| Agency heads and private sector                       | 4                                    |
| Official comments on positions under<br>consideration | 20                                   |
| Positions referred to OMB for final<br>resolution     | <u>25</u>                            |
|   | <u>83</u>                            |

As indicated above, most interagency task groups' positions submitted to the executive branch level are either out for official agency and/or private sector comments or the comments are under consideration. When analysis of official agency comments indicate a consensus on the task group position, it is usually adopted as an executive branch position in a meeting between GSA and its Interagency Procurement Policy Advisory Group. Otherwise, if an agency dissents on a significant issue, or if a major policy matter is involved, the position is normally referred to OMB for final resolution. The schedules at the end of this chapter identify the Commission recommendations in each category shown in table 4; the proposed executive branch position on each; and, if referred to OMB, the reasons why. The schedules also include discussions of problem areas in three instances and recommended corrective measures addressed to OMB (see Commission recommendations A-18, A-43, and A-48).

## POSITIONS ESTABLISHED

Final executive branch positions have been established on 40 recommendations, of which the executive branch has adopted 32, modified 5, and rejected 3. The schedules at the end of this chapter identify these recommendations and if modified or rejected the reasons why.

### Implementation status

After executive branch positions are established, implementation actions are initiated. Frequently, this involves drafting legislation for submission to the Congress, a Federal Management Circular, or coordinated Federal and Armed Service Procurement Regulations. Table 5 shows the status at July 1, 1974, of implementation actions on the 37 recommendations adopted either as proposed by the Commission or as modified by the executive branch.

Table 5

Status of Implementation Actions  
July 1, 1974

|                           | <u>Number of<br/>recommendations</u> |
|---------------------------|--------------------------------------|
| Action not yet initiated  | 5                                    |
| Action initiated by the:  |                                      |
| Executive branch          | 25                                   |
| The Congress <sup>a</sup> | 4                                    |
| Implementation completed  | <u>3</u>                             |
|                           | <u>37</u>                            |

Schedules at the end of this chapter identify these recommendations and the type of implementation planned or initiated. They include GAO recommendations where implementation actions are believed to be inadequate to accomplish objectives of Commission recommendations.

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<sup>a</sup>See ch. 3 for total legislation initiated by the Congress (which includes Commission recommendations on which executive branch positions have not as yet been established).

## RESPONSIVENESS TO RECOMMENDATIONS

The executive branch approach is to consider Commission recommendations as a baseline for improving the Federal Government Procurement process. In individual cases, alternative solutions or modifications to the recommendations may be offered. The key to our evaluation was to determine whether a considered and positive response had been made to the problems identified in the Commission report, using the following criteria.

- Clarity of executive position in accepting, modifying, or rejecting Commission recommendations.
- Accuracy of decision-supporting material, including interpretations of recommendations and underlying data.
- Completeness and objectivity of discussion of issues.
- Convincingness of rationale and other material supporting executive branch positions.
- Adequacy of proposed implementation for accomplishing the objectives of Commission recommendations.

We evaluated the responsiveness of 79 executive branch positions and related implementation plans that had been established as of July 1, 1974, or that had progressed sufficiently to permit such evaluation.

On those positions not fully established, all steps through obtaining official agency coordination (see step 6 in chart 1) had usually been completed and the executive branch direction or consensus was clear. It is still possible, however, for the executive branch to change its indicated direction in these cases.

In making the evaluations, we found the GSA staff analyses of task group submissions and official agency comments to be of great assistance. The analyses were well prepared and indicative of the skill and knowledge of the analysts. They summarized clearly and concisely the (1) task group position and extent to which it changed the Commission's recommendation, (2) official views of the agencies solicited, (3) problems and issues involved in reaching an executive branch position or implementing it, and (4) significant matters to be resolved by the Interagency Procurement Policy Advisory Group or by OMB.

Table 6 summarizes the results of our evaluation of executive branch responsiveness to Commission recommendations.

Table 6

Extent of Responsiveness

|   | <u>Number of<br/>recommendations</u> |
|---|--------------------------------------|
| Positions considered responsive           | 47                                   |
| Positions considered partially responsive | 14                                   |
| Positions considered nonresponsive        | <u>18</u>                            |
|   | <u>79</u>                            |

Of the recommendations reviewed, we found 32 to be either partially responsive or nonresponsive. The reasons can be classified generally into three categories.

1. Insufficient rationale advanced for recommendation modification (A-36, C-3, C-4, C-6, D-7, E-1, E-2, E-3)<sup>1</sup>.
2. Unsupported statements that Commission recommendations were already being implemented (A-49, B-6, C-1 through C-12).
3. Proposed implementation inadequate to accomplish recommendation objective (A-11, A-27, A-38, B-1 through 4, E-4, F-2, G-14, G-16, H-3, J-6).

Two of the recommendations cited above (G-14 and G-16) involve the role of GAO in the bid protest area. During longstanding discussions on the implementation of these recommendations, GAO and the executive branch have not been able to reach complete agreement. Progress has been made and a current effort is underway to reconcile the remaining differences.

The schedules at the end of this chapter, showing policy positions and implementing actions on Commission recommendations, cover in detail the degree of executive branch responsiveness and the individual problem areas. They also include GAO recommendations directed to OMB to resolve cases of partial responsiveness and nonresponsiveness.

<sup>1</sup>C-3, C-4, and C-6 are also included under category 2.

## RECOMMENDATIONS TO THE DIRECTOR, OMB<sup>1</sup>

In addition to the recommendations previously referred to in this chapter for actions on individual Commission recommendations, our review disclosed some matters of a general nature which we believe warrant OMB's attention.

The implementation phase of the executive branch response is the most critical one, and problems have emerged on some of the recommendations, as identified in GAO comments in the schedules. We have noted also that an implementation "bulge" has impacted the FPR and ASPR Committees as a result of the increasing number of executive branch positions now emerging. These committees are not staffed to handle this additional workload.

We therefore recommend that the Director of OMB

--insure that appropriate staff support is provided to the implementing agencies and

--provide for evaluating the effectiveness of implementation actions to be issued on adopted Commission recommendations and for final OMB approval of each.

### Recommendations in prior report

Our report of January 31, 1974, observed that completing a program of this nature, size, and complexity is likely to require, at the present pace, at least several years of effort. We recommended that the executive branch develop an overall plan which would establish relative priorities and completion dates for final actions on Commission recommendations. From this plan we believed a legislative program could also be established and coordinated with interested congressional committees. Suggested criteria in that report for establishing relative priorities and agency comments on our prior recommendations follow.

1. We suggested that the highest priorities would be assigned to those recommendations which provide a framework for setting procurement policy and a Government-wide regulatory system. These are:

--Establishing a focal point in the executive branch for procurement policy leadership. The executive branch is now responding to legislation in this area (see ch.2).

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<sup>1</sup> GAO intends that the Office of Federal Procurement Policy carry out these recommendations as well as the ones referred to earlier in this chapter, when pending legislation to create this Office is enacted. This legislation has passed both the Senate and House.

--Modernizing and consolidating existing procurement statutes to provide a forward looking and common statutory base for procurement policy. GSA has referred to OMB a marked up version of House bill 9061 based on an analysis of executive agency comments. The Ad Hoc Subcommittee on Federal Procurement is currently preparing to introduce a Senate version.

--Establishing a single Government-wide coordinated system of procurement regulations. The interagency task group report on this recommendation has been remanded for further work. Both this recommendation and the one directed to achieving more timely private sector participation in the regulatory-making process could benefit at this time from a higher priority effort.

2. We suggested the next highest priorities be assigned to those recommendations meeting the criterion of greater significance, judged by such factors as the proportion of procurement dollars and number of transactions involved. Recommendations which obviously qualify under this criterion are those that would make fundamental changes in the manner of acquiring major systems, commercial products, and professional services.

-- Official agency comments have been obtained on the major system task group report but there are serious problems with the proposed executive branch implementation (see C-1 through C-12 in the schedules).

-- The interagency task group report on the principle commercial product recommendation (D-6) has just been submitted to GSA and must be processed through the various executive branch review and coordination stages.

--- Regulatory treatment of the implementing action on professional services has been recently initiated. It requires substantial development by the implementing agencies.

We believe that each of the above areas will have a significant impact on the Government's acquisition process, both in dollars and number of transactions, and that higher priority treatment would be beneficial.

3. We suggested a third criterion involving the requirement for legislation. We believe that the protracted time and level of consideration needed to develop a policy position, enact

legislation, and issue regulatory guidance dictate a higher level of effort and thus a priority assignment. At this time the combined efforts of the Congress and the executive branch have resulted in introducing bills in the House and/or Senate on about half the Commission recommendations involving legislation. Much remains to be done to complete the legislative process on many of these bills (see ch. 3). Placing relative priorities on executive branch responses to the legislation already introduced and on the remaining legislation to be introduced would help to accelerate the legislation program.

Comments on our prior recommendations were furnished by the GSA Deputy Administrator. He supported the objectives of the recommendations and said that by the end of June 1974 the executive branch will have had enough experience with the widely different implementing media for the various recommendations to be able to make sound projections of eventual completion dates for many of them. With respect to legislation, he supported the need for coordination with appropriate committees and he said dates could be projected for at least the submission of legislative proposals.

We therefore recommend that the Director of OMB insure (1) establishment of relative priorities and completion dates for final implementing actions on Commission recommendations and (2) development of a legislative program for coordination with appropriate committees of the Congress.

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible | Task group leader           | Policy Position In Process  |   |   |                                       |                                    |
|---|-------------|-----------------------------|-----------------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                             |                             | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       | Referred to OMB for final decision |
|   |             |                             |                             |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration |                                    |
| <b>PART I--GENERAL PROCUREMENT CONSIDERATIONS:</b>  |             |                             |                             |   |   |   |                                       |                                    |
| <b>Establishment of OJPP:</b>   |             |                             |                             |   |   |   |                                       |                                    |
| 1. Establish by law a central OJPP to provide executive direction and coordination and to be responsive to the Congress (p. 9)  | OMB         | Management and operations   | Robert H. Marik             | No Submission   |   |   |                                       |                                    |
| <b>Statutory framework:</b>   |             |                             |                             |   |   |   |                                       |                                    |
| 2. Consolidate existing legislation to provide a common statutory basis for establishing fundamental procurement policies and procedures applicable to all executive agencies (p. 15)   | DOD         | ASPR committee              | Capt. L. E. Hopkins, U.S.N. | Nov. 1973   |   |   |                                       | June 1974                          |
| 3. Authorize competitive negotiation as an acceptable alternative to formal advertising, but require documented reasons for its use in procurements over \$10,000 (p. 20)   |             |                             |                             | Nov. 1973   |   |   |                                       | June 1974                          |
| 4. Adjust statutory competitive negotiated procurement provisions to extend to all agencies, provide for competitive rather than maximum number of source solicitations, facilitate use of clarifying discussions in fixed-price competitions, and require inclusion of evaluation criteria in solicitations where basis of expected award will be other than lowest cost (p. 22) |             |                             |                             | Nov. 1973   |   |   |                                       | June 1974                          |
| 5. Require briefings when requested by unsuccessful proposer in negotiated procurement (p. 25)  |             |                             |                             | Nov. 1973   |   |   |                                       | June 1974                          |
| 6. Authorize sole source procurement when competitive procedures cannot be used, but require appropriate documentation for procurements over \$10,000 and agency approval at higher administrative level (p. 26)  |             |                             |                             | Nov. 1973   |   |   |                                       | June 1974                          |
| 7. Raise ceiling to \$10,000 for use of simplified purchase procedures; OJPP reexamine at least every 3 years (p. 26)   |             |                             |                             | Nov. 1973   |   |   |                                       |                                    |
| 8. Authorize use of multiyear contracts with annual appropriations for clearly specified, firm requirements (p. 27)   |             |                             |                             | Nov. 1973   |   |   |                                       | June 1974                          |
| 9. Repeal contractor's statutory sub-contract notification requirement (p. 28)  |             |                             |                             | Nov. 1973   |   |   |                                       | June 1974                          |
| <b>Regulatory framework:</b>  |             |                             |                             |   |   |   |                                       |                                    |
| 10. Establish a single Government-wide coordinated system of procurement regulations under control of OJPP (p. 31)  | DOD         | ASPR committee              | Capt. L. E. Hopkins, U.S.N. | (Aug. 1974)   |   |   |                                       |                                    |

<sup>a</sup> OAO prepared these short-form statements of the Commission's recommendations. They are not official substitutes for the full texts, which are contained on the indicated pages of the Commission's report.

| Position<br>Established<br>and<br>Commission<br>Program<br>(A) Adopted<br>(V) Modified<br>(R) Rejected | Implementation   |  | Actual or<br>(anticip-<br>ated)<br>Completion<br>Date | Executive<br>branch<br>responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|--|---|---|----------------------------------|
|  | Action Initiated |  |   |   |                                  |

|               |  |             |  |     |  |
|---------------|--|-------------|--|-----|--|
| (A) May 1974  | Legislation initiated by the Congress (H.R. 15233, S.2510) has been approved by the Senate and the House       |             |  | (R) | In lieu of a task group report, OMB submitted its position at congressional hearings. In 1973 OMB urged deferral of legislation pending results of executive branch action to strengthen procurement policy leadership, and in May 1974 it began working with the Congress in the final drafting of legislation to create OFPP. OMB has confirmed the following quote from the July 1974 House report 93-1176 on H.R. 15233 "OMB now favors creation of an OFPP by statute, along the lines provided in the bill." |
|               | Executive branch is responding to proposed legislation on A-2 through 9 initiated by the Congress (H.R. 9061). |             |  | (R) | GSA has used both the task group and the official agency comments on H.P. 9061 to modify and refine the language in this proposed bill to modernize and unify existing procurement statutes. The current GSA draft, which adopts Commission recommendations A-2 through A-9, has been forwarded together with the rationale for the proposed changes to OMB for final decision and eventual submission to the Congress.  |
|               | See A-2  |             |  | (R) | See A-2 comments   |
|               | See A-2  |             |  | (R) | See A-2 comments   |
|               | See A-2  |             |  | (R) | See A-2 comments   |
|               | See A-2  |             |  | (R) | See A-2 comments   |
|               | See A-2  |             |  | (R) | See A-2 comments   |
| (A) Jan. 1974 | Jan. 1974  | Legislation |  | (R) | The executive branch submitted legislation on this recommendation in April 1974. Bills were introduced by the Senate and the House in April 1974 (S.3311, H.R. 14494) and they passed both houses in July 1974.  |
|               | See A-2  |             |  | (R) | See A-2 comments   |
|               | See A-2  |             |  | (R) | See A-2 comments   |

Proposed executive branch position remanded to task group in June 1974 to develop an overall system for OFPP to coordinate, control, and standardize Government procurement regulations. A GSA staff analysis shows task group proposal was "too defensive of the present situation."

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible        | Task group leader          | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|--|-------------|------------------------------------|----------------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                                    |                            |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P, Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| GENERAL PROCUREMENT CONSIDERATIONS: (continued)  |             |                                    |                            |   |   |   |                                       |                                    |
| 11. Establish criteria for industry and public participation in procurement rulemaking (p. 38)   | DOD         | ASPR committee                     | Capt. L.E. Hopkins, U.S.N. | May 1974  |   | (A) (P) June 1974   |                                       |                                    |
| Procurement work force:  |             |                                    |                            |   |   |   |                                       |                                    |
| 12. Make procurement an operational priority with other managerial functions in all agencies (p. 43)   | NASA        | Office of procurement              | E. Golden                  | Nov. 1973   |   |   |                                       | Apr. 1974                          |
| 13. Strengthen role of contracting officer; allow business judgement latitude (p. 42)  | NASA        | Office of procurement              | E. Golden                  | Oct. 1973   |   |   |                                       | Apr. 1974                          |
| 14. Delegate contracting authority to qualified individuals; clarify understanding of authority (p. 44)                                      | NASA        | Office of procurement              | E. Golden                  | Oct. 1973   |   |   |                                       | Apr. 1974                          |
| 15. Establish through CIPP agency responsibilities and standards for procurement personnel improvement program and monitoring system (p. 46) | CSC         | Bureau of recruiting and examining | A.W. Howerton              | Oct. 1973   |   |   |                                       | June 1974                          |
| 16. Establish procurement recruitment and training program with special attention to college recruitment (p. 47)                             | CSC         | Bureau of recruiting and examining | A. W. Howerton             | Oct. 1973   |   |   |                                       | June 1974                          |

| Position established and Commission recommendation (A) Adopted (M) Modified (F) Rejected | Implementation   |      | Actual or (anticipated) completion date | Executive branch responsiveness (R) Responsive (P) Partially (N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|------|---|--|----------------------------------|
|  | Action Initiated |      |   |  |                                  |
|  | Date             | Type |   |  |                                  |

(P)

Task group submission proposed adoption of recommendation and implementation by OFPP. Pending creation of OFPP, the task group proposed:

1. Continuance of present procedures by Federal Procurement Regulation and Armed Services Procurement Regulation (FPR/ASPR) Committees
2. FPR/ASPR test and evaluation of various publication media to improve private sector participation in
  - a. proposed regulations,
  - b. procurement problems for which regulatory coverage is being considered
3. FPR/ASPR development of criteria and procedures when these test results have been evaluated.

In June 1974 GSA sent this proposed executive branch position out for agency and private sector comments. GAO believes that the publication of procurement problems to seek alternative solutions has considerable potential for improving timely private sector participation. The GSA staff analysis shows that the task group submission lacks an action plan or completion date for implementing this recommendation. This matter has not been identified as an issue to be resolved. Because early implementation is critical to a balanced public/private sector participation in the implementation phase of Commission recommendations, GAO recommends that OMB establish and monitor an action plan to develop and test new criteria for private sector participation.

Consensus exists among the agencies to adopt recommendations A-12, 13, and 14. GSA has forwarded to OMB a draft memorandum for agency heads requesting those who rely extensively on the contracting function to provide a report in 6 months of corrective measures planned or taken on these three recommendations. One agency warned that this implementation approach will produce only negative results because agencies are being asked to self-appraise and report their own shortcomings.

See A-12 comments

See A-12 comments

(R)

The executive branch concluded that the responsibility for developing personnel management programs was an agency role that needed more priority rather than one that should be assigned to OFPP. It reworded this recommendation to have a high-level advisory board and program staff established in OFPP to develop and manage an interagency career program for procurement personnel. In June 1974 GSA forwarded the proposed executive branch position and implementation to OMB for final decision.

(R)

The executive branch reworded recommendations A-16, 17, 19, and 20 without altering their purposes. It did, however, change the manner of implementation. The key change was to require that agencies fulfill existing personnel management responsibilities instead of instituting new requirements. To obtain the necessary priority attention, the recommendations are to be transcribed to executive agencies with a special message signed by the President, together with an implementing OMB bulletin. In June 1974 GSA forwarded the proposed executive branch position and implementation to OMB for final decision.

**BEST DOCUMENT AVAILABLE**

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible        | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|---|-------------|------------------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                                    |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| PART A--GENERAL PROCUREMENT CONSIDERATIONS: (continued)   |             |                                    |                   |   |   |   |                                       |                                    |
| 17. Provide better balance between employee tenure and promotion rights and agency needs (p. 48)  | CSC         | Bureau of recruiting and examining | A. W. Howerton    | Oct. 1973   |   |   |                                       | June 1974                          |
| 18. Reconcile grade levels to responsibilities and professionalism required (p. 49)   | CSC         | Bureau of Policies and standards   | W. R. Collins     | Dec. 1973   |   |   | X                                     |                                    |
| 19. Establish rotation program (p. 49)  | CSC         | Bureau of recruiting and examining | A. W. Howerton    | Oct. 1973   |   |   |                                       | June 1974                          |
| 20. Structure longer range personnel programs (p. 49)   | CSC         | Bureau of recruiting and examining | A. W. Howerton    | Oct. 1973   |   |   |                                       | June 1974                          |
| 21. Establish a Federal procurement research and training institute (p. 51)   | CSC         | Bureau of training                 | J. J. Bean        | (July 1974)   |   |   |                                       |                                    |
| Government make or by decision:   |             |                                    |                   |   |   |   |                                       |                                    |
| 22. Establish through legislation a national policy of reliance on private enterprise for needed goods and services (with dissent) (p. 57)  | OMB         | Organization and special projects  | J. Currie         | Not established   |   |   |                                       |                                    |
| 23. Increase \$50,000 threshold for the cost comparison requirement to \$100,000 (with dissent) (p. 61)   |             |                                    |                   | Not established   |   |   |                                       |                                    |
| 24. Establish through OPFP criteria for making cost comparisons on fully allocated, rather than incremental, cost basis when work is significant part of workload and Government investment is not substantial (with dissent) (p. 61) |             |                                    |                   | Not established   |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive |
|--|------------------|---|---|
|  | Action Initiated | Actual or (anticipated) completion date |   |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        | Date             | Type                                    |   |

(R) See A-16 Comments

The executive branch has tentatively accepted recommendation; GSA is exploring implementation approach with OMB, based on a discussion paper dated July 9, 1974. Present implementation approach is not acceptable to several agencies, including the Civil Service Commission (CSC) which is currently concerned with the grade creep problem in Government civil service generally. CSC said "We cannot agree \*\*\* grades \*\*\* too low, nor \*\*\* that present grades have resulted in any specific personnel management problems such as recruiting difficulties." Strong CSC dissent brings into question whether an executive branch position has yet been evolved. To attract and retain good people in the procurement field, GAO recommends that OMB establish a high priority executive branch effort for an acceptable implementation approach, including consideration of logical career progression, training, and job prerequisites necessary for procurement personnel to assume increased responsibilities.

(R) See A-16 comments

(R) See A-16 comments

Task group submission that was forwarded to GSA in Sept. 1973 proposed adopting the recommendation to establish a federal procurement institute. On advice of its Interagency Procurement Policy Advisory Group, GSA returned the case to the task group to develop a more detailed multiphased plan for establishing and managing the institute.

First draft is under development but no target completion date has been established for recommendations A-22 through A-26. The task group leader told us that additional technical skills are needed to address the fully allocated cost proposal of the Commission. He said a major effort continues for an innovative approach to implement make-or-buy cost analyses objectives. This is the same status reported 6 months ago. In view of the task group's inability to make substantive progress over the past 15 months and to establish a target completion date, GAO recommends that OMB (1) reevaluate the task group effort and membership, (2) insure that a positive program is being actively pursued, and (3) reach agreement with the task group on a target completion date.

See A-22 comments

See A-22 comments

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible       | Task group leader        | Policy Position In Process  |   |   |                                       |                                    |
|--|-------------|-----------------------------------|--------------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                                   |                          | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       |                                    |
|  |             |                                   |                          |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| PART A--GENERAL PROCUREMENT CONSIDERATIONS: (continued)  |             |                                   |                          |   |   |   |                                       |                                    |
| 25. Increase thresholds for new starts from \$25,000 to capital investment or \$50,000 additional annual operating cost to \$200,000 (with dissent) (p. 62)  | OMB         | Organization and special projects | J. Currie                | Not established   |   |   |                                       |                                    |
| 26. Increase cost differential to justify new in-house starts from 10-percent minimum to 25-percent maximum (with dissent) (p. 62)   |             |                                   |                          | Not established   |   |   |                                       |                                    |
| Timely financing of procurement.   |             |                                   |                          |   |   |   |                                       |                                    |
| 27. Initiate measures to eliminate executive and congressional delays in submitting and considering procurement fund requests and to make funds appropriated available promptly to procuring activities (with dissent) (p. 67) | OMB         | Budget review                     | George H. Strauss        | Dec. 1973   |   |   |                                       |                                    |
| Selected areas in acquisition process:   |             |                                   |                          |   |   |   |                                       |                                    |
| 28. Establish Government-wide principles on cost allowability (p. 76)  | DOD         | OASD (I&L)                        | Charles E. Beardorff     | May 1974  |   | (A) June 1974   |                                       |                                    |
| 29. Make single final overhead settlement signing on all Federal contracts at a given contractor location (p. 77)  | DOD         | OASD (I&L)                        | Capt. A. Kallios, U.S.N. | (Nov. 1974)   |   |   |                                       |                                    |
| 30. Establish uniform guidelines for equitable profit objectives in negotiated contracts, emphasizing consideration of capital, risk, complexity, management performance (p. 77)   | GSA         | Office of financial management    | J. J. Lordan             | (July 1974)   |   |   |                                       |                                    |
| 31. Evaluate procurement negotiation procedures to compare completed contract results with original profit objectives (p. 78)  |             |                                   |                          | (July 1974)   |   |   |                                       |                                    |
| 32. Establish a contract payment office for all Federal agencies in each of 10 Federal regional areas (p. 79)  | DOD         | OASD(C)                           | Edwin F. Smith           | Apr. 1974   |   | (P) May 1974  |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|---|---|----------------------------------|
|  | Action Initiated | Actual or (anticipated) completion date |   |                                  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        | Date             | Type                                    |   |                                  |

See A-22 comments

See A-22 comments

|               |  |     |  |
|---------------|--|-----|--|
| (A) Mar. 1974 | Legislation initiated by the congress, H. R. 7130, S. 1541 | (P) | OMB considers current congressional budget reform bills H.R. 7130 and S. 1541 adequate response to the recommendation. Since the Commission recommendation was also directed to the executive branch, GAO recommends that OMB determine whether additional actions need to be taken to make appropriated funds promptly available to procuring activities. In this connection, the task group report does not contain evidence that an effort was made to analyze executive branch delays in releasing funds. A GSA staff analysis raised this issue, but OMB established a final position on the task group's report without modifying it or following normal practice of obtaining official agency vie-points. |
|---------------|--|-----|--|

|               |  |     |   |
|---------------|--|-----|---|
| (A) June 1974 |  | (R) | <p>The executive branch accepted this recommendation for Government-wide cost principles but recognized that a specific set of principles may be required for different organizational categories, e.g., commercial, universities, and Government-owned contractor-operated facilities. The task group split over implementation: one group favored using existing organizations; the other favored creating an interagency committee on cost principles working under direction of OFFP. GSA requested official agency views on implementation alternatives and suggested that responsibility be focused in OFFP.</p> <p>A November 1973 task group submission proposed adopting this recommendation for a single overhead settlement for contractors dealing with more than one Federal agency. The task group concluded that implementation will hinge upon successful implementation of A-28 and A-10 dealing with uniform cost principles and a Government-wide regulatory system. On advice of its Interagency Procurement Policy Advisory Group, GSA requested the task group to proceed with development of the proposed implementation material.</p> |
|---------------|--|-----|---|

After extensive review, the task group proposed that the executive branch reject this recommendation. Difficulty in separating disbursement from other related accounting functions and deterioration of personalized and timely service to both contractor and Government were two reasons given. The executive branch is obtaining private sector comments through the Federal Register before taking a final position. Reaction from contractors should be helpful in determining whether they believe there are any problems with the large number of existing payment offices.

BEST DOCUMENT AVAILABLE

POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible          | Task group leader        | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|--|-------------|--------------------------------------|--------------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                                      |                          |   | Executive Branch Level                  |   |                                       |                                    |
|  |             |                                      |                          |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMS for final decision |
| <b>GENERAL PROCUREMENT CONSIDERATIONS (continued)</b>  |             |                                      |                          |   |   |   |                                       |                                    |
| 33. Establish criteria for estimating costs and benefits of data requirements, make suitable after-the-fact studies to eliminate unnecessary requirements (p. 81)  | DOD         | Navy office of comptroller           | J. Perry                 | (A-g. 1974)   |   |   |                                       |                                    |
| 34. Establish Government-wide criteria for management systems prescribed for contractor use, including standards for mission-essential data requirements (p. 82)   | DOD         | OASD(O)                              | Paul E. Wight            | (A-g. 1974)   |   |   |                                       |                                    |
| 35. Stimulate contractor acquisition of production facilities through increased profit and guaranteed amortization of facilities specially acquired for Government programs (p. 86)                          | DOD         | OASD (I&L)                           | Col. E. H. Conner        | (Sept. 1974)  |   |   |                                       |                                    |
| 36. Authorize by law negotiated sale to using contractor of surplus heavy machinery tools and production equipment not needed on full-time basis--with future availability to Government when needed (p. 87) | DOD         | OASD (I&L)                           | Charles P. Downer        | Feb. 1974   |   |   |                                       |                                    |
| 37. Establish Government-wide policy for review/approval of cost-type prime contractor procurement systems and transactions (p. 93)  | DOD         | DCAS                                 | R. W. Dallas             | Nov. 1973   |   |   |                                       |                                    |
| <b>Procurement of professional services:</b>   |             |                                      |                          |   |   |   |                                       |                                    |
| 38. Continue to negotiate procurement professional services with selection based primarily on technical competence and merits of proposed end product rather than fee (p. 98)                                | HEW         | Office of asst. secretary for health | A. Schwartz              | Feb. 1974   |   |   |                                       |                                    |
| <b>Field contract support:</b>   |             |                                      |                          |   |   |   |                                       |                                    |
| 39. Establish program to promote inter-agency use of field contract administration, audit, and other support services (p. 103)   | DOD         | OASD (I&L)                           | Capt. A. Kollins, U.S.N. | Apr. 1974   |   | (A) June 1974   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |      | Actual or (anticipated) completion date | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|---|------------------|------|---|---|----------------------------------|
|   | Action Initiated | Type |   |   |                                  |

In January 1974 GSA asked the task group to develop implementing material in support of its acceptance of this recommendation and to broaden its coverage to include management data.

|               |           |  |             |  |   |
|---------------|-----------|--|-------------|--|---|
| (M) Mar. 1974 |           | Confined to legislation already pending in Congress, H.R. 611, S. 2152 | (P)         | Executive branch confined implementation to DOD, NASA and Coast Guard per legislation introduced several years ago on the basis that other agencies are not experiencing a disposal problem and restrictive provisions in the bills on new acquisitions would not be applicable to all agencies. As the interagency task group report does not contain evidence of conditions found at other agencies and official agency views were bypassed in this case, GAO recommends that OMB confirm whether other agencies have or can expect a similar problem. Government-wide legislation may be desirable in any event in view of the proposed unification of agency procurement statutes. |   |
| (M) Feb. 1974 | Mar. 1974 | Regulation (FPR)   | (Feb. 1975) | (R)  | The executive branch broadened the recommendation beyond cost-type contracts to include noncompetitive contracts when total amount is expected to exceed \$5,000,000. ASPR is not being amended because DOD already has a program.  |
| (A) June 1974 | June 1974 | Regulation (FPR/ASPR)  | (Feb. 1975) | (P)  | The proposed executive branch position adopts the recommendation, but GAO and at least two operating agencies believe the proposed circular for implementation is only partially responsive. Sufficiency of coverage in the implementation document is also questioned in the GSA staff analysis. Areas lacking sufficient coverage include, (1) drafting of solicitations, (2) screening of the base for solicitations, (3) manner of proposal evaluation, and (4) use of results. One agency said a "broad brush treatment *** does not take aim on the specific problems discussed by the COGP [Commission on Government Procurement]." A decision was made late in June to suspend the circular approach and request the FPR/ASPR Committees to amend their coverage, considering as well the areas not covered in the task group's proposed circular. In view of the many problems that have arisen in the procurement of professional services, GAO recommends that OMB oversee the development of a more complete and comprehensive regulatory implementation. |
|               |           |  |             | (R)  | The task group proposed adopting the recommendation to give GSA responsibility to promote and coordinate interagency use of contract administration and audit services. In June 1974 GSA sent out the task group report with a proposed Federal Management Circular for official agency coordination.   |

REPLACEMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible                   | Task group leader        | Policy Position In Process  |   |   |                                       |                                    |
|--|-------------|---|--------------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |   |                          | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       |                                    |
|  |             |   |                          |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| <b>PART A--GENERAL PROCUREMENT CONSIDERATIONS- (continued)</b>   |             |   |                          |   |   |   |                                       |                                    |
| 0. Transfer to Defense Contract Administration Services military service cognizance of plants not exempted by Secretary of Defense (p. 104)                                  | DOD         | OASD (IAI)                                    | Capt. A. Kollios, U.S.N. | Feb. 1974   |   | (P) Feb. 1974<br>(A) May 1974                                       |                                       |                                    |
| 1. Separate Defense Contract Administration Services from Defense Supply Agency (p. 105)   |             |   |                          | (Sept. 1974)  |   |   |                                       |                                    |
| 2. Consolidate Defense Contract Administration Services and Defense Contract Audit Agency into one Agency reporting directly to Secretary of Defense (with dissent) (p. 107) |             |   |                          | (Sept. 1974)  |   |   |                                       |                                    |
| National socioeconomic policies implemented through procurement process:   |             |   |                          |   |   |   |                                       |                                    |
| 43. Establish program for legislative and executive reexamination of socioeconomic objectives implemented through procurement process (p. 118)                               | Labor       | Office of solicitor                           | H. Rose                  | Nov. 1973   |   |   | X                                     |                                    |
| 44. Raise threshold to \$10,000 for applying socioeconomic programs to procurement process (p. 120)  | Labor       | Employment standards administration           | F. Glasgow               | (Jan. 1975)   |   |   |                                       |                                    |
| 45. Find means to make more visible the socioeconomic costs incurred in procurement process (p. 122)   | Labor       | Asst. Sec. for policy evaluation and research | L. Gold                  | Oct. 1973   |   |   | X                                     |                                    |
| 46. Revise policies to provide for uniform debarment treatment and broader sanctions for comparable violations of socioeconomic requirements (p. 123)                        | Labor       | Employment standards administration           | F. Glasgow               | (Jan. 1975)   |   |   |                                       |                                    |

RECOMMENDATIONS AVAILABLE

| Position established and Commission recommendation | Implementation   |      | Actual or (anticipated) completion + date | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|------|---|---|----------------------------------|
|  | Action Initiated |      |   |   |                                  |
|  | Date             | Type |   |   |                                  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        |                  |      |   |   |                                  |

The task group proposed rejecting this recommendation and substituting an alternative essentially reflecting the program already in existence. GSA asked for private sector comments but practically no response was received. In May 1974 GSA asked DOD for its official agency views.

Agencies agree on substance of recommendation; GSA suggested that an independent group be assigned to develop a working plan for implementing this recommendation. However, this recommendation and A-45 are being referred to OMB "until OMB determines a course of action." Although the basis for referring A-45 to OMB seems clear, GAO believes that deferring a decision on A-45 is questionable in view of the executive branch consensus for taking action.

The task group led by the Department of Labor has initiated a survey to (1) evaluate the impact of this recommendation on the Service Contract, Davis-Bacon and related acts and (2) support legislative changes to these acts in the Congress. DOD, one of the agencies subject to the survey, will not participate unless Labor agrees to pay the cost of the survey, which DOD estimates would exceed \$100,000. As the matter has reached an impasse, GAO recommends that OMB resolve the conflict so that the task group may conclude its evaluation--preferably sooner than the current target date of January 1975.

Official agency views questioned the (1) approach to and feasibility of measuring socioeconomic costs, and (2) meaningfulness of the results. These views also indicated a need to measure benefits although they are often intangible. This recommendation is being referred to OMB for final decision. (See A-45 comments)

The task group reports that its submission is being prepared but that the implementing action (legislation) is closely related to A-44. (See A-44 comments)

NOT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible      | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
|---|-------------|----------------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                                  |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       |                                    |
|   |             |                                  |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| PART A--GENERAL PROCUREMENT CONSIDERATIONS: (continued)   |             |                                  |                   |   |   |   |                                       |                                    |
| Procurement from small business:  | SRA         | Office of procurement assistance | Ben S. Read       |   |   |   |                                       |                                    |
| 47. Establish new standards for measuring agency and prime contractor performance in using small business (p. 128)                  |             |                                  |                   | Sept. 1973  |   |   | X                                     |                                    |
| 48. Test feasibility of mandatory small business subcontracting (p. 130)  |             |                                  |                   | Dec. 1973   |   |   |                                       | June 1974                          |
| 49. Initiate executive branch procurement review, with guidance from SEA and CFFP, to enhance small business participation (p. 133) |             |                                  |                   | Dec. 1973   |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation | Implementation   |      | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|------|---|----------------------------------|
|  | Action Initiated |      |   |                                  |
|  | Date             | Type |   |                                  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        |                  |      |   |                                  |

|               |                    |  |     |   |
|---------------|--------------------|--|-----|---|
|               |                    |  |     | <p>The task group, led by the Small Business Administration (SBA), was unable to recommend any new standards and opposed implementation. In May 1974 GSA transmitted several suggested techniques to SBA and requested reevaluation. The executive branch has tentatively accepted the Commission recommendation but is withholding final decision until a response is received from the task group which was reconvened by SBA for this purpose.</p>   |
|               |                    |  | (R) | <p>SBA wants the test to include the early research and development technical phase; DOD opposed this idea and it is being dropped from the test program to be initiated by an OMB directive. As production sources are often established during the early technical phase of procurement, GAO recommends that OMB further explore the SEA idea as part of the test program.</p>  |
| (A) Apr. 1974 | None, see comments |  | (N) | <p>The executive branch accepted the recommendation but did not provide an action to accomplish it. The task group indicated acceptance of recommendation when, in fact, it disagreed and contends existing program is adequate. GAO recommends that OMB resolve the following issue raised in GSA staff analysis.</p> <p>"The critical issue remains: Should a new review of programs be instituted in an effort to provide improvement and to gather the various modes of administration among Federal agencies into more common practices and goals as they relate to small business. The proposed letter to Federal agencies seems to do little but echo the status quo, with limited potential for making small business programs in the Federal Government more effective."</p> <p>The executive branch did not issue the letter referred to above. It established the position that a program already exists to accomplish the recommendation.</p> |

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible    | Task group leader    | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|--|-------------|--------------------------------|----------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                                |                      |   | Executive Branch Level                  |   |                                       |                                    |
|  |             |                                |                      |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| <b>PART B--ACQUISITION OF RESEARCH AND DEVELOPMENT</b>   |             |                                |                      |   |   |   |                                       |                                    |
| Federal R&D objectives and organization:   |             |                                |                      |   |   |   |                                       |                                    |
| 1. Conduct R&D procurement to be responsive primarily to agency mission needs and then, when possible, to needs of other Federal activities (p. 6)   | NSF         | Office of deputy director      | R. L. Bisplinghoff   | Dec. 1973   |   |   |                                       | May 1974                           |
| 2. Allow discretionary use of Government laboratory R&D funds in limited amount for any national research and development objective (p. 6)   | NSF         | Office of deputy director      | R. L. Bisplinghoff   | Dec. 1973   |   |   |                                       | May 1974                           |
| 3. Encourage agencies with R&D missions to generate associated long-range basic research and advanced studies programs (p. 7)  |             |                                |                      | Dec. 1973   |   |   |                                       | May 1974                           |
| Performance of R&D:  |             |                                |                      |   |   |   |                                       |                                    |
| 4. Strengthen in-house procurement-related technical and management capabilities to support technology advancement in private sector (p. 14)   |             |                                |                      | Dec. 1973   |   |   |                                       | May 1974                           |
| 5. Continue optional use of federally funded R&D centers to satisfy needs outside organizational resources; reassess need periodically and give special attention to termination provisions when need ceases (p. 16)   | DOD         | AF deputy chief of staff (R&D) | Col. W. E. Jackonis  | Oct. 1973   |   |   | X                                     |                                    |
| 6. Monitor NSF and Bureau of Standards experimental R&D incentives program; translate results into practical application (p. 21)   | OMB         | Energy & Science               | H. Loveth            | No Submission   |   |   |                                       |                                    |
| R&D procurement policy:  |             |                                |                      |   |   |   |                                       |                                    |
| 7. Eliminate restraints on submission of unsolicited proposals by private sector in R&D procurements to encourage flow of creative and innovative ideas (p. 25)  | NASA        | Office of university affairs   | E. M. James          | Nov. 1973   |   |   |                                       |                                    |
| 8. Eliminate R&D cost sharing except when performers clearly benefit (p. 26)   | NASA        | Office of university affairs   | E. M. James          | Mar. 1974   |   | (A) Apr. 1974   |                                       |                                    |
| 9. Eliminate recovery of R&D costs from Government contractors and grantees except those related to unusual and expensive programs and approved by agency head (p. 28)   | DOT         | I&L                            | D. I. Siegel         | Not established   |   |   |                                       |                                    |
| 10. Establish a policy recognizing that independent R&D and bid proposal costs should receive uniform Government-wide treatment as necessary allowable overhead costs of doing business with exceptions handled by OFPP (with dissent against a 50-percent rule) (p. 31) | DOD         | OASD (I&L)                     | Charles E. Deardorff | (July 1974)   |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |                       | Actual or (anticipated) completion date | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations   |
|---|------------------|-----------------------|---|---|--|
|   | Action Initiated | Type                  |   |   |  |
|   |                  |                       |   | (P)   | GSA recommended OMB adopt B1, 2, 3, and 4 and assign implementation responsibility to the National Science Foundation (NSF) or the Federal Council for Science and Technology (FCST). The interagency task group did not provide means for or recommend implementing these recommendations and it was not requested to do so. The record shows uncertainty as to whether implementation is actually intended by the executive branch and, if so, by what means. GAO recommends that OMB resolve this issue before assigning implementation responsibility.   |
|   |                  |                       |   | (P)   | See B-1 comments   |
|   |                  |                       |   | (P)   | See B-1 comments   |
|   |                  |                       |   | (P)   | See B-1 comments   |
|   |                  |                       |   | (R)   | The executive branch is adopting the recommendation subject to tightening of a proposed implementing document and developing a definition for a federally funded research and development center. ISA intends to draft an OMB memorandum for agency needs and refer it to OMB for final decision.  |
| (A) Mar. 1974   |                  |                       |   | (P)   | The executive branch guidelines for developing a task group report with a proposed position and an implementation action were not followed in this instance. OMB letter indicates acceptance of recommendation; implementation now part of National Science Foundation and National Bureau of Standards budget review and apportionment processes. No guidelines or assurance are provided as to how implementation will be accomplished. GAO recommends that OMB develop and issue guidelines so that the programming and budget officials in OMB and the two operating agencies will understand what is expected to accomplish the desired implementation, the effectiveness of which can be determined at a later date.   |
| (A) Apr. 1974   | May 1974         | Regulation (FPR/ASPR) | (Dec. 1974)                             | (R)   | The executive branch has established a position to accept this recommendation with implementation to take place through amending the Federal Procurement and Armed Services Procurement Regulations.<br><br>Commission recommended eliminating all cost sharing (except when performers would clearly benefit from the project). The task group proposed that the executive branch eliminate required cost sharing but permit voluntary cost sharing to continue and be considered as a factor in cost competitions. NSF dissented, believing that agencies should not be required to require cost sharing in specific instances, such as when supporting (rather than procuring) research. Official agency comments being received on the task group submission indicate a trend to accept the NSF dissent. Once an executive branch position has been established, contemplated implementation actions are legislation and issuance of a Federal Management Circular.<br><br>The task group advised GAO it is awaiting the report of the Council on International Economic Policy on this and closely related subjects. This is the same status reported 6 months ago. |

Best Document Available

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |  |                                       |                                    |
|---|-------------|-----------------------------|-------------------|---|---|--|---------------------------------------|------------------------------------|
|   |             |                             |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comment or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| PART B--ACQUISITION OF RESEARCH AND DEVELOPMENT (R&D): (continued)  |             |                             |                   |   |   |  |                                       |                                    |
| 11. Encourage standardized use of grant and contract-type master agreements with respect to R&D (p. 46)   | AEC         | Division of                 | C. Armstrong      | Jan. 1974   |   |  |                                       |                                    |
| 12. Require senior procurement official to justify degree of restraint placed in contractual hardware exclusion provision when potential organizational conflict of interest exists between Government and R&D contractor (p. 47) | AEC         | Division of                 | D. Shiller        | Nov. 1973   |   |  |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |      | Actual or (anticipated) completion date | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive |
|---|------------------|------|---|---|
|   | Action Initiated | Type |   |   |

GAO Comments and Recommendations

|               |           |                       |             |     |
|---------------|-----------|-----------------------|-------------|-----|
| (A) May 1974  | June 1974 | Regulation (FPR/ASFR) | (Dec. 1974) | (R) |
| (M) Apr. 1974 | May 1974  | Regulation (FPR/ASPR) | (Dec. 1974) | (R) |

An executive branch position has been established adopting the recommendation to make greater use of master agreements for contracts and grants. A GSA analysis of agency official views identified questions on implementation. GSA is forwarding these questions to FPR and ASFR committees with its request to develop necessary regulatory coverage.

Based on the task group's proposal, the executive branch adopted the recommendation in modified form. The modification provides for senior level review in all instances of potential unfair competitive advantage or bias as opposed to requiring such reviews only when hardware exclusion clause is contemplated. GAO suggests that implementation development be coordinated with the executive branch response to recommendations C-4, 5 and 6 which provide for contractor design continuity from concept through hardware testing and thus tend to avoid organizational conflicts of interest leading to unfair competitive advantage.

BEST DOCUMENT AVAILABLE

1. POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a) | Lead agency | Agency activity responsible | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position in Process              |   |                        |                                       |
|-------------------------|-------------|-----------------------------|-------------------|---|---|---|------------------------|---------------------------------------|
|                         |             |                             |                   |   | In USA Office of Procurement Management | Out for official (A) & my comments or (F) Private sector comments | Executive Branch Level | Official comments under consideration |

1.1.1.1. ACQUISITION OF MAJOR SYSTEMS:

Needs and goals for new major acquisition programs:

- 1. Start new system acquisition programs with needs and goals (1) stated by agency head independently of any system project, (2) reconciled with overall agency capabilities and resources, and (3) specified in terms of anticipated mission cost, projected capability level to be achieved, time period for achievement, and assignment of agency component responsibility (etc. etc.)

DOD

DDR&E

Lt. Gen.  
R. E. Coffin

Jan. 1974

X

BEST DOCUMENT AVAILABLE

| Commission Recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|---|---|----------------------------------|
|  | Action Initiated | Actual or (anticipated) completion date |   |                                  |
|  | Date             | Type                                    |   |                                  |

Overall Responsiveness to Part C Recommendations

The Commission took an integrated view of the total systems acquisition process and linked its 12 recommendations to a basic framework applicable to acquisition programs of all agencies. The 12 recommendations were designed to work together to control the whole, rather than individual parts of, the acquisition process.

An Interagency Steering Group, established to develop an executive branch response, recommended that the executive branch generally concur with, and each agency adopt, the policy intent of these 12 recommendations, subject to certain reservations and in a manner appropriate to the agency's mission and environment. The Group concluded that "the collective policy framework postulated by the recommendations represents a valuable reference against which all agencies, each in their own context, can continuously examine their major system acquisition activity."

The Interagency Steering Group added the caveat, however, that "the existing policies of the agencies represented on the Group (DOD, NASA, AEC, DOE, NSF) are believed generally to reflect the Commission's intentions." Despite that claim, except in one area (DOD test and evaluation), the Group offered no evidence that existing policies or programs incorporated the intent of Commission recommendations.

In March 1974 GSA transmitted the Interagency Steering Group report to executive agencies for their official views. The GSA analysis accompanying the Group's report said "we are unable to judge how fully the COOP [Commission on Government Procurement] recommendations would be implemented after giving effect to [the Group's] pivotal issues \* \* \* and reservations."

Industry association views solicited by GSA in May had not been received when GAO concluded its review early in July. Official comments of agencies having large system acquisitions basically endorsed or repeated the position of their Interagency Steering Group members. In contrast, GSA's official comments said that it

"\* \* \* does not concur in the proposed executive branch positions set forth by the task group \* \* \*. The divergent views of the task group members have resulted in modification, qualification, or restriction of a majority of the recommendations \* \* \* the task group proposal simply pay lip service to the recommendations \* \* \* it appears to us that at no time is any formal implementation contemplated \* \* \*. This [task group] statement mirrors the superficial extent to which the task group would have the recommendations implemented, and we consider this unacceptable as an executive branch position."

GAO believes that the GSA analysis depicts accurately the general problem with the Interagency Steering Group's proposed executive branch position. We would add that the greater part of the report prepared by the lead agency (DOD) represents an excellent treatment of the Commission recommendations and is in many respects superior to most task group efforts, were it not for the negating reservations, restrictions, and qualifications.

Another problem is that the report sections prepared by the participating agencies (NASA, AEC, DOE, NSF) assume either that the Commission recommendations apply solely to the DOD environment or that the policies of these other agencies already incorporate the "spirit" of the recommendations. The civilian agency comments do not recognize that the basic steps for acquisition embodied in the recommendations--such as those for establishing needs and goals for new programs and for creating and exploring alternatives in direct competition--apply (with some minor word changes) to any combination of public and private sector relationships used to carry out an agency's mission.

One civilian agency commented that its "directives as currently established already incorporate the spirit of these Recommendations." It did not cite those directives or any programs for which it had implemented the policy intent of the recommendations.

In view of the Interagency Steering Group's general position and the absence of any expressed intent to develop implementation for the 12 recommendations, GAO believes the proposed executive branch position is on the whole nonresponsive. We have so categorized the executive branch proposed position on each recommendation. GAO recommends that OMB (1) inquire into the need for the proposed modifications and restrictions on Commission recommendations D-3, D-4, and C-5 (see comments on these recommendations below) and (2) request each agency acquiring major systems to develop and submit implementation guidance for its evaluation and approval.

Some of the Interagency Steering Group discussions of the specific recommendations are responsive; other discussions conflict with its general position, as shown below.

(N)

The Interagency Steering Group proposed that the executive branch adopt this recommendation, subject to each agency jointly agreeing with their OMB and congressional counterparts on mission area identification and definition and recognizing the (natural) limitations in long-range projections. The Group said implementation "could force more direct and more early agency consideration and decisions on the tentative allocations of resources against identified mission deficiencies (within agencies) as well as against other identified national needs and goals (by Congress). Initial agency cooperation with their OMB and congressional counterparts is an important first step. However, GAO believes identification and definition of missions and the flow of the agency head with his own component and by OMB among the agencies do not ultimately a well-defined and articulated executive branch proposal can be made to the Congress. It is important to note that this Commission recommendation extends to agency programs the concept major emphasis in OMB on management objectives. GAO recommends that OMB take the lead in implementing recommendation D-1 as part of its responsibility to prepare the President's annual budget.

**BEST DOCUMENT AVAILABLE**

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible | Task group leader     | Policy Position In Process  |   |   |                                       |                                    |
|---|-------------|-----------------------------|-----------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                             |                       | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       |                                    |
|   |             |                             |                       |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| PART C--ACQUISITION OF MAJOR SYSTEMS: (continued)   |             |                             |                       |   |   |   |                                       |                                    |
| 2. Provide appropriate congressional committees with annual review of missions, capabilities, deficiencies, and new acquisition needs and goals as basis for reviewing agency budgets (p. 109)  | DOD         | DDRA&E                      | Lt. Gen. R. E. Coffin | Jan. 1974   |   |   | X                                     |                                    |
| Exploring alternative systems:  |             |                             |                       |   |   |   |                                       |                                    |
| 3. Support technology-based activities of agency missions, but do not fund fully designed hardware for subsystems until they are identified as part of system candidates to meet specific operational needs (p. 133)  |             |                             |                       | Jan. 1974   |   |   | X                                     |                                    |
| 4. Create alternative system candidates within stated needs and goals for new acquisition programs by soliciting proposals from industry, including smaller firms with production potential, and by sponsoring most promising ones selected by agency component heads using team of experts (p. 133)        |             |                             |                       | Jan. 1974   |   |   | X                                     |                                    |
| 5. Finance exploration of most promising alternative system candidates by (1) proposing development budgets, (2) authorizing, appropriating, and allocating R&D funds according to mission need, and (3) monitoring funds through annual budget reviews using un-allocated mission needs and goals (p. 133) |             |                             |                       | Jan. 1974   |   |   | X                                     |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |      |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|---|------------------|------|---|---|----------------------------------|
|   | Action Initiated |      | Actual or (anticipated) completion date |   |                                  |
|   | Date             | Type |   |   |                                  |

(N) Interagency Steering Group proposed that the executive branch adopt this recommendation as stated. Contrary to the Group's general position that implementation is unnecessary, it recognized here that "current procedures\* \* \* may have to be expanded or realigned \* \* \*." The Group said "this approach would provide to Congress a comprehensive review of agency needs and goals at a higher level of consideration than normally occurs \* \* \* continued improvements in the dialogue between the agencies and the Congress and a better understanding by the Congress of agency needs and goals in the acquisition of major systems is a highly desirable objective."

(H) The Interagency Steering Group proposed that the executive branch adopt this recommendation except for the restriction on subsystem development. It acknowledged that the prudent course is to pursue subsystem development with a system goal in mind, but to also seek use of proven hardware and commonality so that a subsystem could be used in more than one system. Since this recommendation does not refer to the appropriate use of existing subsystems, GAO questions whether the Group really differs with the Commission recommendation. Carrying new subsystems too far into final development can lead to a new system acquisition at a time when a need has yet to be established for that system; at the same time it precludes competition for alternative system designs and approaches. This recommendation prevents prespecifying subsystems which restrict the system designer's latitude. GAO believes the Group's modification inappropriate. If accepted, GAO recommends that it be worded to permit final development of subsystems only in rare exceptions when approved at a high agency level.

(N) The Interagency Steering Group concluded that the general approach recommended by the Commission should be pursued when feasible, i.e., when true innovation should be stimulated and the approach is compatible with agency organizational structure and policy governing use of in-house facilities. GAO believes that the need for innovation cannot be predetermined and that the recommendation principle is just as applicable to in-house labs, such as those managed by AEC, as it is to industry labs.

The Group enlarged on the recommendation so that industry would be encouraged to propose alternatives to system time, cost, and capability goals. GAO believes these are basically internal agency mission need and resource allocation decisions. They should be periodically updated but not subject to industry determinations.

The Group expressed concern about contracting with unqualified firms. It modified the part of the recommendation calling for participation by other than major companies, and deleted the criteria for determining eligibility of smaller firms. GAO feels that the principal thrust of this part of the recommendation was to allow a small group of talented engineers to create a concept, and develop partial or complete prototypes and, after required testing, to form an association with a reputable manufacturer to produce the system or to grow on the basis of competitive merit and eventually do its own production. The transitional practice of requiring potential contractors making proposals to have production capabilities which may or may not be needed has limited competition and resulted in sponsoring many aerospace facilities with feast or famine production schedules. It would be less costly to support several small developers. More importantly, the Commission wanted to reduce the barriers for new entries, strengthen the competitive forces in industry, and reverse the present trend toward nationalization. GAO therefore recommends that the wording for recommendation C- be modified as proposed and that it remain largely as presented by the Commission.

(N) The Interagency Steering Group proposed that the executive branch adopt this recommendation with the addition of one word. The Group recognized that the recommendation is basically sound and that satisfactory implementation procedures must be worked out by each agency. However, some of the Group's discussion of the recommendation was negative with preconditions against investing too much in the exploratory effort. GAO believes the Group's discussion does not adequately recognize the Commission's underlying theme--to rid the procurement process of "contrived" competitions by investing in more substantive ones. The investment seems large at the time, but it has been proven to be relatively small when compared later with the total cost of the program.

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible | Task group leader     | Policy Position In Process  |   |   |                                       |                                    |
|--|-------------|-----------------------------|-----------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                             |                       | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       |                                    |
|  |             |                             |                       |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMS for final decision |
| <b>PART C--ACQUISITION OF MAJOR SYSTEMS: (continued)</b>   |             |                             |                       |   |   |   |                                       |                                    |
| Crossing a preferred system:   |             |                             |                       |   |   |   |                                       |                                    |
| c. Maintain competition between system exploration contractors by: (1) limiting commitments to annual fixed-level awards for technical development, (2) assigning experienced agency representatives to advise contractors, and (3) concentrating agency development and technical organization efforts on monitoring, testing, and evaluating contractor efforts (p. 133)   | DOD         | DDR&E                       | Lt. Gen. R. E. Coffin |   |   |   |                                       |                                    |
| 7. Limit premature commitments and maintain competition through field demonstration by: (1) having selected contractors prove chosen technical approach is sound and system definition of candidate system is practical before final development, production, and operational use commitments, (2) providing test with final evaluation operational test, mission performance, and lifetime ownership cost criteria, and (3) strengthening agency's development, procurement, and life-cycle cost estimation capability (p. 133) |             |                             |                       | Jan. 1974   |   |   | X                                     |                                    |
| 8. If a system is chosen without competing candidates, obtain agency team approval, incorporate technical and management contributions from in-house groups and contractors, establish technical and management criteria through a strong centralized program office, select contractor for known capabilities in dealing with program problems, and estimate program cost within a probable range (p. 133)  |             |                             |                       | Jan. 1974   |   |   | X                                     |                                    |
| System implementation:   |             |                             |                       |   |   |   |                                       |                                    |
| 9. Withhold agency and congressional full production commitments pending reconfirmation of need and system performance test and evaluation; establish operational test activity separate from developer and user, refine the score agency-wide, and strengthen capabilities (p. 136)   | DOD         | DDR&E                       | ADM P. S. Peterson    | Jan. 1974   |   |   | X                                     |                                    |
| 10. Use contracting as system acquisition tool, not management substitute; set guidelines to permit flexibility in applying contracting regulations, including use of simplified final development and production contract clauses and priority production options when critical test milestones have minimized risk (p. 171)  | DOD         | DDR&E                       | Lt. Gen. R. E. Coffin | Jan. 1974   |   |   | X                                     |                                    |

BEFORE DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations   |
|---|------------------|---|---|--|
|   | Action Initiated | Actual or (anticipated) completion date |   |  |
|   | Date             | Type                                    |   |  |
|   |                  |   | (N)   | The Interagency Steering Group proposed that the executive branch adopt this recommendation, concluding that more meaningful competition would improve system acquisition results. It suggested two modifications. The Group prefers the terminology "funding design contractors at planned levels" because the Commission's terminology, "fixed level awards," is not in current use and thus not well understood, and it does not want to adopt the idea of a fixed dollar ceiling. The Commission, although not wedded to the terminology, believed that fixed dollar ceilings could and should be used during these relatively short periods of performance to provide cost control. The Group's other modification removed the requirement that agency operational inputs would be made to the competing contractors on an advisory basis. GAO believes that these user-type inputs are vital to the program outcome. GAO recommends that these two modifications be reconsidered.  |
|   |                  |   | (N)   | The Interagency Steering Group proposed executive branch adoption on the basis that the recommendation "is desirable and should be pursued by various agencies more consciously than is perhaps currently the case." As the overall comments note, the Group's general position denies the need for implementation. The Group clarified one part of the recommendation to show that lifetime ownership costs would only be one factor in choosing preferred systems. The Group also indicated concern over the agency's ability to develop such ownership cost projections as future operating and maintenance costs. GAO believes the Commission was not seeking precise projections in this area but rather approximations based on field data collected from the development and operational test phases and supplemented to the extent necessary by contractor and agency analyses.  |
|   |                  |   | (N)   | The Interagency Steering Group proposed that the executive branch adopt this alternate noncompetitive acquisition strategy as stated, recognizing that competitive demonstration of system solutions is not always feasible. It did not comment on the Commission criteria which severely limits the use of this single-source acquisition strategy. One civilian agency representative provided superficial dissenting views on parts of the recommendation. For example, he said a strong technical program office is warranted only when a program "is truly a major system." In this group of recommendations the Commission was only dealing with major systems.  |
|   |                  |   | (N)   | The Interagency Steering Group proposed that the executive branch adopt this recommendation as stated. It pointed out that the strongest support for this recommendation comes from the DOD. DOD actions before and after the Commission report together with a forthcoming refinement to DOD Directive 5006.3 seems to be responsive to the recommendation. The Steering Group members of other agencies, however, argued against individual parts of the recommendation as not literally applying to their situations. For example, DOT said its components do not have the scale of operation to warrant a separate test and evaluation activity. GAO believes that the Commission was emphasizing the objective of an independent operational test rather than necessarily directing how each agency should organize to accomplish this objective. GAO believes also that a more positive response by the civilian agencies can be achieved if they focus on the basic intent of and principles embodied in this recommendation. |
|   |                  |   | (N)   | The Interagency Steering Group proposed that the executive branch adopt this recommendation practically as stated (it deleted three words that were not significant). The Group recognized as did the Commission that, if earlier steps in the acquisition process are carried out well, final development and production contracts can be simplified and Government controls and regulations reduced. However, the Group confused the issue by concluding that "several agencies are practicing, where appropriate, the policies advocated by the recommendations." This conclusion like others in the same vein was not supported by citing implementing documents and/or examples of actual practice.   |

**BEST DOCUMENT AVAILABLE**

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible | Task group leader     | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|---|-------------|-----------------------------|-----------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                             |                       |   | Executive Branch Level                  |   |                                       |                                    |
|   |             |                             |                       |   | In GSA Office of Procurement Management | Out for official (I) agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| <b>PART C--ACQUISITION OF MAJOR SYSTEMS: (continued)</b>  |             |                             |                       |   |   |   |                                       |                                    |
| 11. Unify major acquisition policy and monitoring at agency and component management levels, integrate technical and business management policy, assign program managers upon program initiation; institute career program to insure varied and enlarged personnel experience and to reduce agency and industry management layering, reviews, procedures, reporting, and paperwork (p. 178) | DOD         | DDR&Z                       | Lt. Gen. F. E. Coffin | Jan. 1974   |   |   | X                                     |                                    |
| 12. Delegate technical and program decision authority to operating agencies / components except for key agency head decisions for program needs and goals and for approving systems for demonstrative, final development, and full production (p. 178)  |             |                             |                       | Jan. 1974   |   |   | X                                     |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|---|------------------|---|---|----------------------------------|
|   | Action Initiated | Actual or (anticipated) completion date |   |                                  |
|   | Date             | Type                                    |   |                                  |

(N)

The Interagency Steering Group proposed that the executive branch adopt this recommendation as stated. It pointed out that "several agencies have recognized the need for unified policy-making and monitoring responsibilities for major system acquisitions and have organized to assure that business and technical considerations are applied in an integrated fashion." The Group said acquisition review councils within DOT and DOD offer such means. It does not believe additional management entities will necessarily improve the management system. GAO believes it is clear from the Commission's report that fewer management entities were recommended, rather than more and that to accomplish this, the Commission had in mind unifying (consolidating) technical and business policy and monitoring activities at agency and component-headquarters levels. GAO believes also that the recommendation calls for day-to-day interaction or total integration of technical and business management aspects of agency-head and component-system policy and monitoring functions. The Commission was aware of and acknowledged the existence of the various acquisition review councils when making its recommendation. Such review councils represent temporary solutions which leave in place the separation of system technical and business policy functions and decision-making that, in turn, perpetuate management layering, staff reviews, coordinating points, and paper work down through the organizational structure.

(N)

The Interagency Steering Group proposed that the executive branch adopt this recommendation with minor word changes that do not alter the intent of the recommendation. However, it added that "the several agencies [represented on the Steering Group] have developed and implemented policies and procedures designed to accomplish the objectives of the Recommendation" but gave no support for this statement. The Commission examined in detail the existing key agency-head decision points in systems acquisition and concluded that current policy completely delegates to agency components the authority to determine needs and to explore, define, and choose systems to meet the needs, (see for example DOD Directive 5000.1). These are the key decisions--and the Commission believed the agency head should have a role in them. Agency head decision points recommended by the Commission thus arise much earlier than the present ones. GAO believes that the earlier decision points, although involving only minor expenditures, are basic to agency-head control and rational evolution of system acquisition programs. For example, currently the first DOD key agency decision point occurs after competitive alternatives have been largely eliminated through the military component requirements determination process, thereby restricting the span and depth of top agency consideration. As recommendation C-12 provides the key decision framework for the overall systems acquisition process, GAO believes that its implementation must receive a serious implementation effort.

REL. DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
|--|-------------|-----------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                             |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       | Referred to OMB for final decision |
|  |             |                             |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration |                                    |
| <b>PART D--ACQUISITION OF COMMERCIAL PRODUCTS:</b>   |             |                             |                   |   |   |   |                                       |                                    |
| <b>Commercial products marketplace:</b>  |             |                             |                   |   |   |   |                                       |                                    |
| 1. Improve collection and dissemination of commodity and agency procurement statistics for congressional, executive branch, and industry needs (p. 5)  | GSA         | Federal Supply Service      | Russell Allen     | Dec. 1973   |   |   |                                       |                                    |
| <b>Commercial products requirements:</b>   |             |                             |                   |   |   |   |                                       |                                    |
| 2. Provide means for users to communicate extent of satisfaction with centralized supply support system in order to evaluate its effectiveness (p. 17)   | GSA         | Federal Supply Service      | Sylvester Kish    | Apr. 1974   |   |   |                                       |                                    |
| 3. Reevaluate commercial-type product specifications every 5 years, limit new Federal specifications for commercial-type products to those specifically justifiable, and use purchase descriptions if Federal specifications are unavailable (p. 18) | GSA         | Federal Supply Service      | C. C. Travis      | Sept. 1973  |   |   |                                       |                                    |
| 4. Assign policy responsibility to OSPP for developing and coordinating Federal specifications (p. 18)   | GSA         | Federal Supply Service      | C. C. Travis      | Dec. 1973   |   |   | June 1974                             |                                    |
| <b>Acquisition of commercial products:</b>   |             |                             |                   |   |   |   |                                       |                                    |
| 5. Encourage use of headquarters procurement staff to train field procurement personnel on the job in implementing techniques and identifying innovations related to their needs (p. 30)   | GSA         | Federal Supply Service      | R. Hill           | Dec. 1973   |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |   | Actual or (anticipated) completion date | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations   |
|---|------------------|---|---|---|--|
|   | Action Initiated | Type  |   |   |  |
| (A) May 1974  | See comments     |   |   | (R)   | Implementation is to be accomplished through an interagency steering committee being established and chaired by GSA. This committee will be responsible for developing a reporting system, including specific data elements and other basic aspects, compatible with agency internal systems and responsive to procurement statistic needs of the departments and agencies, the executive branch, the Congress, GAO, and industry. The type of implementation action and when it is to be accomplished will depend on the results of the interagency steering committee's efforts. GAO believes assurance is needed that such a system can be developed which will be compatible with an existing agency's internal system, such as DOD's, and at the same time provide the desired responsiveness to this recommendation.   |
| (A) May 1974  | May 1974         | Circular (Federal Management Circular)              |   | (R)   | Recommendation has been adopted by the executive branch. Draft circular was sent to agencies in June 1974 for official concurrence or nonconcurrence.  |
| (M) Feb. 1974   | Mar. 1974        | Regulation (Federal Property Management Regulation) | (Sept. 1974)                            | (R)   | The executive branch broadened the scope of the recommendation by (1) changing "Federal specifications" to "purchase specifications" so as to include Federal, military, and all other specifications developed by Federal agencies and (2) deleting specific references to the use of purchase descriptions in the absence of available Federal specifications as being criteria of very limited scope and already comprehended within the proposed meaning of "purchase specifications." GAO agrees with GSA's staff analysis and the official view of one agency and suggests that, for purposes of clarity, the proposed implementing regulation include (1) definitions and examples of the terms "purchase criteria", "purchase description", and "purchase specification", and (2) a more detailed treatment of specification requirements for packaging, packing, and marking.   |
|   | See Comments     |   |   | (R)   | The task group adopted the recommendation except for substitution of "purchase specifications" for "Federal specifications". DOD's official view differed with that of the task group. DOD proposed that the policy responsibility for military specifications be retained in DOD and only that relating to Federal specifications for commercial products be centralized, preferably in a more engineering-oriented activity than OPPP although DOD would not object to OPPP. Commerce agreed with DOD, maintaining that the responsibility involved performance rather than purchase specifications. In June 1974, on the advice of the Interagency Procurement Policy Advisory Group, GSA sent a letter to OMB advising that the executive agencies support adoption of the recommendation and that specification policy development and coordination responsibility be centralized, preferably in OPPP. Disposition of this recommendation will depend on OMB's decision.                              |
| (A) May 1974  | May 1974         | Circular (Federal Management Circular)              |   | (R)   | At the suggestion of the Interagency Procurement Policy Advisory Group, GSA modified the task group's implementation proposal to incorporate specific requirements to deal with the Commission findings and submitted the revised proposal in the form of a Federal Management Circular for official agency comment. In May 1974, on the basis of the agency consensus, the recommendation was adopted and implementation is being effected through the issuance of a Federal Management Circular. The circular makes the heads of agencies with decentralized procurement activities responsible for establishing and furnishing to GSA, within 120 days from the date of the circular, a continuing program aimed at removal of impediments to improved operational effectiveness of these activities. The effective implementations of the recommendation will depend, in part, on the extent to which the individual programs submitted by the agencies are reviewed, evaluated, and monitored by GSA. |

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible               | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
|--|-------------|---|-------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |   |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       | Referred to OMB for final decision |
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| <b>PART II--ACQUISITION OF COMMERCIAL PRODUCTS: (continued)</b>  |             |   |                   |   |   |   |                                       |                                    |
| 6. Provide statutory authority and assign OMB responsibility for policies to achieve greater economy in procuring, storing, and distributing commercial products used by Government and, in interim, establish standards to permit using agency organizations to make local economical buys directly from commercial sources if not inconsistent with centralized procurement requirements and if lower total economic costs can be achieved; establish industrial funding when practical for interagency commercial product support activities; provide for continuous evaluation on a total economic cost basis of agency procurement and distribution systems (p. 32) | GSA         | Federal Supply Service                    | C. C. Yeckel      | June 1974   | X                                       |   |                                       |                                    |
| 7. Require overseas activities to consider direct procurement of U.S.-made commercial products from overseas distribution sources when cost effective (p. 33)  | DOD         | AF central and support procurement branch | N. L. Wilansky    | Dec. 1973   |   |   |                                       |                                    |
| 8. Authorize primary grantees the option to use Federal sources of supply to support more than 60-percent federally financed programs, provided Government is fully reimbursed for such use (with dissent) (p. 35)   | GSA         | Federal Supply Service                    | F.D. Kehev        | Mar. 1974   |   |   |                                       |                                    |

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| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |      | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|---|------------------|------|---|----------------------------------|
|   | Action Initiated |      |   |                                  |
|   | Date             | Type |   |                                  |
|   |                  |      |   |                                  |

The task group's report on this recommendation was submitted to GSA at the end of June 1974. GSA plans to propose legislation to permit industrial funding of interagency commercial product support activities.

(M) May 1974 See comments

(N)

The task group unanimously proposed adoption of the recommendation with the modification that overseas procurements be limited to those items designated for decentralized management in the supply system. It was the view of the task group that (1) the present national supply system, together with existing balance of payments procedures, in large measure satisfy the trust of the recommendation and (2) limiting procurement actions to decentralized items preserves the integrity of an effective and economical system which is responsive to wartime as well as peacetime logistic demands. As announced in the Federal Register, the task group's position was adopted by the executive branch and, as it is considered to be already a part of the supply/procurement regulations and operating practice, no implementing action was believed necessary.

GAO believes that the Commission, in making the recommendation, did not intend to challenge the need for central procurement and management of spare parts, ordinance, and other items necessary to support weapons systems. Rather, it intended to have DOD establish criteria which activities could apply in determining the most cost-effective source for commercial items available direct from overseas commercial sources. The criteria could include such military considerations as responsiveness and readiness to permit DOD's local activities to take advantage of existing world-wide commercial distribution systems operated by many U.S. firms and to consider these systems part of the national supply system for commercial products. GAO believes that, because of the significant annual savings that can be realized, DOD and the other agencies should be permitted to use these distribution systems in local overseas purchases under established criteria. Comments from two industry and two Federal agency sources also question the need for limiting local overseas procurements to decentralized items.

Under the circumstances, GAO recommends that OMB further inquire into the need for the modifying limitation adopted by the executive branch.

(R) Apr. 1974

See comments

Initially, the task group unanimously recommended adopting D-8, D-9, and D-10. In January 1974, GSA requested the task group to consider a practical way of reliably identifying total cost of items supplied to grantees by the Government. In its resubmission, the task group concluded that development of criteria for computing total cost, independent of that developed under the industrial funding concept in D-6, would be very difficult if not inappropriate. The task group unanimously recommended deferring D-8, D-9, and D-10 pending development of D-6 criteria to provide the foundation from which reliable, valid cost criteria could be adopted. However, as publicized in the Federal Register of May 13, 1974, the executive branch rejected the three recommendations because it believed that neither the Commission, which was divided on these recommendations, nor the task group introduced any new evidence to justify reinstating the use of Federal sources of supply by grantees.

The Senate-passed OFPP bill (S. 2510) specifies that nothing in the bill is to be construed as giving OFPP authority to authorize such use. A companion bill (H.R. 15233), recently approved by the House, is neutral on the subject. Both bills were modified to accommodate the views voiced by small business against giving OFPP such authority. GAO's testimony and comments on various House and Senate bills during 1972 and 1973 is a matter of record and is consistent with the Commission's recommendations. In view of the current private sector and executive branch opposition, any further response to these recommendations may depend on an expression of congressional policy.

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POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible   | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|---|-------------|-------------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                               |                   |   | Executive Branch Level                  |   |                                       |                                    |
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| PART D--ACQUISITION OF COMMERCIAL PRODUCTS: (continued)   |             |                               |                   |   |   |   |                                       |                                    |
| 9. Require grantor agency to have procedures for insuring appropriate use of Federal supplies and computing total costs for Government reimbursement (with dissent) (p. 39) | GSA         | Federal Supply Service        | F. D. Kehew       | Mar. 1974   |   |   |                                       |                                    |
| 10. Assign OFFP to monitor implementation of recommendations D8 and D9 (p. 39)  |             |                               |                   | Mar. 1974   |   |   |                                       |                                    |
| Special products and services:  |             |                               |                   |   |   |   |                                       |                                    |
| 11. Re-evaluate ADPE acquisition procedures in light of total economic cost (p. 46)   | GSA         | Automated and telecom service | J. L. DeProspero  | June 1974   | X                                       |   |                                       |                                    |
| 12. Require GSA to establish ADPE procurement delegation policy to promote effective preplanning of agency requirements and optimum use of manpower (p. 48)                 |             |                               |                   | Dec. 1973   |   |   | X                                     |                                    |
| 13. Revise funding policies for multiyear leasing to permit procurement of ADPE on a cost-effective basis in addition to use of ADPE fund (p. 48)                           |             |                               |                   | Dec. 1973   |   |   | X                                     |                                    |
| 14. Develop standard benchmarks to be used in evaluating ADPE proposals (p. 51)   |             |                               |                   | Mar. 1974   |   |   |                                       |                                    |
| 15. Conform ADPE late-proposal clause with other procurement practices (p. 51)  |             |                               |                   | Oct. 1973   |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

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|---|------------------|------|---|---|----------------------------------|
|   | Action Initiated |      |   |   |                                  |
|   | Date             | Type |   |   |                                  |

(R) Apr. 1974

See D-8 comments

(R) Apr. 1974

See D-8 comments

The task group's report on this recommendation has just been received by the executive branch.

The task group proposed revising the existing Federal Property Management Regulation (FPMR) for automated data telecommunications systems (ADTS) plans as a device to expedite implementation of D-12 with respect to delegating automated data processing equipment (ADPE) procurement authority. The FPMR revision applies only to future planning and was officially published in the Federal Register on May 1, 1974. The revision requires agencies to submit annual system requirements plans to GSA for each of 5 succeeding fiscal years when planned expenditure in one fiscal year is \$1 million or more so that GSA can (1) determine potential requirements for multiuser computer or communication facilities and (2) allow advance notification of procurements GSA will assume and those it will delegate to agencies. Although the FPMR revision does not apply when the planned fiscal year expenditure is below the \$1 million threshold, another FPMR section continues to require GSA approval for any contemplated competitive or sole-source procurement, not covered by the revision, when it is \$50,000 or more.

GAO believes that the \$1 million threshold is too high because it is precisely in the acquisition of small rather than multiunit systems, where economies can be realized through either volume purchases or a multiuser computer installation. GAO believes another serious weakness in the FPMR revision is that it does not contain a requirement for reporting to GSA the changes made by agencies in their annual plans subsequent to submission.

The GSA staff analysis points out that another FPMR proposal is presently being coordinated by GSA for publication in the Federal Register to obtain the comments of interested agencies. This FPMR would change the dollar threshold for procurement without prior GSA approval to \$500,000 for competitive procurements and \$50,000 for sole-source procurements. It also provides for a rapid turnaround delegation of authority to an agency for certain procurements after receipt of an agency's plan. Action to establish an executive branch position is being deferred because of the confusion over these different FPMR proposals. GSA has sent a memorandum to the GSA Commissioner of ADTS requesting that action on the FPMR proposals be expedited.

(R)

The executive branch agrees with the Commission that multiyear leasing of ADPE should be permitted. However, GSA disagrees with the majority of the agencies as to how these procurements should be funded. The majority agree with the Commission that agencies should be allowed to use their available annual appropriated funds in addition to funds allotted from the GSA-ADPE fund. GSA believes ADPE procurements by any agency should be financed only from the ADPE fund. This is a modification of the Commission recommendation. Legislation, proposed by GSA through OMB to effect this position, was introduced as S.2755 and has been approved by the Ad Hoc Subcommittee of the Senate Government Operations Committee. This bill was supported by GAO. At the suggestion of the Interagency Procurement Policy Advisory Group, the conflicting positions of GSA and the agencies are being referred to OMB for final decision on the executive branch position on the pending legislation.

(A) May 1974

June 1974

See comments

2-5 years

(R)

The executive branch considers that the thrust of this recommendation has been adopted and implementation begun in view of two ongoing benchmark feasibility studies presently being conducted by DOD and the National Bureau of Standards Institute for Computer Science and Technology (NBS/ICST). As an adjunct to its program, NBS/ICST has also established a Federal Information Processing Standards Task Group as a central interagency benchmark technology forum. Full implementation will be contingent on the results of these studies, begun after the Commission's study, which will take an estimated 2 to 5 years to complete, based on current resources. NBS/ICST is being notified of the executive branch position in a letter from GSA.

(A) Oct. 1973

Sept. 1973

Regulation (FPMR)

Oct. 1973

(R)

**BEST DOCUMENT AVAILABLE**

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible   | Task group leader   | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|---|-------------|-------------------------------|---------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                               |                     |   | Executive Branch Level                  |   |                                       |                                    |
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| PART D--ACQUISITION OF COMMERCIAL PRODUCTS: (continued)   |             |                               |                     |   |   |   |                                       |                                    |
| 16. Assign to GPPF or other Presidential-designated agency the responsibility for consistently and equitably implementing the legislative food-acquisition policy (p. 5-) | USDA        | Commodity operations division | B. D. Ensley        | Mar. 1974   |   | (A) June 1974   |                                       |                                    |
| 17. Establish by law a central coordinator of agency management responsibilities for Federal food-quality assurance program (p. 54)                                       | USDA        | Agriculture marketing service | R. F. Bartlett, Jr. | May 1974  |   | (A) June 1974   |                                       |                                    |
| 18. Encourage acceptance of commercial provisions and forms used for industry and public in agency procurement of utility supplies and services (p. 62)                   | GSA         | Federal supply service        | E. D. Miller        | Mar. 1974   |   | (A) July 1974   |                                       |                                    |
| 19. Determine whether more innovative transportation procurement techniques are warranted when alternative sources and modes are available (p. 61)                        | GSA         | Federal supply service        | J. F. Reutemann     | Dec. 1973   |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation | Implementation   |      | Actual or (anticipated) completion date | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|------|---|---|----------------------------------|
|  | Action Initiated | Type |   |   |                                  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        | Date             | Type | date                                    |   |                                  |

The final task group submissions on D-16 and D-17 have been sent to the agencies for official comments. The GSA staff analysis raises two questions for the agencies to consider: (1) whether implementation of the food-acquisition policy (D-16) and the food-quality assurance program (D-17) should be handled by separate organizations or by a single organization within OFPP or a Presidential-designated agency and (2) whether D-17 should be broadened by substitution of a "central director" for a "central coordinator." DOD is opposed to any change that would give this role more authority than that of a coordinator.

See D-16 comments

The task group is recommending that the executive branch adopt this recommendation. Its submission is out for official agency comment.

(A) May 1974 See comments

See comments

In adopting the recommendation, the executive branch takes the position that implementation is being effected through ongoing efforts to implement the Joint Agency Transportation Study (JATS) recommendations and through continuing examination of techniques to generate more competition in the procurement process. GAO believes that simple adoption of the JATS recommendations will not achieve what the Commission desired, namely, greater consideration of competitive transportation sources and modes. The executive branch is in accord with this belief as evidenced by the instructions to the task group in May 1974 to submit a supplemental report dealing specifically with procurement aspects of obtaining competition for transportation services, including findings, analyses, and conclusions on competitive techniques and ongoing efforts to improve them. Incidentally, the task group report initially submitted in October 1973 was returned by the executive branch for further consideration because of a similar deficiency that was not corrected in the December 1973 resubmission. Executive branch responsiveness to this recommendation will depend on the extent of the task group's compliance with GSA instructions.

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |
|--|-------------|-----------------------------|-------------------|---|---|---|---------------------------------------|
|  |             |                             |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration |
| PART B--ACQUISITION OF CONSTRUCTION AND ARCHITECT AND ENGINEERING SERVICES:  |             |                             |                   |   |   |   |                                       |
| 1. Procure architect-engineer services through competitive negotiations with selection based primarily on technical competence and merits of end product, including cost-fee should not be a dominant factor (with dissent) (p. 115)   | GSA         | Public buildings service    | W. A. Meisen      | Dec. 1973   |   | (A) Mar. 1974   |                                       |
| 2. Provide policy guidance through OFFP for including estimated total life-cycle costs in architect-engineer proposals on projects estimated to cost more than \$500,000 when realistic estimates are feasible (with dissent) (p. 115) | GSA         | Public buildings service    | W. A. Meisen      | Dec. 1973   |   | (A) Mar. 1974   |                                       |
| 3. Consider reimbursing proposal submission costs to architect-engineer when unusual design and engineering problems and substantial work efforts are required (p. 115)  | GSA         | Public buildings service    | W. A. Meisen      | Dec. 1973   |   | (A) Mar. 1974   |                                       |
| 4. Repeal statutory architect-engineer fee limit and authorize OFFP policy guidelines to insure consistency and to protect Government interest (p. 122)  | GSA         | Public buildings service    | W. A. Meisen      | Dec. 1973   |   | (A) Mar. 1974   |                                       |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|---|---|----------------------------------|
|  | Action Initiated | Actual or (anticipated) completion date |   |                                  |
| (A) Accepted<br>(M) Modified<br>(R) Rejected       | Date             | Type                                    | completion date   |                                  |

(N) The task group's proposal adopts the Commission's minority position on recommendations E-1 through E-3, which represents the views of the profession and Federal construction agencies, and is encompassed in Public Law 92-582 enacted in October 1972. Nothing new is offered in support of this position. Although GSA has not completed its analysis of official views solicited from 27 agencies, most of those who responded concurred in the task group's position. GAO is presently making a follow-on study of A-E (architect-engineer) contracting and methods of selection.

It is of interest to note that the State of Maryland has recently enacted a law to provide for competitive negotiation of A-E services and that, in June 1974, the GSA Administrator announced that he had decided on a plan which will fundamentally change GSA's basis for selecting A-Es. The plan is to be implemented over a 3 to 5 year period beginning in January 1975. The plan ultimately will require GSA to award A-E contracts on the basis of fully developed "project proposals" that will include "evidence of technical and professional distinction; estimated fees; construction and life cycle cost estimates; and planning and design concepts." The Administrator stated that his decision which he had been thinking about for some time, responds to "GSA's concern for the production of the finest architecture" and "to realities of the construction industry."

The Administrator's proposed plan represents substantial progress toward accomplishment of the Commission's majority recommendations. It is not clear whether this plan includes the competitive negotiation concept intended by the Commission since the term "project proposals" is not defined. Under the circumstances, GAO believes that the present executive branch consensus to reject the Commission's majority recommendations on E-1 through E-3 would not be warranted at this time.

(N) See E-1 comments

(N) See E-1 comments

(P) The GSA staff analysis indicates that the task group is in basic agreement with the recommendation. However, the task group is recommending that the implementing guidelines retain the general 6-percent fee limitation and provide criteria to permit agency heads to authorize higher fees for special types and classes of projects and services. Although GSA has not completed its analysis of the official views solicited from 18 agencies, most of those who responded concur in the task group's position. GAO believes that, by retaining the fee limitation in the guidelines, the task group is in effect maintaining the present outdated legal requirement and defeating the Commission recommendation.

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note s)   | Lead agency | Agency activity responsible                  | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|---|-------------|--|-------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |  |                   |   | Executive Branch Level                  |   |                                       |                                    |
|   |             |  |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| <b>ITEM 11--FEDERAL GRANT-TYPE ASSISTANCE PROGRAMS:</b>   |             |  |                   |   |   |   |                                       |                                    |
| 1. Distinguish through legislative the procurement (contract) and assistance (grant) relationships and authorize use of instruments reflecting these relationships (p. 162) | HEW         | Office of asst. sec. for admin. & management | T. Reynolds       | Sept. 1973  |   |   | X                                     |                                    |
| 2. Urge OJPP to undertake or sponsor a feasibility study on developing a system of guidance for Federal assistance programs (p. 168)  | GSA         | Office of financial management               | P. A. Marcantonio | Mar. 1974   |   | (A) Mar. 1974   |                                       |                                    |

NOT AVAILABLE

Position established and Commission recommendation  
 (A) Adopted  
 (M) Modified  
 (R) Rejected

| Implementation   |  | Actual or (anticipated) completion date | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive |
|------------------|--|---|---|
| Action Initiated |  |   |   |

GAO Comments and Recommendations

Legislation initiated by Congress:

June 1973 H.R. 9060  
 May 1974 S. 3514

The task group proposed adopting F-1 as recommended by the Commission with the qualification that the contemplated distinction between "grant" and "grant-in-aid" be eliminated. It also proposed that implementation be accomplished through the marked-up version of H.R. 9060 then pending before a House subcommittee. Two major procuring agency participants disagreed with the majority position: they opposed labeling as "assistance" the use by their agencies of research grants. Subsequently, a bill was drafted by an NSF representative in an attempt to accomplish the purpose of the Commission recommendation as well as accommodate the views of the dissenting agencies. These views persisted and in April 1974, after discussions with the agencies and the Interagency Procurement Policy Advisory Group, GSA drafted a bill in a second attempt to resolve the differences. In May 1974, Senator Chiles introduced S. 3514, a bill similar to that drafted by NSF, to implement F-2 as well as F-1. Both S. 3514 and the GSA draft bill have been sent to the agencies for official comments via the OMB legislative route. On June 26, GSA testified on S. 3514 and agreed to work with the Committee in an attempt to refine the terminology and iron out the differences. In July GAO testified in favor of enacting legislation--because it constituted a significant step forward--and suggested that the scope of the study called for in F-2 below be broadened to include a further review of the terminology for possible administrative or legislative refinement at a later date.

Legislation initiated by Congress:

May 1974 S. 3514

(P)

The task group proposed adopting F-2 as recommended by the Commission. Official agency views were solicited in March 1974 and those received concur with the task group. S. 3514 was introduced in May 1974 to implement both F-1 and F-2. GSA believes that a feasibility study can be made without legislation. GSA's testimony in June 1974 on this bill indicates that the executive branch feasibility study would focus on administrative requirements imposed on grantees rather than on the all-inclusive grant preaward, postaward policy guidance contemplated by the Commission.

In the implementing memorandum proposed by the task group, GAO noted certain shortcomings which GSA should resolve before the study is initiated. The memorandum did not indicate the makeup of the study group, the agency under whose authority the group should be constituted, what agency should lead the group, or how a State or local government and other interested parties would be represented or otherwise have a voice in group deliberations. When the study is completed, there will also be a need to assign to a focal point in the executive branch the responsibility for monitoring and periodically updating the system of guidance initially developed. As indicated in F-1 comments, GAO testified that it strongly favors the legislation calling for a comprehensive grants policy guidance study.

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a) | Lead agency | Agency activity responsible | Task group leader | Policy Position In Process  |   |                                       |  |                                    |
|-------------------------|-------------|-----------------------------|-------------------|---|---|---------------------------------------|--|------------------------------------|
|                         |             |                             |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level  |                                       |  | Referred to OMB for final decision |
|                         |             |                             |                   | In GSA Office of Procurement Management                                   | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration |  |                                    |

PART G--LEGAL AND ADMINISTRATIVE REMEDIES:

BEST DOCUMENT AVAILABLE

| Disputes arising in contract performance:  | DOD | Office of John Navy General Phelan Counsel | May 1974  | (A) June 1974 |
|--|-----|--|-----------|---------------|
| 1. Clarify to contractor the identity and authority of contracting officer and other designated officials to act for Government in contract disputes (p. 12)   |     |  |           |               |
| 2. Provide informal review conference of adverse contracting officer decisions with contractor attendance mandatory when dispute exceeds \$25,000 or contractor invokes recommendation G-6 below (p. 22) |     |  | May 1974  | (A) June 1974 |
| 3. Retain multiagency appeals boards, establish minimum personnel and caseload standards, and add subpoena and discovery powers (p. 20)  |     |  | May 1974  | (A) June 1974 |
| 4. Establish regional small claims boards for disputes of \$25,000 or less (p. 22)   |     |  | May 1974  | (A) June 1974 |
| 5. Empower contracting agencies to decide, settle, and pay all contract claims or disputes (p. 22)   |     |  | May 1974  | (A) June 1974 |
| 6. Grant contractors option of direct access to Court of Claims or district courts (p. 23)   |     |  | May 1974  | (A) June 1974 |
| 7. Grant both Government and contractors judicial review of adverse decisions by agency appeals boards (with dissent) (p. 2)   |     |  | May 1974  | (A) June 1974 |
| 8. Establish uniform, short time limits for judicial review of administrative decisions (p. 27)  |     |  | May 1974  | (A) June 1974 |
| 9. Modify existing remand practice to allow reviewing court the option to make findings of fact necessary to final disposition (p. 27)   |     |  | May 1974  | (A) June 1974 |
| 10. Expand jurisdictional limit of district courts from \$10,000 to \$100,000 (with dissent) (p. 28)   |     |  | May 1974  | (A) June 1974 |
| 11. Pay interest on administrative and judicial claim awards (p. 29)   |     |  | Mar. 1974 |               |

# BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |      | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially completion date<br>(N) Nonresponsive | GAO Comments and Recommendations |
|---|------------------|------|---|----------------------------------|
|   | Action Initiated |      |   |                                  |
|   | Date             | Type |   |                                  |

### General (G-1 through G-10 and G-12)

GSA considers G-1 through G-10, and G-12 to be interrelated, so the task group report and GSA staff analyses on them were sent as a single package at the end of June 1974 to the agencies for official comments. Task group reports did not discuss the extent to which these recommendations may be related to various provisions in H.R. 9062, a contract disputes act pending in the House Judiciary Committee. GAO in a letter dated May 7, 1974, to the Chairman of the House Judiciary Committee, supported H.R. 9062, which essentially adopts G-2 through G-12. The task group is proposing adoption of G-3, G-5, G-7, G-8, and with some modification, G-1 and G-2, but is opposing adoption of the other 5 recommendations. Comments on each modified and rejected recommendation follow.

Although agreeing to the general thrust of the recommendation, the task group objected to informing the contractor of the identity and authority of "other designated officials" acting for the Government because such knowledge might encourage the contractor to deal with these other individuals instead of the contracting officer. GSA staff analysis shows that proposed implementation (through GMS memoranda) does not "make clear" the authority of the contracting officer as was intended by the Commission.

The task group believes informal review conferences would be more meaningful and less disruptive if held before contracting officer's final decision on a dispute rather than after as proposed by the Commission. The group is also opposed to the 30-day contractor appeal period recommended by the Commission because it would weaken what was intended to be an informal review process. Two members of the group and the GSA staff analysis question whether the role and authority of the contracting officer would be downgraded by this approach instead of being strengthened as was intended by the Commission.

See general comments

The task group believes that the small claims boards of contract appeals structure envisioned by the Commission would be uneconomical, because of the caseload and high processing cost, and unnecessary since benefits to be derived from such a system are available under existing procedures. In June 1974 Senator Hathaway introduced S.3610, a bill to establish regional small claims boards. This bill has been referred to the Judiciary Committee.

See general comments

The recommendation is opposed by the task group because it would encourage "forum shopping" by contractors in that it would allow litigation in as many as four separate forums.

See general comments

See general comments

The task group suggests that the recommendation conflicts with a Supreme Court decision holding that, in a suit governed by the Wunderlich Act, the Court of Claims is restricted to a review of the administrative record and may not receive new evidence.

The task group opposes this recommendation because it would add to already overcrowded court dockets, result in "forum shopping", bring about uncertainty in procurement law by increasing the probability of diversity of precedent, and reduce reliance on the Court of Claims which the Commission feels should remain the leader in Government contract law.

(A) June 1974 See comments Regulation ASFR Feb. 1972 (R)  
(FPR/ASPR) FPR July 1972

Recommendation adopted and implemented in both ASFR and FPR as a result of GAO opinion B-174-001 of October 27, 1971.

# BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible    | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|--|-------------|--------------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                                |                   |   | Executive Branch Level                  |   |                                       |                                    |
|  |             |                                |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| <b>PART 3--LEGAL AND ADMINISTRATIVE REMEDIES: (continued)</b>  |             |                                |                   |   |   |   |                                       |                                    |
| 12. Pay court judgments on contract claims from agency appropriations if feasible (p. 29)                            | DOD         | Office of Navy General Counsel | John Phelan       | May 1974  | (A) June 1974                           |   |                                       |                                    |
| Disputes related to award of contracts:  |             |                                |                   |   |   |   |                                       |                                    |
| 13. Promulgate adequate information on contract-award protest procedures (p. 38)                                     | AEC         | Division of contracts          | T. J. Devin       | Nov. 1973   |   |   |                                       |                                    |
| 14. Continue to use GAO as an award protest-resolving forum (with dissent) (p. 40)                                   |             |                                |                   | Nov. 1973   |   |   |                                       |                                    |
| 15. Establish more expeditious and mandatory time requirements for processing protests through GAO (p. 42)           |             |                                |                   | Nov. 1973   |   |   |                                       |                                    |
| 16. Require high-level management review of any decision to award contract while protest is pending with GAO (p. 44) |             |                                |                   | Nov. 1973   |   |   |                                       |                                    |
| 17. Have GAO continue to recommend terminations for Government convenience of improperly awarded contracts (p. 45)   |             |                                |                   | Nov. 1973   |   |   |                                       |                                    |
| 18. Improve contracting agency debriefing procedures (p. 48)   |             |                                |                   | Nov. 1973   |   |   |                                       |                                    |
| 19. Establish a preaward protest procedure in all contracting agencies (p. 48)                                       |             |                                |                   | Nov. 1973   |   |   |                                       |                                    |
| 20. Have GAO periodically review agency award protest procedures and practices (p. 49)                               |             |                                |                   | Nov. 1973   |   |   |                                       |                                    |

| Position established and Commission recommendation | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations   |
|--|------------------|---|---|--|
|  | Action Initiated | Actual or (anticipated) completion date |   |  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        | Date             | Type                                    | completion date   |  |
|  |                  |   |   | <p>The task group disagrees with two provisions on which the Commission based its recommendation in contending that (1) it is unlikely an officer at the secretariat level would so lack impartiality as to send a case to court simply to protect his agency's appropriations against an adverse judgment, and (2) the present practice of not requiring an agency to seek an additional appropriation to pay the court judgment does not necessarily hide the true economic costs of some procurements because the Congress merely has to ask the procuring agency for the information. In addition, requiring an agency to fund judgments from its appropriations could disrupt its programs and program financing. The task group believes that, unless adequate amounts are appropriated and protected against use for immediate agency needs, a contractor will be dependent on the success and speed with which the agency can reprogram sufficient money to cover the contractor's award and judgment.</p> |
| (A) June 1974                                      | June 1974        | Circular (Fed. Mgmt. Circ.)             |   | (R) The task group adopted recommendations G-13, 14, 15, 16, and 19 except that it substituted a 25-day goal for the mandatory time requirement specified in G-15. Implementation is to be accomplished by issuing a Government-wide circular. GMS, GSA, and GAO have had long-standing discussions regarding implementation of the Commission's bid protest recommendations. Although considerable progress has been made, complete agreement has not been reached with respect to the GSA/GMS proposed circular since it does not adequately recognize, in a positive way, the role of GAC. For this reason, G-14 and G-16 have been categorized by GAO as being only partially responsive. GAO has requested GSA by letter of July 19, 1974, to withhold issuance of the circular pending resolution of the differences.  |
| (A) June 1974                                      | June 1974        | Circular (Fed. Mgmt. Circ.)             |   | (P) See G-13 comments  |
| (A) June 1974                                      | June 1974        | Circular (Fed. Mgmt. Circ.)             |   | (R) See G-13 comments  |
| (A) June 1974                                      | June 1974        | Circular (Fed. Mgmt. Circ.)             |   | (P) See G-13 comments  |
| (A) June 1974                                      | See comments     |   |   | (R) The executive branch has adopted this recommendation and will publish it in the Federal Register. Implementation is not required as recommendation is only a continuation of GAO's present practice. A notice of adoption is being sent to GAO.  |
| (A) May 1974                                       | May 1974         | Regulation (FPR/ASPR)                   | (Feb. 1975)   | (R) The executive branch adopted this recommendation. In letters to the FPP director and the Secretary of Defense, GSA requested that uniform implementation be effected through coordinated FPR and ASPP issuances. GSA also requested the resolution of 3 questions raised during consideration of the recommendation: whether debriefing should (1) identify factors on which successful contractor was selected, (2) take place before or after contract award, and (3) apply to formally advertised and two-step procurements.  |
| (A) June 1974                                      | July 1974        | Circular (Fed. Mgmt. Circ.)             |   | (R) See G-13 comments  |
| (A) June 1974                                      | See comments     |   |   | (R) A letter being sent by the executive branch to the Comptroller General advises that, because implementation involves GAC, no further action by the executive branch is considered necessary other than publication of a notice in the Federal Register.  |

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
|--|-------------|-----------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                             |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       |                                    |
|  |             |                             |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (B) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| PART C--LEGAL AND ADMINISTRATIVE REMEDIES: (continued)   |             |                             |                   |   |   |   |                                       |                                    |
| Eligible and special management powers under Public Law 85-601:  |             |                             |                   |   |   |   |                                       |                                    |
| 21. Make procurement authority permanent, not limited to periods of national emergency with dissent (p. 55)                          | AEC         | Office of general counsel   | H. B. Regen       | (July 1974)   |   |   |                                       |                                    |
| 22. Extend law to all contracting agencies under regulations developed by OMB and prescribed by the President (with dissent) (p. 57) |             |                             |                   | (July 1974)   |   |   |                                       |                                    |
| 23. Incorporate law into primary procurement statute (with dissent) (p. 59)  |             |                             |                   | (July 1974)   |   |   |                                       |                                    |
| 24. Revise law to require report to Congress before obligating Government for more than \$1 million (p. 59)                          |             |                             |                   | (July 1974)   |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position<br>established<br>and<br>Commission<br>recommenda-<br>tion | Implementation   |   | Executive<br>branch<br>responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive |
|---|------------------|---|---|
|   | Action Initiated | Actual or<br>(antici-<br>pated)<br>completion<br>date |   |
| (A) Adopted   | Date             | Type  |   |
| (M) Modified  |                  |   |   |
| (R) Rejected  |                  |   |   |

GAO Comments and Recommendations

Task group report on G-21 through G-24 submitted to GSA Office of Procurement Management July 5, 1974.

See G-21 comments

See G-21 comments

See G-21 Comments

BEST DOCUMENT AVAILABLE

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible | Task group leader | Actual or (anticipated) date of task group submission to executive branch | Policy Position In Process              |   |                                       |                                    |
|---|-------------|-----------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |                             |                   |   | Executive Branch Level                  |   |                                       |                                    |
|   |             |                             |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration | Referred to OMB for final decision |
| <b>PART H--SELECTED ISSUES OF LIABILITY--GOVERNMENT PROPERTY AND CATASTROPHIC ACCIDENTS:</b>  |             |                             |                   |   |   |   |                                       |                                    |
| Self-insurance of Government property:  |             |                             |                   |   |   |   |                                       |                                    |
| 1. Make Government act generally as a self-insurer for Government property loss or damage resulting from defects in finally accepted contractor-supplied items (p. 93)                        | DOD         | ASPR committee              | Gordon J. Keefe   | Oct. 1973   |   |   |                                       |                                    |
| 2. Apply the same policy in recommendation H-1 to subcontractors (p. 97)  |             |                             |                   | Oct. 1973   |   |   |                                       |                                    |
| 3. Limit rights of third-party transferee of Government property for loss or damage from defects in property to rights granted to Government under original procurement contract (p. 97)      |             |                             |                   | Oct. 1973   |   |   |                                       |                                    |
| Catastrophic accidents:   |             |                             |                   |   |   |   |                                       |                                    |
| 4. Establish by law prompt and adequate compensation to victims of catastrophic accidents under Government-connected programs (p. 101)  | AEC         | Office of General Counsel   | H. B. Ragan       | (Sept. 1974)  |   |   |                                       |                                    |
| 5. Provide by law Government indemnification of contractors for liability in excess of available insurance resulting from catastrophic accidents under Government-connected programs (p. 101) |             |                             |                   | (Sept. 1974)  |   |   |                                       |                                    |

BEST DOCUMENT AVAILABLE

| Position established and Commission recommendation | Implementation   |      | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|------|---|----------------------------------|
|  | Action Initiated |      |   |                                  |
|  | Date             | Type |   |                                  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        |                  |      | Actual or (anticipated) completion date   |                                  |

|               |           |                       |             |     |  |
|---------------|-----------|-----------------------|-------------|-----|--|
| (A) Feb. 1974 | Mar. 1974 | Regulation (FPR/ASPR) | (Nov. 1974) | (R) |  |
|---------------|-----------|-----------------------|-------------|-----|--|

The general thrust of recommendations H-1, H-2, and H-3 has been adopted by the executive branch. In June 1974, GSA offered for industry comment through the Federal Register a proposed FPR amendment, similar to one adopted by the ASPR Committee that would make the Government a self-insurer for damage to Government property resulting from defects in supplies or services delivered to and accepted by the Government. Although the task group recommended adopting H-3 as it pertains to sales under the Foreign Military Sales Act, the proposed implementation action did not specifically so provide. The task group was also uncertain whether to adopt H-3 with respect to other Government sales. Some agencies, in their official comments, thought H-3 should be made applicable to all sales, including grants-in-aid programs as well as foreign military sales. GAO recommends that OMB make a policy decision on H-3 and specifically inform the FPR Director and the ASPR Chairman as to what sales are to be covered by the implementation action.

|               |           |                       |             |     |  |
|---------------|-----------|-----------------------|-------------|-----|--|
| (A) Feb. 1974 | Mar. 1974 | Regulation (FPR/ASPR) | (Nov. 1974) | (R) |  |
|---------------|-----------|-----------------------|-------------|-----|--|

See H-1 comments

|               |           |                       |             |     |  |
|---------------|-----------|-----------------------|-------------|-----|--|
| (A) Feb. 1974 | Mar. 1974 | Regulation (FPR/ASPR) | (Nov. 1974) | (P) |  |
|---------------|-----------|-----------------------|-------------|-----|--|

See H-1 comments

The task group's submissions on H-4 and H-5 have been delayed because the required personnel resources have not been available due to the priority of other assignments, such as energy organization proposals.

See H-4 comments

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POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible                                     | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
|---|-------------|---|-------------------|---|---|---|---------------------------------------|------------------------------------|
|   |             |   |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       | Referred to OMB for final decision |
|   |             |   |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration |                                    |
| PART I--PATENTS, TECHNICAL DATA, AND COPYRIGHTS   |             |   |                   |   |   |   |                                       |                                    |
| Patents:  |             |   |                   |   |   |   |                                       |                                    |
| 1. Promptly and uniformly implement revised Presidential statement of Government patent policy (p. 112)   | NSF/OST     | Executive Subcommittee of Committee on Government Patent Policy | James E. Denny    | Oct. 1973   |   |   |                                       |                                    |
| 2. Enact legislation to clarify authority of all agencies to issue exclusive licenses under patents held by them (p. 114)                             |             |   |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 3. Supplement Presidential policy by adopting uniform procedures for exercising rights retained by the Government under the policy (p. 114)           |             |   |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 4. Amend statute to make authorization and consent automatic except when expressly withheld or withdrawn by agency on a specific patent (p. 123)      |             |   |                   | Dec. 1973   |   | (A)(P) Apr. 1974  |                                       |                                    |
| 5. Amend agency regulations and clauses to provide that warranties against patent infringement be specified rather than implied in contracts (p. 123) |             |   |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |

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| Position established and Commission recommendation | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|--|------------------|---|---|----------------------------------|
|  | Action Initiated | Actual or (anticipated) completion date |   |                                  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        | Date             | Type                                    |   |                                  |

### General (I-1 through I-13)

In April 1974, I-1 through I-13 were sent to the agencies as a package to elicit official comments by the end of June. Comments were also solicited from the private sector through the Federal Register on I-4 and I-13. The task group submissions on the 13 recommendations proposed adopting nine, rejecting three (I-4, I-8, and I-13) and deferring one (I-9). Specific comments on the individual recommendations follow.

|                        |                                    |           |     |
|------------------------|------------------------------------|-----------|-----|
| (A) Mar. 1974          | Regulation<br>(FPR/FPFR)<br>(ASPR) | Aug. 1973 | (R) |
| June 1974<br>June 1974 | Legislation                        |           |     |

The executive branch adopted this recommendation and determined that its main thrust had been accomplished through amendments to the FPR and FPFR. ASPR is being revised to make it consistent with the President's 1971 patent policy statement and with the FPR as amended. However, some agencies are statutorily restricted from fully implementing these policies so the Federal Council for Science and Technology (FCST) is being assigned responsibility for drafting the necessary amendatory legislation to accomplish Government-wide implementation. The effective dates of the GSA FPR amendments have been suspended pending the outcome of litigation initiated by Public Citizen, Inc., challenging their constitutionality.

The task group recommended adoption, provided enacted legislation allowed greater administrative flexibility so that agencies could grant rights beyond the limited exclusive licensing currently authorized under GSA's licensing regulation (FPMR 101-4). These regulations have been suspended as noted above, pending the outcome of litigation challenging the constitutionality of the exclusive licensing program. Two energy-related bills (H.R. 11556 and H.R. 11557) are pending before a House subcommittee. H.R. 11557 is in accord with the President's policy for authorizing agencies to issue exclusive licenses but, under H.P. 11556, the Government would take title to all inventions and license solely on a non-exclusive basis.

The task group proposes that implementation await completion of a short study by the Federal Council for Science and Technology (FCST), required to ascertain ways in which the recommendation can be accomplished, including how "march-in" rights can be improved and strengthened. The Interagency Procurement Policy Advisory Group agrees with the GSA Staff analysis that I-3 be considered adopted, assuming general acceptance by the agencies, with transfer of implementation responsibility to FCST.

From the notice in the Federal Register soliciting comments from the private sector, the task group recognized that certain benefits were to be realized from the two interrelated provisions of I-4: (1) automatic authorization and consent in all R&D and supply-type contracts, and (2) withdrawal of such authorization and consent as to specific patents. The task group recommended against adopting I-4 because it believed that the areas of uncertainty were relatively few and largely avoidable by improving administrative practices and that the withdrawal of the authority would be rare and could disrupt the procurement process.

In proposing adoption, the task group interpreted I-5 as contemplating a contractual provision expressly setting forth availability to the Government of commercial warranties against patent infringement. The task group was concerned because I-5 could be interpreted as contemplating a contractual provision expressly negating the availability of such warranties. It believes that inclusion of the provision should be made mandatory, unless expressly excluded, to insure the availability of the warranties.

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency | Agency activity responsible | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
|--|-------------|-----------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|  |             |                             |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       | Referred to OMB for final decision |
|  |             |                             |                   |   | In GSA Office of Procurement Management | Out for official (A) Agency comments or (P) Private sector comments | Official comments under consideration |                                    |
| PART I--PATENTS, TECHNICAL DATA AND COPYRIGHTS: (continued)  |             |                             |                   |   |   |   |                                       |                                    |
| 6. Authorize agencies to settle patent infringement claims with available appropriations before litigation (p. 124)  | NSF/OST     | Executive Subcommittees     | James E. Denny    | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 7. Grant agencies the statutory authority to acquire patent applications, and licenses or other related rights (p. 124)  |             |                             |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 8. Give Federal district courts concurrent jurisdiction with Court of Claims for patent suits within the statutory jurisdictional dollar limit (p. 124)  |             |                             |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| Technical data:  |             |                             |                   |   |   |   |                                       |                                    |
| 9. Amend or repeal statutes limiting agency flexibility for rights in technical data (p. 129)  |             |                             |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 10. Develop and evaluate through OFFP and Federal Council for Science and Technology the implementation of a Government policy on rights in technical data supplied under Government contracts, including the relationship of prime contractor and subcontractor rights (p. 129) |             |                             |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 11. Authorize agencies to acquire rights or interest in technical data and information (p. 129)  |             |                             |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 12. Develop and evaluate through OFFP and Federal Council for Science and Technology the implementation of a Government-wide policy on treatment of technical data submitted with proposals or other related documents (p. 130)  |             |                             |                   | Dec. 1973   |   | (A) Apr. 1974   |                                       |                                    |
| 13. Establish a remedy for Government misuse of confidential information supplied to it (p. 131)   |             |                             |                   | Dec. 1973   |   | (A) Apr. 1974<br>(P) May 1974                                       |                                       |                                    |

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Referred | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|---|------------------|---|---|----------------------------------|
|   | Action Initiated | Actual or (anticipated) completion date |   |                                  |
|   | Date             | Type                                    |   |                                  |

The task group recommended adopting I-6. Legislation it proposed for implementing I-6 also includes provisions for implementing I-7 (patents, licenses, etc.), I-11 (technical data), I-15 (copyrights).

See I-6 comments

The task group was against adopting recommendation I-8. It doubted that adoption could achieve the objective of reducing a patent claimant's litigation expenses due to the District Court's limited jurisdiction and lack of expertise possessed by the Court of Claims in this area. The task group believes that, instead of providing for additional avenues of judicial relief, the objective could be better achieved by providing for effective administrative consideration of patent claims by all agencies, an initial step being adoption of I-6 and I-7 above.

The task group proposed that this recommendation be deferred at the present time and considered as part of I-10 and I-12 and that the implementations of these three recommendations include a review of existing laws to determine the need for repeals or changes. Any such specific changes would then be proposed along with implementation of I-10 and I-12. The task group stated that development of policy statements would be a long-term effort for the three recommendations and could take as long as 2 to 3 years based on current resources.

See I-9 comments

The task group recommended adopting this recommendation. As explained in the comments on I-6, the legislation proposed by the task force for implementing I-6 and I-7 (patents, licenses, etc.) also includes provisions for implementing I-11 (technical data) and I-15 (copyrights).

See I-9 comments

The task group concluded there was no immediate need for adopting this recommendation because it found no instances when a remedy was not available to parties injured by Government misuse of information supplied to the Government in confidence. The task group stated that statutes provide criminal penalties for any such misuse, remedies for breach of contract, and avenues of timely protest to GAO, etc. The task group believes that legislation of appropriate scope should be enacted only if actual need can be demonstrated. In contrast, the electronic industries are urging that a strong effort be mounted to support the Commission recommendation to prevent this type of abuse in the future.

POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)   | Lead agency | Agency activity responsible | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
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|   |             |                             |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       | Referred to OMB for final decision |
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| PART I--PATENTS, TECHNICAL DATA AND COPYRIGHTS: (continued)   |             |                             |                   |   |   |   |                                       |                                    |
| Copyrights:   |             |                             |                   |   |   |   |                                       |                                    |
| 14. Amend or repeal statutes limiting flexibility in dealing with publications of works developed under Government contracts (p. 133) | NASA        | Office of general counsel   | L. Hawicz         | Dec. 1973   |   |   |                                       |                                    |
| 15. Give all agencies the legislative authority to acquire private copyrights or interests therein (p. 133)                           |             |                             |                   | Sept. 1973  |   |   |                                       |                                    |
| 16. Establish an interagency task force under OFPP to develop and evaluate implementation of a Government copyright policy (p. 134)   |             |                             |                   | Jan. 1974   |   |   |                                       |                                    |

| Position established and Commission recommendation | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations   |
|--|------------------|---|---|--|
|  | Action Initiated | Actual or (anticipated) completion date |   |  |
| (A) Adopted<br>(M) Modified<br>(R) Rejected        | Date             | Type                                    |   |  |
| (A) May 1974                                       | May 1974         | Legislation                             | (R)   | <p>The Federal Council for Science and Technology (FCST) has been assigned responsibility to lead an interagency task force to develop a Government copyright policy in the implementation of I-16. As there is an interrelationship between the I series recommendations on copyrights, patents, and technical data, the Council has also been requested, in discharging its assigned responsibilities in these areas, to consider on a unified basis the plans and legislative language needed for implementing I-14 and I-15.</p> <p>GAO and the GSA staff analysis noted that the task group's position, which was adopted by the executive branch, failed to (1) consider statutes which "inhibit" an agency in "controlling" the publication of works by withholding such works from the public and (2) determine whether the general statutory prohibition against copyrights for works within the public domain applies to works developed by Government contractors or only to works of Government employees. Copies of the task group's report and GSA staff analysis have been sent to FCST. GAO suggests that the interagency task force, in developing a Government copyright policy, consider the omitted statutes and an evaluation of the general statutory prohibition.</p> |
| (A) May 1974                                       | May 1974         | Legislation                             | (R)   | See I-14 comments  |
| (A) May 1974                                       | May 1974         | Legislation                             | (R)   | See I-14 comments  |

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POLICY POSITIONS AND IMPLEMENTING ACTIONS ON COMMISSION RECOMMENDATIONS AS OF JULY 1, 1974

| Recommendation (note a)  | Lead agency         | Agency activity responsible      | Task group leader | Policy Position In Process  |   |   |                                       |                                    |
|--|---------------------|----------------------------------|-------------------|---|---|---|---------------------------------------|------------------------------------|
|  |                     |                                  |                   | Actual or (anticipated) date of task group submission to executive branch | Executive Branch Level                  |   |                                       | Referred to OMB for final decision |
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| <b>PART J--OTHER STATUTORY CONSIDERATIONS:</b>   |                     |                                  |                   |   |   |   |                                       |                                    |
| Consolidated procurement title in U.S. Code:   |                     |                                  |                   |   |   |   |                                       |                                    |
| 1. Establish a program to develop changes needed to organize and consolidate procurement statutes (p. 169)                                     | DOJ                 | Civil Division                   | Irving Jaffe      | (July 1974)   |   |   |                                       |                                    |
| Statutes of limited application:   |                     |                                  |                   |   |   |   |                                       |                                    |
| 2. Extend Truth-in-Negotiations Act to all procurement agencies; develop coordinated regulations for interpreting and applying act (p. 187)    | GSA                 | Office of procurement management | P. G. Read        | Sept. 1973  |   |   |                                       |                                    |
| 3. Extend Renegotiation Act for periods of 5 years (p. 188)  | Renegotiation Board | Headquarters                     | Dr. G. Lenches    | Apr. 1974   |   |   |                                       | June 1974                          |
| 4. Extend Renegotiation Act to contracts of all Government agencies (p. 188)   |                     |                                  |                   | Apr. 1974   |   |   |                                       | June 1974                          |
| 5. Raise Renegotiation Act jurisdictional amount to \$2 million for sales to Government and \$50,000 for brokers' fees (with dissent) (p. 189) |                     |                                  |                   | Apr. 1974   |   |   |                                       | June 1974                          |
| 6. Expand and clarify profit criteria used by the Renegotiation Board (with dissent) (p. 190)  |                     |                                  |                   | Apr. 1974   |   |   |                                       | June 1974                          |

| Position established and Commission recommendation<br>(A) Adopted<br>(M) Modified<br>(R) Rejected | Implementation   |   | Executive branch responsiveness<br>(R) Responsive<br>(P) Partially<br>(N) Nonresponsive | GAO Comments and Recommendations |
|---|------------------|---|---|----------------------------------|
|   | Action Initiated | Actual or (anticipated) completion date |   |                                  |
|   | Date             | Type                                    |   |                                  |

(A) Feb. 1974 Legislation initiated by Congress June 1973, H.R. 9061

(R)

The task group's initial report was submitted in June 1973 but was returned by GSA for modification and proposed implementation. The task group is presently awaiting additional information to work up a cost analysis of the massive reodification program involved. This will be included in the revised report.

The executive branch adopted the recommendation to extend the Truth-in-Negotiation Act to all procurement agencies but, under this recommendation, is considering only the cost and pricing aspects of the act. The other aspects are being considered under other recommendations related to provisions of the new procurement statute. Implementation of this recommendation is to be accomplished by legislation, now pending in the Congress, to consolidate the two basic procurement statutes as recommended in A-2. Currently, the FPPs are also being coordinated and made generally consistent with ASPR.

(R)

In a June 1974 letter to OMB, GSA recommended adopting the task group's proposals for J-3 through J-6. GAO believes these proposals, except for J-6, are responsive to the Commission recommendations. The J-6 proposal is non-responsive because the changes suggested to improve the statutory language relating to the profit factors, or criteria, do not include any guidelines for their application. In a May 1975 report on the Renegotiation Board's operations, GAO pointed out that the lack of such guidelines could affect the propriety and consistency of the Board's determinations. The Board, through OMB, has had amendatory legislation introduced which, in incorporating only the task group's J-6 position, is not responsive to the Commission's recommendations. The Congress has extended the Renegotiation Act in its present form for 18 months, to the end of December 1975, to allow time for a joint congressional and Board staff group to complete its study and for the appropriate congressional committees to review the entire renegotiation process and to hold hearings on recommended changes to determine how and to what extent the act should be amended. In its letter to OMB, GSA called attention to the Board's proposed legislation and its possible impact on the implementing legislation proposed by the task group. In view of the conflicting amendatory legislation being proposed in the executive branch and its failure to include sufficient guidelines for applying profit criteria, GAO recommends that OMB re-evaluate the executive branch position on recommendations J-3 through J-6.

(R)

(R)

(N)

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