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The Honorable Jack Brooks, Chairman  
Committee on Government Operations  
House of Representatives

RELEASED

Dear Mr. Chairman:

Your October 26, 1976, letter requested that we provide information to facilitate a thorough review and probable hearings by your committee on procurement in the Federal Government. You specifically requested that we identify those procurement practices that are in need of changes and those procurement-related laws or regulations that should be enacted or amended.

As you are well aware, there are numerous procurement issues that bear looking into by your committee. We have, therefore, identified for your consideration what we believe to be some of the more prominent issues which warrant early consideration by the 95th Congress. These are discussed in some detail in the following sections.

DOD's ACQUISITION MANAGEMENT

In September 1975, the DOD Acquisition Advisory Group (AAG) recommended that the Office of the Secretary of Defense (OSD) make certain changes in the weapon system acquisition process. Essentially, the AAG recommended that there should be less involvement by the OSD in major systems acquisitions decisions. In late January 1976, the Deputy Secretary of Defense requested the Secretaries of the Military Departments and the various Assistant Secretaries of Defense to implement the key AAG recommendations.

We are concerned that the implementation of some of those recommendations may erode the central policy direction and executive control of the acquisition process that the Procurement Commission was trying to strengthen and improve. In our opinion, it is essential for OSD to retain approval authority for the key management decisions related to major program initiation, advanced development, full-scale development, and production. Moreover, in order to exercise that authority OSD must have the ability to independently assess alternatives, risks, and progress. In this connection, for example, we are concerned that an apparent downgrading of systems analysis in OSD may severely hamper OSD's ability to analyze proposals made by the Services. We believe that the combination of decentralization of management and the de-emphasis of systems analysis will adversely affect OSD's acquisition management.

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There are other actions currently being taken which will affect the acquisition process. For example, on January 18, 1977, DOD Directive 5000.1, "Acquisition of Major Defense Systems" and DOD Directive 5000.2, "Major System Acquisition Process" were both significantly revised. We are in the process of analyzing the impact of those revisions.

IMPLEMENTATION OF OMB  
CIRCULAR A-109

Closely related to the immediately preceding discussion on DOD's acquisition management is the Department's implementation of OMB Circular A-109, "Major Systems Acquisition," which was issued in April 1976. You will recall that the Procurement Commission recommended a plan for improving the acquisition process for major systems. That plan was implemented through Circular A-109. The basic intent of the plan and the implementing circular is to improve the "front end" of the acquisition process, i.e., those decisions that are made before a final system solution is developed.

At the request of Senator Chiles, we reviewed three DOD programs to determine whether the system envisioned by the Commission had been used. The DOD selected the three programs we reviewed--the Army's Pershing II program, the NAVSTAR Global Positioning System which has a joint service program office with the Air Force as the executive service, and the Navy's Shipboard Intermediate Range Combat System (SIRCS). We concluded that:

- The Pershing II program is not similar to the Commission's plan but instead is characteristic of the acquisition process the Commission was trying to reform.
- The NAVSTAR Global Positioning System resembled only slightly the Commission's plan.
- The SIRCS generally is consistent with the Commission's plan but the Navy's planned approach does not provide the extent of competition the Commission desired.

In the near future, we plan to review the implementation of A-109 by several civilian agencies

REPORTING OF MAJOR  
CIVIL PROJECTS NEEDED

Since 1969, the Department of Defense has provided the Congress with reports on cost, schedule, and performance of selected major weapon systems. The Congress has found these reports very valuable in carrying out its oversight responsibilities.

As of June 30, 1976, Federal civilian agencies were managing more than 600 major projects estimated to cost \$208 billion when completed. While most civilian agencies prepare reports both for internal management and congressional use, in most cases the reports do not include cost, schedule, and performance data. The GAO believes that such information on selected major civilian projects would provide the Congress with a better means of assessing a project's overall progress and aid in making decisions on the future direction of the programs.

In our opinion, the Office of Management and Budget's relationship with the executive agencies makes it the most logical focal point for monitoring which programs to report to the Congress and what specific performance aspects of the programs to include in the reports. We have recommended that the director of OMB (1) issue guidelines to all agencies for reporting on selected major projects to appropriate committees of the Congress and (2) monitor implementation of the guidelines by the agencies involved.

The OMB does not believe it should require civil agencies to submit status reports to the Congress. The OMB believes that congressional need for status reports should be determined before establishing such reporting requirements. Over the past year, however, committee chairmen and staff of the Senate Committees on Appropriations, Aeronautical and Space Sciences, and Public Works as well as both the House and Senate Committees on Government Operations have indicated that such status reports on major civilian projects would be useful.

#### OMB CIRCULAR A-76

OMB Circular A-76 sets forth the policy that the Government will rely on the private enterprise system to supply its needs, except where it is in the national interest to provide directly the products and services it uses. This policy is undoubtedly one of the most controversial of all procurement issues. Contractors in the private sector are trying to get more of the Government's business, claiming that they can provide the Government with its required goods and services more economically than the Government could provide them directly through in-house operations. On the other hand, Federal employee labor unions are trying to retain in-house operations to provide job security for its members.

The OMB and OFPP have taken several recent actions which would result in significant increases in contracting out of functions now performed in-house. This increase in contracting out would be accompanied by decreases in the need to support such actions with cost analyses. For example, the OMB in July 1976, ordered every major Federal department and agency to identify at least 5 functions presently performed in-house that will be reviewed with the objective of contracting out those functions. In October 1976, the OFPP issued a memorandum providing guidance and specific cost

factors to be used when agencies prepare a cost analysis under Circular A-76. That memorandum discourages the making of cost analyses, pointing out that they are expensive, time-consuming, and not required except to justify in-house performance.

We agree with the stated policy of reliance upon the private sector for most needed goods and services and with the need to keep the expense and delay involved in making cost studies to a minimum. We have informed OFPP, however, that we also firmly believe that obtaining needed goods and services at the lowest possible cost is a sound public policy. This policy would require that cost comparisons be made not only to support a decision to provide goods or services in-house but also to support a decision to provide such goods or services through contract.

The OMB and OFPP actions have received considerable congressional attention. This is evidenced by the fact that the GAO has been receiving an increasing number of requests from the Congress to review the costs of proposed shifts from Government to private enterprise at numerous installations across the country. We have several studies underway and have just recently issued a report on the subject. Regarding the report, the OMB disagrees with the GAO position that there is a need to (1) develop a series of retirement cost rates tailored to apply to each type of activity that is a candidate for contracting out and (2) include the dynamic cost of Social Security benefits as part of the costs of contracting out on a basis similar to that used in determining Civil Service benefit costs applicable to in-house activities. Costs computed on a dynamic basis would take into consideration such factors as projected rates of inflation, wage increases, or benefit increases.

#### STATUS OF THE RENEGOTIATION BOARD

The Renegotiation Act expired on September 30, 1976, and Congress adjourned in October 1976 without extending it. Last minute attempts in the Senate Finance Committee to enact a 15-month extension of the act, as a rider, failed to reach the Senate floor.

The "Minish Bill," H.R. 10680, which was passed by the House and referred to the Senate Finance Committee last January 1976, never got out of the Committee. This bill would have introduced many reforms and improvements in the operation of the Renegotiation Board, a number of which have been recommended by the GAO.

The expiration of the Renegotiation Act will not immediately affect contractor activities because contractors are required to file reports with respect to renegotiable business performed prior to October 1, 1976. If the act is not extended, however, all business performed after September 30, 1976, would become nonrenegotiable.

The current situation has occurred several times in the past. On each occasion the Congress renewed the act on a retroactive basis. On the assumption that the 95th Congress will again adopt a retroactive renewal, industry publications have been advising contractors to continue their submissions and recordkeeping in anticipation of this renewal.

The GAO endorses the concept of renegotiation of excessive profits on Government contracts and subcontracts and, therefore, fully supports the renewal of the Renegotiation Act.

### SHIPBUILDING CLAIMS

From 1967 to 1975 shipbuilders submitted over \$1.6 billion in claims to the Navy. We estimate that at the present time the backlog of unsettled claims is over \$2 billion. These claims are based on the proposition that the Government owes the shipbuilders more than the contract price because the Government caused the contractor to perform work different from, or in addition to, that specified in the contract or caused delays or disruptions that increased the contractor's costs. As a result of these claims some contractors are refusing new Government contracts or threatening work stoppages on existing contracts. There is evidence, however, that the Government is not responsible for many of the events that increased contractor costs. Also, many of the claims being submitted appear to be excessive and are unsupported.

We are currently completing a review of the Navy's settlement of four shipbuilders' claims valued at \$315 million. The claims were settled by the Navy for \$144 million.

As a result of our review, we found that:

- 1) shipbuilders' claims were inflated and poorly documented resulting in delayed settlements,
- 2) the Navy procedures were generally adequate to assure reasonable settlements, and,
- 3) there is a need for a liberalized provisional payment policy for payment of individual line items as the Navy analysis is completed. This would improve Navy/shipbuilder business relations and reduce the additional accrual of interest expense on allowable claim amounts. The Navy has agreed with this suggestion and is putting it into effect.

In view of our findings, we believe there is a continuing need for Navy review and evaluation of claims before they are settled.

Several solutions have been suggested to deal with the problem including nationalization of shipyards, use of Navy yards for new construction, use of cost-type contracts in lieu of fixed price contracts where they are presently used, and authorization of new construction only after ship design is fully developed and frozen to minimize modifications during construction. Each of these proposed solutions is appealing in some respects but they also have serious disadvantages.

#### ADP PROCUREMENT

The hearings held by the House Government Operations Committee's Subcommittee on Legislation and National Security on June 28, 29, and July 1, 1976, covered, in considerable detail, the procurement situation as it relates to ADP. GAO provided the leadoff witness for these sessions, and our testimony covered many aspects of ADP procurement. As a result of these hearings, and the subsequent Committee report - which contained 19 recommendations - the Committee is cognizant of all current major matters at issue in the area. We would like, however, to restate our support of multi-year leasing legislation, which we believe has great potential for Government savings. Additionally, we understand that GSA intends to request further increases in capitalization of the ADP fund, and we are of the opinion that this, too, may result in significant savings.

We are continuing our assignments on ADP standards and interim up-grades, both of which have impact on the procurement process. We also plan a report to OMB's Office of Federal Procurement Policy concerning its proposed supplemental guidance to agencies on the application of Circular A-76 to ADP matters. Each of these reports will, of course, be provided to your Committee upon issuance.

#### CONTRACTS VERSUS GRANTS

The Commission on Government Procurement found that there is a fundamental conceptual difference between grant-type relationships and contracts, i.e., grant-type relationships are used where Federal assistance of activities having a beneficial affect on public policy is desired, while contracts are used for the acquisition of goods and services required for the conduct of the Government's business. The Commission concluded that there is a need to distinguish between grants and contracts and to better define which is the appropriate instrument to use in given situations. For example, the Commission found that (1) there is no single or precise definition for the term "grant," (2) grants and contracts are used interchangeably within and among agencies for the same type of projects, (3) the statutes are inconsistent in specifying the circumstances under which they require the use of grants versus contracts, and (4) some agencies do not have the authority to use grants. This situation was reportedly causing confusion, ineffectiveness, and waste.

Consequently, the Commission recommended that legislation be enacted that, in effect, would:

- distinguish Federal assistance from procurement by restricting the term "contract" to procurement relationships and the terms "grants", "grant-in-aid", and "cooperative agreement" to assistance relationships, and
- authorize all Federal agencies to use any of the above types of instruments as appropriate.

The Commission also recommended that the Office of Federal Procurement Policy undertake or sponsor a study of the feasibility of developing a system of guidance for Federal assistance programs.

Legislation designed to accomplish the intent of the Commission's recommendations was passed by both Houses during the 94th Congress. We testified in support of that legislation. The measure was pocket vetoed by the President, however, on the advice of the Office of Management and Budget. You will recall my letter to you dated November 29, 1976, expressing disappointment with the President's action.

Similar legislation (H.R. 1503 and S. 443) has again been introduced for consideration by the 95th Congress and the new administration. We continue to support the Commission's recommendations regarding this matter and would likewise support any legislation aimed at implementing those recommendations.

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We believe that the foregoing issues are prime candidates for discussion during the hearings you plan to hold on Federal procurement. As indicated, the GAO has done some work in each of these issues in the past and we will be happy to testify on these or any other procurement matters which you decide to address.

In addition, to help you prepare for the hearings, we have enclosed a schedule showing the status of the Procurement Commission's recommendations. We expect to issue to you our next status report on the recommendations this summer.

We hope that this information meets your needs. If we can be of any further assistance, please feel free to contact us.

Sincerely,

R.F. KELLER

~~MR. KELLER~~  
Comptroller General  
of the United States

Enclosures

STATUS OF THE RECOMMENDATIONS OF THE  
COMMISSION ON GOVERNMENT PROCUREMENT

The Procurement Commission made 149 recommendations to improve Federal Procurement. As of August 1976, OFPP had rejected 16 of the 149 recommendations. Of the 133 remainder, OFPP informed us in February 1977 that 113 had been accepted and 20 were still under consideration.

The 113 accepted recommendations are in various stages of implementation, either by legislation or regulations. Action on 19 has been completed; 18 are awaiting legislative action and 76 are still being developed.

The status of the Commission's 149 recommendations are summarized below and listed in the following pages.

In process	20
Implementation completed	19
Awaiting legislation	18
Being developed	<u>76</u>
Accepted	113
Rejected	<u>16</u>
Total	<u>149</u>

EXECUTIVE BRANCH POSITIONS IN PROCESS  
PER OFPP AS OF FEBRUARY 1977

<u>RECOMMENDATIONS</u>	TARGET DATE FOR EXECUTIVE BRANCH POSITION			
	1977			
	FEB.	MAR.	JULY	NONE REPORTED
A-22 through A-26 relying on private enterprise				X
B-1 through B-4 establishing Federal R&D policy			X	
B-8 R&D cost sharing			X	
B-10 treating contractor IR&D-B&P costs			X	
E-2, E-3 A-E life cycle cost and proposal reimbursement			X	
G-21 through G-24 extending Public Law 85-804		X		
H-4, H-5 catastrophic accidents	X			
I-13 remedy for Govern- ment misuse of data		X		
TOTALS	<u>2</u>	<u>5</u>	<u>8</u>	<u>5</u>

IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS  
PER OFPP AS OF FEBRUARY 1977

RECOMMENDATIONS	STATUS OF IMPLEMENTING ACTION		
	COMPLETED	AWAITING LEGISLATION	BEING DEVELOPED
A-1, creating OFPP	X		
A-2 through A-6, A-8, A-9, enacting modern, unified statutory framework		X	
A-7, raising ceiling to use simplified purchase procedures	X		
A-10, A-11, establishing Government-wide regulatory framework			X
A-12 through A-17, A-19, A-20 improving procurement work force			X
A-18, reconciling procurement grade levels	X		
A-21, creating Federal Procurement Institute	X		
A-27, financing procurement timely	X		
A-28, establishing Government-wide cost principles			X
A-29, making single overhead settlements			X
A-30, A-31, establishing Government-wide profit guidelines			X
A-33, A-34, establishing Government-wide criteria for contractor data, management systems			X
A-35, stimulating contractor acquisition or production facilities			X
A-36, disposing heavy machine tools			X
A-37, relying on contractor procurement system			X
A-38, competing professional services			X
A-39, using interagency contract support services			X
A-40, transferring military plant cognizance to Defense Contract Administration Service	X		
A-46, making debarment treatment uniform and equitable		X	
A-43, A-44, A-45 reassessing socioeconomic programs applied to procurement process		X	
A-48, testing mandatory small business subcontractors on selected basis			X
A-49, enhancing small business participation			X

IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS  
PER OFPP AS OF FEBRUARY 1977

RECOMMENDATIONS	STATUS OF IMPLEMENTATION ACTION		
	COMPLETED	PENDING LEGISLATION	BEING DEVELOPED
B-5, using federally funded R&D centers			X
B-6, monitoring experimental R&D incentives	X		
B-7, eliminating restraints on unsolicited proposals			X
B-11, using basic agreements	X		
B-12, resolving organizational conflicts of interest			X
C-1 through C-12, setting major systems acquisition policy			X
D-1, providing Government-wide procurement data			X
D-2, satisfying user with commercial supply support systems			X
D-3, limiting commercial Federal specifications			X
D-4, assigning OFPP specifications policy responsibility	X		
D-5, training decentralized purchasing activities	X		
D-6, using commercially available products and distribution systems			X
D-7, procuring U.S. commercial products overseas	X		
D-11, reevaluating ADPE acquisition procedures			X
D-12, USA delegation of preplanning ADPE requirements			X
D-13, authorizing multiyear ADPE leasing		X	
D-14, establishing ADPE evaluation benchmarks	X		
D-15, amending ADPE late proposal clause	X		
D-16, D-17, coordinating food acquisition policy, quality assurance	X		
D-18, using commercial forms in utility procurement			X
D-19, using innovative transportation procurement techniques	X		
E-1, E-4 competing A-E services		X	
F-1, clarifying procurement vs. assistance relationships			X <sup>a/</sup>
F-2, creating policy guidance system for Federal assistance program	X <sup>a/</sup>		
G-1, clarifying contracting officer authority			X
G-2, conferring informally on adverse contracting officer			Y

IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS  
PER OFPP AS OF FEBRUARY 1977

RECOMMENDATIONS	STATUS OF IMPLEMENTING ACTION		
	COMPLETED	PENDING LEGISLATION	BEING DEVELOPED
G-3, retaining multi-agency contract appeals boards; adding subpoena and discovery powers			X
G-5, using "All Disputes" clause			X
G-6, giving contractors direct access to courts			X
G-7, granting Government judicial review of adverse board decisions			X
G-8, establishing uniform, quick judicial review of adverse administrative decisions			X
G-10, increasing jurisdictional limit of district courts from \$10,000 to \$100,000		X	
G-11, allowing interest in claims	X		
G-13, thru G-16, G-18, G-19, improving bid protest procedures			X
G-17, recommending termination for Government convenience	X		
G-20, review of agency bid protest procedures			X
H-1 thru H-3, making Government self-insurer			X
I-1, I-2, I-3, I-5, I-6, I-7, I-9, through I-12, I-14 through I-16, revising patents, technical data, and copyright policies			X
J-1, consolidating, recodifying procurement statutes		X	
J-2, extending Truth-in-Negotiations Act		X	
J-3, modifying Renegotiation Act		X	
TOTALS	19	18	76
a/Reflects executive branch view of status; bills have been reintroduced in the 95th Congress to legislate these recommendations.			

RECOMMENDATIONS REJECTED BY OFPP

PER OFPP REPORT OF AUGUST 2, 1976

	<u>Number</u>
<u>A-32</u> Establishing regional contract payment offices	1
<u>A-41</u> Separating defense contract administration and supply activities	1
<u>A-42</u> Combining defense contract administration and audit activities	1
<u>A-47</u> Establishing new standards for measuring small business participation	1
<u>B-5</u> Eliminating recoupment from contractor's other sales of Government R&D investment	1
<u>D-8, 9, 10</u> Authorizing use of Federal Supply Services by grantees	3
<u>G-4</u> Establishing regional small claims boards for contract performance disputes	1
<u>G-9</u> Allowing reviewing court to take additional evidence and make findings of fact	1
<u>G-12</u> Paying court judgments on contract claims from agency appropriations	1
<u>I-4</u> Making patent authorization and consent automatic	1



	<u>Number</u>
<u>I-8</u> Giving Federal district courts concurrent jurisdiction with Court of Claims for patent suits	1
<u>J-4</u> Extending Renegotiation Act to contracts of all Government agencies	1
<u>J-5</u> Raising Renegotiation Act jurisdictional amount to \$2 million for sales to Government and \$50,000 for brokers' fees	1
<u>J-6</u> Expanding and clarifying profit criteria used by Renegotiation Board	<u>1</u>
TOTAL REJECTED RECOMMENDATIONS	16