
CONTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Recommendations Of The Commission On Government Procurement: A Final Assessment

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Important structural changes are now in place on procurement reforms first proposed in 1972, but the program is far from complete and momentum is slowing. The outlook for at least half of the reforms is not encouraging. Renewed dedication in the executive branch and more congressional action are needed.





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

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To the President of the Senate and the
Speaker of the House of Representatives

This is our eighth status report on the recommendations
proposed by the Commission on Government Procurement in
December 1972.

Response to the recommendations is far from complete,
and momentum is slowing. Renewed effort in the executive
branch and more conspicuous support in the Congress will
be needed.

We are sending copies of this report to the Chairmen,
House Committee on Government Operations and Senate
Committee on Governmental Affairs; the Chairmen of other
interested congressional committees; the Director, Office
of Management and Budget; the Administrator, Office of
Federal Procurement Policy; the heads of the 14 agencies
participating in this followup program; and each member
who served on the Commission.

A handwritten signature in black ink that reads "James A. Stairs".

Comptroller General
of the United States

D I G E S T

As Federal procurement expanded (now over \$100 billion annually) and individual problems multiplied, a patchwork of laws, directives, and regulations were installed to cope with the problems. In time the need for reform became evident.

CONGRESS INITIATES REFORM PROGRAM

The Congress, after exhaustive hearings in the late 1960s, created the Commission on Government Procurement to devise fundamental improvements. Twelve commissioners were appointed representing the Congress, executive branch, and industry. The Commission developed 149 integrated recommendations that required congressional and executive branch action.

Recent Congresses have launched

- a special subcommittee to oversee installation of the reforms and introduce legislation and
- the Office of Federal Procurement Policy (OFPP) to lead in making needed changes.

OVERALL ASSESSMENT

Success of the reform program is still not assured. Much important groundwork has been laid, but relatively few of the Commission's recommendations are a part of day-to-day operations. The outlook for many incomplete actions is not encouraging. (See pp. 4 and 5.)

WHERE MAJOR REFORMS STAND

Streamlining regulations

During its study, the Procurement Commission encountered a mass of rules and regulations within the procuring agencies that were difficult to understand and subject to little or no check on proliferation at lower organizational levels. Gaps and inconsistencies abounded.

After exploring several proposals, the OFPP decided on an entirely new Government-wide regulatory framework. A Federal Acquisition Regulation System is intended to consolidate existing defense and civilian agency regulations. Other objectives are to limit the occasion or need for additional agency rules, to encourage public participation, and to put regulations in language understandable to all.

There are some hurdles to overcome in this new unified regulation. To achieve consolidation, for instance, some statutes must be realigned and new policies must be developed. (See pp. 11 and 14.)

The new system asks for public participation in developing regulations but offers no practical way to get participation before a regulation is in near final form. (See pp. 12 to 14.)

The new system defines the kind of regulation an agency may not issue but not what it may issue, so that proliferation will not be entirely arrested. (See p. 10.)

Professionalizing the work force

The Federal procurement work force numbers over 100,000 people. The Commission found that many entering this work force are not qualified by experience or training. The Commission urged development of a professional work force as well as continuing research to improve procurement practices.

OFPP created the Federal Acquisition Institute in July 1976 for these purposes. The Institute has made progress in some areas but not in others. The Institute has been hindered by overextended scope, a staffing imbalance, absence of qualification standards for contracting officers, and poor organizational location. (See pp. 16 to 20.)

Cross-servicing
agency contracts

When two or more agencies have contracts at the same activity, it makes sense not to duplicate contract administration work, preaward surveys, price analysis, inspection, and so on.

For instance, a single Department of Defense agency administers (cross-services) contracts of the several military departments as well as some contracts of the space and energy agencies. The Procurement Commission recommendation was to promote such cross-servicing in all agencies.

OFPP has urged the agencies to comply, to list existing field cross-servicing capabilities (for a contemplated Federal directory), and not to add any new field activities where cross-servicing is available. No directory has emerged nor has there been any marked increase in cross-servicing. (See pp. 22 and 23.)

Some civil agencies are adverse to cross-servicing, believing their missions to be too special or too technical for another agency's contract administrators, or they are unwilling to transfer authority to people not under their direct control. Some prefer to do the work with home office rather than onsite personnel; others do little contract administration. (See p. 24.)

Improving climate for
federally sponsored research
and development

The Commission's view was that ponderous procurement practices and inexpedient policies for Government-sponsored research and development were retarding scientific enterprise and steering innovators away from the Government market. Some of the recommendations called for changes in philosophy, motivation, and climate for federally related research and development. (These are in the province of the Office of Science and Technology and the President's budgetary advisors.)

Other recommendations sought to liberalize Government-contractor financial arrangements as a way to spur innovation. The Commission also wanted removal of barriers, real or perceived, that discourage the flow of unsolicited proposals. (See pp. 26 to 28.)

For several years OFPP has been attempting unsuccessfully to convey some of these changes to the executive agencies through a new circular or regulation. Action on other proposals dealing with scope and roles of Federal labs and programs for long-range research are still undecided. (See pp. 27 to 33.)

Deciding Government-wide patent policy

The executive branch long has been divided on what kind of patent policy for Government-sponsored research will best stimulate technology advancement and hasten commercialization of inventions.

For instance, some hold that the Government should acquire all rights to a federally funded invention and let anyone exploit it (the "title policy"). At the other pole are those who believe that it is more productive to give the inventor-contractor exclusive right to commercialize or to license others to do so ("license policy"). Presidential policy has occupied the middle ground with a recent tilt towards more licensing. (See pp. 65 and 66.)

The Procurement Commission recommended support of the Presidential policy until its results could be assessed. Subsequent experience with the Presidential middle-ground policy was not persuasive, so OFPP and most executive agencies embraced the Commission's alternative of title-in-the-inventor contractor.

The Department of Commerce, OFPP, and the Office of Science and Technology Policy are composing a paper on feasible options for Presidential review. Several earlier deadlines for this paper have been missed. (See pp. 67 and 68.)

There is still no workable consensus for a particular national patent policy. Another obstacle is that there are some 20 laws on the books mandating patent policies for various agencies. A new departure is a Senate bill (S. 414) proposing title-in-the-contractor for small business and nonprofit organizations.

The problem will not be resolved until the Congress formulates a national patent policy.

Reforming major system acquisition

The Commission's recommended reforms in this field were sweeping. There was to be an entirely new approach to affirming and coordinating mission needs for new major systems. Competition among system concepts will begin much earlier and be sustained longer. Considerably more design freedom will be allowed than heretofore. (See pp. 34 to 36.)

The Commission recommendations were conveyed to the executive agencies in Office of Management and Budget (OMB) Circular A-109, "Major Systems Acquisition" of April 5, 1976. Most agencies are gradually bringing their policies in line. However, implementation machinery is far from complete and few new programs are underway in accordance with Circular A-109, now 3 years old. (See pp. 37 to 43.)

GAO recommendations to strengthen Circular A-109 implementation are contained in separate reports on defense and civilian agencies.

While Circular A-109 has received much attention and support, some congressional, industry, and other sources have expressed cautions. (See p. 44.)

Shift in commercial products buying policy

The Procurement Commission strongly recommended that the Government should buy more commercial-type products in the open marketplace and reduce reliance on items made to elaborate Federal specifications.

The special designs are often harder to get delivery on, less satisfactory to users, and more expensive in the end. Further, commercial warehousing and distribution systems are generally more responsive than Government ones, especially in managing marketplace products.

OFPP issued a commercial products policy 3 years ago asking for reduction in items procured to Federal specifications.

To date some individual buys have resulted in marked savings, but agencies have been slow to respond. Key actions are still required to get the commercial products policy into daily operations. One Commission reform is yet to be addressed. (See pp. 51 to 53.)

In responding to a recent GAO report citing some longstanding problems, the General Services Administration has pledged total support to a series of initiatives, including a move away from use of detailed Government specifications (PSAD-79-71, May 2, 1979).

Making architect-engineering services more competitive

The Procurement Commission wanted to foster more design entries and project ideas among architects and engineers by opening up competition, removing the traditional 6-percent fee ceiling, reimbursing architect and engineering firms for preliminary design work, and introducing project life-cycle cost as a selection criterion. (See p. 54.)

The executive branch has accepted the Commission's recommendations, but there may still be legislative obstacles to some. Selection procedures imposed by law, for example, tend to narrow the field of proposers (whose fee must be 6 percent or less). Pending legislation (S. 5) will repeal some, not all, fee limits but will not enhance competition. (See pp. 55 to 58.)

Tests are underway in the executive branch to see how the Commission's purposes can be approached. New regulations, uniform guidance, and congressional support are needed to complete this reform. (See pp. 56 to 58.)

Reforming Federal assistance

Considerable confusion has surrounded grant-type assistance programs at local, state, and national levels. There are unnecessary variations and inconsistencies in agency practices, nomenclature, use of procurement versus assistance-type instruments, and roles and responsibilities of the parties. (See pp. 59 and 60.)

The Procurement Commission thought that a Government-wide system was needed and urged the executive branch to study the problems and the need for change in statutes and regulations. The Congress reiterated this study requirement in Public Law 95-224 and set February 1980 as the OMB report deadline.

Staffing and completeness of the study is uncertain and the Congress should oversee progress at midyear. (See pp. 61 to 64.)

Other major reforms

GAO's last year's update of open legislative recommendations shows four other major Commission reforms have a long way to go.

- Establishing a modern integrated statutory base for all of Federal procurement.
- Establishing a national policy for the Government's reliance on the private sector for goods and services.
- Streamlining applications of socio-economic programs in the procurement process.
- Using a mission-based budgeting approach to the congressional funding process. (PSAD-78-100, July 31, 1978.)

RECENT CONGRESSIONAL ACTIONS

The Senate and the House have introduced bills to extend OFPP. The Senate bill is a simple 5-year extension. The House bill would set priorities for OFPP in the near future to develop a uniform procurement system as well as legislation and a management concept to put the new system into effect. (See p. 74.)

The House bill omits one existing OFPP function until a statutory policy is established and adds three others--including one to propose actions and schedules for completing Procurement Commission recommendations. (See p. 75.)

CONCLUSIONS AND RECOMMENDATIONS

The inherent difficulty of bringing about Government-wide change, loss of momentum, and the complexity of some issues will require renewed effort in both branches of Government. In addition, several conditions have dimmed the chances for realization of the Commission's reforms.

- Diversion of OFPP attention to other matters. (See p. 73.)
- Absence of an OFPP legislative program. (See p. 73.)
- Poor visibility of reform progress and problems in OFPP management and congressional reporting. (See p. 74.)

In recent testimony, GAO supported continuation of OFPP and the House OFPP renewal bill as strengthened in committee. (See p. 75.)

RECOMMENDATION TO THE DIRECTOR, OMB

Direct OFPP to review and resolve the indicated actions and issues on the chief Commission reforms discussed in this report and request OFPP to develop a new reporting design that permits high visibility and accountability for future management of open recommendations.

RECOMMENDATION TO THE CONGRESS

The House Government Operations Committee and the Senate Governmental Affairs Committee should review and resolve

--open legislative recommendations of the Commission discussed in the July 1978 GAO report (PSAD-78-100) and

--legislative matters in this report relating to architect-engineering services, Federal assistance, and patent policy.

GAO has discussed this report with OFPP and OMB officials and has considered their views.

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ABBREVIATIONS

A-E	Architect and Engineering
B&P	Bid and Proposal
DCAS	Defense Contract Administration Service
DOD	Department of Defense
DOE	Department of Energy
DOT	Department of Transportation
FAI	Federal Acquisition Institute
FAR	Federal Acquisition Regulation
GAO	General Accounting Office
GSA	General Services Administration
HEW	Department of Health, Education, and Welfare
IR&D	Independent Research and Development
NASA	National Aeronautics and Space Administration
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
OSTP	Office of Science and Technology Policy
R&D	Research and Development
VA	Veterans Administration

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CHAPTER 1

ESTABLISHMENT OF THE COMMISSION AND

FOLLOWUP PROGRAM

Over the past 30 years Government procurement of goods and services has expanded markedly in scope and complexity. Government buying is exceeding \$100 billion a year. Goods range from ordinary commercial products to space, energy, and defense weapon systems. Over 100,000 Federal employees are engaged in the process. A whole library of rules and regulations has accumulated to assure equitable buyer-seller relationships, to protect the public interest, and to use Government procurement as a vehicle for pursuing various social and economic goals.

Thus, Federal procurement is pervasive in the U.S. economy, and the efficiency of the procurement system is a matter of keen concern to everyone.

THE CONGRESS ESTABLISHES FEDERAL COMMISSION

As procurement expanded and individual problems multiplied a patchwork of laws, directives, and regulations were installed to cope with them. In time, the need for sweeping reform became pressing. The Congress, after exhaustive hearings in the late 1960s, decided to create the Commission on Government Procurement to devise fundamental improvements. Twelve commissioners were appointed, representing the Congress, executive branch, and industry. The Commission developed 149 integrated recommendations requiring congressional and executive branch action.

THREE-FOLD RESPONSE TO COMMISSION REPORT

The Commission released its report in early 1973 and the responses were:

- The Office of Management and Budget (OMB) set up a program to act on the recommendations.
- The Senate set up a special subcommittee to initiate legislation and conduct oversight, now called the Subcommittee on Federal Spending Practices and Open Government.

Our task

The House Government Operations Committee asked us to monitor progress on the Procurement Commission's reforms, and to report periodically. This is the eighth in our series of reports. Additionally, we have issued several reports dealing with particular Commission recommendations. (See fig. 1-1.)

Figure 1-1

<u>Special Reports</u>		
<u>Subject</u>	<u>Report no.</u>	<u>Date</u>
Mission budgeting	PSAD-77-124	July 1977
Commercial products	PSAD-77-170	Oct. 1977
Federal specifications	PSAD-77-171	Nov. 1977
Procurement research	PSAD-77-128	Sept. 1977
Government make or buy policy (A-76)	PSAD-78-118	Sept. 1978
OMB major systems Circular A-109:		
Defense agencies	PSAD-79-09	Feb. 1979
Civilian agencies	(draft)	

ORGANIZATION OF THIS REPORT

Chapter 2 recaps the progress made and current status of the 149 Commission recommendations. Succeeding chapters then discuss some of the more important reforms and how well they are progressing. (A similar update of mainly legislative reforms is in PSAD-78-100, July 31, 1978.)

The first of two concluding chapters assesses the Office of Federal Procurement Policy's (OFPP's) annual report to the Congress on the Commission recommendations. The second concluding chapter highlights current legislation to renew OFPP and our overall conclusions and recommendations. Appendix I describes each of the Commission's recommendations and its present status.

CHAPTER 2

WHERE THE REFORM PROGRAM STANDS TODAY

Important groundwork has been laid for some of the Commission's major reforms, but overall only relatively few are a part of day-to-day agency operations. The outlook for many others is not particularly optimistic.

THE PROGRAM

Soon after release of the Commission report, OMB responded with a two-phase program. In the first phase, inter-agency task groups study the recommendations to advise acceptance, modification, or rejection. These provisional policy positions are then circulated among the executive agencies and the interested public for comment after which positions are solidified.

In the second phase, implementation actions are proposed for accepted recommendations in the form of new or revised regulations, directives, and laws. When the Congress created OFPP in OMB, in 1974, it charged that Office with responsibility for this program.

STATUS OF THE PROGRAM

Figure 2-1 shows status of the program to date.

Figure 2-1

<u>Status of Commission Recommendations</u> <u>April 1979</u>		
<u>Actions</u>	<u>Number of</u> <u>recommendations</u>	<u>See</u> <u>appendix</u>
Complete:		
Rejected	13	II
Accepted and implemented	<u>30</u>	III
Total	43	
Incomplete:		
Neither accepted nor rejected	13	IV
Accepted, implemen- tation pending	<u>93</u>	V
Total	<u>106</u>	
Total recommendations	<u>149</u>	

Recommendations rejected

About 10 percent of the recommendations have been turned down so far. (See app. II.) The reasons given for rejection seem reasonable with one exception. (See A-22.) No serious rebuttals have been heard since the rejections were made known.

Although the outright rejections are few, they are not the full measure of opposition within Government. Tacit resistance can be gaged by the way some recommendations were rephrased and modified. Opposition can also be detected in others whose implementation continues to lag or fall short of original intent. Examples of these can be found in appendix V (see "outlook") and in succeeding chapter discussions.

Recommendatons accepted and implemented

For the most part the easier ones have been completed. (See app. III.) The more difficult ones usually require

multiple actions, new legislation or comprehensive regulatory change, and considerable changeover time.

We disagree with the OFPP's assertion that several more recommendations are now completed. (See ch. 12.)

Recommendations undecided

The 13 recommendations not yet acted on for acceptance or rejection (see app. IV), seek to clarify controversial policies about

- Government-financed research and development,
- amending contracts without consideration, and
- liability for defects in property furnished by contractors.

Some undecided recommendations require legislation. OMB's traditional thinking, now shared by OFPP, is to avoid legislative solutions.

Recommendations accepted, implementation pending

Ninety-three of the accepted Commission recommendations are either moving toward implementation or stalled. Appendix V depicts their present status and outlook for completion.

OUTLOOK FOR COMPLETION

In all, there are 106 recommendations still undecided or pending implementation. Their possibilities for action range from poor to good. The outlook for each recommendation is shown in appendixes IV and V and summarized here in figure 2-2.

Figure 2-2

<u>Outlook for Concluding Action</u>	
<u>Number of recommendations</u>	<u>Prospects for realization</u>
19	Good
42	Fair
45	Poor
<u>106</u>	

These ratings are our judgment of the chances for each pending recommendation, looking at its inherent complexity, proximity to completion at this time, and the degree of enthusiasm, indifference, or hostility toward it. Circumstances can change, however, and new initiatives, congressional interest, or higher priority could change the outlook.

Succeeding chapters will overview executive branch actions on major reforms.

CHAPTER 3

A NEW GOVERNMENT-WIDE REGULATORY SYSTEM:

A NEED TO TAP ITS FULL POTENTIAL

OFPP is developing a new system of procurement regulations intended to simplify contracting and improve Government/business relationships. The new system goes a long way in addressing the four major concerns of the Procurement Commission, but additional actions are needed in two of them--regulatory proliferation and public participation. Also, extending the time table for drafting the new regulation could be useful to exploit this opportunity to improve procurement policy in critical areas.

COMMISSION'S CONCERNS

The Procurement Commission found a burdensome mass of procurement regulations within individual Federal agencies and little or no system to coordinate and control the regulations. Figure 3-1 outlines the Commission's four main concerns.

Figure 3-1

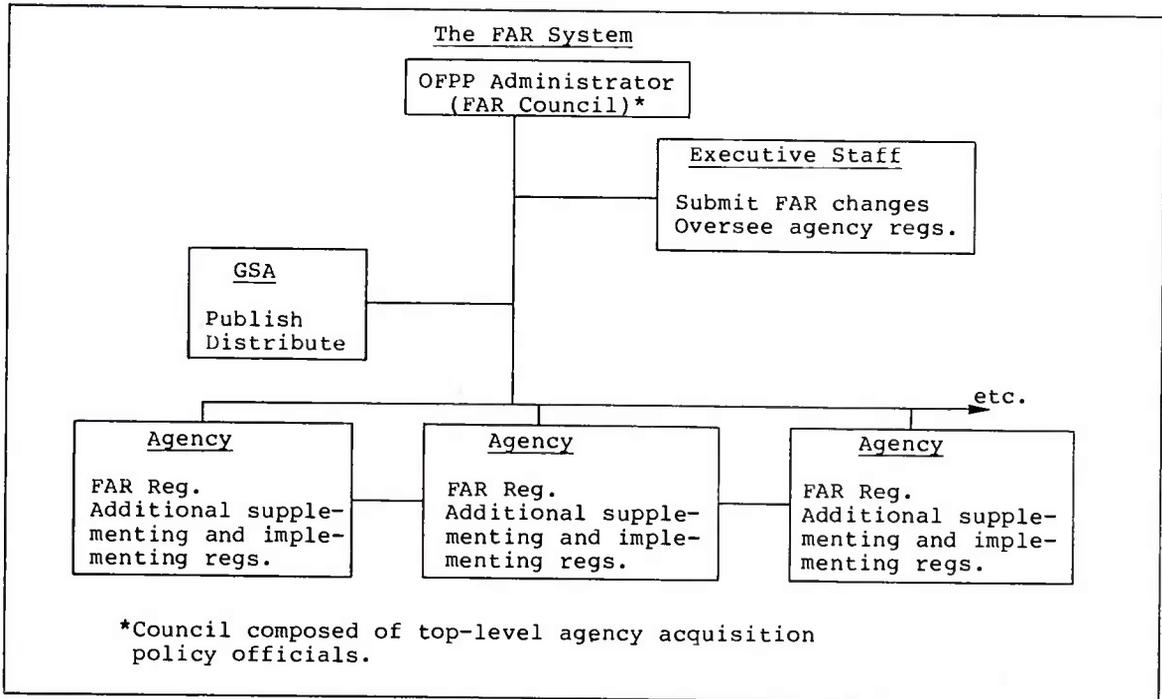
<u>Commission Concerns with Regulations</u>			
<u>Proliferation</u>	<u>Lack of uniformity</u>	<u>Readability problems</u>	<u>Limited public participation</u>
Numerous primary sources of regulations Numerous agency levels of supplementary and implementing regulations Numerous uncoordinated but related regulations: Labor SBA EPA OMB GSA Reneg. Board GAO	Inconsistencies among agencies, such as in: Basic clause language Cost principles guidance Profit guidelines Surveillance waivers Truth-in-negotiations application Gaps in agency regulatory coverage, such as: Research & development Multiyear contracting Government property	Unnecessarily complex Ambiguous language Voluminous coverage Frequent changes	Prior public notice not required Pre-issuance opportunity to comment not required Rationale for regulation not explained Alternative regulations not invited

THE CONGRESS LEGISLATES
RECOMMENDATIONS

OFPP was originally charged with carrying out the Commission's recommendations for a new system to coordinate procurement regulations and provide for public participation in developing them.

After studying various proposals for several years, OFPP decided in early 1978 to create an entirely new unitized system called the Federal Acquisition Regulation (FAR). The Congress, in fact, made it a statutory requirement in late 1978, directing OFPP in amendments to the Small Business Act to issue "a single, simplified, uniform Federal procurement regulation." Figure 3-2 shows the organizational framework of the new FAR system.

Figure 3-2



Operating under OFPP guidelines, the Department of Defense (DOD) and the General Services Administration (GSA) drafting teams began work in the summer of 1978. Figure 3-3 shows OFPP's original and current targets for completion.

Figure 3-3

<u>FAR Targets</u>		
<u>Original</u>	<u>Current</u>	<u>Milestone</u>
Jan. 1979	May 1979	All parts in draft
Feb. 1979	June 1979	Out to agencies and industry for comment
Aug. 1979	Oct. 1979	Entire regulation in draft for congressional review
Spring 1980	Spring 1980	Final regulation published; new system in operation

As of April 1979, about 20 percent of FAR had been drafted and sent out for comment. Some in the procurement field consider the schedule much too optimistic.

FAR SYSTEM TO ALLEVIATE MANY BUT NOT ALL CONCERNS

Figure 3-4 starts to answer how well the FAR system addresses the Commission's concerns by matching key features of the new system with the four main concerns.

Figure 3-4

What the FAR System Does			
About regulatory proliferation	About uniformity	About readability	About public participation
<p>Individual agency regulations are not to repeat, paraphrase, or conflict with anything in FAR.</p> <p>If a new agency regulation has common application, it must be in FAR.</p> <p>Agency proliferation controls and regulations subject to agency Hdqs. and OFPP review.</p>	<p>Issuance of FAR as core regulation throughout Federal Government will reduce inconsistencies and fill gaps.</p>	<p>FAR goals are to produce a simple regulation written in plain English.</p>	<p>Public comment allowed on significant regulations; 60 days allowed for comment; public meetings possible.</p> <p>Other--mailings to interested parties for comment.</p>

Regulatory proliferation--
not entirely arrested

A recent OFPP survey that penetrated organizational levels within agencies reinforces and expands on the Commission's conclusions. It found several hundred sources of regulations in the Federal Government and pages of regulations numbering in the tens of thousands. The survey attributes this proliferation to multiple levels of regulatory authority within agencies which issue local regulations, none of it well managed. 1/

To cope with this proliferation, Part I of FAR outlines several kinds of regulations the operating agencies cannot issue. (See fig. 3-4.) However, FAR is not clear about what kinds of regulations the agencies can issue. For example, according to the FAR draft,

"* * * agencies may issue or authorize the issuance of * * * regulations that implement or

1/"Survey and Study of Executive Agency Procurement Regulations," Alexander W. Keema, OFPP, Apr. 1979.

supplement the FAR at specific levels within their agencies * * * [and] to satisfy the specific needs of the agency or of a particular suborganization within it."

To illustrate, one agency (DOD) expects to have about 1,500 pages of its own regulations at the top level. Lower levels in the organization, in turn, would have many additional pages.

While FAR is installing several useful restrictions (see fig. 3-4), a great deal of discipline will be required if regulatory proliferation is to be arrested. The small FAR staff cannot oversee the 30 to 40 operating agencies, especially their lower echelons. Positive guidance is needed on what kinds of regulatory issuances are in an individual agency's province. Examples of such guidance are matters unique to an agency's operation and special statutory requirements. Further explanatory material about FAR need not be in individual agency regulation; it can be included in training materials.

One way of constraining agency regulatory proliferation is public preview. However, as discussed later, only those deemed significant by the agency are subject to public comment. Also, the public comment requirement can be interpreted to operate only at the agency top, not at lower echelons. (OFPP officials intend to clarify this.)

Uniformity--substantial increase likely

Since FAR will be a single Government-wide regulation, it has considerable potential for eliminating inconsistencies and gaps in agency regulations.

Procurement officials generally acknowledge that uniformity is attainable on procurement principles, policies, objectives, and even business forms. Latitude is needed, they believe, within operating procedures for further thought, innovation, business judgment, and unique agency situations.

Statutory requirements imposed on particular agencies work against uniformity. In consolidating agency regulations, FAR is identifying these variant legislative requirements. No effort is yet planned to clear them away. As a general rule, OMB and the Federal agencies are reluctant to reopen existing legislation. Consequently, legislative differences cited in the Commission's report can be expected to continue unless a concerted effort is made to eliminate them.

Readability--much better

As noted in figure 3-4, one of OFPP's primary FAR goals is a simple Government-wide regulation written in plain English. The present Administration has stressed easing the burden of Federal regulations and writing them clearly. Early parts of FAR sent out for comment are much clearer and more concise than existing regulations.

Public participation--two barriers remain

The Procurement Commission observed that varied practices of the agencies in inviting public participation "do not meet minimum standards for promoting fair dealings and equitable relationships among the parties in Government contracting* * *." FAR will allow greater public participation in the making of regulations but two barriers remain.

First, only those regulations deemed significant are subject to public participation and the term "significant" is subject to varying interpretation. Without specific guidelines or tests, the agencies and OFPP could deny at any time that a particular regulation is significant. OFPP has informed us it will change the term "significant" to "substantial." Either one seems vague at best. All regulations that impact on or are burdensome to the private sector ought to be open to public participation.

The second barrier is that public participation will often come too late if the new regulation is not exposed until it has been actually drafted. By then other alternatives have usually been entertained inhouse and dismissed. The FAR plans to expose a draft regulation to public comment at the same time it is sent to the agencies. The common perception is that once a regulation has reached this stage it is extremely difficult to change it more than trivially. In response to an earlier executive proposal on the Commission recommendation, private-sector reaction was:

"Comments are usually requested well after * * * recognition of a problem and * * * drafted regulation has been prepared. This procedure does not allow full airing of the basic problem nor a complete consideration of alternative action. [Once] drafted the

central question of whether it [regulation] is needed is extremely difficult to address * * *." 1/

The President's March 1978 Executive Order on improving Government regulations reinforces the above view saying that " * * * many people believe that a proposed rule is almost impossible to change once published [for comment]."

Many believe there is need to offset the tilt inherent in a system that permits Government procurement officials to decide the ultimate content of regulations and contract clauses.

A number of public and private officials supported the idea of bringing those affected by regulation into the thinking process at an earlier stage of the proceedings. No consensus exists, however, as to how to accomplish this earlier participation. Figure 3-5 depicts three possible alternatives designed by GAO each involving a two-step approach.

Figure 3-5

<u>Alternatives for Earlier Public Participation</u>		
<u>A</u>	<u>B</u>	<u>C</u> (note a)
1. Advise new start and objective, ask for problem validation and magnitude, and invite alternative solutions.	1. Advise new start and objective, give one or more alternatives, invite others, as well as further information on problem.	1. Advise new start and objective, and hold public meeting to discuss problem and alternatives.
2. Ask for comment on details of draft regulation.	2. Ask for comment on details of draft regulation.	2. State alternatives analyzed, why favored one is most effective, least burdensome, ask for comment on details of draft regulation.
a/C is similar to President Carter's Executive Order 12044.		

1/Response of Council of Defense and Space Industry Associations to executive task group on Procurement Commission recommendation A-11.

In March 1979 OFPP put forth for public comment a new approach to profit policy and invited other ideas. The approach parallels alternative B in figure 3-5; public participation in this policy development should be of interest.

NEED FOR POLICY DEVELOPMENT

The present FAR project is intended to consolidate and rewrite existing regulations and develop new or revised policies. The current schedule is too tight to accomplish both of these objectives. As a result, policy development in critical areas may be deferred. Figure 3-6 lists some policies in need of revision or development, several of which were identified by OFPP officials.

Figure 3-6

<u>Illustrations of Policies Needed in the FAR</u>	
	<u>See</u>
Contracting for commercial products	Ch. 8
Contracting for research and development	Ch. 6
Contracting for professional services, including architect-engineering	App. V, A-38, and Ch. 9
Contracting from Federal supply schedule	Ch. 8
Use of Federal specifications	Ch. 8
Cross-servicing of contract administration	Ch. 5
Government-wide profit guidelines	App. V, A-30, and A-31
Qualifications of contracting officers	Ch. 4
Control of management system and data requirements	App. V, A-33, and A-34
Independent research and development	App. IV and B-10

The regulatory system needs to respond also to the Commission-recommended unification and modernization of all Federal statutes. (See, for example, app. V, A-2 thru A-9.) OFPP recognizes that modernization not in conflict with present law can be adopted now, but two questions arise. Is

there enough time in the schedule to do this? Which should come first, the statutory base or the new regulation?

ANALYSIS

OFPP has taken a major step in development of a regulatory system. Some remaining actions and issues to resolve are:

- A program to eliminate unnecessary legislative differences among the operating agencies and to design the statutory base for the regulatory system.
- A greater focus on policy development in critically needed areas.
- Guidance on the kinds of regulatory material that are properly within an individual operating agency's province.
- Exploration of alternative ways of getting meaningful public participation in the formative stages of policy development.

CHAPTER 4

THE FEDERAL ACQUISITION INSTITUTE:

REASSESSMENT IS NEEDED

The Federal Acquisition Institute (FAI) started with an even larger scope than contemplated by the Procurement Commission and with great dedication to its mission. Important progress is being made in some FAI programs, less so in others. If FAI is to help the Federal agencies professionalize their work force, attention must be given to staffing, scope, and organizational placement.

COMMISSION STRESSED QUALIFICATIONS AND PROFESSIONALISM

The Commission found that only a small number of college graduates were entering the acquisition work force. New employees were receiving little formal training. The Commission also cited limited career development in the agencies and little systematic procurement research. Finally, agencies were appointing many contracting officers not qualified by experience or training. The Commission recognized that although procurement was not yet a profession, the increasing complexity and importance of the procurement process demand a more competent and professional work force.

The Commission recommended a series of agency and OFPP actions aimed at increasing the professionalism of the work force, and the creation of an institute to foster education and research.

OFPP created FAI in July 1976. Its charter included objectives conceived by the Commission and some intended for the operating agencies and OFPP. In addition to education and procurement research, FAI's added missions are to (1) develop agency and Government-wide career development programs, (2) serve as the focal point for the development of standards for training, and (3) monitor training programs to ensure currency and avoid duplication.

PROBLEMS IN FAI'S FORMATION

Several problems associated with FAI's staffing, scope, and organizational location are still hampering the operation of FAI.

Staffing imbalance

FAI did not attract the broad professional excellence from all agencies it ought to have. One reason is staff selection comes primarily from one agency. A proper balance of DOD and civil agency personnel is needed to win Government-wide acceptance and achieve FAI's several difficult missions.

Overextended scope

FAI initially spread its 11 professionals over about 40 programs. Later, OFPP requested cutbacks in many of these. Also, FAI's budget request was cut by the Congress. FAI's initial plan included education and training of some 30,000 to 40,000 in the Federal-assistance work force, in addition to approximately 130,000 in the acquisition work force. Due to opposition from people in the assistance area and subsequent OFPP redirection, FAI deleted the assistance work force from its agenda.

Organizational location creates narrow image

DOD is the executive agent administering FAI. This contributes to what some see as DOD dominance. The congressional conference report covering FAI's fiscal year 1979 budget stated that FAI should be part of OMB. This legislative history is being ignored by the executive branch and DOD continues to be FAI's executive agent. Civil agencies regard FAI as a DOD organization, not a Government-wide institution.

FAI'S PROGRAMS

Many FAI programs are long range; consequently, it is too early to tell how successful are the recommendations being implemented so far. Although progress in some areas is apparent, most of FAI's actions are still in the formative stage.

Educational programs underway

Through educational programs, FAI is attempting to produce technically qualified contract personnel with broad-gaged management skills. To achieve professionalism, FAI is giving a high priority to procurement education. Figure 4-1 shows FAI's approach to education programs.

Figure 4-1

FAI Approach to Education Program (note a)		
Type of degree	Approach	Status
Graduate level: MPA/MBA	Using committees of deans from schools of public and business administrations	MPA awaiting approval and developing MBA model
Undergraduate level: BS in Public or Business Administration	Jointly sponsoring model undergraduate program with American University	Steps underway to duplicate at other universities
Associate level: Associate in Science with major in contract management	Working through American Council on Education and New York State for credentialing service	Propose to available in-house training for college credit
a/Source: FAI		

The model undergraduate program at American University has enrolled over 80 students.

Research to improve productivity/
performance lagging

The Commission recommended that FAI conduct and sponsor research in procurement policy and procedure. Also, in a September 1977 report, we stated that civil agencies generally have been reluctant to undertake procurement research. In DOD, procurement research has been going on for about 6 years, but the program is in low gear. 1/

FAI has helped set up DOD and civilian agency research councils. Their purpose is to eliminate duplication, establish priorities, and coordinate existing research. A survey of civilian research needs has been made. In its first 4 years, FAI has managed two research projects for OFPP, one in cost estimating and the other in profit policy. OFPP intends to allocate most of its research funds this year to other program areas.

1/"An Organized Approach to Improving Federal Procurement and Acquisition Practices," PSAD-77-128, Sept. 30, 1977.

Draft career guide circulated

FAI is circulating to agencies a comprehensive career guide for contract personnel. The guide is intended to unify practices Government-wide and to help agencies establish skill and knowledge objectives, career patterns, and goals to upgrade their personnel.

New training courses offered

The Commission noted that particular attention should be devoted to both on-the-job and formal classroom training of new midcareer personnel, if the procurement work force is to be upgraded and to offset retirement and other losses of the next decade.

In making use of existing training resources, FAI has established initial standards for six common courses expected to have Government-wide applicability. A course on contract law, for instance, is currently being developed.

FAI is starting to offer new courses with top priority given to Presidential initiatives. To support the President's Urban Policy, FAI sponsored development and nationwide distribution of two videotapes on the Labor Surplus Area Program. To support the President's Anti-Inflation and Minority Business Programs, as well as OFPP policies, seven additional subject matters are under similar development.

FAI is having trouble certifying and coordinating a system for Government-wide use of training courses. Although agency courses have been cataloged, evaluation criteria have not been implemented to certify those worthy for retention.

QUALIFICATION STANDARDS FOR CONTRACTING OFFICERS NEEDED

Currently, employees awarding contracts need not meet minimum qualification standards by regulation or law. Nor are they required to take training or attain a certain level of education or experience. One method to achieve professionalism would be to qualify contracting officers who meet minimum standards of competency. The new draft FAR (part 1.603) contains the policy for selection of contracting officers. The regulation illustrates desired attributes but does not lay down or require qualifications standards for contracting officer appointments.

ANALYSIS

FAI efforts to encourage schools of business and public administration to develop acquisition executives and managers are noteworthy. FAI efforts in career development have led to a guide now under agency review. The FAI training initiative is just beginning to take effect. Few accomplishments can be reported in research because limited funds and attention have been devoted to this area.

FAI can contribute substantially to improve the qualifications of acquisition personnel through education and training programs. A major impetus for FAI would be to require contracting officers to meet predetermined qualifications. Such a policy would spur a continuing effort between FAI and the operating agencies to develop a work force with these qualifications.

In order to enhance Government-wide credibility and reach its objectives, FAI needs to be in a more central place in Government. House bill H.R. 3763 to renew OFPP would accomplish this purpose. (See ch. 13.)

CHAPTER 5

PROGRAM TO PROMOTE CROSS-SERVICING

NEEDS A MORE ORDERLY APPROACH

OFPP's program to coordinate and promote interagency use of field people at contractor locations (cross-servicing) is not receiving much response because:

- Only one agency, DOD, can provide extensive cross-servicing, and it is not staffed to handle additional workload.
- Potential users of the service have problems understanding the concept or are unwilling to transfer authority to those not under their direct control.

WHY CROSS-SERVICING?

When two or more agencies have contracts at a single location there can be considerable overlapping or voids in the coverage of their contract administrators, inspectors, auditors, etc. Each agency or component separately may do preaward surveys, price analysis, production expediting, quality assurance, etc., and impose their own special requirements for contractor data and reports. Thus, the contractor is harassed by conflicting or redundant requirements and the cost of contract administration is multiplied.

DOD attempted to streamline its contracting by setting up the Defense Contract Administration Service (DCAS) as a single instrument for the military departments. Not all defense contracts are serviced this way; a particular military department rather than DCAS still handles administration at some larger plants where major defense systems are produced. In both situations, DOD is able to present "one face to industry" through what is called a "plant cognizance program." This program identifies a single entity to administer contracts at any one business location. 1/

The Commission noted that the National Aeronautics and Space Administration (NASA) from its beginning has used DOD contract services. The Commission observed further that

1/Under a new DOD proposal, administration at the large military plants and DCAS would be combined into a new contract management agency.

contract auditing has long been on a cross-servicing basis--for most agencies DOD is the auditor for commercial firms and the Department of Health, Education, and Welfare (HEW) is the auditor for educational institutions, hospitals, and State and local governments. The Commission cited two reasons why cross-servicing is nonetheless uncommon in the Federal Government.

--Cross-servicing is voluntary.

--No one in the executive branch coordinates it.

OFPP SETS UP A PROGRAM

In 1974, the executive branch accepted the Commission's recommendation to coordinate and promote a program of cross-servicing. In late 1977, OFPP announced the program, pointing up the benefits of cross-servicing and encouraging its use, and requested the agencies to identify participating field activities so that a Federal directory could be published. October 1978 was to be the effective date of the program.

In August 1978, OFPP sent a policy letter to all agencies (1) reiterating the benefits of cross-servicing, (2) requesting DOD to publish this Federal directory of available cross-servicing activities, and (3) asking the Federal agencies not to add any new field activities duplicative of a cross-servicing capability without OFPP clearance.

Little capability reported

Except for HEW (audit) and the Department of Agriculture (food quality), civilian agencies have not reported to OFPP any Government-wide cross-servicing capability nor has a Federal directory been published. Figure 5-1 shows the known cross-servicing capabilities in the Federal Government.

Figure 5-1

<u>Known Federal Cross-Servicing Capabilities</u>		
<u>Contract locales</u>	<u>Contract administration</u>	<u>Contract audit</u>
Business firms	Defense	Defense
Educational institutions	Defense	HEW
Hospitals, State and local govern- ments	-	HEW
Food quality assurance	Agriculture	-

As figure 5-1 indicates, DOD is the only agency with a capability at private business firms to provide cross-servicing. DOD supports the OFPP cross-servicing program but believes it cannot continue to absorb additional civilian workload without some relief from present personnel ceilings. A followup letter of January 17, 1979, to the Administrator, OFPP, reiterated DOD's need for relief from these ceilings if the program is going to be successful.

At the time OFPP's program was to become operational in late 1978, DOD civilian agency workload amounted to about \$15 million for contract administration and \$11 million for contract audit. ^{1/} These amounts covered several agencies but the largest customers, NASA and the Department of Energy (DOE), accounted for almost 90 percent.

REASONS ENCOUNTERING DIFFICULTY

There are several obstacles hindering the fuller development and use of Federal cross-servicing capabilities under the OFPP program.

^{1/}These figures do not include foreign military sales.

No civilian agency tradition

Historically, some civilian agencies have not used onsite organizations to administer contracts--they do it from the procurement office. According to an FAI survey, however, preaward and award activities of civilian agencies absorb available manpower with little time left for administration of contractor performance.

Resistance to the concept

Procurement officials in some civilian agencies believe that contract administration should not be separated from the activity that awarded the contract ("cradle to grave" concept). Further, they question the competence of DOD to cross-service agencies with entirely different missions. (OFPP's view on this point is that the procuring agency may at any time assign its own specialist to the contractor's facility and thus retain oversight of critical technical requirements.)

Insufficient knowledge about cross-servicing

Civilian agencies will acknowledge the value of using a few well understood services of other agencies such as auditing, preaward surveys, and administering Government property in contractor hands. They still resist, however, the idea that another agency can handle the technical end. Civilian agencies fear an all or nothing proposition as opposed to using selective contract services that satisfy their needs.

Lack of reciprocity

Adding to the reluctance to use the program is the unlikelihood that civilian agencies can do cross-servicing. Most lack field organizations to service their own needs much less the needs of others. Also, some think the DOD price (\$20 an hour) is too high.

DOD's limited capacity

A further deterrent is DOD's capability to provide additional cross-servicing due to manpower ceilings. So far OMB has not supported lifting DOD ceilings, when and if it becomes necessary.

OFPP COMMENTS

OFPP has noted that cross-servicing is working with several agencies and that, while other agencies resist it

for the reasons above, most welcome the availability of field assistance. Such assistance is not always formal or invoiced, especially in the case of smaller agencies. According to OFPP, the primary purpose of its program is to eliminate overlap and duplication, not simply to have a single agency do all of the administration at a given location.

As to DOD's need for relief on personnel ceilings, OFPP says it knows of no instance where DOD has declined cross-servicing agreements due to lack of resources.

OFPP believes the best approach to the program is an evolutionary one--allowing for a gradual phase-in of cross-servicing by the civilian agencies.

ANALYSIS

A more orderly program is needed to accomplish OFPP objectives. Secondly, civilian agencies need to be better informed on what particular field services are now available to administer contracts. Finally, civilian agencies need to know which of these available services are or can be tailored to their use without compromising special mission responsibilities.

CHAPTER 6

A BETTER CLIMATE FOR GOVERNMENT-

SPONSORED RESEARCH AND DEVELOPMENT IS NEEDED

In a dozen integrated recommendations, the Commission called for new stimulation of Government-sponsored research into national needs and missions. The gist of these recommendations is that there should be less onerous research and development (R&D) procurement rules, more fertile conditions for innovation, and more positive in-house attitudes. The executive branch has not yet decided policy positions on many of these matters but, for some, new simplified regulations are emerging.

SCOPE OF THE COMMISSION'S RECOMMENDATIONS

The Procurement Commission came to the opinion held by many observers that technology exploration in the United States has been losing its traditional vigor. In the case of Government-sponsored R&D, the Commission concluded that ponderous procurement practices and inexpedient Federal policies were dampening scientific enterprise and keeping innovators away from the Government market.

Some of the recommendations call for changes in philosophy, motivation, and the general climate for federally supported R&D. A few are management oriented--they are aimed at strengthening Federal agency long-range basic research programs and laboratory capabilities and clarifying their roles. Others prescribe standardized contracting and nomenclature, curbs on federally financed R&D centers, and more concentration on agency mission improvements. These relatively mild changes would ordinarily win quick sanction of themselves, but were held up as part of the R&D package. (See B recommendations in app. I.)

OBSTACLES IN EFFECTING RECOMMENDATIONS

Other recommendations affecting Government-contractor financial arrangements were not so agreeable. These proposals (B-7-8-10-12) seek to increase the rewards or lessen the cost burden of private R&D work and to equalize the competition for sizeable Government programs.

Views are contentious on these recommendations. Some, in the Congress and elsewhere, regard these measures simply as "give aways" to contractors; to others, they are fruitful incentives for advancing the Nation's technology. The

polarization of opinion was a difficult hurdle for executive branch task groups and OFPP in trying to work out new stances.

The objective of the task groups and OFPP was to win ratification of policy positions among the science-oriented agencies, rephrasing statements as necessary but without violating procurement commission intent. Easy acceptance was not to be expected, of course, for proposed alterations in Government-contractor financial arrangements, long-standing laws, and deeply embedded procurement regulations. These negotiations for policy positions took time and, because many R&D reforms were treated as a package, even the seemingly acceptable ones were held up.

Another obstacle was that some of the Commission's proposals are not really within the powers or province of the task groups or OFPP. For example, some R&D recommendations (B-1, 2, 3, 4, and 5) call for changes in establishment management attitudes and increased long-range research in the various agencies. OFPP can formally accept these recommendations but has no way to effectuate them beyond missionary effort. These kinds of changes are more in the province of the White House Office of Science and Technology Policy (OSTP) and the Federal agency R&D establishment.

As a result, progress has been quite slow. R&D policy-forming and installation plans have essentially hung fire since 1973. Several posted deadlines have been missed. (See fig. 12-3.)

RECENT OFPP ACTIONS

OFPP decided at one point to convey the recommendations predominantly in an OMB circular. A circular was in draft for about 2 years, yet was never issued. In December 1978, OFPP decided that FAR would be a better vehicle for both R&D policy and regulatory changes.

The FAR sections dealing with R&D matters are in various stages of draft at this writing, but the paths embarked on for the more difficult reforms can be discerned. These reforms deal with Government-contractor's cost sharing, unsolicited proposals, independent R&D, the hardware exclusion clause touching on conflict of interest, curbs on federally funded R&D centers, and R&D recoupment.

ENCOURAGING UNSOLICITED PROPOSALS

There are firms in the private sector possibly with unique technologies and concepts which, if brought forward,

could help meet Government needs in more efficient ways. The Procurement Commission concluded, in fact, that unsolicited proposals are a primary source of creative ideas for Government uses.

The climate for these private initiatives has not been altogether favorable however. The Commission observed that some agencies seem to view unsolicited proposals as "not invented here" intrusions, or regard them as too troublesome to deal with. Small firms, often the more innovative if less affluent, face the possibility of having to cost-share development work. There is also the fear that, within the labyrinth of Government, exclusive concepts will be disclosed or that unsolicited proposals will be broadcasted for competitive bidding. Such practices or palpable threat of them, is bound to send innovators to more receptive markets.

The Commission in recommendation B-7 urged a more affirmative climate for unsolicited proposals, asking for elimination of discouraging policies and an end to in-house practices and attitudes tending to disparage these private initiatives.

The executive branch has accepted this recommendation and plans to implement it in a FAR to be issued next year. The approach taken in a proposed regulation offered in 1975 may be a clue to the new one.

Among other things, the 1975 proposal would have prohibited using unsolicited proposal data in Government solicitations or other exposures; it required coordination when a rejected proposal might suit another agency's missions; and it prescribed rules for the receipt, review, and procurement of such proposals.

DISCOURAGING FORCED COST-SHARING

Statutes and regulations require that contractors, notably universities, should pay part of the cost of their Government-sponsored research. The idea is that the Government should reap economic benefits from the findings, i.e., commercial exploitation of patents. (See ch. 11.) The target is potential windfall profits accruing to contractors whose research costs are federally underwritten.

The Procurement Commission found that mandatory cost sharing is not all that worthwhile; it is burdensome administratively, applied unevenly by the various agencies, discouraging to private initiative, and rarely fruitful to the Government. The Commission's proposal, recommendation B-8, was to

eliminate the mandatory rule (but permit voluntary arrangements), except where the research organization was obviously going to profit from R&D spinoffs. Further, negotiation of grants and contracts should not be influenced by the cost-sharing factor.

Proposed FAR would halt cost-sharing

An early draft (February 1979) of the relevant FAR section reaches a bit beyond the Commission's intent. The FAR draft proposes that cost sharing is not to be proposed or (even) permitted in R&D contracts. Rather, the agency should assure that funds, scope of work, and evaluation criteria are "in balance" in R&D procurements. FAR drafters refer to the recoupment provision to cover the possibility of windfall profits.

MORE DISCREET CONTROLS FOR IR&D

The term independent research and development (IR&D) encompasses R&D work that the contractor does on his own and effort and expense in bidding and proposing (B&P) on upcoming Government contracts. How and when the Government should recompense the contractor for IR&D costs in negotiated contracts has been heatedly argued for years. (It is not an issue in commercial-type procurement because costs behind the marketplace price are irrelevant).

The IR&D debate is about the amount, Government share, specific relationship to particular contracts, relevancy to agency missions, and control and financing of negotiated contracts. Industry contends that the incidence of IR&D is a matter of management discretion; it is not a commodity but a necessary cost of doing business that all customers should share. Contractors contend that IR&D is vital in expanding the Nation's technological capability, and the Government, including the Congress, should call for more of it. If there has to be a relevancy test, IR&D ought to be relevant Government-wide, not merely to one particular agency.

Those who hold otherwise say IR&D subsidies do not, in fact, broaden the national technology base. They benefit only the firms already doing business with the Government; new entrants must find other financial sources. Critics contend that, if any IR&D should be paid for at all, new firms ought to be covered.

DOD negotiates advance agreements on IR&D rates with contractors who recovered \$2 million or more of such costs

in the previous year. The work must be DOD-relevant, a statutory requirement. A smaller contractor may negotiate its IR&D allocation up to 120 percent of its past average figure, and in some cases more. This provision is to accommodate fast-growing small companies.

Commission recommendation

IR&D and B&P are in the Nation's best interest and should be recognized as a necessary cost of doing business (R&D recommendation B-10). They should be treated uniformly Government-wide. Contractor allocations should be accepted without question if the contractor's business is 50 percent or more commercial and fixed-price governmental. (The Commission was not unanimous on this point.) With predominantly cost-type contractors, these charges should be negotiated in advance with ceiling for IR&D and B&P. The work should be relevant to the agency's missions.

Regulation under development to adopt Commission proposal

OFPP's guidance for a new regulation has won acceptance among policy people in several major agencies. Among other things, OFPP wants master negotiated agreements with contractors serving more than one agency (as does Commission recommendation B-11). This method would present one face to industry, but necessarily broaden relevancy to a wider Government scope than any one agency's mission.

OFPP also proposes that the threshold for negotiated agreements with contractors should be raised from "\$2 million of IR&D last year" to \$3 million, to account for inflation.

OFPP proposes to raise the automatic acceptance threshold from 50 percent to 75 percent. The Government would accept without question the IR&D allocation of a contractor whose combined commercial and fixed-price governmental business is 75 percent of total volume, rather than 50 percent as the Commission majority originally proposed. This position is consistent with pending legislation to reform basic procurement statutes. 1/

OFPP also wants to abolish the 120-percent ceiling on allocated IR&D now imposed on smaller contractors. The

1/S. 5, 96th Cong., 1st sess., sec. 509(a).

rationale is that rapidly expanding companies should not have an arbitrary "brake" on their allowable R&D.

To eliminate restrictions, such as a narrow relevancy test, the Commission believed legislation in the defense area needed revision. As in other cases, however, OFPP is avoiding legislative remedies, and defense may be dealt with on an exception basis.

HANDLING ORGANIZATIONAL CONFLICTS OF INTEREST

Sometimes the Government engages a contractor (industry, nonprofit, etc.) to help prepare a performance or design specification to be used in soliciting products or services for a Government need. As with many R&D explorations the real prize is the development, production, or service contract down the road. A conflict of interest could arise from the initial engagement. For instance a design contractor, who is also a producer, could conceivably tailor the specifications for his own design or facilities and so wrap it in exclusionary (proprietary) know-how that competitors are shut out of the follow-on work. In this way a "ground floor" contractor can lock up a program from start to finish.

A hardware (or software) exclusion clause forestalls such a monopoly. The designer contractor who prepares the specification agrees not to bid for the follow-on R&D or production contracts. The hardware exclusion clause must be used judiciously in the Commission's view. If "hardware exclusion" hovers over most R&D negotiations it could choke off the flow of unsolicited proposals, a medium of innovation encouraged by the Commission recommendation B-7. Innovators would be inclined to market their ideas elsewhere.

At one time, a potential conflict with the Commission's system acquisitions reforms was perceived. (See ch. 7.) The intent there is to get vigorous competition among contractors attempting to devise novel system concepts. A follow-on contract is the main incentive for many. The threat of hardware exclusion would narrow the field of competitors.

Commission recommends higher level decision

When and how to interpose the hardware or software exclusion clause has been widely argued. The Commission, in recommendation B-12, proposed that it be a high-level decision. When there is a potential conflict of interest and the

clause is to be considered, a senior procurement official of the agency should decide case by case, whether the original contractor should be barred wholly, partially, or not at all from the follow-on contracting.

OMB has offered in the October 13, 1978, Federal Register a regulatory amendment for conflicts of interest and the use of hardware/software exclusion clauses. They are not for contracts awarded in the context of OMB Circular A-109, or in other obviously competitive procurements, or unsolicited proposals. Rather, the clause is intended to mitigate conflicts of interest in noncompetitive situations. There, bidders or offerers have an unfair competitive advantage as a result of authoring restrictive specifications.

Unsolicited proposers are required to disclose their perceived potential conflicts of interest. In the regulation contemplated the contracting officer, on the basis of these disclosures or other evidence, will decide the extent and duration of any hardware exclusion.

The Commission, on the contrary, wanted high-level, pragmatic ruling on these matters. Restricting such judgments to a higher court, as it were, would signal to offerors of unique technology that exclusion clauses will not be used lightly or routinely and that equity will prevail in R&D negotiations.

ANALYSIS

The emerging FAR regulations appear at this point to be following the Commission's proposals on the more controversial matters. There are some deviations.

- The recommendations for furthering long-range agency research programs, and strengthening and clarifying the role of Federal laboratories (see recommendations B-1,2,3, and 4) are not receiving concerted action for lack of support beyond OFPP's province. The OMB Director needs to consider whether responsibility for these recommendations should be transferred elsewhere.
- The policy of banning all cost-sharing by private institutions is more liberal than the Commission's wording (which would allow voluntary arrangements).
- The tentative position on acceptable IR&D allocation is more restrictive than the Commission majority preferred. To get automatic acceptance of its allocation

rate, a firm will now have to do 75 percent instead of 50 percent of its volume in commercial and fixed-price contract work. This higher figure is in keeping with the Commission minority view. The question of whether legislation is necessary to permit a sound uniform Government policy on IR&D ought to be resolved forthrightly.

--The hardware exclusion clause may be applied by the contracting officer in contrast to the Commission's wish that such decisions be elevated to a senior procurement official.

CHAPTER 7

SYSTEM ACQUISITION REFORMS ARE LAGGING

Most agencies have a long way to go in conforming their system acquisition practices to the Commission reforms conveyed in OMB Circular A-109. Installation of these reforms is spotty and few systems are being acquired in the new way.

Commission identified basic problems

Problems with the development and procurement of complex major systems, advanced energy plants, integrated weapons, space vehicles, and the like have bedeviled the executive branch and the Congress since the 1950s. Cost overruns, contract claims, contested awards, and disappointing system performance have been among the sore points endlessly discussed and criticized without real resolution.

Most improvements put forward before the sweeping reforms of the Procurement Commission were patchwork, transient remedies not reaching the abiding ills below the surface. The Commission defined the underlying anomalies in the "system":

- Confused and overlapping roles among contractors, agency administrators, the Congress, and others, resulting in diffused responsibilities, poor accountability, and badly skewed buyer/seller relationships.
- Absence of a coherent acquisition-process framework which all parties could understand and commonly refer to.
- Lack of agency administrator-congressional preview of the early key decisions that define the character of all new system programs; resulting in foreclosed options, decisions by default, and out-of-control acquisition programs.

COMMISSION RECOMMENDS A NEW APPROACH

The Procurement Commission called for a new look at the way system needs are manifested, coordinated, and affirmed; defined a sequence of discrete acquisition phases and key decisions for administering system programs; and laid out (or restored) appropriate roles for the principal parties to system acquisition.

Roles for participants

The Commission sought to define logical functions for agency administrators, contractors, congressional committees, agency components, and others. The Commission proposed the following leading roles:

- The agency head should see that new systems derive from assigned agency missions; decide if a new need warrants a system acquisition program; approve program goals in cognizance of other agency needs, capabilities, and resources available; and decide if and when a system program should progress to the next acquisition phase.
- Agency components should balance their mission strengths and weaknesses and define their pressing needs, entertain various system concepts before committing to just one, contract for the exploration of alternative concepts, and evaluate design proposals. The program manager should be in on the formative acquisition stages and be appointed when the mission need is affirmed.
- Contractors, in a competition stage earlier than before should seek out new system ideas in response to broadly stated mission needs; be allowed to follow their choice of technology paths in devising solutions; and small design firms, often a good source of innovation encouraged to compete in the concept exploration phase.
- The Congress should preview mission needs and the performance and cost goals for new system acquisitions before they are launched; examine these proposals in the context of national policies and priorities; exercise more knowledgeable oversight due to regular congressional preview of agency needs and program goals; and fund system programs within their parent mission categories.

The new system acquisition framework

The Commission's system acquisition model has four individually funded progressive phases. Passage from one phase to the next is to be decided by the agency head. The proposed phases are (1) establishing needs and goals; (2) exploring alternative solutions; (3) choosing preferred systems; and (4) finalizing development, production, and use.

These phases and their enabling recommendations are listed in figure 7-1.

Establishing needs and goals

The Commission considered the front end phase the most important one, since the thinking and planning at the start profoundly affect the character, quality, and ultimate cost, good or ill, of whatever major system finally emerges. In the larger sense, the choices made at the front end, in the Commission's view, retard or expedite pursuit of national objectives. Moreover, these choices dictate how great resources will be spent for many years ahead.

Mission needs and the program goals they produce are to be previewed by agency administrators and congressional committees for consistency with long-run trends in mission strengths and weaknesses, technological opportunities, and the demand on resources. The Commission's recommendations, here and elsewhere, are anchored to its proposal that agencies should perform analysis and budget their affairs by mission, and that Congress should review and oversee in the same way.

Exploring alternative solutions

The formative phase in the Commission's acquisition model is when competing designers render their concepts into a tangible form suitable for preliminary evaluation. The Commission's intent was to generate earlier and more potent competition for the best solution. The mission-need statement the competitors would work to, unlike the traditional, very specific request for proposal preordaining a particular kind of solution, is to outline the capabilities wanted, and scope, such as operating and environmental constraints. Broadly drawn mission needs should challenge imaginative designers. They may choose to modify existing systems or devise entirely new solutions according to their assessment of program goals and constraints.

Choosing preferred systems

The system ideas surviving the exploratory phase come under increasingly critical scrutiny as they progress through development, entail larger funds for each later phase and face more precise criteria. The Commission, mindful of the exacting price of thinly based decisions, called for periodic reverification of the mission need and goals, regular assessment of development progress; competition sustained; options preserved, as far along as practical; and the ultimate choice to be buttressed by test and evaluation under near-operational conditions.

FIGURE 7-1

A-109 POLICY CONFORMANCE

In Agency Directive
 Not in Directive

COMMISSION RECOMMENDATIONS	OMB	DOD	NASA	DOT	DOE	GSA
I. NEEDS AND GOALS						
C-1 Starting agency programs						
a. State in mission terms; no solution implied	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Reconcile with overall agency resources and capabilities	<input type="checkbox"/>					
c. Assign program responsibilities to components	<input type="checkbox"/>					
C-2 Congressional budget reviewing						
a. Examine agency missions and capabilities annually	N.A. ^{a/}					
b. Evaluate mission needs	N.A. ^{a/}					
II. EXPLORING ALTERNATIVE SOLUTIONS						
C-3 Advancing agency technology						
a. Support the technology base; segregate from new-system design	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
b. Develop subsystems but not to final design	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
C-4 Creating alternatives						
a. Encourage varied solutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Invite smaller firms to compete also	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Select most promising solutions with impartial expert teams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
III. EXPLORING ALTERNATIVE SYSTEMS						
C-5 Congressional financing						
a. Agency to budget alternatives by mission need	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Congress to review authorize and fund by mission need	N.A. ^{a/}					
c. Agency to allocate funds by mission need	<input type="checkbox"/>					
d. Agency head to monitor competitive explorations annually using updated mission needs and program goals	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
						REVISED POLICY CONTEMPLATED
^{a/} Predominantly recommendations to the Congress but agencies have to conform their budget presentations accordingly.						

In Agency Directive
 Not in Directive

COMMISSION RECOMMENDATIONS	OMB	DOD	NASA	DOT	DOE	GSA
C-6 Starting alternative exploration						
a. Use short term parallel contract awards	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
b. Agency operational experts to advise contractors	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Inhouse organizations to monitor and evaluate concepts	<input type="checkbox"/>					
IV. CHOOSING PREFERRED SYSTEMS						
C-7 Competitive programs						
a. Bring promising candidates thru field demonstration	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. Give contractors selection criteria	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
c. Strengthen agency cost estimating	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
C-8 Non-competitive programs						
a. Agency head to approve	<input type="checkbox"/>	<u>a/</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. Integrate contractor in-house contributions	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
c. Maintain strong technical/management control	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d. Choose proven contractors	<input checked="" type="checkbox"/>					
e. Estimate costs within a probable range	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
V. IMPLEMENTATION						
C-9 Full production						
a. Reconfirm mission need	<input type="checkbox"/>					
b. Test under operational conditions	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c. Use an independent test body	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d. Unify defense testing scope; strengthen capabilities	N.A.	<u>b/</u>				
C-10 Contracting <u>c/</u>						
a. Not a substitute for managing	<input checked="" type="checkbox"/>					
b. Flexibility in regulations	<input checked="" type="checkbox"/>					

REVISED POLICY CONTEMPLATED

a/ DOD draft Directive 5000.1, in draft at this writing, is unclear. See its par. C-1e.

b/ Applicable to DOD only.

c/ OFPP believes this recommendation is more appropriate in the FAR than in a policy circular.

In Agency Directive
 Not in Directive

COMMISSION RECOMMENDATIONS	OMB	DOD	NASA	DOT	DOE	GSA
c. Simplified final contracts	<input checked="" type="checkbox"/>	REVISED POLICY CONTEMPLATED				
d. Priced production options	<input checked="" type="checkbox"/>					
C-11 Management						
a. Unify policy and monitoring activities	<input type="checkbox"/>					
b. Integrate technical/business management policies	<input type="checkbox"/>					
c. Assign program managers early	<input type="checkbox"/>					
d. Initiate a career program	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
e. Reduce management layering and paperwork	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
C-12 Agency Head Decisions						
a. Mission needs and program goals	<input type="checkbox"/>	a/	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. Alternatives worthy of fabrication and demonstration	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c. System choice for final development	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d. Full production go-ahead	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
e. Delegate all other decisions	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Directive or agency order	A-109	5000.1	7100.14	4200	0207	
DATE	4/76	5000.2 Draft	A 4/78	14 A 5/78	2/78	
a/ DOD draft Directive 5000.1 allows delegation to lower echelons. See para. D-1.						

OMB RESPONSE MOSTLY ON TARGET

The executive branch accepted the Commission recommendations and conveyed them to the agencies in OMB Circular A-109 "Major Systems Acquisition," April 5, 1976. As is usual procedure, the agencies were expected to conform their internal directives to OMB Circular A-109. The degree of conformance is shown in figure 7-1 and will be discussed here.

OMB Circular A-109 is faithful to Commission intents; only a few points are left out. These omissions are C-5d, annual agency head monitoring of changes in goals, missions, and priorities; C-8, certain controls for noncompetitive development programs; and C-10, flexible contracting for system acquisitions. OFPP contends that flexibility in contracting is more suitable for regulation than policy pronouncement, and that the other points are covered in OMB Circular A-109, although not in the literal sequence or wording of the Commission proposals.

AGENCY POLICY CONFORMANCE PROGRESSING

Agencies coping with internal foot dragging or uncertainties about applying the new system acquisition model have had problems in getting out compatible policy statements. Some agencies, at OFPP's urging, have rewritten them more than once but progress is being made.

Figure 7-1 is a profile of agency conformity, as we gauge it, in these top-tier policy statements to OMB Circular A-109.

DOD

This agency, the oldest and biggest buyer of major systems, has responded more diligently than most to OMB Circular A-109 and the Commission reforms. (DOD's directives on the subject were originally issued in January 1977.) OMB Circular A-109 is an integral part of proposed new drafts of DOD Directives 5000.1 "Major System Acquisition" and 5000.2 "Major System Acquisition Procedure."

These DOD draft directives, in circulation for comment at this point, depart from OMB Circular A-109 in three policies. First, a program manager may be appointed later than OMB Circular A-109 requires. The original idea was to get the manager onboard as soon as an acquisition program is decided and before program boundaries begin to harden; the DOD manager on the other hand may be appointed sometime after the competitive exploration phase is launched.

Secondly, DOD would assign functions to Federal R&D centers denied them by OMB Circular A-109. DOD would allow the centers to do system development work, i.e., direct involvement in system design. Such added tasks could lead back to in-house domination of system preference and restore the old Government/industry role confusion the Procurement Commission complained of.

Thirdly, the Commission and OMB's Circular A-109 assign unequivocally to the agency head the four key decisions that make or break system programs. DOD Directive 5000.1, however, permits assigning some of these decisions lower down, such as to the secretaries of the military departments. DOD has been seeking to decentralize. But delegation of the key system program decisions could possibly again cause regression to the role deformation of the past and lend a parochial flavor to system choosing.

The civil agencies

Conformance to the several policies of OMB Circular A-109 is not complete as shown in the figure 7-1 comparison of DOE, DOT, and NASA directives. (GSA contemplates a new statement when subsidiary directives are rewritten).

DOE and OFPP officials have conferred on DOE's departures from OMB Circular A-109 and have not completely resolved their differences. DOT's directive is weak on acquisition front-end policies, where OMB Circular A-109 wants effective competition among contractors seeking fresh solutions. NASA's top policy statement is close to OMB Circular A-109, but like the other agencies it does not spell out the need to separate specific-system R&D from the technology base scope.

CONGRESS BEGINNING TO EXPLORE MISSION BUDGETING

To work well, the Commission reforms are dependent on the mission approach to budgeting in the Congress. As to the recommendations for mission budgeting (C-2 and C-5), reciprocal executive branch requirements are in the Congressional Budget Act and OMB Circular A-109, and several committees are exploring or experimenting with the concept.

In the end, mission budgeting is up to the authorization and appropriations committees, for they can require, or not require, mission organized budgets from the agencies. The House Armed Services Committee, for example, has requested DOD to present many of its R&D programs in budget requests on a mission basis. Similarly, the Senate Appropriations Committee is beginning an experiment with the Department of Agriculture.

AGENCY IMPLEMENTATION
FALLS SHORT

Even if internal directives acquiesce in most OMB Circular A-109 policies, how are these new policies interpreted in practice, and how quickly are the agencies moving on implementation? Figure 7-2 shows what the agencies are doing about implementation machinery.

We recently developed two detailed reports on OMB Circular A-109 progress. One is on DOD. 1/ The other is on civil agencies, DOE, DOT, GSA, and NASA. 2/ These studies discerned little sense of urgency about setting up implementation machinery.

Few acquisitions are underway within the guidelines, now 3 years old. (See fig. 7-2). The agency heads have the primary responsibility, of course, but OMB can expedite matters by further exerting its budget review powers. The findings of these companion GAO reports, summarized below, tell where aggressive leadership is needed.

DOD has recently reached agreement with the military services on a DOD-wide mission structure for use in research, development, and system acquisition. The Services' internal directives are not yet entirely aligned with OMB Circular A-109, nor are they coordinating their mission analyses of shared missions. Mission-need approval at the Office of the Secretary of Defense is taking too long. DOD needs a better plan for financing front-end system exploration instead of reprogramming funds earmarked for use elsewhere.

However, DOD is moving on OMB Circular A-109 implementation. After conferring with OMB and OFPP on 16 questionable programs, DOD has asked the military services to realine a number of them for compliance.

1/"Observations on Office of Management and Budget Circular A-109--Major System Acquisitions by the Department of Defense" (PSAD-79-9, Feb. 20, 1979.)

2/PSAD Draft entitled, "Much Remains to be Done Before OMB Circular A-109 on Major System Acquisitions is Implemented into Civil Agencies' Operations."

FIGURE 7-2

A-109 IMPLEMENTATION MACHINERY

Acted On Partial Not Acted On

	DOD	NASA	DOE	DOT	GSA
Acquisition executive appointed	<input type="checkbox"/>				
Procedure in place for the agency head to make the four key program decision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Personal trained is A-109 procedure	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Technology base is segregated from mission programs	<input checked="" type="checkbox"/>				
Mission structure agreed upon	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Mission analysis is ongoing	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Number of new program starts underway in accordance with A-109	5	1	1	0	0

DOE has not yet applied OMB Circular A-109 reforms to practice. DOE's method calls for identifying a system solution before the mission need is processed, and could thus limit front-end competition.

DOT too has not folded OMB Circular A-109 into day-to-day operations and the implementation effort seem to be a low-priority one. The dollar criteria categorizing system acquisitions as major are so high as to exclude many large acquisitions of DOT components. DOT components have done little to implement OMB Circular A-109.

GSA has been very slow. GSA's first try at implementation met with internal resistance, particularly in regard to policy on public buildings, telecommunications and automatic data processing equipment. GSA will be rewriting its directives in collaboration with OFPP and cognizant congressional committees. Still to be accomplished is conversion of the GSA budget format to a mission structure.

NASA's directive is quite close to OMB Circular A-109, as was said earlier, but some disparities may emerge. For example, solutions may be indicated prematurely when NASA does feasibility studies in advance of mission need approval,

NASA program manager continuity is not assured, and whether NASA will transfuse ideas of design competitors voluntarily or by direction remains to be seen.

CONGRESSIONAL, INDUSTRY, AGENCY CAUTIONS

There has been little experience with OMB Circular A-109, but as a new departure in systems acquisition policy the Circular has aroused widespread interest and speculation about its prospects. OMB Circular A-109 has been discussed at length in congressional hearings, industry meetings, seminars, and the press. The reception has been somewhat favorable, but OMB will have to deal with some skepticisms expressed. These are about OMB Circular A-109's acceptance in the Government and industry generally, the likelihood of implementation, and whether the new way will indeed deliver innovative systems at less cost and time.

Some in the Congress for instance, accept the good intentions of OMB Circular A-109 but fear that agency implementing documents, as they sometimes do, will take a narrow "cookbook" approach. Agency directives, in other words, might foreclose freedom to select a unique acquisition strategy suited to urgency of need, cost/affordability and technical risk. Another source in Congress, and the head of a key Committee, recently pointed out the need for more operating guidance on the new frontend analysis required by the Circular.

According to a Presidentially ordered study of one agency's operations, there has been little experience, but the basic idea appears sound. The study goes on to caution:

"It is important * * * that alternatives really be considered, that new technologies be explored, and that the definition of mission need not be irrevocable, immutable, or premature." 1/

Industry is generally wary of any new process "to revolutionize procurement," having lived through such panaceas as total package procurement and concurrency. OMB Circular A-109 sounds promising, but is the Government serious about entertaining various system design approaches, life-cycle costs, and flexible mission needs? Some industry representatives

1/Donald P. Rice, "Defense Resource Management Study, Final Report." (Washington: GPO Feb. 1979), p. 36.

are concerned that there will be larger industry costs at the front end, fewer actual new starts, and more competition for R&D funds with in-house labs who will be worried about the reduced role that OMB Circular A-109 seems to assign them.

ANALYSIS

The GAO defense and civilian reports cited earlier discuss these matters further and recommend to the heads of agencies actions to clear up policy differences and implementation problems with OMB Circular A-109.

CHAPTER 8

MUCH REMAINS TO BE DONE

IN COMMERCIAL PRODUCT REFORM

It is not yet predictable to what extent, or when, executive branch actions will achieve the full thrust of the Commission's commercial products reforms or whether the efforts undertaken so far will be successful. The OFPP has broken new ground with a policy to eliminate unnecessary Government specifications, to purchase off-the-shelf commercial products, and to use commercial distribution systems. Although there have been some significant individual buys of commercial products, Federal agencies have been slow to respond and key actions are still required to fully integrate the policy into procurement practice. One important Commission reform is yet to be addressed.

COMMISSION RECOMMENDS MAJOR SHIFT

The Procurement Commission called for a shift in fundamental procurement philosophy in acquiring commercial-type products to achieve much greater economies in procurement, storage, and distribution operations. To help show the need for this shift, the Commission asked that total economic cost 1/ be used in comparing different procurement methods. This total cost visibility is intended to encourage agencies to consider alternatives and determine the most economical and user responsive supply methods. The Commission suggested the preferred alternative in many instances would be reliance on commercial products and regular commercial distribution channels as opposed to substitute products made to Government specifications and channeled through Government warehouses.

The Commission also cited the need to improve procurement statistics collection so that the Congress, the public, and the executive branch can see what the agencies are buying and how much is commercial product.

1/The Commission defined total economic cost as the total cost to provide an item to its user. This includes price paid for the item and its allocated share of the support system or systems used to acquire and deliver the product to the ultimate user plus costs incidental to its use, and disposal or consumption. See Procurement Commission Report, vol. 3, p. 65.

Commission recommendations D-1 thru D-7 provide the basis for the recommended changes. As a group, they are intended to achieve greater economy and user satisfaction in Government supply operations. Figure 8-1 summarizes those recommendations and the Commission's rationale for making them.

Figure 8-1

<u>Commission Commercial Product Recommendations</u>	
<u>Recommendation</u>	<u>Reason</u>
D-1 Improve Government-wide procurement data	Incomplete data exists; difficulty getting total value of commercial products procured.
D-2 Get user feedback on supply support systems	To reevaluate how well supply support systems serve the user.
D-3 Limit Federal specifications for commercial products	Specifications too complex for need; inhibit or exclude use of commercial products. Result is more expensive, less innovative, and lower quality products.
D-4 Assign specification policy responsibility to OFPP	Nobody sets or coordinates specification policy.
D-5 Provide training in decentralized procurement techniques	To identify and encourage use of innovative techniques.
D-6 Evaluate alternative procurement and distribution systems on a total cost basis (including decentralized buying); institute industrial funding	To achieve greater economy and user satisfaction in procuring, storing, and distributing commercial products.
D-7 Have overseas activities procure U.S.-made commercial products locally	Overseas activities required to order from U.S.; excludes less costly, quicker alternatives.

Stressing user satisfaction

User satisfaction depends on ordering ease and timely delivery of the right product. User satisfaction, in the Commission's opinion, is directly proportional to the extent users feel their ideas and problems are acted on by procurement people. For that reason, the Commission said supply systems should be continually evaluated to see how well they are serving the user.

Encouraging alternatives and innovative techniques

The Commission encouraged looking at all procurement techniques, including indefinite quantity-delivery contracts, requirements contracts, and leasing. Each of these techniques could use commercial distribution systems to deliver directly to users instead of first to Government depots. The Commission also noted that various types of service or functional support contracts can be used for such things as technical service and maintenance, eliminating the need for separate-parts or materials contracts that would be required if the function were performed by the Government.

In encouraging use of alternative procurement methods, the Commission recommended on-the-job training of field personnel. But the Commission recognized that more than training is needed. It said alternative procurement methods are difficult to compare because of mandatory supply sources and hidden costs of current methods. The Commission also said that innovation in alternate approaches is discouraged by a supply system that is mainly oriented to channeling supplies through Government depots and delivery systems.

EXECUTIVE BRANCH TAKES IMPORTANT INITIATIVES

The executive branch has responded to the Commission recommendations individually and with broad initiatives that go even beyond the Commission recommendations. Both types of action have permitted the executive branch to act on the recommendations though not necessarily to address their full scope and interrelationships. Figure 8-2 summarizes executive branch actions on key commercial product recommendations.

Figure 8-2

<u>Executive Branch Action on Key Commercial Product Recommendations</u>	
<u>Recommendation</u>	<u>Executive branch action taken</u>
D-1 Improve Government-wide procurement data	Accepted; established a Federal Procurement Data System; first reports available.
D-2 Get user feedback on supply support systems	Accepted; issued a Federal Management Circular placing responsibility on individual agencies. No OFPP follow-up evaluation.
D-3 Limit Federal specifications for commercial products	Accepted; OFPP issued Commercial Products Policy in 1976. Agencies slow to respond.
D-4 Assign specification policy responsibility to OFPP	Accepted; OFPP assumed responsibility.
D-5 Provide training in decentralized procurement techniques	Accepted; Federal Management Circular issued assigning responsibility to individual agencies. No OFPP follow-up evaluation.
D-6 Evaluate alternative procurement/distribution systems on a total cost basis; institute industrial funding (total cost recovery)	Accepted in principle; OFPP partially implemented through Commercial Products Policy issuance.
D-7 Have overseas activities procure U.S.-made commercial products locally	Modified acceptance tantamount to rejection; limited action taken.

In May 1976, the OFPP announced the Government would buy commercially available products and rely on commercial distribution. In December 1976, OFPP laid out additional guidance and, a year later brought ongoing food and medical pilot programs under the new policy. At the same time, OFPP also issued a more complete plan with tasks and target dates for implementing the policy.

Much activity and some progress have resulted since the policy was first enunciated and some significant buys of commercial products have occurred. Action to date, however,

is more like feasibility testing than policy implementation. Progress has been made in eliminating Government specifications, but most were obsolete or no longer needed. Reductions have been achieved in items stocked in Government warehouses, but mostly low demand items. In DOD, a limited number of buys have been made under a special program to see what problems exist in buying commercial products. Thus, DOD has not yet fully integrated the policy into their day-to-day operations. At the beginning of 1979, GSA had not made any buys as part of its implementation of the policy.

OFPP has targeted July 1979 as the time when the necessary regulations, procedures, and techniques supporting the new policy will be produced. A number of agency people have told us that much more time will be needed for the policy to become a part of day-to-day procurement operations. Figure 8-3 reviews the actions to date on the Commission's recommendations.

Figure 8-3

Action	Chronology of Events		
	<u>1970</u>	<u>1975</u>	<u>1980</u>
Commission report released		Spring 1973	
OFPP issued commercial products policy		May 1976	
Basic recommendation accepted in principle		July 1976	
Incremental implementation plan issued		Dec. 1976	
Pilot study underway		Dec. 1976	
Regulations, procedures in place by			July 1979 (target)
Full integration of policy into practice			Unknown

KEY ACTIONS
STILL REQUIRED

In our view, the key actions still required to fully integrate the policy into procurement practices include:

- Linking commercial products procurement with greater use of commercial distribution systems. Acquisition of commercial products involves an integrated effort extending from identifying user needs to delivery and support of a product to meet those needs. Under OFPP's incremental approach to implementation, agency programs for making test buys of commercial products are separate from programs to assess whether Government warehouses are needed to stock the items.
- Developing the proper model and organizational structure to assure effective market research. Market research is a vital, but as yet inadequately developed, element in implementing the new policy. Full-market research includes identifying user needs, determining the availability of commercial products of proven customer acceptance, and providing a basis for procurement decisionmaking. The importance of market research to the entire acquisition cycle indicates the need for organizational placement of the market research function that will complement the shift to buying commercial.
- Giving sufficient resources and attention to reviewing existing specifications. Both GSA and DOD have efforts underway to review existing Government specifications as part of their on-going activities. Obsolete and no longer needed specifications can easily be and have been eliminated by this process. But much greater attention to market research and acquisition strategy is required where the supply item is in current demand.
- Restricting Government specifications in purchase descriptions. Functional descriptions and commercial item descriptions are two terms associated with acquiring commercial products. Agency officials acknowledge that much can be accomplished to streamline existing Government specifications and referencing. Continued use or referencing of

Federal or military specifications in new purchase descriptions can lessen use of commercially available products. 1/

- Extending the policy application to overseas procurements. (See Commission recommendation D-7.) Full application of the policy requires rescinding requirements on using Stateside sources of supplies so that first consideration is given to the overseas market place as a source of supply. The Director of OMB told GAO in May 1975, that action on this recommendation would need to be reconsidered once Government-wide policy was made on the acquisition and distribution of commercial products. Since that time limited action has been taken on this recommendation.
- Furnishing additional policy guidance to operating agencies. Several agency officials expressed to us the need for further policy guidance in implementing the Commercial Products Policy. They cited socioeconomic requirements, such as small business set-asides and required sources of supplies. Also, agency officials are uncertain about what is involved in testing product market acceptability. Continuing questions, reservations, and even resistance can probably be expected.

VITAL LINK IN COMMISSION REFORM MISSING

As noted in our last report to the Congress on the legislative aspects of Commission recommendations, the executive branch has yet to resolve the issues in industrial funding and in evaluating alternative supply systems on a total cost basis.

Under industrial funding, an activity such as GSA would price supply items to Federal customers to fully recover GSA's total costs. Currently, the Federal Property and Administrative Services Act limits the handling charge that GSA may pass on to its customers. By not recovering full costs, GSA is indirectly subsidizing other agencies. On the

1/A recent GAO report on GSA's multiple award schedule program shows that agencies are paying more than they should for commercial products. In response, GSA has pledged total support to a series of initiatives including a move away from the use of design specifications (PSAD 79-71, May 2, 1979).

other hand, the Veterans Administration's pricing recovers personnel, transportation, and other operating expenses.

GSA and DOD are developing and using cost models for making supply decisions but not for pricing. The cost data used in these models is yet to be independently validated. Without injecting total costs considerations GSA interagency prices are understated and there is less incentive to consider inherently better alternatives.

ANALYSIS

Actions by the executive branch have provided a partial response to the Commission's recommendations for a shift in fundamental procurement philosophy. A policy change has been made to emphasize the purchase of commercial products without using technical specifications. Progress in carrying out the change has been slow. By July 1979, OFPP plans to have the necessary regulations, procedures, and techniques in place. But more time will be required to have it become an integral part of the acquisition process in individual agencies.

The executive branch has not acted formally on the Commission's recommendation to use industrial funding and to continuously evaluate procurement and distribution systems on a total cost basis. As noted in our July 1978 report, comparable treatment of this recommendation, as with other Commission recommendations, would require the executive branch to formally accept (in which case the legislation should be proposed), reject, or modify the recommendation as presented.

In any event, further action along the lines discussed in the preceding pages is required if the full implications of the Commission's recommendations are to be achieved.

CHAPTER 9

INCREASING COMPETITION IN ARCHITECT AND ENGINEERING SERVICES: A BEGINNING

The Commission's recommendations to increase competition in design concepts and lifetime project costs have been accepted by the executive branch, and tests are underway to see if the objective can be accomplished within the limits of existing legislation. Government-wide statutory reform now pending in the Congress does not incorporate the Commission's recommendation to increase competition in this field and remove artificial restrictions on architect and engineering fees.

COMMISSION RECOMMENDS SUBSTANTIVE COMPETITION

The Procurement Commission found that with limited exception, A-E firms were not subjected to substantive competition. It recommended changes in selecting and paying for A-E services. (See fig. 9-1.)

Figure 9-1

<u>Procurement Commission A-E Recommendations</u>	
<u>Recommendation</u>	<u>Reason</u>
E-1 Competitively negotiate A-E services based on competing design concepts, estimated project costs, and proposers' technical competence.	To better assure optimal designs within available funding.
E-2 Require A-Es to provide life-cycle cost estimates in their proposals.	To obtain optimal design for least total cost over life of the facility.
E-3 Reimburse A-Es for certain design work associated with precontract proposals.	Encourage design competition.
E-4 Repeal 6-percent design fee limitation.	Unrealistic limitation for some projects.

The Commission recommended reimbursing firms for design proposals to assure sufficient competition and to encourage optimal designs especially in cases involving complex, costly, or unusual design problems. The recommendation recognizes that it may be desirable to carry competition through early design phases but that it is unreasonable to expect the typical A-E firm to bear the cost of competition in all cases.

PENDING LEGISLATION DOES
NOT DEAL WITH A-E

The last significant legislative action pertaining to the selection of A-E services was the passage of P.L. 92-582 in October 1972. A-E selection procedures in effect after passage of that Act known as the "Brooks Act" include:

- Public announcement of requirements for A-E services.
- Selection of no less than three firms from which negotiations begin with the top ranked (highest qualified) firm for A-E services at compensation which the agency head determines is fair and reasonable to the Government (within the legal fee limitation).

Eligibility for consideration by the government is based on A-Es having required information forms on file with the agency. In GSA and DOD, selection boards or panels determine a firm's qualifications by evaluating these information forms. Next, the number of potential A-Es is reduced by review boards or committees of A-Es based on factors spelled out in Federal regulations. Negotiations for a particular project are then held with the top ranked firm. If agreement cannot be reached with the selected A-E on price, negotiations are terminated and a second firm is invited to propose terms.

Key legislation (S. 5) before the 96th Congress to modernize Federal procurement statutes does not address A-E contracting.

EXECUTIVE BRANCH RESPONDING PARTIALLY

Within the past few years an interagency A-E review committee developed three alternate approaches (Level I, Level II, and Level III) to selecting the most qualified

A-E. The first level is based on traditional selection procedures, and the other two have increasingly greater requirements. Level III requires submission of conceptual drawings including life-cycle cost considerations of the proposed project. Competing A-Es are reimbursed for costs up to a specified amount. Level III is intended for large or complex projects of national significance as designated by an agency head.

GSA testing a new approach

GSA officials emphasized to us that Level III competition is intended to help them determine which A-E is the most highly qualified, not to provide the project design. They make this distinction to avoid conflict with the "Brooks Act" to " * * * negotiate a contract with the highest qualified firm for architectural and engineering services."

In discussions with the present and immediate past directors of the interagency A-E review committee we learned that only GSA is testing the Level III approach. GSA's criteria for using it involves construction of 250,000 or more square feet or costs estimated of \$25 million or over. GSA has applied Level III to several recent projects which are just now in the detailed design or initial construction phase. Officials in GSA and the U.S. Army Corps of Engineers speculated to us that the newness of the concept, length of the process, and cost of the competition may inhibit the use of the Level III approach.

DOD conducting congressional experiment

DOD has not used the Level III concept, but the Corps of Engineers is doing experimental work directed by the Congress with fiscal year 1979 design money. One test option under the experiment requires submission of competing design concepts. This test option is exercised when A-E costs are estimated to be \$750,000 or more.

A key difference between GSA Level III and the DOD experiment is that under Level III fee is not a selection factor. It is negotiated by GSA after the A-E is selected and, in the DOD experiment, fee is a factor. Its significance varies between the options; fee carries the greatest weight when it is less than \$25,000. Once the experiment is completed the Corps will report on the tested options and recommend future uses.

OMB Circular A-109

OMB Circular A-109 places emphasis on creation and evaluation of alternative design concepts. As implementation of this new policy advances, more emphasis can be expected in its application to construction. (See ch. 7.)

UNIFORM GUIDANCE ON LIFE-CYCLE COSTS NEEDED

The interagency A-E review committee in early 1978 approved adoption of the Procurement Commission recommendations for life-cycle costing and reimbursement of A-Es for submitting design proposals. Shortly after, the OFPP submitted a copy of the Committee's suggested language to DOD and GSA for implementation in Federal regulations. OFPP intends to put these recommendations in the FAR this year. Both Commission recommendations have received some degree of implementation to date either through experimentation with new selection techniques or a general move in the A-E profession toward some life-cycle cost analysis.

The implementation language suggested by the interagency committee for life-cycle cost provisions differs somewhat from the Procurement Commission's. The Commission proposed a general policy of obtaining life-cycle cost estimates unless excepted by the agency head. The Commission also said agencies should follow uniform policies and procedures in like situations. The interagency committee proposed that requirements for life-cycle cost analysis be under guidelines determined by the individual agency head and at the discretion of the individual contracting officer.

While there may be the need for flexibility about when life-cycle costing analysis is applicable, efforts should be made, in keeping with Procurement Commission recommendations, to develop uniform Government-wide guidelines.

REPEAL OF FEE LIMITATIONS NEEDED

The executive branch in 1974 formally accepted the Commission's recommendation to end the 6-percent fee limitation on A-E services. The executive branch has previously endorsed unsuccessful legislative proposals along these lines. Current legislation (S.5) to modernize existing procurement statutes would repeal some but not all statutes which set a 6-percent fee limitation.

ANALYSIS

In the absence of legislation as envisioned by the Commission, other efforts are being made experimenting with more competitive negotiations for A-E services. This encompasses consideration of design concepts for the end product and life-cycle cost analysis. Whether these efforts will achieve the Procurement Commission intent remains to be seen. Additional effort will be required by all agencies to achieve real competition in A-E services whether for large or small projects.

Both the GSA use of Level III procedure, within the framework of the existing "Brooks Bill" and the Corps of Engineer's experiment, will require review and analysis of their experience by OFPP and the Congress.

Expected implementation in regulations of the Commission recommendations on life-cycle costing and A-E reimbursement for unusual or competitive design efforts should further encourage use of these techniques. However, there still exists a need for uniform guidance in implementing life-cycle cost analysis.

CHAPTER 10

FEDERAL ASSISTANCE STUDY NEEDS ATTENTION

Because of scoping problems and delays in OMB, as well as uncertain staffing from the operating agencies, a new Federal assistance study legislated by the Congress will need continuing attention if it is to make a real contribution to improving Federal, State, and local administration. Another part of the same legislation has been acted upon to clarify use of procurement-type versus grant-type assistance instruments.

COMMISSION ASKED FOR NEW GUIDANCE SYSTEM

The Commission on Government Procurement, in a limited assessment of Federal assistance programs, found three problems:

- Confusion between procurement and grant-type assistance relationships and transactions.
- Inadequate recognition that there is more than one kind of grant-type assistance relationship or transaction; and
- No Government-wide system of guidance for Federal grant-type assistance relationships and transactions.

Legislation was recommended to deal with the first two problems; a study was recommended to address the feasibility of a Government-wide system of guidance for all Federal assistance programs. The Commission cited a number of factors substantiating the need for this system of guidance. (See fig. 10-1.)

Figure 10-1

Factors Indicating Need for Guidance System

- Lack of Government-wide guidance for Federal grant-type relationships and transactions.
- No single or precise meaning for the term "grant".
- Failure to recognize the variety of grant-type relationship and transaction.
- Enabling and appropriation statutes for grant programs cause confusion; as a group, they lack consistency in requirements, terminology, level of detail, and emphasis.
- Grant-type assistance instruments reveal variance in agency requirements; subjects covered explicitly in one may not be in others.
- Contract-type requirements used in grant-type instruments making some agencies' "grants" more complicated than other agencies' "contracts".
- Insufficient Federal involvement or use of standards when significant procurements occur under grant-type relationships.
- Uncertainty and inconsistency over roles and responsibilities between agency and recipient.
- Suspicion surrounding awards: indicating need for standardized award procedures.

CONGRESS ENACTS COMMISSION
RECOMMENDATIONS INTO LAW

The Congress enacted the Procurement Commission recommendations into law in February 1978. That legislation 1/ provides criteria governing when to use procurement contracts, grant and cooperative agreements. It also mandates an OMB-led feasibility study of a system of guidance for Federal assistance programs. The legislation requires that the study give full consideration to the finding and recommendations of the Procurement Commission. A study report is to be submitted to the Congress by February, 1980. The report must include recommendations about proceeding with any system

1/The Federal Grant and Cooperative Agreement Act (P.L. 95-224).

of guidance determined appropriate, and for needed administrative or statutory changes.

PROBLEMS IN GETTING STUDY OFF THE GROUND

In February 1978, the President signed P.L. 95-224 and OMB issued interpretative guidance in August to distinguish between the use of contracts, grants and cooperative agreements. As to the study required by the Act, OMB has issued a study plan which is broad in scope and an action plan to carry out the study. The study plan has nine major tasks; the key ones pertaining to a comprehensive system of guidance are

- description of existing guidance documents and processes,
- alternatives for a comprehensive system of guidance for assistance programs, and
- alternative means for implementing Federal assistance programs.

Delay in getting study underway

OMB published a draft study plan in June 1978 for comment. Following receipt of comments, OMB completed a revised study plan in September 1978. Officials disagreed over the extent to which the study would include a review of the current OMB assistance circulars. An approved study plan was finally issued in January 1979, almost a year after the President signed the Act. Staffing the study did not begin until this time.

Staffing of study uncertain

Much of the study effort will be by individuals volunteered by various executive branch agencies. The study's quality and timely completion will be influenced greatly by whether the persons volunteered have the correct backgrounds and enough time to devote to the study. OMB has encouraged agency participation without citing specific staff requirements. At this time, some agencies were uncertain about how many people they will provide and how much time these people will be allowed. Also officials of one major assistance agency told us that not much time remains for an indepth study.

Study completeness uncertain

OMB's late release of the study plan may not allow time to do substantive work. Important ingredients include research, data collection, frequent interaction among study team members and between task groups, analysis, and report writing. The study schedule indicates these important elements may have to be compressed to meet time deadlines. (See arrows in fig. 10-2.)

Figure 10-2

<u>Significant events</u>	<u>Timespan</u>		
	<u>1978</u>	<u>1979</u>	<u>1980</u>
Legislation enacted	Feb.		
Draft study plan published for comment	June		
Final study plan released		Jan.	
Study tasks organized		Jan.	
Staffing underway		Jan. - Feb.	
Issue papers outlining problems, findings and alternatives to be developed		Midsummer	
External review		July - Oct.	
Issue papers revised		Oct. - Dec.	
Report to the Congress			Feb.

One way to measure study thoroughness

A measure of thoroughness and completeness is the scope and outputs suggested by the Commission, and the Act requires thorough consideration of the Commission's findings. The Commission thought a Government-wide assessment of Federal assistance was needed. It noted that while much of the current attention devoted to the hundreds of assistance programs is on individual program objectives, much less effort has been devoted to generalizing from past methods. The Commission expected a broad study to permit generalizations by analyzing:

- Management problems affecting Federal assistance programs.
- Statutes dealing with Federal assistance to get an overall picture of requirements (consistency, clarity, level of detail, and emphasis) to see if any legislative changes are needed.
- Legal requirements of individual statutes against agency-imposed requirements for individual assistance programs to see whether legal requirements cause over- or under-management by Government agencies.
- The role of recipients in developing or modifying Federal assistance program requirements.
- The basis for requirements attached to Federal assistance awards.
- Selection factors for competitively awarded Federal assistance.
- The potential of loans, direct-payments, nonfinancial assistance, and subsidies in Federal assistance.
- Whether various Federal assistance techniques are relevant for revenue-sharing.

The broad assessment referred to above implies certain actions and guidance that might be recommended if the study results validated the need. For instance, consideration could be given to changes in existing statutes to clarify the right degrees of Federal involvement in assistance programs, and to modernize and standardize assistance requirements across the Federal Government.

The Commission also identified specific outputs from the study that were needed in developing a comprehensive system of guidance. (See fig. 10-3.)

Figure 10-3

Needs Associated with Developing
a System of Guidance

- Standardized assistance award procedures.
- Whether requirements should be optional or mandatory regarding Federal assistance agreements.
- Which requirements should be specified administratively and by statute.
- What procurement clauses should be applied to assistance agreements.
- When and to what extent there should be direct government involvement in overseeing, monitoring, assisting, or controlling Federal assistance programs.
- What procurement standards should be followed by recipients using Federal assistance money.

ANALYSIS

With less than one year remaining of the two years initially available, OMB's study of Federal assistance is just getting underway. The extent to which individuals are assigned full time will greatly influence study outcomes. Even if adequate staffing materializes, it is questionable how complete and thorough the study can be in the little time available.

Management attention and congressional oversight by mid-year are needed to make sure of a thorough study. One way to measure thoroughness is to compare study results with the scope and output prescribed by the Procurement Commission.

CHAPTER 11

GOVERNMENT-WIDE PATENT POLICY--CONCERTED

EXECUTIVE-LEGISLATIVE ACTION NEEDED

For over 30 years, a controversy has existed about how the Federal Government should handle rights to patents arising from Government-sponsored research so that patents are commercialized. The Federal Government holds title to about 28,000 inventions, but only about 5 percent have been commercialized. With commercialization, the Nation's productivity is increased and new jobs are created. The Commission's recommendation to implement a uniform Government-wide policy is still unresolved today.

THE TITLE VERSUS LICENSE POLICY

There are two ways to commercialize patents--the "title" policy where the Government acquires the rights but allows anyone to exploit the invention, or the "license" policy which leaves patent rights to the inventor-contractor and the contractor alone can exploit the invention. If the contractor chooses not to commercialize, the Government may then require the firm to license others. 1/ Although positions of title versus license are opposite ends of a spectrum, both provide an exception for the other's approach.

Previous Presidential policies

Most agencies have developed their patent policies independently or such policies are governed by individual statutes. As far back as 1943, President Roosevelt noted the "need for a uniform Government-wide policy." Twenty years later President Kennedy issued the first policy to guide agencies not governed by statute. This policy was a middle-of-the-road approach to title and license, and was revised in 1971 to enlarge agency authority to grant exclusive licenses to inventors agreeing to commercialize Government-owned inventions. Over the years Congress has passed about 20 laws defining patent policy for individual agencies. These laws vary as to title and license, with title dominating.

1/This is done through the "march-in" rights; i.e., the right to require the contractor to license others to protect the public interest and to make the invention available to others if the contractor fails to commercialize the inventions.

Commission recommends uniform
executive-legislative policy

The Commission's report first recommended that the revised Presidential Patent Policy be effected Government-wide promptly and uniformly. But the Commission also noted that experience may prove that the Government should not routinely take title in all situations listed in the Presidential Patent Policy, because it may hinder commercialization. If the Presidential policy was not effective in commercialization, the Commission recommended that the Government adopt the alternative of generally allowing contractors to retain title. Under this arrangement, the Government would obtain a royalty-free license and the right to license others, if the inventor-contractor did not commercialize the patent.

The Commission's purpose was to encourage commercial development of Government-financed research and development for the public benefit. The Commission believed that without the inventor-contractor's exclusive ownership, many Government-sponsored patents would lie dormant. Such patents could remain inactive because inventors would hesitate to risk capital to commercialize them, if other firms could quickly be licensed by the Government to compete.

PREVIOUS LEGISLATIVE ACTIONS
UNSUCCESSFUL

During 1975-76, the Interagency Committee on Patent Policy, after evaluating experience under the Presidential Patent Policy, accepted the alternative approach and developed a legislative proposal. However, the Department of Justice has consistently opposed any license policy and the Administration has not pushed this proposal. In 1977, Representative Thornton introduced H.R. 6249, provisions of which were similar to the alternative approach. No hearing was held on this bill. Since the Department of Justice remained opposed, H.R. 6249 did not receive administration support.

In September 1978, Senators Bayh and Dole proposed a uniform Federal patent procedure for small business and nonprofit organizations. The bill's purpose was to expedite commercialization by removing what it termed a major bottleneck in the transfer of inventions to the public--Government title in federally sponsored inventions. The bill has been reintroduced in the current Congress as S.414.

EXECUTIVE BRANCH SPLIT
ON PATENT POLICY

The issue that divides the executive branch is whether title or license is the better way to commercialize patents. OFPP and some agencies support the policy of title-in-the-contractor or exclusive licensing of the inventor. The Department of Justice has not believed that title-in-the-contractor will generally achieve commercialization more rapidly than acquiring title in the Government. When the contractor has title, the Department of Justice is wary of anticompetitive aspects and the potential for windfall profits.

Another effort is underway to settle the controversy. The Department of Justice has launched an effort to assess its historical stance on this question, to review the data, and to possibly reformulate its position. In addition, the Department of Commerce is supposed to develop a Presidential option paper with the assistance of OSTP and OFPP. Figure 11-1 shows the significant events in resolving patent policies and target dates missed for earlier Presidential submissions of the patent policy paper.

Figure 11-1

<u>Evolution of Government Patent Policies</u>			
Significant events	Timespan		
	1960	1970	1980
President Kennedy's statement on Government patent policy issued	Oct. 1963		
President Nixon's revised statement issued		Aug. 1971	
Procurement Commission's recommendations made		Dec. 1972	
Recommendation partially implemented (I-1)		Mar. 1974	
Commission alternative approach drafted		Sept. 1975	
White House date for submitting Presidential option paper missed			Jan. 1978
White House date for submitting Presidential option paper missed			Jan. 1979
New date for Presidential option paper missed again			Apr. 1979

ANALYSIS

We have stated the need for a Government-wide patent policy on many occasions and, as recently as May 1979, in testimony before the Senate Judiciary Committee on S. 414.

The executive branch is still divided about a uniform Government-wide patent policy; this split has persisted for several decades. Notwithstanding attempts to implement the Commission's alternative proposal, no Government-wide patent policy is yet in sight. The Congress, therefore, must take the initiative to set the policy.

CHAPTER 12

NEED FOR VISIBILITY ON OPEN

COMMISSION RECOMMENDATIONS

More than 6 years have passed since the Commission made its recommendations, yet some are still undecided and action on many of those accepted is uncertain. (See app. V.) More needs to be published about the status, progress, problems, shortfalls, and actions scheduled on each open recommendation. Present OFPP reports offer no handles for Congress and others to give help, nor do they satisfy the oversight Congress wants, as expressed in OFPP's legislative history.

OFPP'S ANNUAL REPORTING NOT IN ACCORD WITH LEGISLATIVE HISTORY

Legislative history of that Act states that the OFPP's annual report is to include an "analysis, evaluation and review" of Commission recommendations implementation status. 1/

Since its creation in 1974, OFPP has submitted annual reports to the Congress at three separate times--April 1976, May 1977, and January 1979 (OFPP skipped one year). These reports contain a general description of OFPP's activities, some of which are traceable to Commission recommendations. The May 1977 OFPP report included a copy of a periodic report used internally by OFPP to show the status of individual recommendations. (See fig. 12-1.) Such a status report was not included in OFPP's latest report to the Congress but did provide the basis for a one-page statistical summary. This summary does not, it seems to us, constitute the analysis, evaluation, and review cited in the legislative history.

Figure 12-1

<u>OFPP'S Current Status Report Format for Accepted Recommendations</u>						
<u>Recommendations accepted by the executive branch</u>	<u>Assignment with OFPP</u>	<u>Type of Implementation Required</u>	<u>Status</u>	<u>Target date</u>	<u>Implementation intermediate level</u>	<u>Completed</u>

Problems with OFPP status reports

Internal status reports are prepared by OFPP two or three times a year. They track actions on the recommendations for the benefit of OFPP management, the executive agencies

1/Senate Report 93-692 to accompany S. 2510, p. 22.

and, as previously mentioned, serve as a foundation for the OFPP annual statistical summary. OFPP's internal status reports:

- Contain several premature assessments that implementation of recommendations is complete. (See fig. 12-2.)
- Contain target dates that shift frequently with no indication of original dates or reasons for delay. (See fig. 12-3.)
- Do not show multiple actions required by some recommendations.
- Do not identify incremental tasks required to carry out the accepted recommendations.

Figure 12-2

<u>Premature Assessments of Completion</u>	
<u>Recommendations completed according to OFPP</u>	<u>Status determined by GAO</u>
A-29 Use single overhead settlements.	Still need regulatory coverage as well as an agreement on Government-wide cost principles.
A-35 Encourage modernization of contractor production facilities.	DOD action only; new profit policy needed for across-the-board action.
A-39 Cross-servicing Federal contracts.	Initial OFPP policy letter has had little or no effect; reassessment of program is needed. (See ch. 5.)
D-5 Provide training in decentralized acquisition technique.	GSA Federal Management Circular issued but no OFPP followup evaluation made to see if training was accomplished. OFPP has said Federal Acquisition Institute would implement but action has yet to be initiated.
D-7 Procure commercial products locally overseas.	Modified acceptance by executive branch that is tantamount to rejection; little implementing action afterwards (see ch. 8.).
D-14 Develop standardized ADPE benchmarks	Work still underway at Bureau of Standards and Agriculture; future use of benchmark uncertain.
G-4 Establish regional small claims boards.	Rejected by both branches; not in Contract Disputes Act of 1978.
G-10 Raise district courts jurisdiction to \$100,000.	Rejected by both branches; not in Contract Disputes Act of 1978.

Figure 12-3

Recommendation		OFPP projected target dates as of			
		Late 1975	Early 1977	Late 1977	Early 1979
A-14	Delegate contracting authority to qualified persons.	-	6/77	7/78	10/79
A-33, A-34	Establish criteria for contractor data and management systems.	3/76	-	10/78	7/79
B-7	Eliminate restraints on unsolicited proposals.	12/75	7/77	7/79	6/79
B-12	Resolve organizational conflicts of interest.	12/75	5/77	9/78	6/79
I-1, I-3	Establish uniform policies for property rights in patented inventions.	12/76	4/77	1/79	-
I-5	Amend warranties against patent infringement.	3/76	4/77	9/78	1/80

REPORT REDESIGN ESSENTIAL

OFPP needs to give greater visibility in its executive and congressional reporting to specific problems delaying or limiting action on Commission recommendations, and identify tasks which are required and scheduled to assure implementation. One approach would be to redesign the OFPP report along the following lines.

- Recommendations accepted by the executive branch showing clearly the specific one or more actions required by the recommendation.
- Incremental implementation tasks based on assessment and planning of steps required to implement above actions. This would clarify what tasks remain and those already accomplished.
- Assigned OFPP official so that action and accountability can be focused.

- Target dates firmly established based on assessment of above tasks and when they can be accomplished. A clearer picture of progress would result and targets would not be changed unless a new approach proved necessary.
- Reason for delay would provide visibility regarding delays, inaction, and additional measures required.

Figure 12-4 illustrates how such information could be presented.

Figure 12-4

Alternative Reporting Format						
Recommendations) (notes a)	OFPP assigned official (note b)	Incremental implementation task (note c)	Target dates (note d)	Current status (note e)	Progress (note f)	Explanation (note g)
a/Abbreviated recommendation description with discrete action elements.						
b/OFPP person assigned responsibility for monitoring action.						
c/Major tasks required to implement the recommendation, including legislation.						
d/Target date for completing each task (date should not be changed unless new approach to implementation adopted).						
e/Status of action on each task, whether underway (U) or planned for future (PFA).						
f/Positive assessment of whether progress is advancing as planned; yes or no.						
g/Explanation of delay and actions required to overcome delay.						

ANALYSIS

Both branches of Government need to know what actions remain on the recommendations and how each branch can contribute. A House bill to renew OFPP (see next chapter) would elevate to a statutory basis OFPP's accountability for, and reporting on, the recommendations. Redesign of OFPP's congressional reporting for high visibility of future progress and remaining obstacles would help bring this program to a timely conclusion.

CHAPTER 13

CONCLUSIONS AND RECOMMENDATIONS

The Procurement Commission identified many needed reforms for the procurement process. The Congress agreed that action was required and established OFPP to take the lead.

After 6 years, about two-thirds of the Commission recommendations either are pending in one stage or another or have not been acted upon. The prospect for many of these is doubtful. (See app. IV and V.) OFPP and OMB have not taken the initiative to propose relevant legislation. Progress reports to the Congress tell little about encumbrances, problems, and schedule slippages or what will be done about them.

OFPP's TENUOUS POSITION

OFPP staying power has been in doubt due to its temporary 5-year life and its tenuous position as OMB's "uninvited guest." Having been inserted into OMB by congressional mandate, OFPP had the problem the first few years of gaining acceptance there and elsewhere. During 1977, OFPP had to survive Presidential reorganization plans. In such situations, skeptics tend to hang back and to "wait and see" whether a new office has survival strengths.

PROBLEMS WITH OFPP's REFORM PROGRAM

Several things have been lacking in OFPP's administration of the reform program.

Readying legislation

About one-third of the Commission's recommendations require legislative action. OFPP could have drafted legislative proposals to help but has done little of this. Its officials have often testified on pending legislation introduced by others, but by then, a bill is in draft and hardening. OFPP has no legislative program.

Sustaining priority

In recent years, matters not directly related to procurement, such as labor and inflation issues, have occupied greater OFPP attention. The agency could have argued vigorously for the primacy of fundamental procurement reform

to its other assigned tasks. Now, implementation of the Commission recommendations has low priority.

Taking the lead

OFPP seems to have assumed a reactive character rather than an initiating one. In our discussions at OFPP and with other observers we sense reluctance to take positions possibly at odds with strong congressional figures or staffers. Examples are positions connected with:

- Research and development policies.
(See Ch. 6.)
- Architect and engineering services.
(See Ch. 9.)
- Joint Executive-legislative reexamination of socioeconomic applications. (See App. V, A-43.)
- Establishing a national policy of Governmental reliance on the private sector for goods and services. (See App. II, A-22.)

Rather than presuppose the outcome or rely on limited informal staff discussions, it is important for OFPP to make firm legislative proposals and let all committees with jurisdiction or the full Congress make the actual decision whether to proceed or not.

Maintaining visibility and accountability

OFPP's reporting within the executive branch and to the Congress neither renders that Office very accountable for action on the reforms, nor measures up to requirements in OFPP's legislative history. (See Ch. 12.)

CONGRESSIONAL ACTION TO REDIRECT OFPP

When it created OFPP, the Congress did so for a 5-year term ending September 30, 1979. Bills are now before the Senate and the House to renew OFPP. The Senate bill (S. 756) is a simple extension for 5 years. The House bill (H.R. 3763) is for 3 years.

The House bill would change OFPP's purpose during the next 3 years from policy direction to policy development with limited directive authority. OFPP's objectives under the House bill would be to develop (1) a simplified, uniform procurement system and (2) legislation and a central management system to put the system into effect.

The procurement system to be designed by OFPP would be unconstrained by existing statutes and could accommodate current and future needs of the Federal agencies. Instead of prescribing regulations as the current law permits, OFPP's role in the near future would shift to developing the procurement system and necessary legislation. After the system is approved by the Congress, OFPP could resume its regulatory role. In the interim, OFPP may issue "policy directives" with the OMB Director's concurrence.

The House bill, in addition, would:

- Omit a function to monitor and revise policies of governmental reliance on the private sector for goods and services on the basis that a statutory policy is needed first. (See app. II, A-22.)
- Add functions to lead an executive branch legislative program in procurement matters, to develop standard contract forms and language, and to propose actions and schedules on completing Procurement Commission recommendations.

Finally, the House bill would place in OFPP the leadership for development of a professional workforce and shift FAI organizationally to OFPP. (See ch. 4.)

We have testified in the Senate and House in support of OFPP continuation, and have endorsed the thrust of the House legislation. 1/

RECOMMENDATION TO THE DIRECTOR, OMB

The Director, OMB, should direct OFPP to (1) review and resolve the individual actions and issues summarized under "analysis" of each major Commission reform in this report and (2) develop a new reporting design that permits high visibility and accountability for remaining actions on open Commission recommendations.

1/The Comptroller General, "Testimony on the Office of Federal Procurement Policy before the Subcommittee on Legislation and National Security, House Committee on Government Operations," May 3, 1979, and subsequent letter to the Chairman, dated May 10, 1979, on the matter of OFPP directive authority.

RECOMMENDATION TO THE CONGRESS

The cognizant congressional committees--the House Government Operations and the Senate Governmental Affairs--should review and resolve:

- Open legislative recommendations of the Commission identified in our July 1978 report (PSAD 78-100).
- Legislative matters summarized under "analysis" in this report dealing with architect and engineering services, Federal assistance, and patent policy reforms.

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
A-1: Create OFPP by law.	Accepted	X		99
A-2: Consolidate procure- ment statutes.	Accepted		X	105
A-3: Authorize competitive negotiation.	Accepted		X	105
A-4: Require competitive number be solicited; include evaluation criteria; clarify discussion purpose.	Accepted		X	105
A-5: Require debriefings when requested.	Accepted		X	105
A-6: Authorize sole-source with approval.	Accepted		X	105
A-7: Raise small purchase ceiling to \$10,000.	Accepted	X		99
A-8: Authorize multiyear contracts.	Accepted		X	105
A-9: Repeal subcontractor notification require- ment.	Accepted		X	105
A-10: Establish Government- wide procurement regulatory system.	Accepted		X	106
A-11: Establish criteria for public participa- tion.	Accepted		X	106

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
A-12: Raise level of procurement management function.	Accepted		X	106
A-13: Strengthen contract- ing officer role; allow judgement latitude.	Accepted		X	106
A-14: Delegate contracting authority to qualified individuals; clarify authority.	Accepted		X	106
A-15 thru A-17, A-19, A-20: Upgrade procurement work force.	Modified Acceptance		X	107
A-18: Reconcile procurement grade levels to required responsi- bilities.	Accepted		X	107
A-21: Establish Federal Procurement Institute.	Accepted	X		99
A-22: Express policy in law of private sector reli- ance where prices are reasonable.	Rejected			97
A-23: Do not make cost comparisons under \$100,000.	Accepted	X		99

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
A-24: Use fully allocated costs in comparisons if significant part workload or little Government investment.	Modified Acceptance	X		99
A-25: Raise dollar level for reviewing in-house activities to see if they should be contracted out.	Modified Acceptance	X		99
A-26: Permit margin up to 25 percent favoring private sector on new starts.	Modified Acceptance	X		99
A-27: Finance procurement timely.	Accepted	X		99
A-28: Establish Government-wide cost principles.	Accepted		X	107
A-29: Make single final overhead settlements.	Accepted		X	108
A-30, A-31: Develop and evaluate Government-wide profit guidelines.	Accepted		X	108
A-32: Establish regional contract payment offices.	Rejected			97

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
A-33, A-34: Establish Government-wide criteria for contractor data and management systems.	Accepted		X	108
A-35: Stimulate contractor acquisition of production facilities.	Accepted		X	108
A-36: Authorize negotiated sale of heavy equipment.	Modified Acceptance		X	108
A-37: Rely on contractor procurement system.	Accepted		X	108
A-38: Compete procurement of professional services.	Accepted		X	109
A-39: Promote interagency use of field contract support services.	Accepted		X	109
A-40: Transfer plant cognizance to Defense Contract Administration Services.	Modified Acceptance	X		100
A-41: Separate Defense Contract Administration Services from Defense Logistics Agency.	Rejected			97

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
A-42: Combine Defense Contract Administra- tion Services and Defense Contract Audit Agency.	Rejected			97
A-43 thru A-45: Reexamine socioeco- nomic applications; raise thresholds; make costs more visible.			X	109
A-46: Make debarments more uniform and equitable.	Modified Acceptance		X	109
A-47: Establish new per- formance standards for measuring small business use.	Rejected			97
A-48: Test mandatory small business subcontract- ing on selected basis.	Accepted	X		100
A-49: Enhance small business participation.	Accepted	X		100

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part B - Acquisition of Research and Development.				
B-1: Make agency R&D responsive to mission and national needs.	Undecided			103
B-2: Use agency lab funds to support national objectives.	Undecided			103
B-3: Generate long-range basic research and advanced studies program.	Undecided			103
B-4: Strengthen in-house capabilities to support private sector technology advancement; clarify roles.	Undecided			103
B-5: Clarify use federally funded R&D centers.	Accepted		X	110
B-6: Monitor NSF and NBS incentive programs.	Accepted	X		100
B-7: Eliminate restraints on unsolicited proposals.	Accepted		X	110
B-8: Eliminate R&D cost-sharing.	Undecided			103

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
B-9: Eliminate Government recovery of R&D costs.	Rejected			98
B-10: Treat IR&D and B&P as normal business cost uniformly.	Undecided			103
B-11: Encourage use of master (basic) agreements.	Accepted	X		100
B-12: Resolve organiza- tional conflicts of interest (hard- ware/software clause).	Accepted		X	110

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part C - Acquisition of Major Systems				
C-1: Initiate major systems with mission needs and goals reconciled with capabilities and re- sources.	Accepted		X	110
C-2: Begin congressional budget review with review of agency missions and capabili- ties.	Accepted		X	110
C-3: Support technology base; separate from funding of new starts.	Accepted		X	110
C-4: Create, explore alter- native system candi- dates within programs needs and goals.	Accepted		X	111
C-5: Authorize, appropriate funds by mission and needs.	Accepted		X	111
C-6: Maintain system-level competition.	Accepted		X	111
C-7: Limit premature commit- ments through field demonstrations.	Accepted		X	111
C-8: Add special controls over noncompetitive system development.	Accepted		X	111

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
C-9: Test and evaluate before full production.	Accepted		X	111
C-10: Use contracting as tool, not management substitute.	Accepted		X	112
C-11: Unify major system policymaking, monitor- ing at agency and component levels.	Accepted		X	112
C-12: Delegate decision authority to operating components except four key ones.	Accepted		X	112

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part D - Acquisition of Commercial Products				
D-1: Improve Government- wide procurement data.	Accepted	X		100
D-2: Get user feedback on supply support systems.	Accepted		X	112
D-3: Limit Federal specifi- cations for commercial products.	Modified Acceptance		X	112
D-4: Assign specification policy responsibility to OFPP.	Accepted	X		101
D-5: Provide training in decentralized acquisi- tion techniques.	Accepted		X	112
D-6: Evaluate alternate procurement and distribution systems on a total cost basis (including decentral- ized buying), and institute industrial funding.	Modified Acceptance		X	113
D-7: Have overseas activi- ties procure U.S.-made commercial products locally.	Modified Acceptance		X	113

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
D-8 thru D-10: Authorize grantee use of Federal sources of supplies and services.	Rejected			98
D-11: Reevaluate individual segments of the ADPE acquisition process.	Accepted		X	113
D-12: Require GSA to develop ADPE procurement dele- gation policy.	Accepted		X	113
D-13: Authorize multiyear leasing of ADPE.	Modified Acceptance		X	113
D-14: Develop standardized ADPE benchmarks.	Accepted		X	113
D-15: Amend ADPE late proposal clause.	Accepted	X		101
D-16: Assign food acquisi- tion policy role to OFPP.	Accepted	X		101
D-17: Establish coordinator for Federal food quality assurance program.	Accepted	X		101
D-18: Use commercial forms in obtaining utility services.	Accepted		X	114
D-19: Seek more innovative transportation pro- curement techniques.	Accepted	X		101

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part E - Acquisition of Architect-Engineer Services				
E-1: Competitively negoti- ate for A-E services.	Accepted		X	114
E-2: Require life-cycle cost estimates in A-E proposals.	Accepted		X	114
E-3: Reimburse A-Es for certain design work associated with pre- contract proposals.	Accepted		X	114
E-4: Repeal 6-percent design fee limitation.	Accepted		X	114

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part F - Acquisition of Federal Assistance (Grants)				
F-1: Distinguish Federal assistance and grants from procurement and contracting.	Accepted	X		101
F-2: Study creating a system of guidance for Federal assistance programs.	Accepted		X	115

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part G - Legal and Administrative Remedies				
G-1: Clarify contracting officer identity and authority.	Accepted		X	115
G-2: Conduct informal review conference.	Accepted		X	115
G-3: Retain multiagency appeals boards, establish standards, and add subpoena and discovery powers.	Accepted	X		101
G-4: Establish regional small claims boards.	Rejected			98
G-5: Empower agencies to decide, settle, and pay all disputes.	Accepted	X		101
G-6: Grant contractors option of direct access to Court of Claims or district courts.	Accepted	X		102
G-7: Grant both Government and contractors judicial review of adverse decisions by agency appeals boards.	Accepted	X		102
G-8: Establish uniform short time limits for judicial review of administrative decisions.	Accepted	X		102

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
G-9: Modify existing remand practice.	Accepted	X		102
G-10: Expand jurisdic- tional limit of district courts.	Rejected			98
G-11: Pay interest on administrative and judicial claims.	Accepted	X		102
G-12: Pay court judgments on contract claims from agency appropri- ations.	Modified Accepted	X		102
G-13: Promulgate adequate information on contract-award protest procedures.	Accepted		X	115
G-14: Continue to use GAO as an award protest- resolving forum.	Accepted		X	115
G-15: Establish more expedi- tious and mandatory time requirements for processing protests through GAO.	Accepted		X	115
G-16: Require high-level management review of any decision to award contract while protest is pending with GAO.	Accepted		X	115

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
G-17: Have GAO continue to recommend termination for convenience of improperly awarded contracts.	Accepted	X		102
G-18: Improve contracting agency debriefing procedures.	Accepted		X	115
G-19: Establish a preaward protest procedure in all contracting agencies.	Accepted		X	115
G-20: GAO review of agency bid protest procedure.	Accepted		X	116
G-21: Make P.L. 85-804 permanent authority.	Accepted	X		102
G-22: Extend P.L. 85-804 relief authority to all agencies.	Undecided			103
G-23: Incorporate law into primary procurement statute.	Undecided			104
G-24: Revise law to require report to the Congress before obligating Government for more than \$1 million.	Undecided			104

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part H - Selected Issues of Liability - Government Property and Catastrophic Accidents				
H-1: Make Government self- insurer for contractor supplied items.	Accepted		X	116
H-2: Apply the same policy to subcontractors.	Accepted		X	116
H-3: Limit rights of third- party transferee.	Accepted		X	116
H-4: Establish by law compensation to victims of catastro- phic accidents under Government- connected programs.	Undecided			104
H-5: Provide by law Govern- ment indemnification of contractors for liability in excess of available insurance.	Undecided			104

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
Part I - Patents, Technical Data, and Copy Rights				
I-1: Promptly and uniform- ly implement revised Presidential state- ment of Government patent policy.	Accepted		X	116
I-2: Enact legislation to clarify authority of all agencies to issue exclusive licenses under patents held by them.	Accepted		X	116
I-3: Supplement Presidential policy by adopting uni- form procedures for ex- ercising rights retained by the Government under the policy.	Accepted		X	116
I-4: Amend statute to make authorization and consent automatic.	Undecided		X	104
I-5: Amend regulations/ clauses on contractual warranties against patent infringement.	Accepted		X	116
I-6, I-7: Authorize agencies to settle patent infringe- ment claims from avail- able appropriations; authorize agency acqui- sition of patents, licenses, and related rights.	Accepted		X	116

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See page
I-8: Give Federal District Courts and Courts of Claims concurrent jurisdiction.	Undecided			104
I-9, I-11, I-13: Repeal or amend tech- nical data rights limitations; author- ize agency acquisi- tion; establish remedy for Government's confidential informa- tion misuse.	Accepted		X	116
I-10, I-12: Develop technical data rights policy.	Accepted		X	117
I-14, I-15: Repeal limitations on publicizing works under contracts; authorize agency acquisition of private copyrights.	Accepted		X	117
I-16: Develop Government copyright policy.	Accepted		X	117

STATUS OF PROCUREMENT COMMISSION RECOMMENDATIONS

Recommendation	Accepted/ Rejected	Implementation		
		Completed	Pending	See Page
Part J - Other Statutory Considerations				
J-1: Consolidate, recodify procurement statutes.	Accepted		X	117
J-2: Extending Truth-in- Negotiations Act.	Accepted		X	117
J-3, J-5: Extend renegotiation life; revise jurisdic- tion.	Accepted		X	117
J-4: Extend the coverage of Renegotiation Act to all agencies.	Rejected			98
J-6: Clarify Renegotiation Board criteria for determining excessive profits.	Rejected			98

RECOMMENDATIONS REJECTED

Recommendation	Reason for Rejection
<p>A-22: Establish policy in law of Government reliance on private enterprise if prices are reasonable.</p>	<p>OFPP rejected, claiming it found little support for legislative action. OFPP did not air recommendation with private or public sectors or the Congress. OMB's new Circular A-76 departs significantly from Commission recommended policy. <u>1/</u></p>
<p>A-32: Establish regional contract payment offices.</p>	<p>Difficulty in separating agency disbursement from related accounting functions and deterioration of personalized timely service to contractors.</p>
<p>A-41: Separate Defense Contract Administration Services from Defense Logistics Agency.</p>	<p>DOD rejected, it would require separate management and support organizations. Recent DOD proposal to set up a separate contract management agency would reverse the rejection.</p>
<p>A-42: Combine Defense Contract Administration Services and Defense Contract Audit Agency.</p>	<p>While close-working relationship needed between contract audit and administration, DOD claims problems can be resolved without recourse to organizational change.</p>
<p>A-47: Establish new performance standards for measuring use of small business.</p>	<p>SBA-led interagency task group had no standards to offer.</p>
<p><u>1/</u>See GAO reports PSAD-78-100, July 31, 1978, and PSAD-78-118, Sept. 25, 1978.</p>	

RECOMMENDATIONS REJECTED

Recommendation	Reason for Rejection
<p>B-9: Eliminate Government recoupment of research and development from contractors.</p>	<p>1974 Presidential decision to recoup (1) proportionate Government investment or (2) fair market value of technology.</p>
<p>D-8 thru D-10: Authorize grantee use of Federal sources of supplies and services.</p>	<p>Lack of evidence to justify reinstating use which terminated due to widespread small business concerns.</p>
<p>G-4: Establish regional small claims boards for disputes of \$25,000 or less.</p>	<p>Not included in P.L. 95-563. OFPP believes new small claims procedure and appeal board members travel may accomplish purpose.</p>
<p>G-10: Increase district's courts jurisdiction to \$100,000.</p>	<p>Raised to only \$25,000 based on belief district courts cannot handle unique issues in contract disputes.</p>
<p>J-4: Extend coverage of Renegotiation Act to all agencies.</p>	<p>Not enough civilian agency procurements to justify; Act now expired.</p>
<p>J-6: Expand and clarify profit criteria used by Renegotiations Board.</p>	<p>Executive branch questioned need for criteria; Act now expired.</p>

RECOMMENDATIONS IMPLEMENTED

Recommendation	Action Taken	When
A-1: Create OFPP by law.	P.L. 93-400 enacted.	1974
A-7: Raise small purchase ceiling to \$10,000.	P.L. 93-356 enacted regulations issued.	1974
A-21: Establish a Federal procurement research and training institute.	Institute chartered.	1976
A-23: Raise dollar level for making cost comparisons.	In revised OMB Circular A-76.	1979
A-24: Use fully allocated costs if significant part of total activity or if little investment.	In revised OMB Circular A-76, but modified toward full costing.	1979
A-25: Raise dollar level for reviewing new starts.	In revised OMB Circular A-76.	1979
A-26: Permit margin up to 25 percent favoring private sector on new starts.	In revised OMB Circular A-76; flexible use of margin not adopted.	1979
A-27: Finance procurement timely.	P.L. 93-344's new budget and impoundment procedures.	1974

RECOMMENDATIONS IMPLEMENTED

Recommendation	Action Taken	When
<p>A-40: Transfer to Defense Contract Administration those contractor plants no longer meeting military service retention criteria.</p>	<p>DOD first modified recommendation to provide closer review, but is now considering transfer.</p>	<p>1976</p>
<p>A-48: Test mandatory small business subcontracting.</p>	<p>OFPP initiated test but several problems invalidated results. P.L. 95-507 overtook test by requiring contractual goals for small business subcontracting. (See GAO report PSAD-79-)</p>	<p>1976</p>
<p>A-49: Enhance small business participation.</p>	<p>OFPP has taken several steps, such as encouraging use of small, high-technology firms and developing initiatives for 1980 White House small business conference.</p>	<p>1976-78</p>
<p>B-6: Monitor progress of an experimental R&D incentive program.</p>	<p>OMB agreed to monitor through budget process; program subsequently dismantled.</p>	<p>1974</p>
<p>B-11: Use of master agreements.</p>	<p>FPR (1-3.410) and ASPR (4-118.5) amended.</p>	<p>1976</p>
<p>D-1: Improve Government-wide procurement data.</p>	<p>New Government-wide data system operational; being debugged.</p>	<p>1978</p>

RECOMMENDATIONS IMPLEMENTED

Recommendation	Action Taken	When
D-4: Assign specification policy responsibility to OFPP.	P.L. 93-400 assigned to OFPP.	1973
D-15: Amend ADPE late proposal clause.	Federal regulations modified.	1974
D-16: Assign food acquisition policy role to OFPP.	P.L. 93-400 assigned to OFPP.	1974
D-17: Establish coordinator for Federal food quality assurance program.	Department of Agriculture assigned responsibility.	1976
D-19: Seek more innovative transportation procurement techniques.	Ongoing DOD/GSA program.	1976
F-1: Distinguished Federal assistance and grants from procurement and contracts.	P.L. 95-224 enacted.	1978
G-3: Retain multiagency contract appeals boards and give them subpoena and discovery powers.	P.L. 95-563 authorizes when workload justifies. Subpeona and discovery powers granted.	1978
G-5: Empower agencies to settle all disputes.	P.L. 95-563 enacted.	1978

RECOMMENDATIONS IMPLEMENTED

Recommendation	Action Taken	When
G-6: Allow contractors direct access to Court of Claims or District Courts.	P.L. 95-563 enacted.	1978
G-7: Grant both parties judicial review of adverse board decisions.	P.L. 95-563 enacted. Agency may appeal through Attorney General.	1978
G-8: Limit time for review of adverse administrative decisions.	P.L. 95-563 enacted.	1978
G-9: Allow reviewing court to take additional evidence.	P.L. 95-563 enacted.	1978
G-11: Pay interest on all claim awards.	P.L. 95-563 enacted.	1978
G-12: Pay court judgments on contract claims out of agency appropriations.	P.L. 95-563 requires prompt payment.	1978
G-17: Have GAO continue to recommend terminations for convenience.	Notice published.	1974
G-21: Make P. L. 85-804 permanent authority.	P.L. 94-412 enacted.	1976

RECOMMENDATIONS NEITHER ACCEPTED NOR REJECTED

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
B-1: R&D procurement to be responsive to other national needs besides	Ongoing policy in OFPP's opinion. No further action planned.	Fair
B-2: Discretionary funds for R&D lab directors in support of any national objectives.	A budgetary item in OFPP's view. No further action planned.	Poor
B-3: With Office of Science and Technology Policy help encourage long-range basic research in executive agencies.	Increases added to 1977-80 R&D budgets. Unclear why OFPP does shift responsibility to OSTP. (See ch. 6.)	Fair
B-4: Enhance in-house R&D capabilities in proper supporting roles.	OMB Circular A-76 to cover in-house lab roles.	Fair
B-8: Eliminate cost-sharing except in unusual cases.	To be in FAR, part 35; no sharing to be imposed or permitted. (See ch. 6.)	Good
B-10: Treat independent R&D and B&P expenses as normal business cost uniformly.	To be in FAR, part 31 essentially as recommended. (See ch. 6.)	Fair
G-22: Extend P.L. 85-804 relief authority to all agencies.	G-22, G-23, and G-24 would permit certain agencies to amend without consideration in unusual cases (as Defense does now). The recommendations are controversial and OFPP considers them to have low priority.	Poor

RECOMMENDATIONS NEITHER ACCEPTED NOR REJECTED

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
G-23: Incorporate law into primary procurement statute.	See above.	Poor
G-24: Revise law to require report to the Congress before obligating Government far more than \$1 million.	See above.	Poor
H-4: Establish by law prompt and adequate compensation to victims of catastrophic accidents under Government-connected programs.	Task report on H-4 and H-5 and legislative proposal under study for about 2 years. Private industry believes proposal insufficiently limits contractors' liability. OFPP considers low priority.	Poor
H-5: Indemnify contractors for liability in excess of insurance.	See above.	Poor
I-4: Make Federal authorization and consent to patent use automatic.	Executive branch previously rejected I-4, now awaiting patent of policy resolution. (See ch. 11.)	Poor
I-8: Give Federal District Courts and Court of Claims concurrent jurisdiction.	I-8 previously rejected OFPP reversed the rejection in 1978, but has done nothing since.	Poor

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
A-2: Consolidate procurement statutes.	A-2 thru A-9 are in Senate bill S-5, the Acquisition Reform Act. Bill yet to be reported out of the Governmental Affairs Committee, clear Senate Armed Services or receive House action.	Fair
A-3: Authorize competitive negotiation.		Fair
A-4: Require competitive number only to be solicited; include evaluation criteria; clarify purpose of discussions.		Fair
A-5: Require debriefings when requested.		Fair
A-6: Authorize sole-source with approval.		Fair
A-8: Authorize multiyear contracts.		Fair
A-9: Repeal subcontractor notification requirement.		Fair

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
<p>A-10: Establish Government-wide procurement regulatory system.</p>	<p>OFPP has designed the FAR, operational spring 1980. Addresses most commissions' concerns but additional guidance needed to arrest regulatory proliferation. (See ch. 3.)</p>	<p>Good</p>
<p>A-11: Establish criteria for public participation in drafting regulations.</p>	<p>Criteria is in FAR 1.5, but is not meaningful nor is participation early enough. (See ch. 3.)</p>	<p>Poor</p>
<p>A-12: Raise level of agency procurement management function.</p>	<p>Accomplished at major procurement agency top level; not yet at lower levels.</p>	<p>Fair</p>
<p>A-13: Strengthen contracting officer role; allow business judgment latitude.</p>	<p>In FAR, part 1.6.</p>	<p>Good</p>
<p>A-14: Delegate contracting authority to qualified individuals; clarify authority.</p>	<p>FAR 1.603-2 clarifies authority but does not require contracting officers to meet or achieve any particular qualifications. (See ch. 4.)</p>	<p>Poor</p>

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
A-15: Establish through OFPP agency responsibilities and standards for procurement personnel improvement programs and monitoring systems.	OFPP delegated responsibilities to FAI. FAI completed draft career guide in January 1979. (See ch. 4.)	Fair
A-16: Improve agency recruiting and training programs.	No action yet; A-18 study below may help to define program.	Fair
A-17: Provide better balance between employees tenure and promotion rights and agency need.	No action yet.	Poor
A-18: Reconcile grade level to responsibility.	Office Personnel Management classification study underway.	Good
A-19: Establish rotation programs.	FAI completed draft career guide in January 1979.	Fair
A-20: Structure larger range personnel programs.	FAI completed draft career guide in January 1979.	Fair
A-28: Establish Government-wide cost principles.	To be in FAR, part 31.	Good

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
A-29: Make single final overhead settlements.	To be in FAR, part 42.7.	Good
A-30, A-31: Develop and evaluate Government-wide profit guidelines.	OFPP weighing LMI profit study and other options. Use of Defense weighed guidelines not acceptable to civilian agencies. If Government-wide agreement reached, new guidelines will be in FAR, part 15.8.	Fair
A-33, A-34: Establish Government-wide criteria for contractor data and management systems.	To be in FAR, part 2.	Good
A-35: Stimulate contractor acquisition of production facilities.	Defense Circular 76-16 permits recovery of lost depreciation if Government terminates program. Civilian agency implementation depends on new profit guidelines. (See A-30, A-31.)	Fair
A-36: Authorize negotiated several sales of heavy equipment.	OFPP to assess need for legislation based on experience with existing GSA authority. GAO supported congressional clarification of authority. (See GAO report LCD-77-417.)	Fair
A-37: Rely on contractor procurement system.	To be in FAR, part 44.	Good

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
<p>A-38: Compete procurement of professional services.</p>	<p>For several years GSA tried to develop regulatory guidance, but met DOD resistance on uniform coverage. While the FAR has overtaken these efforts, civilian and Defense FAR project offices are unclear about what action now is to be taken on this recommendation.</p>	<p>Poor</p>
<p>A-39: Promote interagency use of field contract support services.</p>	<p>OFPP program has not produced results; needs reassessment. (See ch. 5.)</p>	<p>Poor</p>
<p>A-43 thru A-45: Reexamine with the Congress socioeconomic applications; raise triggering thresholds; make costs visible.</p>	<p>OFPP accepted these recommendations in 1976, but did not propose a joint reexamination program with the Congress. OFPP lacks a legislative program and, in this instance, is wary of labor and congressional opposition. However, a <u>neutral</u> posture would permit OFPP to attack improvements in both procurement and socioeconomic fields. For more information, see GAO report PSAD-78-100, pp. 20-22.</p>	<p>Poor</p>
<p>A-46: Make debarments for socioeconomic violations more uniform and equitable</p>	<p>Past history of OFPP inaction, but it is now working with Labor and other agencies to implement.</p>	<p>Poor</p>

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
B-5: Clarify use of Federal R&D centers.	To be in FAR, part 35.	Good
B-7: Encourage unsolicited proposals.	To be in FAR, part 15.5. (See ch. 6.)	Good
B-12: Resolve organizational conflicts of interest (hardware exclusion clause).	New regulation being issued; does not require senior-level approval to use hardware exclusion clause. (See ch. 6.)	Poor
C-1: Initiate major systems with mission needs and goals reconciled with capabilities and resources.	Requirement to approve mission needs is recognized, but most agency mission structures incomplete and mission analyses limited. (See ch. 7.)	Fair
C-2: Begin congressional review with review of agency missions and capabilities.	Some committees are reviewing major systems in context of missions and are exploring or experimenting with the mission budgeting concept. See GAO reports PSAD-77-124 and PSAD-78-100 and the April 5, 1979, testimony before the House Science and Technology Committee.	Fair
C-3: Support technology base; segregate from new system design.	Technology base of agencies still need purging of new program starts and separation of funding.	Poor

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
C-4: Create, explore alternative system candidates within programs' needs and goals.	Letting private contractors devise new system designs in competition is a radical change; agencies must learn how to manage such competitive efforts.	Fair
C-5: Authorize, appropriate funds by mission and needs.	Several committees exploring; no consensus in the Congress as yet to a complete change-over.	Fair
C-6: Maintain system-level competition.	A new way of doing business; continuity of contractual competition through acquisition process not fully recognized by agencies.	Fair
C-7: Limit premature commitments through field demonstrations.	No new starts under OMB Circular A-109 have reached this stage.	Fair
C-8: Stronger controls over noncompetitive system development.	Stronger controls indicated in OMB Circular A-109, but not given emphasis in agency directives.	Fair
C-9: Reconfirm need; operationally test before full production.	No new starts under OMB Circular A-109 have reached this stage.	Fair

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
C-10: Use contracting as tool, not management substitute; make regulations more flexible.	OFPP says will be in FAR section on major systems.	Fair
C-11: Unify major system policymaking, monitoring at agency and component levels.	Largely accepted by the major system oriented agencies.	Good
C-12: Delegate decision authority to operational components except four key ones.	Acceptable to many but agency exceptions need careful review. Review channels between program manager and agency head remain to be streamlined.	Fair
D-2: Get user feedback on supply support systems.	Federal Management Circular placed responsibility on individual agencies. No OFPP followup evaluation.	Fair
D-3: Limit Federal specifications for commercial products.	OFPP issued policy in 1976 emphasizing purchase of commercially available products without using traditional Federal specifications. Agencies slow to respond. (See ch. 8.)	Fair
D-5: Provide training in decentralized acquisition techniques.	GSA circular assigned responsibility to individual agencies but no OFPP or Federal Acquisition Institute followup evaluation. (See ch. 8.)	Poor

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
D-6: Evaluate alternative procurement and distribution systems on total cost basis, including decentralized buying; institute industrial funding.	Partial implementation being attempted through the OFPP "Commercial Products Policy" which emphasizes commercial distribution. Executive branch not yet addressed related issues of industrial funding and alternative systems evaluation on a total cost basis. (See ch. 8.)	Fair
D-7: Have overseas activities directly procure U.S.-made commercial products locally.	Modified acceptance by executive branch tantamount to rejection. Little implementation action afterward. (See ch. 8.)	Poor
D-11: Reevaluate individual segments of the ADPE acquisition process.	Recent Presidential Reorganization Project covered most aspects; report nearing completion.	Good
D-12: Require GSA to develop ADPE procurement delegation policy.	Not yet developed; Presidential reorganization study expected to support further action.	Good
D-13: Authorize multiyear leasing of ADPE.	Pending legislation (S.5) would authorize multiyear leasing. See A-2.	Fair
D-14: Develop standardized	Bureau of Standards and Agriculture to complete work in early 1980s. Questions raised	Poor

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
	whether standard benchmarks are the best way to evaluate complex ADP systems in future and whether benchmarks applicable to OMB Circular A-109 procurements.	
D-18: Use commercial forms in utility services.	Implementation stalled due to socioeconomic provisions in Government contracts. Subject involves legal uncertainties not apt to be resolved soon.	Poor
E-1: Competitively negotiate A-E services.	Legislation initially envisioned not acted on. The executive branch moving in Commission direction; more remains to be done. (See ch. 9.)	Poor
E-2: Require life-cycle cost estimates in A-E proposals.	Accepted in 1978. Implementing regulations and uniform guidelines still needed. (See ch. 9.)	Fair
E-3: Reimburse A-Es for certain design work associated with pre-contract proposals.	Accepted in 1978. Implementing regulations being developed. (See ch. 9.)	Good
E-4: Repeal 6-percent design fee limitation.	Current procurement bill would repeal some, not all statutory fee limitations. OFPP supports repeal but this is not the intent of bill's drafters who anticipated congressional opposition to repeal attempts.	Poor

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
<p>F-2: Study creating a system for Federal assistance programs.</p>	<p>Passage of the legislation in its present form could cause confusion. (See ch. 9.)</p> <p>Legislation passed in 1978 (P.L. 95-224) mandated the study be done within two years. Study had scoping problems and started late. This plus uncertain staffing leave study thoroughness in doubt.</p>	<p>Fair</p>
<p>G-1: Clarify contracting officer identity and authority.</p>	<p>In FAR, part 1.</p>	<p>Good</p>
<p>G-2: Provide informal conference on adverse contracting officer decisions exceeding \$10,000.</p>	<p>Not included in P.L. 95-563; procuring agencies' believe method would undermine contracting officer's authority.</p>	<p>Poor</p>
<p>G-13 thru G-16: Continue GAO bid protest authority, improve procedures.</p>	<p>Recommendations accepted; portions applicable to executive branch still pending.</p>	<p>Fair</p>
<p>G-18: Improve agency debriefing procedures.</p>	<p>To be in FAR.</p>	<p>Good</p>
<p>G-19: Establish a preaward protest procedure in all contracting agencies.</p>	<p>Agencies contend avenue for protests already exists. Reluctant to formalize; fear it will slow down procurement process. This is tantamount to rejection of recommendation.</p>	<p>Poor</p>

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
G-20: Have GAO review agency bid protest procedures and practices.	GAO review deferred pending installation of agency procedure.	Poor
H-1 thru H-3: Make Government self-insurer for contractor-supplied item defects.	Low priority, history of inaction. According to OFPP, legislation to be submitted midyear.	Poor
I-1, I-3: Establish uniform policies for property rights in patented inventions.	History of Executive indecision--lack of consensus and Justice opposition. Presidential option paper to be submitted, but is well behind schedule. (See ch. 11.)	Poor
I-2: Clarify agency authority to issue exclusive licenses under their patents.	See above.	Poor
I-5: Amend regulations/ clauses on contractual warranties against patent infringement.	Draft clauses submitted for OFPP approval; to be in FAR, part 27.	Good
I-6, I-7: Authorize agencies to settle patent infringement claims from available appropriations; authorize agency acquisition of patents, licenses, and related rights.	See I-1 comments.	Poor
I-9, I-11, I-13: Repeal or amend technical data rights limitations; authorize agency acquisition; establish	History of inaction; drafting of legislation not yet done. Remedy for information misuse	Poor

RECOMMENDATIONS ACCEPTED,
IMPLEMENTATION PENDING

<u>Recommendation</u>	<u>Status</u>	<u>Outlook</u>
remedy for Government's confidential information misuse.	may be put in FAR.	
I-10, I-12: Develop technical data rights policy.	History of delay, inaction. May be put in FAR, part 27.	Fair
I-14, I-15: Repeal limitations on publicizing works under contracts; authorize agency acquisition of private copyrights.	History of delay, inaction. OFPP has changed approach from legislation to regulation.	Poor }
I-16: Develop Government copyright policy.	History of delay, inaction.	Poor
J-1: Consolidate, recodify procurement statutes.	Project would take several years, but no OFPP plans to implement. Has low priority.	Poor
J-2: Extension of Truth-in Negotiations Act, P.L. 87-653, to all agencies.	Uniform coverage to be in FAR; legislative requirement is in S.5.	Good
J-3, J-5: Extend renegotiation life; revise jurisdiction.	The Congress rejected legislation and Board expired; Administration still supports extension of the Act.	Poor

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