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STATEMENT OF  
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OF THE UNITED STATES  
BEFORE THE  
LEGISLATION AND MILITARY OPERATIONS SUBCOMMITTEE  
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS  
ON  
H.R. 9059  
A BILL TO CREATE AN OFFICE OF FEDERAL PROCUREMENT POLICY



I am pleased to present the views of the General Accounting Office to the House Committee on Government Operations on H.R. 9059 which would establish an Office of Federal Procurement Policy. This is a subject in which I have a great personal interest. We have given most careful consideration to the proposed legislation.

As you know, I was a statutory member of the Commission on Government Procurement which recommended the establishment of such an office--a recommendation which was unanimous on the part of the twelve members of the Commission. In addition, the General Accounting Office has been deeply involved in audits and reviews of the economies and effectiveness with which the Federal Government's procurement dollar is expended and, increasingly, we have been providing assistance to the committees of Congress concerned with procurement by the executive branch.

As you are aware, the procurement of goods and services now represents more than 20 percent of the entire Federal budget. Given

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the overall fiscal problems of the Federal Government, the opportunities for improvements in the procurement processes and the potentials for economy certainly make this legislation one of the more important matters of business before the present Congress.

The need for a focal point to exercise coordination and leadership in the development of basic procurement policy and related matters in the executive branch was independently arrived at by virtually all of the Commission's study groups. In fact, it was the most frequent central finding of government/industry participants in the Commission's extensive study program.

In part because of this, the Commission designated a special staff to further explore the study groups' findings. This staff interviewed more than a hundred key officials in 14 Government agencies. Almost without exception, these officials agreed that some form of central institution with a governmentwide perspective was needed to formulate basic procurement policies. It was equally clear in their views that day-to-day procurement operating procedures and decisions should remain the responsibility of the procuring agencies.

As you know, Mr. Chairman, the Commission's final report points to the absence of a central point of leadership in procurement policy and to the fragmented statutory base as the root causes of many problems in the procurement process identified in the Commission report. The Commission considered an Office of Federal Procurement Policy essential if recommended reforms of the statutory base are to be fully effective. The Commission stated that the office should be limited in

size relying to the maximum extent on the staff of the procuring agencies, and should focus on major procurement policies.

One of the underlying themes of the report is that a strong focal point for executive branch leadership will provide an unparalleled opportunity to minimize differences, complexities, and details in the regulations; to research and test new procurement ideas; and to transfuse innovative procurement policies and procedures throughout the agencies. The Commission believed that such a focal point--with its governmentwide overview--could do much to improve the procurement process and restore credibility through evaluation, correction, and support of Government procurement policy.

Part of the Commission's rationale is that such a focal point is needed to lend coherence to procurement matters involving more than one agency that are of vital interest to industry, small business, the Congress, and GAO. In other words, one place for these activities to go on overall policy matters instead of possibly 15 or 20 different executive agencies. I might add that it was in recognition of the difficult problem of dealing with procurement matters on an agency-by-agency basis that led the GAO to form a Procurement and Systems Acquisition Division more than a year ago in order to emphasize a governmentwide approach.

The Commission preferred placing the OFPP in the Office of Management and Budget (OMB) but stated that the President should have latitude in deciding its placement in the executive structure. In any case, the Commissioners recommended unanimously that it be estab-

lished by law. The report pointed out that only an organization solidly based in statute can have the prestige, stature, and assured continuity of effort necessary for so important a function.

CONCEPT OF THE OFFICE IN HOUSE BILL 9059

This bill would locate the office in the Executive Office of the President and head it with an administrator to be appointed by the President with the advice and consent of the Senate.

The bill states that the primary purpose of the office is to provide overall guidance and direction of procurement policy. The bill authorizes the office to prescribe policies, regulations, procedures and forms for all executive agencies to use in the procurement of property and services, including procurement by grantees under Government grants. This authority can be delegated to any executive agency with the consent of the agency or upon direction by the President. Existing regulations--such as the Armed Services Procurement Regulation and the Federal Procurement Regulation--would remain effective until superseded by those promulgated by the new office.

The main OFPP functions stipulated in the bill for the OFPP are to:

1. Establish a system of governmentwide coordinated procurement regulations, uniform to the extent feasible.
2. Establish an effective method of soliciting viewpoints from interested parties in the policy formulation and rulemaking process.

3. Monitor and revise, as necessary, policies and implementations concerned with reliance on the private sector as the source of needed property and services.

The bill permits the OFPP to carry out these functions by consulting with executive agencies and using their resources. This would be done, for example, by assigning tasks to lead agencies and interagency committees. The bill requires the OFPP in cooperation with the executive agencies and OMB to study the feasibility and desirability of a focal point similar to OFPP for grant policy.

Additionally, the bill provides specifically for keeping the Congress fully informed. It states that OFPP officers and employees may not refuse to give testimony or submit information to the Congress. It provides for periodic reporting to the Congress on the activities of the office, with appropriate recommendations to amend or repeal existing laws or to adopt new laws.

#### GAO COMMENTS ON THE BILL

An issue has been raised in prior testimony as to whether action on the bill should be deferred. For reasons which we will explain later, we favor immediate action on the bill. Now, we would like to comment on some of the salient features of the bill.

#### Authority of the OFPP

Previous witnesses have discussed the problem of determining the degree of authority to vest in the office. The Commission recommended "directive rather than merely advisory authority." The office probably would be ineffective if its authority were restricted to that of inter-agency coordination. The other extreme, detailed control of procurement

policies, regulations, and procedures could restrict the procuring agencies in exercising their mission responsibilities. Such power would be resisted by those agencies. We believe that H.R. 9059 solves this problem by clearly assigning the OFPP responsibility for and direction over procurement policies and regulations, while at the same time adding restraints and requiring full participation of the executive agencies.

Thus, section 5 of the bill cautions the OFPP administrator when setting procurement policy to give "due regard to the program activities of the executive agencies." Section 5 also requires:

- (1) the consultation with affected executive agencies,
- (2) the coordination with interagency committees or other agency personnel,
- (3) the solicitation of agency views on procurement policy, and
- (4) if possible, the agreement of affected agencies to significant policy changes.

Section 5 makes it clear that the OFPP is not to interfere with agency determinations of procurement needs or establishment of adequate specifications. This section might be further strengthened to provide that the office will not be involved in decisions affecting individual procurements.

Further indications of a balancing of the OFPP's directive authority against agency autonomy are found in section 9 of the bill. It provides that existing policies, regulations, and procedures are

to remain in effect until superseded by the OFPP. Again, section 11 permits the OFPP administrator to delegate his authority to other executive agencies. Thus, House Bill 9059 seems to provide for adequate agency participation in the rulemaking process but to reserve the ultimate decisionmaking authority to the OFPP. We endorse this resolution of a difficult problem.

We believe that OFPP authority over executive agency procurement "procedures and forms" mentioned in several sections of the bill is probably not needed and might discourage support for the legislation. If the Congress decides that such authority is essential, we believe its use should be confined to achieving consistency among two or more agencies where such consistency has been demonstrated to be feasible and to offer substantial benefits without impairing agency missions.

Our last suggestion in this area has to do with the source of directive authority. Since the bill places the OFPP in the Executive Office of the President, the Committee may wish to modify the bill to have the OFPP Administrator's directive authority flow from the President and be subject to his direction within the terms of the OFPP act rather than to create statutory directive authority independent of the President's authority.

#### Additional functions for inclusion in bill

The basic functions of OFPP as listed in the bill parallel closely those suggested in the Commission report. We would like to suggest that the following additional functions be considered:

- Oversight responsibility for the upgrading of procurement personnel through improved programs for recruitment, training, career development, and performance evaluation.
- Sponsorship of research in procurement policy and procedures.
- Guidance and direction in developing a system for collecting and disseminating governmentwide procurement data, which among other things would inform the executive branch, the Congress, and the private sector what is procured, how much is spent, and who is doing the procurement.

Each of these functions is similar to those suggested by the Commission but slightly modified in language to remove any connotations of an operational responsibility.

#### Size of OFPP staff

The bill includes three of the four major attributes the Commission suggested for the OFPP. These are:

1. Separation of policymaking from operational concerns and biases.
2. Directive rather than merely advisory authority.
3. Responsiveness to the Congress.

The fourth attribute concerns the size of the central procurement authority staff. Although the Commission did not define the size of OFPP, it expected that the office would be kept small through the use of advice and personnel from the procuring agencies.

Concerning size, the Commission report states that "to ensure its focus on major procurement policies and effective use of agency

expertise, the Office of Federal Procurement Policy should be limited in size." Toward this end, the Commission report calls for the actual development of policies and procedures by "lead agencies," with the OFPP providing guidance and coordination. One reason for the Commission's suggestions was to avoid creating an ivory tower approach to policy formulation. Staffing estimates offered by knowledgeable people range from 1 to 60. During deliberations of the Procurement Commission, a maximum of 20 staff members seemed to be the consensus. In its report on House Bill 9059 the Committee may wish to discuss the approximate size intended for the new office.

#### Placement of OFPP

As previously noted, the Commission on Government Procurement expressed a preference, that the office be located in OMB. The Commission was of the opinion that OMB's Governmentwide perspective and influence, along with its disengagement from procurement, would result in more objective treatment of procurement policy than would be the case if the OFPP were placed in an agency with direct procurement responsibility.

#### Executive branch action

By Executive Order 11717 of May 9, 1973, the President transferred several management functions, including the procurement management function, from OMB to the General Services Administration (GSA). The Order pointed out that GSA now has leadership responsibility for developing governmentwide policy in procurement and contracting under the broad policy oversight of OMB. A Deputy Assistant Director for

Procurement Policy--who is yet to be appointed--would be in charge of the OMB oversight function. He would have a small staff-- the current thinking is two persons--and his responsibilities would include keeping the Congress fully informed on procurement matters.

To assist GSA in resolving major policy issues and to provide a basis for interagency consultation, OMB testified before this Committee that an advisory group will be formed through an executive order. Representatives at the Assistant Secretary--Deputy Administrator level of the principal procuring agencies--would comprise this group. The OMB Director in his role as the Assistant to the President for Executive Management would chair this group. We understand the Deputy Administrator of GSA would act as Vice Chairman and chair the group in absence of the OMB Director.

The Commission urged the executive branch to take interim steps by executive order to establish an OFPP pending legislative action. It is, of course, too soon to fully evaluate the Administration's proposed steps.

#### Three Alternatives for Consideration

Mr. Chairman, in view of this executive branch action, we would now like to outline three alternatives for your Committee to consider and state our preference.

##### 1. Delay legislation now

One alternative for the Committee to consider would be to defer legislative action until the Administration's plan further unfolds; operating experience is acquired under it; and the effects can be evaluated. With such a perspective the Congress would be in a

stronger position to decide the kind of legislation needed. More information would be available, for example, to define the role, authority, and functions of the OFPP and to decide its preferred location.

Other witnesses have set forth the arguments for this approach--namely, added flexibility, time, and experience to define the roles, relationships, and functions of the OFPP. A major disadvantage is that if the current executive branch plan is not successful an effective OFPP would be unduly delayed.

Another potential problem with the Administration plan is in the organization structure. A hybrid office located partly in GSA is proposed--but OMB would retain the role of leading executive branch action in the identification and resolution of key procurement policy issues. Further, a separate advisory group under the OMB Director in his role as Assistant to the President for Executive Management is contemplated. These arrangements could fragment the responsibility for a new organization which needs clear-cut and manifest authority. The Commission advocated a single, strong focal point--not two or three. Such arrangements might add, rather than subtract, "layers" of approval required to issue policy guidance.

Still another potential problem involves the relative priorities of the OMB Director, who must, of necessity, give his maximum attention and resources to those matters of highest priority to the President. These circumstances could make it difficult for the OMB Director in his role as Assistant to the President for Executive Management to give adequate attention to chairing and coordinating

an interagency Procurement Policy Group responsible for identifying and resolving major procurement issues.

Fourth, we question whether the rank and level within OMB contemplated for the Deputy Assistant Director for Procurement Policy will provide sufficient status and prestige required and whether it is compatible with the posture of a nationally recognized authority in the procurement field. The executive branch proposed rank is, of course, significantly lower than that embodied in the proposed bill, which more closely approximates what the Procurement Commission had in mind.

Fifth, the problem of commitment of resources to the executive branch plan exists. No full-time OMB resources have yet been committed. Regarding the procurement management function transferred from OMB to GSA, three people have been assigned--with the head yet to be appointed. These three are assigned the new GSA responsibility for directing and coordinating the 14 lead agencies' policy positions and implementing actions on Procurement Commission recommendations. Additional staffing is needed before meaningful review and policy guidance can reasonably be expected.

Finally, additional legislation is required if OMB and GSA are to exercise the "broader management role" envisioned for them in dealings with agencies covered by the Armed Services Procurement Act. The Federal Property and Administrative Services Act, originally gave GSA broad responsibility subject to a presidential exemption for the Department of Defense (DOD) from the act's provisions. However, in 1965 the act was amended to specifically exempt DOD, NASA, and the

Coast Guard from GSA regulatory authority with no reservation of presidential or other power to direct otherwise. (See 41 U.S.C. 252 (a).)

Also, 10 U. S. C. 2202, the authority underlying the Armed Services Procurement Regulation, states that:

notwithstanding any other provision of law, an officer or agency of the Department of Defense may obligate funds for procuring, producing, warehousing, or distributing supply, \* \* \* only under regulations prescribed by the Secretary of Defense.

Thus, there is question concerning GSA's present authority to issue regulations or policy guidance binding on DOD and other agencies covered by the Armed Services Procurement Act.

From a practical standpoint, DOD regulation issuance pursuant to 10 U. S. C. 2202 would in all probability be exercised in accordance with the policy guidance received from GSA or from OMB, particularly in view of Executive Order 11717, future contemplated Executive orders, and OMB's governmentwide influence through OMB circulars. However, as indicated above, the potential for conflict exists without additional legislation clearly establishing governmentwide procurement policy authority.

2. Proceed with House Bill 9059 now, as written

A second alternative is to proceed with the current bill now. Establishing the OFPP in the Executive Office, as proposed in the bill, would be consistent with the Commission's recommendation. It would set up an organization with high visibility, governmentwide authority, responsiveness to the Congress, and a single mission

without conflict of direct procurement responsibility--all of which we strongly endorse.

This approach provides a strong congressional mandate with the necessary authority to carry out a program consistent with that advocated by the Procurement Commission. On the other hand, it would not permit the executive branch an opportunity to proceed with its stated plans and to explore alternative arrangements--without possibly seeking new legislation.

3. Proceed with legislation but permit the President latitude on how he organizes

The third alternative would be to proceed with the legislation leaving the President latitude on whether to place the responsibility in the OMB or to establish an OFPP as contemplated in the proposed legislation. Thus, the executive branch would have this flexibility--but other benefits sought by House Bill 9059 could be implemented, including (1) rulemaking procedures, (2) reliance on private enterprise, and (3) guidance to grantees on procurement practices. Further flexibility, in selecting the OFPP location, could be provided by making that part of the Act effective at a future date, such as July 1, 1974.

We believe that legislation incorporating the principles of this bill is required. The issue raised in previous testimony is whether to press for legislation now or await the experience under current executive branch actions. On balance, we favor the third alternative; that is, to proceed with legislation now but allowing the President the final decision on placement of the responsibility in the Executive Office of the President. As you know, allowing the President this latitude is consistent with the language in the

Commission report. We would expect the executive branch to consult with your Committee before making its final decision.

We believe legislation can be drafted to permit the executive branch to benefit from experience while, at the same time, strengthening the hand of the office being assigned this challenging new role of procurement policy leadership and coordination.

To sum up, Mr. Chairman, one executive branch office should have a clear congressional mandate, as the President's agent, to bring about and coordinate fundamental improvements in the procurement process and should have the authority and caliber of personnel necessary to carry out this mandate.

Several additional comments on the bill of lessor significance are attached to our statement. We will be pleased to answer the Committee's questions.

ADDITIONAL GAO COMMENTS ON H. R. 9059

Section 5 of the bill authorized the OFPP Administrator to establish policies governing procurement by grantees of property and services. Testimony by some of the previous witnesses indicates that section 5(a)(B) as now written could be interpreted by the Administrator to mean that a policy of grantee procurement from Federal supply sources should be adopted. To avoid any misunderstanding as to the intent of Congress we suggest that the reference to grantee procurement from Federal supply sources be deleted. It is our understanding that the executive branch has yet to develop a policy position in this area in response to a Commission recommendation. As a consequence, inclusion of any language which could be interpreted as a suggestion of congressional support of a policy might not be appropriate.

Section 4(b) of the Bill calls for the appointment of the Administrator "by the President and by and with the advice and consent of the Senate." Paragraph (c) of section 4 provides for a Deputy Administrator to be appointed by the Administrator. Because the Deputy Administrator would be authorized to act in the absence of the Administrator, we suggest that consideration be given to appointing and confirming the Deputy Administrator in the same manner as the Administrator.

Section 3(1) of the Bill would bring the U.S. Postal Service and the Postal Rate Commission under the Bill's definition of "Executive Agency" thereby bringing those organizations under the

jurisdiction of the OFPP. The operation of the Postal Service and the Postal Rate Commission is governed by Title 39 of the United States Code. 39 U. S.C. 410, which has application to both the Postal Service and the Postal Rate Commission, provides, with exceptions not here relevant, that "no Federal law dealing with public or Federal contracts, property, works, \* \* \* shall apply to the exercise of the powers of the Postal Service." In view of this explicit declaration of congressional policy, we suggest that consideration be given to excluding the Postal Service and the Postal Rate Commission from coverage by OFPP.

Section 5(b) states that one of the functions of the OFPP will be "establishing a system of Government-wide coordinated, and to the extent feasible, uniform procurement regulations." The word "uniform" implies that the goal is to achieve exactness among agency policies and procedures. We suggest that a word such as "consistent" be substituted for "uniform."

Finally, section 8 of the Bill subordinates to the authority conferred under H.R. 9059, authority under any other law to prescribe policies, regulations, procedures, and forms. We construe the section to subordinate only other general authorities relating to procurement and not to affect specific authorities such as those operable on a Government-wide basis (for example, issuances by the Cost Accounting Standards Board or the Department of Labor with respect to the establishment of prevailing wage rates under the Davis-Bacon Act or the Service Contract Act of 1965) or to authorities which relate to unique

agency responsibilities not limited solely to procurement consideration (for example, the Atomic Energy Commission's indemnification of contractors against public liability for nuclear incidents).