

BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES



Legislative Recommendations Of The Commission On Government Procurement: 5 Years Later

This is the seventh GAO followup of the Procurement Commission's 149 recommendations. This report covers the 57 recommendations calling for legislative action.

About half of these are now in law or in pending bills. Some difficult but important reforms are still open. They will require concerted executive-legislative action.

The remaining recommendations that require executive agency action only will be covered in a later report.



106 927
UL-47188

PSAD-78-100
JULY 31, 1978



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

B-160725

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

This is our seventh followup report on the recommendations of the Commission on Government Procurement. These followup reports are being made at the request of the House Committee on Government Operations.

This report is addressed to the Congress since it deals primarily with open legislative recommendations and contains matters for consideration by the Congress.

We are sending copies of this report to the Chairman, House Committee on Government Operations; the chairmen of other congressional committees having an interest; the Director, Office of Management and Budget; the Administrator for Federal Procurement Policy; the heads of the 14 agencies participating in the Commission followup program; and each member who served on the Commission on Government Procurement.

A handwritten signature in cursive script, reading "Thomas G. Staebli".

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

LEGISLATIVE RECOMMENDATIONS
OF THE COMMISSION ON
GOVERNMENT PROCUREMENT:
5 YEARS LATER

D I G E S T

In the Commission on Government Procurement's report to the Congress 5 years ago, there were 149 recommendations for improving the Federal procurement process. At the request of the Congress, GAO has been monitoring progress and problems in implementing the recommendations.

This report covers the 57 recommendations that needed congressional action. Of these recommendations, 7 are now law, 21 are in pending bills, and 29 are open.

WHERE MATTERS STAND TODAY

Several important laws have been enacted:

- The Office of Federal Procurement Policy has been created to provide Government-wide leadership on procurement matters.
- The scope of simplified purchasing procedures has been greatly expanded.
- Procurement financing has been expedited.
- The basis for using contract and grant- and cooperative-type arrangements has been clarified. (See pp. 4 and 5.)

Prominent in the pending legislation are House and Senate bills to modernize and consolidate procurement statutes and require a single, Government-wide regulation. Other bills would establish Government patent policies and create a new system of legal remedies for contract disputes. (See pp. 5 to 8.)

PSAD-78-100

Some important problems remain which involve complex political, economic, and legal questions. Resolution will require strong executive-congressional commitment. There are four principal areas.

1. GOVERNMENT POLICY TO RELY
ON PRIVATE ENTERPRISE

The Commission made several recommendations about the role of private enterprise in providing goods and services to the Government. As a first step, the Commission called for a clear congressional policy to be enunciated. (See p. 11.)

The Office of Management and Budget did not follow its normal procedure for responding to these Commission recommendations and an executive branch position is yet to be established. (See p. 11.) Nevertheless, the Office of Management and Budget is revising existing executive policy (OMB Circular A-76). Proposed revisions have some similarity to the Commission recommendations but differ in four major respects. (See p. 13.)

GAO concurs in the need for a clearly stated congressional policy and directs the Congress attention to other recommendations in a separate report to be issued shortly.

2. COMMERCIAL-TYPE PRODUCT PROCUREMENT

Commercial-type items account for about one-third of the \$80 billion a year in Federal procurement. The Commission recognized that unnecessary use of Federal specifications can and does

--preclude Government agencies from using the commercial marketplace where other buyers enjoy the latest product innovations, competitive pricing, product testing, and quick availability;

--cause agencies to choose supply methods based on purchase price rather than on total cost (acquiring, warehousing,

distributing, operating, obsolescence, etc.); and

--limit firms allowed to compete. (See pp. 16 to 18.)

The Commission recommended that the Office of Federal Procurement Policy be given statutory authority to make a fundamental policy shift in procurement, storage, and distribution of commercial-type products. That Office has issued a forceful policy in this matter and is following up with pilot agency programs. Two aspects of the recommendation have not been disposed of officially--the use of industrial funding and use of total costing to evaluate methods of supply. (See pp. 18 and 19.)

3. SOCIOECONOMIC PROGRAMS

The leverage of Government procurement has been increasingly used to pursue social and economic ends, such as fair employment practices, small and minority business participation, and rehabilitation of handicapped persons.

The Commission did not question the merit of these programs. Rather, to avoid impairing the Federal procurement process, the Commission stressed the need to reexamine existing applications, streamline administration, and consider other more direct means (alternatives) to implement new socioeconomic programs.

In addition, procurement dollar thresholds that trigger mandatory consideration of socioeconomic programs were found to vary substantially. Some of those established years ago are almost meaningless due to inflation. (See p. 20.) A current Presidential reorganization study calls for substantially higher and uniform thresholds. (See p. 21.)

Corrective action will require action by a number of different congressional committees.

4. MISSION BUDGETING

Traditional budget formats direct the Congress' attention to detailed management review and away from setting policies and priorities and overseeing key program decisions. (See p. 23.)

The Commission recommended mission budgeting as a solution to this problem. A mission budget links all programs and activities to agency missions and to specific needs they are intended to serve. There is no less access to detail in a mission budget--only more illumination of purpose, priority, and need.

The Congress has required Presidential mission presentations (the 1974 Budget Act) but has yet to require the review of agency operations on a total mission basis. Several committees, however, are considering or conducting experiments. (See p. 25.)

A shift to mission-based budgeting--even on an experimental basis--depends on bilateral support of and cooperation between executive and legislative branches. An illustrative program is offered. (See p. 26.) Examples of mission budgets can be found in a GAO report issued in July 1977 (PSAD-77-124).

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
2	ACTION TO DATE	3
	The executive branch	3
	The Congress	3
	Laws enacted	4
	Bills pending	5
	Recommendations still open	8
3	GOVERNMENT POLICY TO RELY ON PRIVATE ENTERPRISE	11
	Commission recommendations	11
	Executive branch response	11
	Congressional response	12
	OMB Circular A-76	12
	Current administration's proposed A-76 revisions and Commission's recommendations differ	13
	Conclusions	15
4	COMMERCIAL PRODUCTS POLICY	16
	Limiting use of Federal specifications	16
	Considering total cost	16
	Considering product suit- ability, delivery, and ordering simplicity	17
	Opening door to innovation, competition, and small business	17
	Executive branch response	18
	Conclusions	18
5	USING FEDERAL CONTRACTS TO ACHIEVE SOCIOECONOMIC OBJECTIVES	20
	Increasing use of the procurement process	20
	Dollar threshold levels out of date	20
	Conflict with simplified purchasing legislation	21
	Commission recommendations	21
	Conclusions	22

CHAPTER		<u>Page</u>
6	MISSION BUDGETING	23
	Commission recommendations	23
	Policy review	23
	Program oversight	24
	Executive branch response	24
	Conclusions	26

ABBREVIATIONS

GAO	General Accounting Office
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget

CHAPTER 1

INTRODUCTION

Government procurement (over \$80 billion a year) is a pivotal factor in missions of Federal agencies and in the U.S. economy. After an exhaustive inquiry into the subject during the late 1960s (100 witnesses and 10 hearing volumes), the Congress concluded that:

- The procurement process is much too complex.
- The effectiveness of the procurement process is a matter of great concern to the public and to the Congress.
- Patchwork solutions to procurement problems are not enough.

To take an entirely new look at the multifaceted problem, the Congress created the Commission on Government Procurement. 1/ Twelve Commissioners were appointed by the President and the Congress, representing the legislative and executive branches and private business. The Commission got underway in 1970 and, after a 2-1/2-year Government-wide grass roots study, 2/ made 149 recommendations.

In the past the findings of many such national study commissions did not result in corrective actions for lack of sustained follow through. In contrast, the Commission report, enjoying marked bilateral support, resulted in the prompt formulation of action plans. Implementation has proceeded rather steadily, given the complexity of the procurement process. Still, much remains to be done, now 5 years later.

Soon after the Commission's report was issued, task groups were drawn from the Federal agencies to develop a consolidated executive branch position on each recommendation and an agreed implementation plan. The Congress asked

1/Public Law 91-129, Nov. 26, 1969.

2/"Report of the Commission on Government Procurement," vols. 1 to 5 (U.S. Government Printing Office, Washington, D.C., Dec. 1972), hereinafter referred to as Commission report.

us to monitor this program. Thus the Procurement Commission program, unlike many others, is being actively pursued, and the Congress is informed regularly on progress and problems.

This report, the seventh in a series, 1/ covers the 57 recommendations offered principally to the Congress.

1/These reports are dated June 19 and September 19, 1973; January 31 and July 31, 1974; and March 17 (PSAD-75-61) and December 19, 1975 (PSAD-76-39).

CHAPTER 2

ACTION TO DATE

In response to the Procurement Commission's recommendations, the executive branch and the Congress each set up a program.

THE EXECUTIVE BRANCH

The first phase of the executive branch program required interagency task groups to develop a proposed response to each recommendation. Interested Federal agencies and the private sector were asked to comment on these task group proposals. An official executive branch position was then established to accept, modify, or reject the recommendations.

The second phase of the program, still far from complete, involves designing and completing implementing actions, which include legislative proposals, Government-wide circulars, agency directives, regulations, or some combination of these.

Since its creation in August 1974, the Office of Federal Procurement Policy (OFPP), within the Office of Management and Budget, has been responsible for overseeing this executive branch program. The status of the programs at December 31, 1977, as shown in OFPP's annual report to the Congress follows.

	<u>Disposition of recommendations</u>	<u>Status of implementation</u>
Rejected	12	-
Still open	20	-
Accepted:	117	-
Completed	-	20
In process	-	78
Awaiting legislation	-	<u>19</u>
Total	<u>149</u>	<u>117</u>

THE CONGRESS

Traditionally, legislative jurisdiction over procurement matters has been divided among the House Committee on Government Operations, the Senate Committee on Government Operations (now the Committee on Governmental Affairs), and other committees that oversee individual agencies.

After the release of the Procurement Commission report, the Senate established a subcommittee on Federal procurement.

This subcommittee held numerous hearings and developed legislation on several of the Commission's major reforms. Now renamed the Subcommittee on Federal Spending Practices and Open Government, it oversees OFPP, as well as executive response to Procurement Commission recommendations.

In October 1974 the House passed a resolution assigning jurisdiction over multiagency procurement matters to the House Committee on Government Operations. 1/ Its Subcommittee on Legislation and National Security has responsibility for procurement matters.

Among the Commission's recommendations, 57 called for congressional action. 2/ Seven of the legislative recommendations are now law, another 21 are in pending bills, and the remaining 29 are open.

Laws enacted

The seven recommendations enacted into law are in table 2-1.

Table 2-1
Legislation Enacted Into Law

Recommendation	Public Law	
	Number	Enacted
A-1: Create Office of Federal Procurement Policy	93-400	Aug. 1974
A-7: Raise simplified-purchasing-procedures dollar ceiling	93-356	July 1974
A-10, A-11: Establish Government-wide regulatory framework with public participation	93-400	Aug. 1974
A-27: Eliminate procurement financing delays	93-344	July 1974
F-1, F-2 (note a): Clarify procurement (contract) vs. assistance (grant) relationships and study whether system of policy guidance for Federal assistance programs is feasible	95-224	Feb. 1978
G-21: Make contractor relief authority permanent	94-412	Sept. 1976

a/Commission suggested administrative action; the Congress decided to legislate.

1/H. Res. 988, Rept. 93-912, pt. II, 93d. Cong., 2d. sess.

2/Commission rept., vol. 4, pp. 203 to 209; vol 2, pp. 77 to 80.

Of particular note in table 2-1 are Public Laws 93-400 and 95-224 which break new ground. Public Law 93-400 created the OFPP to provide leadership in Government-wide procurement matters and to be responsive to the Congress. Among OFPP's statutory functions are two other Commission recommendations: (1) establishing a Government-wide regulatory system and (2) providing for public participation in forming regulations.

Public Law 95-224 clarifies, for the first time, the use of contracts and grant- and cooperative-type instruments in the Federal Government. It also authorizes a study to develop alternatives for administering Federal assistance programs and to see if a Government-wide system of policy guidance is feasible.

Bills pending

Table 2-2 identifies the 21 recommendations now in bills pending before the Congress. It also identifies several Commission recommendations addressed to the executive branch that the Congress decided to embody in legislation.

Table 2-2
Legislation Pending

Recommendation	Legislative bill				
	Number	Sponsor	Committee	Status	
3 A-2 through A-6 A-8 and A-9	Enact modern, unified, statutory framework	S. 1264 Apr. 1977	Chiles et al.	Governmental Affairs	Reported out of Committee
2 A-49 (note a)	Strengthen small business participation	H.R. 10146 Nov. 1977	Downey	Government Operations	No action
1 D-3 (note a)	Limit Federal product specifications	H.R. 10749 Feb. 1978	Wydler	Government Operations	No action
2 G-14 through G-16 (note a)	Continue GAO bid protest authority	H.R. 11467 Mar. 1978	Downey, et al.	Government Operations	No action
1 J-2	Extend Truth-in-Negotiations Act				
1 D-13 (note a)	Authorize multiyear automatic data processing equipment leasing	S. 1490 May 1977	Chiles et al.	Governmental Affairs	No action; included in above bills
2 G-2 and G-3 (note a) and G-4 through G-12:	Establish integrated system of legal remedies (Contract Disputes Act)	H.R. 11002 Feb. 1978	Harris, Kindness	Judiciary	Expected out of Committee shortly
		S. 2292 Nov. 1977	Packwood	Judiciary; Governmental Affairs	No action
		S. 3178 June 1978	Chiles	Judiciary; Governmental Affairs	Expected out of Committee shortly
2 I-1 (note a), I-2, I-3 (note a):	Establish uniform policies for property rights in patented inventions	H.R. 6249 Apr. 1977	Thornton, Teague	Judiciary, Science and Technology	Hearing not yet scheduled
		H.R. 8596 July 1977	Thornton, et al.		
3 J-3 through J-5	Extend Renegotiation Act 5 years; make applicable to all agencies; raise floors for filing	H.R. 5959 Apr. 1977	Minish	Banking	Cleared rules
		S. 1594 May 1977	Proxmire	Banking	Amended to invoke act, only in national emergency
		S. 2790-91 Mar. 1978	Cranston	Banking	On Senate calendar

a/Commission suggested administrative action; the Congress is considering legislation.

Legislation to enact a modern procurement statute, provide for a system of legal remedies, establish a Government-wide patent policy, and terminate the Renegotiation Board is worth noting.

Modern procurement statute

The most significant emerging legislation is Senate bill 1264 and its House counterparts. These bills would modernize and unify the Federal procurement statutes. Table 2-3 identifies major thrusts of the Senate bill, compares them with the Commission's recommendations, and shows the differences. The bill omits one major area of Commission recommendations--competitive procurement of architect and engineering services. (See table 2-5, p. 9 .)

Table 2-3
New Modern Procurement Statute

Bill section	Major thrusts	Commission recommendation	Differences
2	Unifies statutory base Government-wide	A-2	
102	Requires one simplified, uniform Government-wide regulation	A-10	
2, 302	Broadens "competition" definition and permits competitive rather than maximum number of solicitations	A-4	
101, 201, 301	Recognizes competitive negotiation as equal alternative to formal advertising	A-3	Strengthens formal advertising by specifying conditions for use; written justification required for sole source but not for competitive negotiation
202, 302	Requires needs to be stated in functional terms to encourage innovation and enables consideration of alternative solutions	a/C-1, D-3	
202, 302, 514	Limits use of detailed product specifications and requires 5-year sunset reviews of those that continue	a/C-1, D-3	Commission sunset applied to commercial product specs; bill applies to all
202, 302, 303, 515	Increases new/small and minority business opportunity to compete	A-49	Minority business portion is new
202, 303	Encourages alternative solutions, explorations, and operational testings	C-4, C-9, D-6	
302	Limits transfusion of industry ideas	A-4, C-4	
303	Requires evaluation criteria in solicitation and limits discussion to clarifying, substantiating proposal	A-4	
202, 302, 303	Directs use of total cost for awards; discourages buy-ins	a/C-7, D-6	
304	Restricts sole source; requires market test first		New
305	Reinstates price analysis as a procurement technique		New
305	Extends Truth-in-Negotiations Act Government-wide	J-2	Adjusting dollar level for past inflation is new
504	Authorizes multiyear contracts	A-8, D-13	
509	Reduces multiple inspections and Government surveillance--if contractor meets competitive test		New
511	Accelerates contract payments; allows interest on late payments; limits time period for claims	A-32, G-11	Limiting time period for claims is new
701	Makes GAO bid protest authority statutory	G-14 through-16	

a/The Commission E series recommendations on procurement of architect and engineering services supported these actions also but architect and engineering contracting is not covered in this bill.

System of legal remedies

In another field a number of bills have been introduced to set up the integrated system of contractual legal remedies the Commission recommended. The House Judiciary Committee expects to report out a bill shortly. Among other things, the bill would expedite handling of small claims but would not create the regional small claims boards recommended by the Commission. Related bills have also been introduced in the Senate. Federal Spending Practices Subcommittee hearings on these bills have just been completed. Table 2-4 compares House and Senate bills with the Commission recommendations and identifies the differences.

Table 2-4

Comparison of Commission Contract Dispute Recommendations
With Pending House and Senate Bills

Recommendation	Implemented by		Differences	
	H.R. 11002	S. 3178	House	Senate
G-2 (note a): Provide informal conferences on adverse contracting officer decisions exceeding \$25,000	Yes	Yes	Except no monetary limitation	Except no monetary limitation
G-3 (note a): Retain multiagency contract appeals boards and give them subpoena and discovery powers	Partially	Partially	Agency head authorized to establish board in agency if needed or to refer appeal to other agency or to OPFP	OFPP authorized to regulate and insure uniformity
G-4: Establish regional small claims boards for disputes of \$25,000 or less	Partially	Partially	Requires boards to establish small claims procedures; permits decision by single board member; no legislated monetary limit or Government appeal.	Same as House but with monetary limit of \$10,000
G-5: Empower agencies to settle all disputes	Yes	Yes		
G-6: Allow contractors direct access to Court of Claims or District Courts	Yes	Partially		No access to District Courts
G-7: Grant both parties judicial review of adverse board decisions	Partially	Yes	Agency may appeal through Attorney General within 90 days if compelling Government interest and award exceeds \$1 million	Agency may appeal through Attorney General within 120 days
G-8: Limit time for review of adverse administrative decisions	Yes	Yes		
G-9: Allow reviewing court to make findings of fact	No	Yes	Not unless fraudulent, arbitrary, capricious, in bad faith, or not supported by preponderance of evidence (contractor) or by substantial evidence (Government)	
G-10: Increase District Court's jurisdiction to \$100,000	No	No		
G-11: Pay interest on all claim awards	Yes	Yes		
G-12: Pay contract claim judgments from agency appropriations	Yes	Yes		

^a/Commission did not call for legislation, although it indicated preference for it, but the Congress is considering legislation.

Uniform patent policy

The Commission made several recommendations to establish a uniform policy and procedures for rights in and utilization of patented inventions resulting from federally financed research and development. Three years ago the executive branch accepted most of the recommendations and is now reconsidering its previous rejections of two.

Bills were introduced last year in the House that would establish uniform Government patent policy, but hearings have not yet been scheduled.

Presidential patent policy is presently being reexamined in the executive branch, and an option paper is to be submitted to the President sometime this year.

Renegotiation Board

In lieu of extending the Renegotiation Board for periods of 5 years, as suggested by the Commission, the Congress has decided to let the Board expire, except for work on prior years' backlog. Two new bills would (1) raise the business filing threshold to \$5 million, retroactive to 1972, thereby eliminating over half of the Board's current backlog (S. 2790) and (2) make the act inactive until some future national emergency might require its use (S. 2791).

Recommendations still open

Some difficult Commission reforms are still open. Table 2-5 identifies the open congressional recommendations and the executive branch actions to date on them. These open recommendations fall into the following categories:

<u>Category</u>		<u>Number of recommendations</u>
(U)	Executive branch thinks administrative action will suffice; legislation unnecessary	8
(P)	Executive branch plans to propose legislation	6
(R)	Executive branch rejects the recommendation (two of these are being reconsidered)	3
(PP)	Executive branch position pending	3
(O)	Specifically omitted by the Congress from current legislation	2
(D)	Deferred until other important legislation is enacted	1
(HP)	Unresolved high-priority issues:	
	National private sector policy	1
	Socioeconomic programs	2
	Mission budgeting	2
	Commercial products	1
		<u>6</u>
		<u>29</u>

Table 2-5
Status of Open Recommendations

<u>Recommendation</u>	<u>Executive branch action</u>	<u>Category</u>
A-22: Establish Government policy to rely on private enterprise	Has not developed a position (see ch. 3)	(HP)
A-36: Dispose of surplus heavy machine tools	Trying to use existing General Services Administration authority	(U)
A-43(note a), A-44, A-46: Reexamine use of procurement as a socioeconomic vehicle; raise thresholds for application; make debarment treatment more equitable	Has accepted recommendations but sees little receptivity in the Congress (see ch. 5)	(HP)
B-2: Use Government laboratory funds to support national research and development objectives	No position as yet; proposed policy to be reviewed with agencies this summer	(U)
B-8: Eliminate research and development cost-sharing except where performer benefits from project	No position as yet; proposed policy to be reviewed with agencies this summer	(U)
B-10: Treat contractor independent research and development costs and bid and proposal cost uniformly as normal costs of doing business	No position as yet; plans to include in 1979 draft of single Government-wide regulation	(U)
C-2, C-5: Begin congressional budget proceedings with review of agency missions and capabilities; authorize and appropriate funds by missions and needs	Has accepted recommendations; corresponding executive requirements are in the Office of Management and Budget Circular A-109 (see ch. 6)	(HP)
D-6: Shift to commercial buying practices and rely on commercial distribution rather than Government warehousing	OFPP has accepted the recommendation and has started executive action (see ch. 4)	(HP)
D-17: Establish central food-quality assurance coordinator	OFPP has accepted the recommendation and started implementation; believes legislation unnecessary	(U)
E-1, E-4: Procure architect-engineering services competitively; repeal statutory fee limitation	The Office of Management and Budget proposed but omitted from pending legislation	(O)
G-22, G-23, G-24: Extend contractor relief authority to all agencies; incorporate into primary statute; require prior congressional notice over \$1 million	No position as yet; the Department of Defense authority made permanent under Public Law 94-412	(PP)
H-4, H-5: Compensate catastrophic accident victims of Government programs; indemnify contractor liability exceeding available insurance	No position as yet, but plans to submit legislation this year	(P)
I-4, I-8: Make Federal authorization and consent to patent use automatic; give Federal District Courts and Court of Claims concurrent jurisdiction	Previous rejections under reconsideration by OFPP	(R)
I-6, I-7: Authorize agencies to settle patent infringement claims from available appropriations; authorize agency acquisition of patents, licenses, and related rights	Government Patent Policy Committee expects to propose legislation	(P)
I-9, I-11, I-13: Repeal technical data rights limitations; authorize agency acquisition; establish remedy for Government's confidential information misuse	Working on uniform data policy/clauses; need for legislation uncertain	(U)
I-14, I-15: Repeal limitations on publicizing works under contracts; authorize agency acquisition of private copyrights	Has accepted recommendations; Government Patent Policy Committee expects to propose legislation	(P)
J-1: Consolidate, recodify procurement statutes	Being deferred pending completion of other legislation	(D)
J-6: Clarify Renegotiation Board criteria for determining excessive profits	Rejected September 1975	(R)

a/Commission suggested administrative action; OFPP believes legislation is needed.

The important open issues requiring both executive and congressional attention will be discussed in the remaining chapters. They are the Government policy to rely on private enterprise, commercial products policy, socioeconomic programs, and mission budgeting. The Commission recommendations on these issues are noted along with any actions to date and problems encountered.

These open recommendations have economic, political, and statutory ramifications and are complex and difficult to resolve. If the Commission recommendations are to be implemented, concerted executive and legislative action will be needed.

CHAPTER 3

GOVERNMENT POLICY TO RELY ON PRIVATE ENTERPRISE

Over the last 50 years, a number of congressional committees, national study commissions, and administrations of both political parties have addressed the issue of Government competition with private enterprise and sought practical ways to implement a policy favoring reliance on private enterprise. ^{1/} Policymakers have been beset by interest groups whose divergent views have defied consensus.

Views are argued vigorously on the propriety or impropriety of the Government's in-house business activities competing with private industry; the relative efficiency of the two sources; the criteria for deciding on one or the other; the types of work that are innately governmental and, therefore, belong in-house; and how to dispose of those that are not.

COMMISSION RECOMMENDATIONS

The private enterprise policy and how to implement it were among the thorniest issues confronting the Commission. The Commission members were unanimous on their principal recommendation--that, as a first step toward resolving the matter, there should be a clear policy statement in law. The Commission said that the Congress should:

"Provide through legislation that it is national policy to rely on private enterprise for needed goods and services, to the maximum extent feasible, within the framework of procurement at reasonable prices."

EXECUTIVE BRANCH RESPONSE

In assigning responsibility to Federal agencies for responding to the various Commission recommendations, OMB decided to retain responsibility for this one as well as several others on the same subject. (See table 3-1.) OMB did not, in this case, follow its prescribed steps for responding to Commission recommendations. For example,

^{1/}A history of the private enterprise policy is in a separate GAO report, PSAD-78-118, which will be issued this summer.

the usual interagency task force report was not issued and a proposed response was not coordinated with the Federal agencies and the private sector. As yet, there is no executive branch position on the recommendation.

CONGRESSIONAL RESPONSE

The sense of the Congress about legislating a national policy has not crystalized. The latest congressional actions have been to introduce several joint resolutions affirming the general policy of reliance on the private sector in acquiring goods and services. 1/ These resolutions have not been acted upon and, at present, no legislation is in process.

OMB CIRCULAR A-76

In the 1950s, the Congress was on the brink of policy legislation but held up action when the executive branch testified that the policy was being implemented administratively. A series of OMB bulletins and revisions culminated in Circular A-76 issued in 1966. This circular expresses the Government's policy as one of reliance on the private sector with these exceptions

- an inherently governmental function,
- use of the private sector would disrupt or delay an agency program,
- in-house performance is essential for military readiness,
- the product or service is not available in the private sector,
- the product or service is provided by another agency,
- in-house operation is low enough in cost to outweigh the disadvantage of doing commercial/ industrial work in the Government.

In 1977 the current administration undertook a study of Circular A-76 and developed 37 proposed changes. These

1/For example, see H. J. Res. 131, 413, and 547 introduced in January, April, and July 1977.

changes are incorporated in a new draft circular and are discussed in a forthcoming GAO report on this subject. OFPP directed the administration's study. In soliciting public and Federal agency participation, OFPP did not ask for views on these Commission recommendations.

CURRENT ADMINISTRATION'S PROPOSED
A-76 REVISIONS AND COMMISSION'S
RECOMMENDATIONS DIFFER

The administration's proposed revisions to Circular A-76 have some similarities but differ markedly from the Commission's recommendations in four respects:

1. Policies and procedures would be changed through administrative action instead of pursuing with the Congress a clear statement of national policy. (Recommendation A-22)

2. Cost competitions between Government and private enterprise would be elevated from an exception status to coequal policy status instead of relying on private enterprise where reasonable prices are available. (Recommendation A-22)

3. Conceivably, existing in-house activities would be retained even though commercial sources are available at reasonable prices instead of having to periodically show sufficient cost savings to justify their continuance. In-house expansions would be similarly treated instead of being subject to much more difficult new-start rules as heretofore. (Recommendations A-22 and A-26)

4. A contracted-out activity would be shifted to Government in-house if the contract price seems excessive instead of first correcting the procurement problem (getting more competition, etc.) 1/ and relying on private sources if reasonable prices are available. (Recommendation A-22)

Table 3-1 summarizes the Commission recommendations in short form and shows how they compare with the administration's new proposals.

1/OFPP officials have told us, however, that such corrective action is contemplated.

Table 3-1

How Administration-Proposed Policy

Responds to Commission Recommendations

Commission Recommendation	Executive Branch Action
A-22: Establish a clear policy in law--as a first step (see p. 11).	Pursues an administrative route and articulates policy that differs from the Commission (see p. 11).
A-23: Raise dollar level for making cost comparisons.	Raises dollar level.
A-24: Use fully allocated costs in comparisons with private sector if work is significant part of total activity or if there is little investment.	Uses "fuller" costs in all instances.
A-25: Raise dollar level for reviewing new starts.	Raises dollar level.
A-26: Raise differential up to 25 percent favoring private sector on new starts.	Raises differential but reverses another to favor retaining in-house operations and their expansions.

CONCLUSIONS

The Commission's recommendations on the private enterprise policy have not been thoroughly aired among the executive agencies or with the private sector. The Office of Management and Budget did not follow in this case its prescribed program, and an executive branch position on these recommendations has not been established.

The Office has, however, developed its own proposals for addressing the private enterprise issue. A detailed GAO study of the private enterprise policy and these proposals will be published this summer. It seconds the need for a clear congressional statement in law along the lines recommended by the Commission and offers a number of other recommendations.

CHAPTER 4

COMMERCIAL PRODUCTS POLICY

The Procurement Commission recommended that OFPP have statutory authority to bring about a fundamental shift in policy covering the procurement, storage, and distribution of commercial-type products used by Federal agencies. 1/ These products account for about one-third of the annual \$80 billion procurement expenditure.

LIMITING USE OF FEDERAL SPECIFICATIONS 2/

The Commission said that a fundamental problem in commercial product procurement is the present use of Federal specifications to define special product variations even though perfectly acceptable items are available in the commercial market.

The Commission noted that the development of a Federal specification often evolves from a commercial design. Desirable characteristics of the commercial product are incorporated into the proposed Federal specification, the specification is circulated among industry firms and Federal agencies, their proposed changes are amalgamated, and the specification is ultimately issued as an official requirement. Advantages to standardizing some designs include simpler logistics and volume purchases.

Considering total cost 3/

Besides the cost and time of drafting and updating Federal specifications for procurement, the Government spends a great deal of money on warehousing and distribution. As special products they are also more prone to higher obsolescence loss. 4/ The Commission concluded that,

1/Commission report, vol. 3, pp. 32 to 37.

2/Idem, pp. 18 to 21.

3/Commission report, vol. 3, pp. 32 to 37.

4/For example, new but obsolete goods scrapped by one Federal supply agency over a 4-year period in the 1970s amounted to \$658 million. See "Uninformed Procurement Decisions For Commercial Products Are Costly," GAO report, PSAD-77-170, Oct. 26, 1977.

since there is no accounting for these add-on inventory management efforts, the costs are not visible for comparing alternate methods of supplying commercial products.

The Commission said that this cost visibility should be provided so that the true costs of providing goods to users could be recovered and a more efficient use of resources encouraged. A self-supporting supply operation through user charges (industrial funding) was the recommended vehicle for assuring that full costs are determined and recovered. The Commission also recommended that the total costs for procurement and distribution be continually assessed. This would help identify less costly procurement and supply support methods, such as local commercial market-place buying using regular commercial distribution channels.

Considering product suitability,
delivery, and ordering simplicity

Another problem cited by the Commission was dissatisfaction among agency users with quality, performance, and delivery time. ^{1/} When users know that an off-the-shelf commercial product will fill their needs, the need for a Federally specified item becomes challengeable. Further, if the user knows that an item is available in a matter of hours or days from a local commercial source, a wait of several weeks or months for a less satisfactory Federal variation is frustrating and possibly costly.

Opening door to innovation,
competition, and small
business

A recent Senate report on legislation to enact a modern Federal procurement statute notes still other problems with Federal specifications. ^{2/} For example, it says that detailed product specifications tend to bar innovation and use of new technology. Such situations also limit participation of small businesses as producers, distributors, and retailers. These small enterprises may

^{1/}Commission report, vol. 3, pp. 15 to 18, and GAO report on "Government Specifications For Commercial Products-- Necessary Or A Wasted Effort," PSAD-77-171, Nov. 3, 1977.

^{2/}S. Rept. 95-715 to accompany S. 1264, pp. 4, 5, 20, 21, and 22.

not be able to handle the Government variation, or, if they attempt to do so, they often find it difficult to gather and understand the multitudinous documentation and requirements in the specifications.

According to the Senate report, by limiting the use of specifications, the Government can open its doors to

- private sector innovation and use of newer technologies;
- a variety of product solutions, prices, and ownership costs;
- more firms, including small businesses; and
- market-tested commercially available products.

EXECUTIVE BRANCH RESPONSE

In 1976, the OFPP responded to the Commission's recommendations and issued a forceful policy statement:

"The Government will purchase commercial, off-the-shelf products when such products will adequately serve the Government's requirements, provided such products have an established market acceptability. The Government will utilize commercial distribution channels in supplying commercial products to its users." 1/

In late 1976 each agency was given a list of supply items to evaluate for potential purchase and distribution under the new policy. In 1977 OFPP scheduled other actions, including regulatory changes. This represents a significant step toward achieving the fundamental change recommended by the Commission.

CONCLUSIONS

As the fundamental change in commercial product procurement takes root, there are several matters that still need executive and congressional attention.

1/Memorandum from the Administrator for Federal Procurement Policy to the Administrators of General Services and Veterans Administration and to the Secretary of Defense; Subject: Procurement and Supply of Commercial Products, May 24, 1976.

Issuance of OFPP's policy statement followed action by the executive branch to accept in principle the Commission's recommendation. However, the executive branch has yet to formally address two specific aspects of the Commission's recommendation:

--Use of industrial funding.

--Continuous evaluation of procurement and distribution systems on a total cost basis.

Comparable treatment of this recommendation, as with other Commission recommendations, would require the executive branch to formally accept (in which case legislation should be proposed), reject, or modify the recommendation as presented.

The Federal Property and Administrative Services Act limits the handling charges the General Services Administration may levy on interagency product transfers. Thus the full cost of purchase and distribution is not picked up by the using agency. Instead, these extra costs are partially absorbed (subsidized) by the General Services Administration. Without counting such hidden but very real costs, Government catalogue prices are understated. The Commission's recommendation for industrial funding was intended to force recognition of these costs.

At present, procurement regulations actually encourage procurements based on Government specifications instead of competition between available commercial products. Legislation may be needed to explicitly encourage use of competition among commercial products and to restrict issuance of new Federal specifications.

Legislation is in process to modernize existing procurement statutes. (See p. 6.) Enactment of this or similar legislation could lead the way by emphasizing the desirability of purchasing off-the-shelf commercial products, cutting down on Government specifications, removing any lingering legal constraints, and helping to overcome traditional resistance to change.

CHAPTER 5

USING FEDERAL CONTRACTS TO ACHIEVE SOCIOECONOMIC OBJECTIVES

During the past 50 years, the Congress and the executive branch have often used Federal contracts to help achieve social and economic goals. By incorporating contract provisions, for example, the Government can require suppliers to maintain fair employment practices; provide safe and healthful working conditions; require industry to refrain from polluting the environment; help handicapped persons attain a productive status in the society; and encourage small and minority-owned businesses.

INCREASING USE OF THE PROCUREMENT PROCESS

The Commission on Government Procurement looked at the growing impact of the Government's socioeconomic goals and programs on the procurement process. In doing so, it took note of 39 social and economic programs in effect at that time. A number of other programs have been enacted into law since the Commission report or are now pending before the Congress.

The Commission did not question the merit of these socioeconomic programs but, rather, wanted to keep the means of accomplishing them from unduly impairing the Government's procurement process. The Commission questioned whether it is always in the Nation's interest to pursue these programs through the procurement process and noted the need for alternatives. It stressed also the need to improve administration.

DOLLAR THRESHOLD LEVELS OUT OF DATE

Dollar thresholds provide levels below which Government contracts are exempted from various socioeconomic requirements. Some were legislated as long as 40 years ago. 1/ They were designed to lessen the administrative burden for smaller contracts. As the Commission noted,

1/Commission report, vol. 1, pp. 114, 116, 120, 121, and 122.

however, inflation over time has depreciated these dollar threshold levels to insignificance. As a result, fewer and fewer purchases are exempt from socioeconomic provisions, and the relative costs and paperwork requirements of small contracts are pushed higher with the increasing number of provisions to administer.

Conflict with simplified purchasing legislation

The Congress has enacted into law a Commission recommendation enabling the use of simplified small-purchase procedures for procurements up to \$10,000, instead of \$2,500 as before. But these simplified procedures are difficult to use because of lower dollar threshold levels for invoking socioeconomic requirements. These lower thresholds range from \$2,000 to \$10,000. Higher and more uniform threshold levels would help streamline administration and lessen the possibility of error in applying socioeconomic requirements.

A recently issued President's reorganization report recognized the lack of uniformity and would increase all thresholds to \$25,000. ^{1/} The Paperwork Commission also cited the multithreshold problem. It said current differences in dollar levels for small purchases and socioeconomic programs are inconsistent with past practices and impose a major paperwork burden on small firms. ^{2/}

COMMISSION RECOMMENDATIONS

The Procurement Commission made several recommendations which have not yet been acted upon. First, the Commission recommended a joint congressional/executive branch reexamination of these socioeconomic programs and of the administrative practices followed in their application. Second, the Commission recommended legislation to raise to \$10,000 the various dollar levels at which socioeconomic program requirements must be met. Third, the Commission recommended that the cost of implementing

^{1/}"Supply And Support Services Task Force Findings And Alternatives," President's Reorganization Project on Administrative Services, June 15, 1978.

^{2/}"Report of the Commission on Federal Paperwork, Procurement," June 10, 1977, pp. 16 to 21.

social and economic goals through the procurement process be made more visible. Fourth, the Commission asked for uniform and equitable penalties for contract violations pertaining to social and economic requirements.

CONCLUSIONS

The executive branch announced its acceptance of the recommendations through the Federal Register in 1976. It further noted the need for joint action with the Congress. Since that time, OFPP has discussed the matter informally with Members of Congress and congressional staffers. As yet, congressional support has not been forthcoming. A major problem is that there is no committee in the Congress with jurisdiction over both procurement and the various socioeconomic programs.

OFPP and most all Federal agencies are in agreement that action is needed. Labor Department experts also acknowledge informally that socioeconomic dollar level exemptions should be updated for inflation. The Congress may want OFPP to develop a proposal for joint congressional/executive action on the Commission recommendations. Such a proposal, as a minimum, could cover improved administration of current programs and means for coordinating and assessing new applications to the procurement process.

CHAPTER 6

MISSION BUDGETING

A major reform suggested by the Commission would have Federal agency budget requests presented, reviewed, and funded in mission terms. The Congress has taken an initial step of requiring mission information in the President's budget, and a few committees are experimenting with the concept.

COMMISSION RECOMMENDATIONS

The Commission recommended that each agency's budget request be organized according to the agency's designated missions. A separate, distinct event to be discussed with the Congress before programs begin is mission need approval. It represents new policymaking leverage for the Congress. By looking at programs and subsidiary activities as needs of a particular mission, rather than as needs themselves, the executive and legislative branches, in the Commission's view, could agree more knowledgeably on national priorities and allocation of resources.

The Commission wanted to (1) unburden the Congress from the highly technical presentation it receives today, (2) allow greater emphasis on policy review, and (3) open up congressional oversight to the early key decisions that control new programs.

Policy review

The Commission intended for a mission-based budget to direct congressional review to policy matters such as:

1. Clarifying agency mission purposes and deciding their continued relevancy to current national policy and problems.
2. Assessing agency roles and responsibilities for the missions and approaches for carrying them out.
3. Raising or lowering mission funding based on
 - resources required for missions versus their "worth,"
 - the agency's current capability to perform the missions,

- priority needs of each mission,
- extent of mission overlap desired within and between agencies, and
- individual program reviews.

Should the Congress desire to review managerial or technical aspects of a program, there would be no less congressional access to program details.

Program oversight

The Congress is quite concerned about the effectiveness of its oversight process as evidenced by the current action on reform measures in the Senate. For example, Senate bill (S.2) requires reauthorization of Federal programs periodically to see if they should continue, be modified, or terminated. Such a reform would require a sharper focus on mission purpose and program results.

By funding a need rather than an activity initially, mission budgeting would get away from predetermined solutions to Government programs and, instead, would stimulate exploration of differing and innovative alternatives.

After programs are fully operational, a new measure of public accountability is available--outputs related to already defined end purposes. The Congress could then begin to ask the question whether the level of mission performance that it funded was actually attained by the agency.

A separate GAO report discusses the mission budgeting concept in detail and illustrates its use by converting energy, defense, and space budget requests to a mission approach. 1/

EXECUTIVE BRANCH RESPONSE

^{1/} The President's budget now includes a presentation according to national needs, broad agency missions,

1/"Mission Budgeting: Discussion and Illustration of the Concept in Research and Development Programs," PSAD-77-124, July 27, 1977. See also "Mission Budgeting: The Need, The Future," vol. XVI, Mar. 1978, Electronic Industries Association, Washington, D.C.

and programs. 1/ OMB is taking an evolutionary approach that will gradually change its budget subfunctions into agency missions. Additionally, OMB gave the congressional budget and Appropriations Committees this year a special Government-wide display of research and development by agency missions. It identifies each agency's major systems developments. 2/ For these major system developments, each agency is to inform the Congress in the normal budget process about missions, capabilities, deficiencies, needs, and objectives. (See OMB Circular A-109, par. 15.)

Federal agencies now experimenting in mission analysis and budgeting include the Departments of Defense and Health, Education, and Welfare.

Three Senate committees have mission budgeting experiments with individual agencies, and three others have expressed interest. (See table 6-1.) //

Table 6-1

Status in the Congress

● Three Senate Committees Experimenting

- Budget Committee (Department of Defense)
- Armed Services (Department of Defense)
- Appropriations (Departments of Defense and Health, Education, and Welfare)

● Three Senate Committees Interested

- Senate Intelligence
- Senate Human Resources
- Senate Subcommittee on Science, Technology, and Space

1/"The Budget of the United States, Fiscal Year 1979," pp. 277 to 279.

2/OMB Director's letter, dated May 17, 1978, to certain congressional committees. In the future, such data will be required by OMB Circular A-11.(see p. 131).

CONCLUSIONS

Because a shift in the method of funding, even on an experimental basis, depends on close collaboration between the Congress and the executive branch, these two branches of Government may need to devise a cooperative program to more fully test and evaluate the mission budgeting concept. These test programs could be designed to support the needs of both the legislative and executive branches.

Table 6-2 suggests the kind of executive/congressional program that might be useful.

Table 6-2
Program for Experimenting
With Mission Budgeting

Agency	OMB	The Congress
<ul style="list-style-type: none"> ● Determine mission structure ● Establish responsibility for mission analysis ● Link mission structure to needs and programs in budget ● Separate new knowledge or technology base efforts from new program starts 	<ul style="list-style-type: none"> ● Continue making President's budget more need, problem, purpose oriented ● Establish active OMB-agency congressional dialogue ● Support congressional experiment ● Develop mission budget evaluation criteria 	<ul style="list-style-type: none"> ● Continue experimentation ● Focus authorizations more on policy/missions/program objectives and outputs ● Relate appropriation accounts and reviews more to missions/programs/activities

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