

S 16134

## CONGRESSIONAL RECORD — SENATE

November 15, 1983

of two Senate staff members, Katherine Y. Cudlipp, counsel to the Committee on Environment and Public Works, and B. Reid Detchon, staff director of the Subcommittee on Information Management and Regulatory Affairs of the Committee on Governmental Affairs, in connection with the trial. This resolution would authorize Ms. Cudlipp and Mr. Detchon to provide the requested documents and testimony.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

The resolution (S. Res. 276) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

## S. RES. 276

Whereas, the case of *United States of America v. Rita M. Lavelle*, Criminal No. 83-184, is pending in the United States District Court for the District of Columbia;

Whereas, the Department of Justice has requested the production of certain documents and the testimony of Katherine Y. Cudlipp, an employee of the Senate Committee on Environment and Public Works, and B. Reid Detchon, an employee of the Subcommittee on Information Management and Regulatory Affairs of the Senate Committee on Governmental Affairs, at the trial of the case;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that testimony, documents, papers, and records under the control of or in the possession of the Senate are needful for use in any court for the promotion of justice, the Senate will take such action thereon as will promote the ends of justice consistently with the privileges and rights of the Senate: Now, therefore, be it

*Resolved*, That Katherine Y. Cudlipp and B. Reid Detchon are authorized to appear and testify and to produce documents in the case of *United States of America v. Rita M. Lavelle*, except concerning matters for which a privilege from disclosure should be asserted.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

HOUSE JOINT RESOLUTION 93  
PLACED ON CALENDAR

Mr. BAKER. Mr. President, I ask unanimous consent that the Banking Committee be discharged from further consideration of House Joint Resolution 93, a joint resolution to provide for the awarding of a special gold medal to Danny Thomas in recognition of his humanitarian efforts and outstanding work as an American, and I ask that it be placed on the calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

## BUDGET ACT WAIVER

Mr. BAKER. Mr. President, I ask that the Chair lay before the Senate Calendar Order No. 388, Senate Resolution 192, the budget waiver to accompany S. 1001.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 192) waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1001.

The Senate proceeded to consider the resolution.

The PRESIDING OFFICER. The question is on agreeing to the budget resolution waiver.

The resolution (S. Res. 192) was agreed to as follows:

## S. RES. 192

*Resolved*, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1001. Such Waiver is necessary because S. 1001 authorizes the enactment of new budget authority which would first become available in fiscal year 1984, and such bill was not reported on or before the appropriate date required under section 402(a) of the Congressional Budget Act of 1974 for such authorizations.

The waiver of section 402(a) is necessary to permit congressional consideration of statutory authority for the Office of Federal Procurement Policy.

S. 1001 provides an authorization for fiscal year 1984 of \$5,000,000.

## OFFICE OF FEDERAL PROCUREMENT POLICY ACT AMENDMENTS OF 1983

Mr. BAKER. Mr. President, I ask the Chair to lay before the Senate Calendar Order No. 331, S. 1001.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 1001) to authorize appropriations for the Office of Federal Procurement Policy for an additional 5 fiscal years.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which has been reported from the Committee on Governmental Affairs with an amendment to strike out all after the enacting clause and insert:

## S. 1001

That this Act may be cited as the "Office of Federal Procurement Policy Act Amendments of 1983".

## REFERENCE

Sec. 2. Except as otherwise specifically provided, whenever in this Act a reference is expressed in terms of a section or other provision, the reference shall be considered to be made to a section or other provision, respectively, of the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.)

## DECLARATION OF POLICY

Sec. 3. Section 2 (41 U.S.C. 401) is amended to read as follows:

## "DECLARATION OF POLICY

"Sec. 2. It is the policy of the Congress to promote economy, efficiency and effectiveness in the procurement of property and services by the executive branch of the Federal Government by—

- "(1) promoting effective competition;
- "(2) establishing policies, procedures, and practices which will provide the Government with property and services of the requisite quality, within the time needed, at the lowest reasonable cost;
- "(3) promoting the development of simplified uniform procurement processes;
- "(4) promoting the participation of small business concerns;
- "(5) supporting the continuing development of a competent, professional work force;
- "(6) eliminating fraud and waste in the procurement process;
- "(7) eliminating redundant administrative requirements placed on contractor and Federal procurement officials;
- "(8) promoting fair dealings and equitable relationships with the private sector;
- "(9) ensuring that payment is made in a timely manner and only for value received;
- "(10) requiring, to the extent practicable, the use of commercial products to meet the Government's needs;
- "(11) requiring that personal services are obtained in accordance with applicable personnel procedures and not by contract; and
- "(12) ensuring the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements."

## DEFINITIONS

Sec. 4. Section 4 (41 U.S.C. 403) is amended to read as follows:

## "DEFINITIONS

- "Sec. 3. As used in this Act—
- "(1) the term 'executive agency' means—
- "(A) an executive department specified in section 101 of title 5, United States Code;
- "(B) a military department specified in section 102 of such title;
- "(C) an independent establishment as defined in section 104(1) of such title; and
- "(D) a wholly owned Government corporation fully subject to the provisions of chapter 91 of title 31, United States Code;
- "(2) the term 'procurement' includes all stages of the process of acquiring property or services, beginning with how the need for such property or services is described by an executive agency and ending with contract completion and closeout;
- "(3) the term 'procurement system' means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function;
- "(4) the term 'single system of Government-wide procurement regulations' means—
- (A) a single Government-wide procurement regulation to be issued jointly by the General Services Administration, the Department of Defense, and the National Aeronautics and Space Administration, pursuant to their respective authorities, title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.), chapter 137 of title 10, United States Code, and the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), and (B) agency acquisition regulations implementing and supplementing the Government-wide procurement regulation issued as provided in clause (A), which shall be limited to (i) regulations essential to implement Government-wide policies and procedures within the agency and (ii) additional policies and procedures

November 15, 1983

## CONGRESSIONAL RECORD — SENATE

S 16133

answer to the question regarding the simultaneous leasing program that he would review it. When it came to the Outer Continental Shelf drilling, when it came to the oil and gas leasing program, when it came to the moratorium on coal leasing, when it came to drilling in the wilderness, when it came to all of those things, all Judge Clark would say is he would review them. I am sure he will.

But then you look at what Ed Meese said on the MacNeil-Lehrer show the day after Judge Clark was nominated for the job Ed Meese said nothing is going to change at Interior. "We are simply changing players. The policies will remain the same."

Judge Clark did not have any response to that statement, either. I asked him about that specifically.

"Is Ed Meese speaking for you? Is that the President's belief?"

I invite you to look at the transcript of hearings. That troubled me. President Reagan, until this very day, has never lifted his voice in opposition to any of the outrageous policies and the even more outrageous public conduct of James Watt, and so when the President's No. 1 man says that nothing is going to change, that is really troubling to me.

Before the Senator from Nebraska arrived, I said this morning that I hope my conscience will demand that a year from now I go apologize to Judge Clark. I will happily do that, if I am wrong.

Mr. EXON. Will the Senator yield for another question?

Mr. BUMPERS. I am happy to yield. I was about to speak for 5 minutes but my 5-minute speech usually takes 30 minutes.

Mr. EXON. Well, whatever the Senator says, he always says very well. I congratulate him again.

The problem the Senator outlined did not come about overnight. Could the Senator explain to me, since he is on the committee of jurisdiction, what action was taken by the previous administration in this regard when the Department was headed by a friend of mine and a friend of the Senator? What action was taken in this area by the previous administration, if any?

Mr. BUMPERS. The Fort Chaffee base is the thing that brought this whole thing to my attention. You know, military reservations had never been leased in this country until we amended the law in 1976. Fort Chaffee, Arkansas, 2 miles from my home, covers 74,000 acres. All of a sudden, somebody called me and told me Texas Oil and Gas walked in, and because the base had never been leased before, walked out with the leases for \$33,000, or \$1 per acre. Fort Chaffee was surrounded on four sides by hundreds of producing wells. The only reason Chaffee was not in production is that the law prohibited it from ever having been leased. I pointed out earlier that it is now estimated that that land, if it were put up for competitive bid today,

would be worth roughly \$5,000 an acre.

The PRESIDING OFFICER. The time of the Senator has expired.

#### APPOINTMENT OF SENATOR DeCONCINI AS CONFEREE TO THE CONFERENCE ON H.R. 3959

Mr. HATFIELD. Mr. President, I ask unanimous consent that the Senator from Arizona (Mr. DeCONCINI) be appointed as a conferee to the conference on H.R. 3959, the supplemental appropriations bill for fiscal year 1984, in lieu of Senator INOUE. It has been worked out with the minority side and the majority side.

Mr. BUMPERS. Mr. President, that has been cleared on our side of the aisle.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HATFIELD. I thank the Senator from Arkansas.

#### APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, appoints the following Senators as members of the Special Joint Committee on Arrangements for the Commemoration of Harry S. Truman's 100th Birthday: The Senator from Missouri (Mr. DANFORTH), the Senator from Oregon (Mr. HATFIELD), the Senator from Maryland (Mr. MATHIAS), the Senator from West Virginia (Mr. RANDOLPH), the Senator from North Dakota (Mr. BURDICK), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Missouri (Mr. EAGLETON).

#### THE CALENDAR

Mr. BAKER. Mr. President, I apologize to the Senator from Arkansas. I would ordinarily extend the time for the transaction of routine morning business, but we have a recess beginning at 12 noon, and there are a few matters of routine business that require our attention.

Could I ask the minority leader if House Concurrent Resolution 214 has been cleared on his side?

Mr. BYRD. Yes, Mr. President, House Concurrent Resolution 214 has been cleared on this side.

May I invite the attention of the majority leader to the following items which have also been cleared for action on this side: S. 2039, to indefinitely postpone; Senate Resolution 276, to be passed; House Joint Resolution 93, to be placed on the calendar; Senate Resolution 192, to pass; S. 1001, with two amendments, to amend H.R. 2293, and to indefinitely postpone S. 1001.

Mr. BAKER. Mr. President, I thank the minority leader.

#### COMMEMORATION OF THE 20TH ANNIVERSARY OF THE DEATH OF JOHN F. KENNEDY

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate turn to the consideration of House Concurrent Resolution 214, authorizing the rotunda of the Capitol to be used for a ceremony on November 16, 1983, commemorating the 20th anniversary of the death of John F. Kennedy.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution will be stated by title. The assistant legislative clerk read as follows:

A resolution (H. Con. Res. 214) authorizing the rotunda of the Capitol to be used for a ceremony on November 16, 1983, commemorating the 20th anniversary of the death of John F. Kennedy.

There being no objection, the concurrent resolution (H. Con. Res. 214) was considered and agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the resolution was agreed to.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

#### S. 2039 INDEFINITELY POSTPONED

Mr. BAKER. Mr. President, I ask unanimous consent that Calendar Order No. 520, S. 2039, the Senate version of the DOD appropriations bill, be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### AUTHORIZATION OF TESTIMONY AND PRODUCTION OF DOCUMENTS

Mr. BAKER. Mr. President, I send to the desk a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The resolution will be stated by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 276) to authorize testimony of Katherine Y. Cudlipp and B. Reid Detchon and the production of documents in the case of the United States of America against Rita M. Lavelle.

The PRESIDING OFFICER. Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. BAKER. Mr. President, the case of United States of America against Rita M. Lavelle is pending in the U.S. District Court for the District of Columbia and is set for trial later this month. Counts three and five of the indictment against Ms. Lavelle charge her with perjury before the Senate Committee on Environment and Public Works. The Department of Justice has requested the production of certain documents and the testimony

November 15, 1983

## CONGRESSIONAL RECORD — SENATE

required to satisfy the specific and unique needs of the agency; and

"(5) the term 'standards' means the criteria for determining the effectiveness of the procurement system by measuring the performance of the various elements of such system."

**AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR**

Sec. 5. Section 6 (41 U.S.C. 405) is amended to read as follows:

**"AUTHORITY AND FUNCTIONS OF THE ADMINISTRATOR**

"Sec. 6 (a) The Administrator shall provide overall direction of procurement policy and leadership in the development of procurement systems of the executive agencies. To the extent that the Administrator considers appropriate, and with due regard to applicable laws and the program activities of the executive agencies, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which shall be followed by executive agencies in the procurement of—

"(1) property other than real property in being;

"(2) services, including research and development; and

"(3) construction, alteration, repair, or maintenance of real property.

"(b) The authority of the Administrator under this Act shall not be construed to—

"(1) impair or interfere with the determination by executive agencies of their need for, or their use of, specific property, services, or construction, including particular specifications therefor; or

"(2) interfere with the determination by executive agencies of specific actions in the award or administration of procurement contracts.

"(c) The functions of the Administrator shall include—

"(1) providing leadership and resolving differences among the executive agencies in the establishment, development and maintenance of the single system of simplified Government-wide procurement regulations and in the development of simplified Government-wide procurement procedures and forms;

"(2) coordinating the development of Government-wide procurement system standards that shall be implemented by the executive agencies in their procurement systems;

"(3) providing leadership and coordination in the formulation of the executive branch position on legislation relating to procurement;

"(4) providing for a computer-based Federal Procurement Data System which shall be located in the General Services Administration (acting as executive agent for the administrator) and shall collect, develop, and disseminate procurement data;

"(5) providing for a Federal Acquisition Institute which shall be located in the General Services Administration (acting as executive agent for the administrator) and shall—

"(A) foster and promote Government-wide career management programs for a professional procurement work force; and

"(B) promote and coordinate Government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies;

"(6) establishing criteria and procedures to ensure the effective and timely solicitation of the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms.

"(7) developing standard contract forms and contract language in order to reduce

the Government's cost of procuring property and services and the private sector's cost of doing business with the Government; and

"(8) completing action, as appropriate, on the recommendations of the Commission on Government Procurement.

"(d) In carrying out the functions set forth in subsection (c), the Administrator—

"(1) shall consult with the affected executive agencies, including the Small Business Administration;

"(2) may, with the concurrence of the heads of affected executive agencies, designate an executive agency or executive agencies to assist in the performance of such functions; and

"(3) may establish advisory committees or other interagency groups to assist in providing for the establishment, development, and maintenance of a single system of simplified Government-wide procurement regulations and to assist in the performance of any of the other functions which the Administrator considers appropriate.

"(e) The Administrator may, with the concurrence of the Director of the Office of Management and Budget, deny the promulgation of or rescind any final rule or regulation of any executive agency relating to procurement if the Administrator determines that such rule or regulation is inconsistent with the policies set forth in section 2 or any policies, regulations, or procedures issued pursuant to subsection (a).

"(f) Except as otherwise provided by law, no duties, functions, or responsibilities, other than those expressly assigned by this Act, shall be assigned, delegated, or transferred to the Administrator.

"(g) The authority of the Administrator under this Act shall apply only to procurements payable from appropriated funds.

"(h) Nothing in this Act shall be construed to—

"(1) impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

"(2) limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

"(i)(1) With due regard to applicable laws and the program activities of the executive agencies administering Federal programs of grants or assistance, the Administrator may prescribe Government-wide policies, regulations, procedures, and forms which the Administrator considers appropriate and which shall be followed by such executive agencies in providing for the procurement, to the extent required under such programs, of property or services referred to in clauses (1), (2), and (3) of subsection (a) by recipients of Federal grants or assistance under such programs.

"(2) Nothing in paragraph (1) shall be construed to—

"(A) permit the Administrator to authorize procurement or supply support, either directly or indirectly, to recipients of Federal grants or assistance; or

"(B) authorize any action by such recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions."

**AUTHORIZATION OF APPROPRIATIONS**

Sec. 6. Section 11 (41 U.S.C. 410) is amended to read as follows:

**"AUTHORIZATION OF APPROPRIATIONS**

"Sec. 11. There are authorized to be appropriated to carry out the provisions of this Act, and for no other purpose, \$5,000,000 for the fiscal year ending Sep-

tember 30, 1984, and for each of the four succeeding fiscal years."

**EXPERIMENTAL PROGRAMS; ADDITIONAL PROCUREMENT RESPONSIBILITIES OF EXECUTIVE AGENCIES**

Sec. 7. The Office of Federal Procurement Policy Act is further amended by adding at the end thereof the following new sections:

**"TESTS OF INNOVATIVE PROCUREMENT METHODS AND PROCEDURES**

"Sec. 15. (a) The Administrator may develop innovative procurement methods and procedures to be tested by selected executive agencies. The innovative procurement methods and procedures tested under this subsection shall be consistent with the policies set forth in section 2. In developing any program to test innovative procurement methods and procedures under this subsection, the Administrator shall consult with the heads of executive agencies to—

"(1) ascertain the need for and specify the objectives of such program;

"(2) develop the guidelines and procedures for carrying out such program and the criteria to be used in measuring the success of such program;

"(3) evaluate the potential costs and benefits which may be derived from the innovative procurement methods and procedures tested under such program;

"(4) select the appropriate executive agencies or components of executive agencies to carry out such program;

"(5) specify the categories and types of products or services to be procured under such program; and

"(6) develop the methods to be used to analyze the results of such program.

A program to test innovative procurement methods and procedures may not be carried out unless approved by the heads of the executive agencies selected to carry out such program.

"(b) If the Administrator determines that it is necessary to waive the application of any provision of law in order to carry out a proposed program to test innovative procurement methods and procedures under subsection (a), the Administrator shall transmit notice of the proposed program to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and request that such committees take such action as may be necessary to provide that such provision of law does not apply with respect to the proposed program. The notification to Congress shall include a description of the proposed program (including the scope and purpose of the proposed program), the procedures to be followed in carrying out the proposed program, the provisions of law affected and any provision of law the application of which must be waived in order to carry out the proposed program, and the executive agencies involved in carrying out the proposed program.

**"EXECUTIVE AGENCY RESPONSIBILITIES**

"Sec. 16. (a) To further achieve effective, efficient, and economic administration of the Federal procurement system, the head of each executive agency shall, in accordance with all laws, Government-wide policies and regulations, and good business practices—

"(1) increase the use of effective competition in procurement by the executive agency;

"(2) establish clear lines of authority, accountability, and responsibility for procurement decisionmaking within the executive agency, including placing the procurement

S 16136

## CONGRESSIONAL RECORD — SENATE

November 15, 1983

function at a sufficiently high level in the executive agency to provide—

"(A) direct access to the head of the major organizational element of the executive agency served; and

"(B) comparative equality with organizational counterparts;

"(3) designate a procurement executive who shall be responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency; and

"(4) develop and maintain a procurement career management program in the executive agency to assure an adequate professional work force.

"(b) The head of an executive agency designated by the Administrator to participate in an interagency group established under section 6(d)(3) shall, to the extent practicable, participate in such interagency group.

## "STUDIES AND REPORTS

"Sec. 17. (a) The Administrator shall conduct studies and issue reports on—

"(1) the feasibility and advisability of promulgating Government-wide regulations applicable to suspensions and debarments of recipients of Federal financial assistance; and

"(2) the extent of competition in the award of subcontracts by Federal prime contractors including (A) an evaluation of the data available on subcontracts awarded in fiscal 1982 with respect to (i) the source selection method used in awarding such subcontracts, (ii) the type of subcontracts awarded, (iii) the dollar value of such subcontracts, (iv) the size of the subcontractors which were awarded the subcontract (by number of employees), and (v) the geographical location of such subcontractors, and (B) the report shall also include recommendations for improvements, if appropriate, in the extent of competition in the awarding of subcontracts and in the collection of data on such subcontract awards.

"(b) All reports required under subsection (a) of this section shall be completed by April 1, 1984, and shall be submitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives not later than April 15, 1984."

## MISCELLANEOUS AMENDMENTS

SEC. 8. (a) Section 8 (41 U.S.C. 407) is amended—

(1) in subsection (a)—

(A) by striking out "(1)" at the beginning of paragraph (1); and

(B) by striking out paragraphs (1), (3), and (4);

(2) in subsection (b)—

(A) by striking out the first sentence and inserting in lieu thereof "At least 30 days prior to the effective date of any major policy or regulation prescribed under section 6(a), the Administrator shall transmit to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the proposed policy or regulation."; and

(B) by inserting "or regulation" after "policy" each place it appears in clauses (1), (2), and (3) in the second sentence of such subsection; and

(3) by striking out "any policy" in subsection (c) and inserting in lieu thereof "any major policy or regulation".

(b) Section 10 (41 U.S.C. 409) is amended to read as follows:

"Sec. 10. Procurement policies, regulations, procedures, or forms in effect on the date of enactment of the Office of Federal Procurement Policy Act Amendments of

1983 shall continue in effect, as modified from time to time, until repealed, amended, or superseded by policies, regulations, procedures, or forms promulgated by the Administrator."

(c) Subsection (a) of section 12 (41 U.S.C. 411) is amended to read as follows:

"(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power of the Administrator under this Act (other than the authority to provide overall direction of Federal procurement policy and to prescribe policies and regulations to carry out such policy), to any other executive agency with the consent of the head of such executive agency or at the direction of the President."

(d)(1) Sections 201(a)(1), 201(c), and 206(a)(4) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 481(a)(1), 481(c), 487(a)(4)) are each amended by inserting "and regulations" after "subject to policy directives".

(2) Section 602(c) of such Act (40 U.S.C. 474) is amended by inserting "except as otherwise provided by the Office of Federal Procurement Policy Act, and" after "any law inconsistent herewith."

## AMENDMENT NO. 2610

(Purpose: To make sundry amendments)

Mr. BAKER. Mr. President, I send an amendment to the desk on behalf of the Senator from Maine (Mr. COHEN) and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER) on behalf of Mr. COHEN, proposes an amendment numbered 2610.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page, 2, line 18, strike out "effective" and insert in lieu thereof "full and open".

On page, 3, line 19, strike out "and".

On page, 3, line 22, strike out the period, the end quotation marks, and the period after the end quotation marks, and insert in lieu thereof a semicolon and "and".

On page, 3, between lines 22 and 23, insert the following:

"(13) promoting, whenever feasible, the use of specifications which describe needs in terms of functions to be performed or the performance required."

On page 4, lines 15 and 16, strike out "how the need for such property or services is described by an executive agency" and insert in lieu thereof "the process for determining a need for property or services".

On page, 4, line 25, strike out "to be issued" and insert in lieu thereof "issued and maintained."

On page, 6, beginning with "appropriate" on line 2, strike out all through "of—" on line 7 and insert the following: "appropriate in carrying out the policies and functions set forth in this Act, and with due regard for applicable laws and the program activities of the executive agencies, the Administrator may prescribe government-wide procurement policies which shall be implemented in the single system of government-wide procurement regulations and shall be followed by executive agencies in the procurement of—

"(1) property other than real property in being;

"(2) services, including research and development; and

"(3) construction, alteration, repair, or maintenance of real property.

"(b) In any instance in which the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration are unable to agree on or fail to issue government-wide regulations, procedures and forms in a timely manner, the Administrator may, with due regard for applicable laws and the program activities of the executive agencies and consistent with the policies and functions set forth in this Act, prescribe government-wide regulations, procedures and forms which shall be followed by executive agencies in the procurement of—"

On page 6, line 13, strike out "(b)" and insert in lieu thereof "(c)".

On page 6, line 22, strike out "(c)" and insert in lieu thereof "(d)".

On page 6, beginning with "resolving" on line 23, strike all through "among" on line 24, and insert in lieu thereof "ensuring action by".

On page 7, line 2, insert "resolving differences among the executive agencies" "and".

On page 7, line 3, insert "regulations," after "procurement".

On page 8, line 14, strike out "(d)" and insert in lieu thereof "(e)".

On page 9, beginning with "(e)" on line 5, strike out all through "any" on line 7, and insert the following:

"(f) The Director of the Office of Management and Budget may deny the promulgation of or rescind any government-wide regulation or".

On page 9, line 12, strike out "(f)" and insert in lieu thereof "(g)".

On page 9, strike out lines 16 through 18.

On page 11, line 4, strike out "\$5,000,000" and insert in lieu thereof "\$4,500,000".

On page 11, line 5, strike out "four" and insert in lieu thereof "three".

On page 13, line 7, strike out "(a)".

On page 13, line 10, strike out "all" and insert in lieu thereof "applicable".

On page 13, line 24, strike out "designate a" and insert in lieu thereof "designate a senior".

On page 14, strike out lines 7 through 10.

On page 14, strike out line 13 and all that follows through "reports" on page 15, line 7, and insert in lieu thereof the following: "and issue a report on the extent of competition in the award of subcontracts by Federal prime contractors including an evaluation of the data available on subcontracts awarded in fiscal year 1982 with respect to (1) the source selection method used in awarding such subcontracts, (2) the type of subcontracts awarded, (3) the dollar value of such subcontracts, (4) the size of the subcontractors which were awarded the subcontract (by number of employees), and (5) the geographical location of such subcontractors. The report shall also include recommendations for improvements, if appropriate, in the extent of competition in the awarding of subcontracts and in the collection of data on such subcontract awards.

"(b) The report".

On page 15, strike out "major" on line 22.

On page 15, beginning with "Committee" on line 24, strike out all through "Senate" on page 16, line 2, and insert in lieu thereof "Congress".

On page 16, strike out "major" on line 9.

On page 17, after line 12, insert the following new section:

November 15, 1983

## CONGRESSIONAL RECORD — SENATE

S 16137

## SMALL PURCHASES

SEC. 9. (a)(1) Section 302(c)(3) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(3)) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(2) Sections 201(a)(1), 201(c), and 206(a)(4) of such Act (40 U.S.C. 481(a)(1), 481(c), 487(a)(4)) are each amended by striking out "subject to policy directives" and inserting in lieu thereof "subject to regulations".

(3) Section 602(c) of such Act (40 U.S.C. 474) is amended by inserting "except as otherwise provided by the Office of Federal Procurement Policy Act, and" after "any law inconsistent herewith."

(b) Clause (1) of the first sentence of section 3709 of the Revised Statutes (41 U.S.C. 5) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

(c) The Act entitled "An Act making appropriations for the Legislative Branch for the fiscal year ending June 30, 1966, and for other purposes", approved July 27, 1965 (41 U.S.C. 6a-1), is amended by striking out "\$10,000" in the third full unnumbered paragraph under the heading "Office of Architect of the Capitol" and inserting in lieu thereof "\$25,000".

(d) Clause (3) of the first sentence of section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)) is amended by striking out "\$10,000" and inserting in lieu thereof "\$25,000".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2610) was agreed to.

Mr. COHEN. Mr. President, I am pleased that the Senate is considering S. 1001, the Office of Federal Procurement Policy Act Amendments of 1983. The purpose of this legislation is to improve the management of the Federal procurement process by strengthening the Office of Federal Procurement Policy and extending its authorization.

The need for a central procurement policy office is even greater today than when the Commission on Government Procurement recommended that such an office be established over a decade ago. The dollar value of government contracts has almost tripled during the past 10 years—from \$57.5 billion in fiscal 1972 to \$158.9 billion in fiscal 1982—with over 130,000 Federal employees now involved in the procurement process. The magnitude and budgetary significance of Government contracting, alone, mandate the existence of a strong procurement policy office.

Senator ROTH and I introduced S. 1001, which simply reauthorized the OFPP for an additional 5 years, on April 7, 1983. S. 1001 represented our starting point in considering the OFPP reauthorization and served as the basis for discussion during a hearing held on April 27 by the Governmental Affairs Oversight of Government Management Subcommittee. In addition to the testimony presented, the Oversight Subcommittee solicited views and received over 35 responses from procuring agencies, associations, former members of the Committee on Government Procurement and other

procurement experts. The General Accounting Office also conducted a study at my request on procurement reform and OFPP's role in the process, entitled "Progress of Federal Procurement Reform Under Executive Order 12352," which was completed on June 17.

The Oversight Subcommittee adopted a substitute for S. 1001 on July 25, which was reported unanimously by the full committee on August 1, incorporating several of the recommendations of procurement experts with whom the subcommittee consulted. The substitute restores the OFPP's regulatory authority, codifies the agency management responsibilities included in Executive Order 12352, establishes the OFPP's leadership role in the development of agency procurement systems, provides authority for the testing of innovative procurement methods, transfers the Federal Acquisition Institute from the OFPP to the General Services Administration, and requires the OFPP to undertake studies on the feasibility of Government-wide debarment and suspension procedures for recipients of Federal grants and on the extent of competition among subcontractors. The subcommittee substitute retains the provision of S. 1001, as introduced, which reauthorizes the Office for an additional 5 years but increases the authorization level from \$4 million to \$5 million annually.

The reauthorization of the OFPP—with regulatory authority—enjoys widespread support. S. 1001, as reported, is cosponsored by Senators ROTH, CHILES, DANFORTH, LEVIN, BINGAMAN, PERCY, SASSER, EAGLETON, PRYOR, PROXMIRE, DURENBERGER, COCHRAN, GRASSLEY, and KASSEBAUM. The bill is also strongly endorsed by the General Accounting Office, the U.S. Chamber of Commerce, the American Bar Association, the three former OFPP Administrators, former members of the Commission on Government Procurement, and numerous contracting associations. The House passed its companion bill, H.R. 2293, by voice vote in May.

Despite this extensive support, the Department of Defense raised objections to the bill on the grounds that reauthorizing the OFPP with regulatory authority would impair DOD's mission. On October 19, the Senate Armed Services Committee held a hearing, despite its lack of jurisdiction over S. 1001, to consider the national security implication of restoring OFPP's regulatory authority. This hearing only confirmed my belief that a strong OFPP is needed to resolve agency disputes and turf battles if we are ever to implement significant procurement reforms on a Government-wide basis.

There is no evidence to support DOD's contention that restoring OFPP's regulatory authority would jeopardize the Department's ability to perform its mission. In fact, the Gen-

eral Accounting Office, which has monitored OFPP's activities since 1974, testified at the hearing that "there have been no instances when the use of OFPP's regulatory authority has injured our defense posture \* \* \* and there is nothing on the horizon which would indicate that conditions will change."

Originally, the establishment of a central procurement policy office in the executive branch was the first of 149 recommendations made by the Commission on Government Procurement in its December 1972 report to Congress. The Commission, which was created by Congress in 1969 (Public Law 91-219) to study the Federal procurement process, based its primary recommendation on the rationale that "effective management of the procurement process requires a high degree of direction and control of basic policy."

In 1972, Congress established the Office of Federal Procurement Policy within the Office of Management and Budget for 5 years to provide overall direction and leadership in Federal procurement policymaking (Public Law 93-400). Prior to that time, procurement policies and procedures were needlessly diverse; there was no central office in the executive branch prepared to provide the Congress with the recommendations for improving the procurement process, and there was no arbiter to reconcile agency disagreements on procurement policy.

For these reasons, the OFPP was established—independent of any agency having procurement responsibility, empowered with directive rather than merely advisory authority, responsive to Congress, and consisting of a small, highly competent cadre of seasoned procurement experts—to fill this void. The Administrator for Federal Procurement Policy, who is subject to Senate confirmation, was authorized under the 1974 act to prescribe policies, regulations, procedures, and forms which the Executive agencies were required to follow. The OFPP was statutorily prohibited, however, from interfering in the daily management of an agency's procurement operations, which properly is the responsibility of an agency's procurement officials.

In 1979, the OFPP was reauthorized for an additional 4 years (Public Law 96-83). While Congress maintained the OFPP's fundamental responsibility to promote economy, efficiency, and effectiveness in the Federal procurement process, the authority which the Administrator had to discharge this responsibility was substantially weakened. Public Law 96-83 revoked the OFPP's regulatory authority, thereby restricting its authority to issue Government-wide policy directives. As a supplement to this more limited authority, the Director of the OMB was authorized to deny the promulgation of or rescind any agency rule or regu-

S 16138

## CONGRESSIONAL RECORD — SENATE

November 15, 1983

lation which was inconsistent with any OFPP policy directive.

Since its 1979 reauthorization, the OFPP has devoted considerable resources to the establishment of a single system of Government-wide procurement regulations, known as the Federal Acquisition Regulation system, and the implementation of procurement reforms under Executive Order 12352. While the OFPP has performed these and other functions well, considering its limited authority, there is a strong consensus within the procurement community that there is room for improvement in the OFPP's performance.

The OFPP initiated the Federal Acquisition Regulation (FAR) project in January 1978 and has provided policy oversight and assistance throughout its development. The project is designed to establish a regulatory system which will curb what the Procurement Commission characterized as "a burdensome mass and maze of procurement and procurement-related regulations." Once established, the FAR system will consolidate the Defense Acquisition Regulations, the Federal Procurement Regulations, the National Aeronautics and Space Administration Procurement Regulations and all other agency procurement regulations into one system consisting of a single Government-wide procurement regulation, applicable to all agencies, with such supplemental regulations essential to meet agency-specific needs.

Completion of the FAR, however, has been a problem. Originally, the FAR was to be published in the spring of 1980. After numerous extensions, the FAR's effective date is now scheduled for April 1, 1984—a 4-year delay. Once the system is in place, moreover, maintenance of the FAR is also anticipated to be a problem. Revisions to the FAR will be processed through the coordinated action of two regulatory councils, although it is unclear what will happen in the event of a dispute. Executive Order 12352 authorizes the OMB, through the OFPP, to "facilitate the resolution of conflicting views" between the regulatory councils. The GAO does not believe, however, that the OFPP is in a position to resolve such differences without regulatory authority.

S. 1001, as reported, strengthens the authority and functions of the Administrator for Federal Procurement Policy by restoring regulatory authority and by specifying a leadership role for the Administrator in the establishment, development, and maintenance of the FAR system, by restoring the Administrator's regulatory authority, the committee does not intend for the OFPP to supersede the current efforts by the DOE, GSA, and NASA to issue the FAR. Rather, S. 1001 preserves the present regulatory framework—with the DOD, GSA, and NASA directed by the President under Executive Order 12352 to continue their joint efforts to consolidate their common pro-

urement regulations into a single, simplified FAR—while providing the OFPP with regulatory authority to be used in those situations when these agencies are unable to agree or fail to act.

The Governmental Affairs Committee believes that S. 1001 provides OFPP with the authority necessary to insure the integrity of the FAR system. While the committee does not intend for the OFPP Administrator to serve as "procurement czar," the committee believes that it is important to strengthen the Administrator's hand in the regulatory process to provide the needed leadership. This authority is especially important in light of the GAO's conclusion in its June 1983 report that without strong OFPP leadership for resolving conflicts among, and insuring action by, the Executive agencies, the FAR system may crumble under the proliferation of supplemental agency procurement regulations.

S. 1001 also provides the necessary safeguards to prevent abuse of this authority. Joseph Wright, Deputy Director of the Office of Management and Budget, testified at the Armed Services Committee hearing that:

S. 1001 contains several safeguards which preclude OFPP from acting arbitrarily and unilaterally in any matter. For example, OFPP must consult with agencies affected by its directives; it must notify the Congress at least 30 days in advance of policy issuances; it is prohibited from impairing or interfering with executive agencies' determinations of their needs; and it is prohibited from interfering in any specific contract actions. And in a very practical vein, moreover, the limited size of OFPP's staff is an effective block to any significant involvement in detailed regulatory matters.

Nevertheless, in response to concerns raised by the chairman of the Armed Services Committee, I have agreed to clarify the language in S. 1001 to reflect more explicitly the Governmental Affairs Committee's intention when regulatory authority should be used—"in any instance in which the Administrator determines that the DOD, NASA, and GSA are unable to agree on or fail to issue Government-wide regulations, procedures and forms in a timely manner." I do not feel that this language in any way weakens the authority provided to the Administrator. Rather, this clarification merely incorporates into the statute the clear intent expressed in the Governmental Affairs Committee report accompanying S. 1001. I would also like to clarify that OFPP policy directives shall be in sufficient detail as the administrator considers necessary to insure effective and uniform Government-wide implementation.

Finally, I have agreed to broaden the reporting requirement in S. 1001, which presently requires the OFPP to submit any policy or regulation to the Senate Governmental Affairs and House Government Operations Committees, 30 days prior to its effective date, to permit any congressional com-

mittee to review proposed OFPP policies and regulations.

In addition to developing the FAR system, the OFPP submitted its proposal for a Uniform Federal Procurement System to Congress, as required by Public Law 96-83, in February 1982. The UFPS served as the basis for Executive Order 12352, which was issued by the President in March 1982, to implement those reforms contained in the proposal that could be accomplished administratively. The Executive order requires the heads of Executive agencies to carry out specific reforms in Federal procurement, including designating an agency procurement executive with responsibility to oversee development of the procurement system and establishing career management programs. To facilitate agency implementation of these reforms, the Executive order requires the Director of the OMB, through the OFPP, to provide broad policy guidance and overall leadership.

To date, however, progress in implementing the reforms has been slow. According to the GAO's June 1983 report, agencies are all but ignoring the policy guidance developed by the interagency task groups, which the OFPP formed to assist agencies in implementing the Executive order. The prime example cited by the GAO of agencies failing to follow OFPP guidance involves the designation of a procurement executive. While 44 agencies had appointed their procurement executives as of April 1983, the GAO found that of the 12 agencies sampled (which comprise 97 percent of the Federal procurement budget), only a third had adopted charters which set forth the procurement executive's responsibilities. Of the four agency charters adopted, moreover, the GAO found that none was complete. Absent a clear charter, the procurement executive is a title without substance.

S. 1001, as reported, codifies the basic agency management responsibilities prescribed by Executive Order 12352. The responsibilities include, first, increasing the use of effective competition in procurement, second, establishing clear lines of authority, accountability, and responsibility for procurement decisionmaking within the agency, third, designating a procurement executive who shall be responsible for management direction of the agency's procurement system, and fourth, developing and maintaining a procurement career management program in the agency. The committee does not intend to legislate agency management, but rather to ensure that the objectives of the OFPP's procurement reform efforts are not thwarted by agency failure to act.

To further insure effective execution of these agency management responsibilities, S. 1001 expands the scope of the Administrator's authority for "providing overall direction of procurement policy" to "providing leader-

November 15, 1983

## CONGRESSIONAL RECORD — SENATE

S 16139

ship in the development of procurement systems of the Executive agencies." S. 1001 specifies a new function for the Administrator to "coordinate the development of Government-wide procurement system standards that shall be implemented by the Executive agencies" in order to measure the operational effectiveness of their procurement systems. This concept of establishing performance standards which individual agency procurement systems would have to maintain in order to be considered acceptable was originally developed in the administration's UFPS.

Any action on the part of Congress short of reauthorization—with regulatory authority—would surely threaten the OFPP's procurement reform efforts. Without a strong OFPP to serve as a catalyst for procurement reform, nothing will be done. The individual procuring agencies have not been, and cannot be expected to be, a meaningful source of procurement reform. Their energies must of necessity be channeled to make procurement decisions on a day-to-day basis. In contrast, the OFPP has a Government-wide perspective, insulated from parochial interests, and is able to synthesize the interests of all individual procuring agencies, the Congress, and the vendor community.

The OFPP, therefore, is the critical link in our efforts to improve the Federal procurement process. S. 1001, as reported, would not only preserve that link, but strengthen it.

Mr. President, my staff has worked with the House Government Operations Committee staff to reconcile the differences between S. 1001 and its companion bill, H.R. 2293. To implement that agreement, I am offering the following amendments to S. 1001.

First, the length of the OFPP's reauthorization is reduced to 4 years, and its annual authorization of appropriations is reduced to \$4.5 million. This represents a compromise between the 5-year reauthorization and \$5 million annual authorization provided in S. 1001 and the 3 years and \$4 million in H.R. 2293.

Second, the amendments change the definition of "procurement" to include the process for determining a need for property and services. Under this revised definition, the Administrator for Federal Procurement Policy is authorized to prescribe policy which affects an agency's process for determining its needs (OMB circular A-109 on major systems acquisition is a good example), but is specifically prohibited from interfering with an agency's determination of need for specific property.

Third, a policy statement is added to encourage the use of specifications which describe an agency's needs in terms of functions to be performed or the performance required. This amendment is consistent with the specification provision in S. 338, the Competition in Contracting Act, which was recently passed by the Senate.

Fourth, the amendments delete the provision which restricts the Administrator's authority to procurement payable from appropriated funds. This conforms S. 1001 to present law and maintains the OFPP's jurisdiction over procurement payable from non-appropriated funds.

Fifth, the small purchase procedure threshold, under which less formal procurement procedures are used, is increased from \$10,000 to \$25,000 in accordance with the threshold for military agencies. This provision is also in S. 338.

These amendments provide an expeditious resolution of the differences between the committees, and I urge their adoption.

Mr. President, it is my understanding that the leadership will call up H.R. 2293 and substitute the language after the enacting clause with the text of S. 1001, as amended. I subsequently urge the adoption of H.R. 2293, as amended.

Mr. BYRD. Mr. President, I rise in support of the measure offered by the distinguished Senator from Maine, Mr. COHEN. Senator COHEN and the distinguished Senator from Michigan, Mr. LEVIN, have been in the forefront of the fight to bring added prudence, commonsense, and frugality to the Federal procurement process—particularly as it relates to spending by the Department of Defense. The large expenditures which the Senate has authorized and appropriated for the Department of Defense for fiscal year 1984 are, in my opinion, needed and justified. It is, however, in the area of management practices and in the area of efficiency and economy in contracting and procurement practices that reform is needed.

The Senate passed two amendments of mine on the DOD appropriations measure which address this question of contracting and management reform. I very much appreciate the support that the distinguished Senators from Maine and Michigan, as well as other Senators, gave me on those amendments. Those amendments had to be offered to the DOD bill because the reauthorization measure for the Office of Federal Procurement Policy had been bottled up. I have heard that the Secretary of Defense, Mr. Weinberger, would rather not have the Office of Federal Procurement Policy look too closely at his Department's procurement practices. It is perhaps understandable that the Secretary of the Department of Defense believes that his own Department can take care of its own problems. It is perhaps understandable that he would rather not have someone looking over his shoulder. So the Secretary of Defense fought the creation of outside watchdogs whose job it was to help correct mismanagement, waste, and abusive practices in the Department of Defense.

Fortunately, Mr. President, the Congress overrode Mr. Weinberger's objec-

tions and created a strong and independent inspector general for the Department of Defense. I do not think I have to remind my colleagues that the inspector general has been doing a very good job. He has caused a major reevaluation of the way DOD procures spare parts, for example. He has pointed out some serious deficiencies in the operation of the blueribbon Defense Science Board, for another example. In the long run, the inspector general is going to save the taxpayers of this country a lot of money.

I suppose it is not surprising that Secretary Weinberger is vigorously opposing the activities of the Office of Federal Procurement Policy. The job of that Office, which Congress created 10 years ago, is to improve the economy and efficiency of the Federal procurement process. I understand the Office has performed well in those 10 years, and that is the reason that the Government Affairs Committee has chosen to recommend its reauthorization. Again, we would be derelict in our duty to the taxpayers of the Nation if we did not take every reasonable step to cut back on waste in the Department of Defense. A strong national security is enhanced by frugal spending policies and efficient management practices. Procurement reform in the Department of Defense is obviously needed—no serious person can dispute that. It is therefore puzzling that anyone could seriously object to the reauthorization of an office which Congress created for the explicit purpose of procurement reform.

Yet, I understand that the managers of this measure have had considerable difficulty in their attempts to have this bill considered. Therefore, I congratulate them for working out their differences with other Senators on this matter.

Mr. President, my two amendments passed by the Senate last week on the DOD appropriations measure were study and report provisions on the questions of spare parts procurement by DOD and spending practices at the end of the fiscal year by DOD. Those reports are to be done by OFPP—they should have originally been offered to the pending measure, but the pending measure had been bottled up. The conference committee on the DOD appropriations measure meets tomorrow, and so I cannot be completely certain that the amendments will be accepted by the House conferees. Therefore, Mr. Chairman, I have arranged those two amendments into a single amendment which I now offer to the pending measure. This is simply an added protection that those amendments will be accepted by the House.

I understand that the managers of the bill are agreeable to this procedure. The amendments are virtually identical to those already passed by the Senate, and I do not believe there should be any controversy over them.

S 16140

## CONGRESSIONAL RECORD — SENATE

November 15, 1983

They were sponsored by Senators COHEN, LEVIN, BOREN, HOLLINGS, SASSER, ARMSTRONG, KASSEBAUM, ANDREWS, PRESSLER, PRYOR, FORD, and MATSUNAGA.

## AMENDMENT NO. 2611

(Purpose: To require the Office of Federal Procurement Policy to review certain procurement practices and procedures of the Department of Defense and to report its findings, conclusions, and recommendations to the Congress.)

Mr. BYRD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from West Virginia (Mr. BYRD) proposes an amendment numbered 2611.

Mr. BYRD. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 17, after line 12, insert the following:

## STUDY OF WEAPON SYSTEMS SPARE PARTS PROCUREMENT BY THE DEPARTMENT OF DEFENSE

Sec. 10(a) Not later than June 1, 1984, the Office of Federal Procurement Policy (hereinafter in this section referred to as the "Office") shall review the procurement practices, regulations, and reform proposals and programs of the Department of Defense relating to the procurement of spare parts for weapon systems and shall transmit to the Congress a report on the findings, conclusions, and recommendations of the Office relating to such matters. The report shall include (1) an evaluation of the adequacy of the reform proposals and programs to promote practices and the development of directives which will achieve control of costs, economy, and efficiency in the procurement of such spare parts and (2) such recommendations for legislation with respect to the procurement of such spare parts as the Office considers appropriate.

(b)(1) The Secretary of Defense shall furnish to the Office such information on the practices, regulations, and reform proposals and programs of the Department of Defense relating to the procurement of spare parts for weapon systems as the Office considers necessary to carry out subsection (a).

(2) The Inspector General of the Department of Defense shall furnish to the Office such information on the practices of the Department of Defense in procuring spare parts for weapon systems as the Inspector General acquires during his audits of such practices and the Office considers necessary to carry out subsection (a).

(c) The Inspector General of the Department of Defense shall have reasonable opportunity to review and comment on the report required by subsection (a) before the report is transmitted to the Congress. The comments of the Inspector General shall be included in such report.

## PROCUREMENT PRACTICES OF THE DEPARTMENT OF DEFENSE AT THE END OF THE FISCAL YEAR

Sec. 11. (a)(1) Not later than February 1, 1984, the Office of Federal Procurement Policy (hereinafter in this section referred to as the "Office") shall review the procurement actions of the Department of Defense during the one-week period ending Septem-

ber 30, 1983, and transmit to the Congress a report on such review as provided in paragraph (2). In carrying out the preceding sentence, the Office shall review the regulations and administrative and managerial guidelines applicable to procurement actions of the Department of Defense during the final quarter of a fiscal year.

(2) The report required by paragraph (1) shall include (A) the number and dollar amount of contracts and purchases which were made by the Department of Defense during the one-week period referred to in paragraph (1), (B) the findings and conclusions of the Office on whether the Department of Defense had a bona fide need for the property or services procured by each such contract and purchase, (C) a list of the contracts and purchases which were made by the Department of Defense during such period without formal advertising, including the dollar amount of each such contract or purchase, (D) a list of the contracts and purchases made by the Department of Defense during such period after soliciting bids or proposals from only one source, including the dollar amount of each such contract and purchase, (E) each justification for making each contract and purchase included in the list under clause (C) or (D) without formal advertising or soliciting bids or proposals from more than one source, (F) the findings and conclusions of the Office on whether any regulation or administrative or managerial guideline reviewed pursuant to paragraph (1) (including the requirements of Office of Federal Procurement Policy letter number 81-1) were violated in making any of the contracts or purchases reviewed pursuant to paragraph (1), and (G) such recommendations for legislation and administrative actions relating to the procurement practices of the Department of Defense as the Office considers appropriate to assure economy and efficiency in procurement actions by the Department of Defense during the final quarter of a fiscal year.

(b)(1) The Secretary of Defense shall furnish to the Office such information on the procurement actions of the Department of Defense and the regulations and administrative and managerial guidelines applicable to such actions as the Office considers necessary to carry out subsection (a).

(2) The Inspector General of the Department of Defense shall furnish to the Office such information on the procurement actions of the Department of Defense and the regulations and administrative and managerial guidelines applicable to such actions as the Inspector General has acquired and the Office considers necessary to carry out subsection (a).

(3) The Comptroller General of the United States shall furnish to the Office such information on the procurement actions of the Department of Defense and the regulations and administrative and managerial guidelines applicable to such actions as the Comptroller General has acquired and the Office considers necessary to carry out subsection (a).

(4) Each official furnishing information to the Office under paragraph (1), (2), or (3) shall include with such information all information by such official to the Congress, any committee of the Congress, or any Member of the Congress relating to the procurement actions required by subsection (a) to be reviewed by the Office.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 2611) was agreed to.

Mr. TOWER. I would like to inquire of the Senator from Maine, the spon-

sor of S. 1001, about the proposed amendment to section 6 of the bill. As I understand it, this amendment would clarify that the regulatory authority of the Office of Federal Procurement Policy would apply to situations where the Administrator determines that the Department of Defense, the National Aeronautics and Space Administration, and the General Services Administration have failed to reach agreement on a Government-wide procurement regulation, procedure, or form; or where these three agencies or any one of them have failed to take timely action with respect to the development of a Government-wide regulation, procedure, or form. Is this correct?

Mr. COHEN. The Senator is correct.

Mr. TOWER. The amendment of the Senator from Maine makes reference to a failure to act in a timely manner. I presume that OFPP would be expected to establish reasonable time frames in which agency action would be required. Would this be the expectation of the Senator from Maine?

Mr. COHEN. Of course, I would expect the Administrator of the OFPP to be reasonable in all things, including the establishment of timeframes in which agencies are to act. While we do not want the regulatory agencies thwarting efforts to achieve Government-wide procurement reforms, we also believe that the first opportunity ought to be given to the agencies to see if agreement can be reached. That requires, I think, that agencies be given a reasonable amount of time in which to act in response to an OFPP initiative or changes in Federal law.

Mr. TOWER. I thank the Senator. I should like to note that while the Senator from Maine and I have had some differences of opinion about this legislation, I appreciate the fair and open manner in which he has tried to understand my concerns and to address them. I think that the amendments which are proposed to S. 1001 will clarify what the appropriate role of OFPP is. Though I am not certain that we have yet struck the most appropriate balance between the regulatory agencies and OFPP, I think that we at least have a reasonable basis for providing OFPP with regulatory authority.

I want to compliment the Senator from Maine for the creative leadership that he is providing on Federal Government procurement. The Senator has devoted a tremendous amount of time and energy to considering how the procurement process Government-wide can be improved. As chairman of the Subcommittee on Oversight of Government Management, Senator COHEN has been a daily guardian of our tax dollars. He has worked energetically to insure that the Federal Government operates effectively and efficiently. He deserves the thanks of all Americans for the outstanding contri-



November 15, 1983

## CONGRESSIONAL RECORD — SENATE

S 16141

butions that he has made to Government management.

Mr. COHEN. I thank the distinguished chairman of the Armed Services Committee for his kind words.

Mr. LUGAR. Will the Senator yield? I would like to clarify for the record that S. 1001 will not affect the Director of Central Intelligence statutory authority to protect intelligence sources and methods and to support intelligence purposes.

Mr. COHEN. That is correct.

Mr. LUGAR. I thank the Senator and appreciate his cooperation on this important matter.

Mr. MATTINGLY. Will the Senator yield? I would like to clarify for the record the proper interpretation and application of the policy statement in S. 1001 which "requires, to the extent practicable, the use of commercial products to meet the Government's needs."

Commercial product policy is currently interpreted by some Government procurement officials to limit eligible bidders to those who actually maintain a certain level of ongoing sales to the general public at established catalog or market prices. The effect of such an interpretation is to exclude from competition those manufacturers who sell on a contract basis to various customers, including the Federal Government, but who do not maintain commercial sales.

In its proposal for a uniform Federal procurement system, the Office of Federal Procurement Policy defined commercial products and services as "products or services of a type sold or made available to the public at competitive prices." The implication of this definition clearly is not to impose a commercial sales requirement as a condition to bid.

It is my understanding that the commercial products policy prescribed in S. 1001 is not to be interpreted in such a manner as to exclude contract manufacturers from competing for Government business solely because they do not maintain sales to the general public.

Mr. COHEN. That is correct.

Mr. MATTINGLY. I thank the Senator from Maine.

Mr. COCHRAN. Will the Senator yield? Section 4 of S. 1001, as reported by the Governmental Affairs Committee, provides that wholly owned Government Corporations "fully subject" to the provisions of chapter 91 of title 31, United States Code, are subject to the provisions of S. 1001. It is my understanding that procurement by the Tennessee Valley Authority, which is not fully subject to these provisions of law, would not be covered by S. 1001.

Mr. COHEN. That is correct. I am pleased to clarify that point for the Senator from Mississippi.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on agreeing

to the committee amendment in the nature of a substitute, as amended.

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. CHILES. Mr. President, I express my strong support for S. 1001, a bill to reauthorize the Office of Federal Procurement Policy.

As a cosponsor, I compliment Senator COHEN, the sponsor of the legislation, Senator DANFORTH, and others on the Committee on Governmental Affairs for the thorough evaluation and hard work that underpins this reauthorization effort. They are to be commended.

Mr. President, I have commented previously to Senator COHEN that in the game of Federal procurement reform, touchdowns do not come often or easily. It is a nuts and bolts, mundane subject matter. But Federal procurement, the money Government spends for goods and services, now amounts to some \$159 billion a year. Every 1-percent savings represents over \$1.5 billion in savings to the taxpayer. That potential alone makes the issues surrounding the Office of Federal Procurement Policy's authority and mandate from Congress critically important.

The OFPP sits within the White House Office of Management and Budget. It was originally created by the Congress in 1974 as a result of the Commission on Government Procurement's No. 1 recommendation. The Procurement Commission was a statutory creature of the 91st Congress and had been assigned the task to look at the problems involved with the way Government purchased what was then some \$55 billion worth of goods from paperclips to air combat fighters.

The Commission found fragmentation and unnecessary diversity among Federal agencies in their buying policies. Layers of regulations needlessly piled upon each other. Agencies approached similar procurement functions differently. Private sector suppliers, particularly small business, were discouraged from doing business with the Government. Congress, in its desire to bring about more competitive business practices and fewer cost-overruns, did not have an effective mechanism to help provide oversight.

I served on the Commission and was persuaded by the merit of its first and foremost recommendation: A strong Government-wide focal point with directive authority over Federal procurement policy. I helped sponsor the creation of OFPP. The 1974 law establishing OFPP was a clear statement from Congress that procurement policy was an important subject requiring a central manager who could

lead and exercise clout over functional agency battles.

In 1979 the OFPP authorization expired. The 1979 reauthorization law passed by Congress narrowed the scope of the Office's mandate to emphasize the importance of bringing about the Procurement Commissions second recommendation: The consolidation of the two separate procurement systems that flow from the Armed Services Procurement Act of 1947 and title 111 of the Federal Property and Administrative Services Act. The OFPP was to concentrate on developing executive branch consensus on a uniform procurement code proposal to be submitted to Congress. The regulatory authority contained in the 1974 act was diminished.

The Committee on Governmental Affairs key question in addressing this year's reauthorization was whether to restore the regulatory authority contained in the 1974 law.

The committee found that what the Procurement Commission concluded in 1972 about the need to raise the visibility of procurement activities within the agencies with a strong central manager, is as valid today as it was then. Regulatory authority specifically provided by law was needed:

If OFPP is to be an effective focal point for congressional oversight;

If OFPP is to be a credible actor in standardizing and simplifying agency buying regulations in order to reduce paperwork, encourage small business participation, stimulate more competitive practices, and increase the number of suppliers; and

If OFPP is to coordinate and resolve the wasteful agency turf wars that arise.

Let it be clear that this bill as reported by the committee expresses the congressional intent that regulatory authority is statutorily provided to the Administrator of OFPP, that the Congress understands the Administrator is to be a policy leader with clout above the line activities of the functional procurement agencies. This is a strong OFPP we are authorizing today. As a result, my belief is the Office will be more effective in fulfilling the responsibilities Congress and the President assign to it. The potential for larger cost savings in the \$159 billion procurement program is greater when this bill becomes law.

Mr. President, Public Law 91-129, the law establishing the Procurement Commission, was a brainchild sponsored by Senator Jackson. Without his guidance and support that Commission's first recommendation would never have become a reality. The Office of Federal Procurement Policy would not exist today. It took someone of his stature and credibility to push the idea through the forces of inertia and resistance to change that exist in procurement matters. It is merely a small example of the many contributions this great man made but never-

S 16142

## CONGRESSIONAL RECORD — SENATE

November 15, 1983

theless one which I think illustrates the kind of effective legislator he was. He saw this small Office as an important catalyst in making a difference in the way Government does business. Today's action to reauthorize OFPP continues the can-do spirit the sponsors of OFPP intend.

Mr. LEVIN. Mr. President, I am pleased that the Senate is finally considering the reauthorization of the Office of Federal Procurement Policy. This Office, commonly known as the OFPP, has performed an important function for almost 10 years—providing needed coordination for the many and varied procurement systems and offices in the Federal Government. We are now close to the implementation date for the Federal acquisition regulations, which should make the procurement processes of the various Federal agencies more uniform, and OFPP is to be commended for its long and helpful role in bringing the FAR to fruition.

I want to discuss, for a moment, an amendment I offered and which was added in the Governmental Affairs Committee to this bill and I also want to mention an amendment to be offered by the distinguished minority leader, Senator BYRD. My amendment requires OFPP to conduct a study by April 1, 1984, to assess the level of data currently available on Federal subcontracts and the extent of competition for such contracts.

Mr. President, the chairman of the Subcommittee on Oversight of Government Management (Mr. COHEN) will shortly be offering an amendment to strike a provision requiring a study of debarment and suspension of grant recipients. I concur in that amendment. Since offering that provision in committee, I have been informed that the President's Council on Integrity and Efficiency in the Office of Management and Budget is presently undertaking a study of that very same issue and hopes to have a recommendation in place for legislative or administrative action by early spring, 1984. I think we should avoid a duplication of that effort.

I am eager, however, for OFPP to conduct the study on Federal subcontracting data and practices. For the past 5 years now, I have taken a great interest in some of the more mundane details of the Federal procurement system, as has my good friend, Senator COHEN. And one issue that keeps surfacing, almost regardless of the larger issue pending at the time, is the lack of information the Federal Government has on its subcontracts. When I have asked, I have been told that there is no breakdown of the flow of Federal procurement dollars to the subcontract level by region. Yet, almost 50 percent of DOD's prime contract dollars filter down to the subcontractors. When I have asked, I have been told that there is no way for the DOD to determine the extent to which

there is competition for subcontracts in general or on a particular contract.

This concerns me greatly, if this is true, because it does not allow any assessment by States such as Michigan which are hungry for Federal contracting dollars to determine the extent to which they are losing Federal contracting opportunities, nor does it permit an evaluation about whether a lack of competition at the subcontract level may be a factor in the high cost of Federal procurement.

Second, I welcome the amendment of the minority leader relating to the purchase of spare parts within the Department of Defense. I have been deeply involved in this issue in both the Committee on Governmental Affairs and the Armed Services Committee. For this reason I welcome the suggestion of the Senator from West Virginia that this impartial agency study the findings of the Congress and coalesce these findings and their knowledge of the procurement process into concrete recommendations which should help to stem this horrendous waste of our defense expenditures. I am pleased to cosponsor his amendment.

I commend the efforts of Senator COHEN on this bill, and I urge OFPP to conduct these two studies with all due diligence and thoroughness.

Mr. BAKER. Mr. President, I ask unanimous consent that the Chair lay before the Senate H.R. 2293, the House companion bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2293) to amend the Office of Federal Procurement Policy Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BAKER. Mr. President, I move to strike all after the enacting clause of H.R. 2293 and to substitute the text of S. 1001, as amended.

The motion was agreed to.

The PRESIDING OFFICER. The question is on engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 2293), as amended, was passed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Amend the title so as to read:

"An Act to revise the authority and responsibility of the Office of Federal Procurement Policy, to authorize appropri-

ations for the Office of Federal Procurement Policy for an additional four fiscal years, and for other purposes."

Mr. BAKER. Mr. President, I ask unanimous consent to postpone indefinitely consideration of S. 1001.

The PRESIDING OFFICER. Without objection, it is so ordered.

## LOOK-ALIKE DRUGS

Mrs. HAWKINS. Mr. President, the following is a true story. It happened when one of my staff members was visiting a relative in a kidney dialysis center near Philadelphia, Pa. During her visit, five teenagers, in a state of extreme shock, were rushed in from a police ambulance and immediately hooked up to dialysis machines. In case you are unfamiliar with the process, it entails sitting in a chair for 4 hours with a large needle stuck into your arm, while a machine pumps all your blood through a series of filters. With a substantial part of your bloodstream outside your body at one time, your blood pressure drops, causing extreme nausea and cramps. The machine does the work of your kidneys.

The police told the attendant nurses this story: On their way to a party, the kids had bought some pills they were told were amphetamines. They were not. The nurses never did find out what the pills were, but the poisonous substance caused massive kidney failure in the five teenagers. Only 16 years old, they will be tied to dialysis machines until they die.

Mr. President, throughout the country, "look-alike" drugs are sold to unsuspecting young people. The drugs, usually pills, are easier to obtain than marijuana, cocaine, or opiates. The standard look-alike is a stimulant that is in essence a caffeine and ephedrine sulfate mixture. Caffeine and ephedrine sulfate are central nervous system stimulants. They can cause such bizarre reactions as extreme agitation, uncontrollable nervousness, crying, depression, or manic behavior.

In the case I cited, however, the combination was more than caffeine and ephedrine sulfate. The frightening thing is that we do not know exactly what it was. What we do know is that it was practically lethal. But the effect was almost the same as death—the lives of those five kids will be ruined forever.

Mr. President, I ask unanimous consent to have printed in the RECORD an article from the NARD Journal on look-alike drugs, dated August 1983.

The article follows:

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the NARD Journal, August 1983]

THE LOOK-ALIKE RIPOFF

(By Sidney Cohen, M.D.)

A relatively new phenomenon appeared on the American drug scene about five years ago. It was the look-alike explosion, a bizarre outgrowth of the Controlled Sub-