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STATEMENT OF
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BEFORE THE
SUBCOMMITTEE ON SPECIAL INVESTIGATIONS
HOUSE COMMITTEE ON VETERANS' AFFAIRS

ON

THE [PROCUREMENT OF ADP EQUIPMENT AND SERVICES BY
THE VETERANS ADMINISTRATION]

Mr. Chairman and Members of the Subcommittee, we are pleased to be here today to discuss our review of certain contracts and purchase orders related to the Veterans Administration's (VA) procurement of ADP equipment and services in late fiscal year 1979. Our staff has been assisting this Subcommittee and others over the past several months in reviewing various aspects of VA's medical ADP activities.

As you know, VA entered into a number of contracts and purchase orders for equipment and services for selected ADP projects using end-of-year funds. My testimony today will relate only to the ADP equipment and service procurements related to VA's medical ADP program. Although we have been in the process of reviewing the medical ADP program we had

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not concentrated on the alleged irregularities relating to the procurements. However, when we received your request for testimony we devoted considerable staff resources in an attempt to be responsive to the Subcommittee's concerns regarding these procurements. Because of the short timeframe involved, our review could not be as thorough as we would have liked. However, we believe we have done sufficient work to permit some tentative observations and conclusions which will be of help to this Subcommittee.

BACKGROUND

During the fourth quarter of fiscal year 1979, VA entered into 35 ADP procurements (including contracts, purchase orders, and contract modifications) in amounts totalling about \$19.1 million. There has been considerable interest in these procurements by Committees of the Congress, the Office of Management and Budget (OMB), and we in GAO. On April 15, 1980, the Deputy Administrator of VA stated during a hearing before this Subcommittee that, in his view, allegations of procurement irregularities were unfounded and that VA knew of no such irregularities. On May 1, 1980, officials of OMB provided details supporting its allegations during another hearing before this Subcommittee.

OMB involvement

In November 1979, OMB informed VA that it was:

--reviewing the VA contracts and purchase orders awarded
in September 1979;

- directing that VA refrain from further obligations against these contracts and purchase orders; and
- requesting that GSA report to OMB all VA requests for ADP procurements in excess of \$10,000.

In December 1979, OMB requested from VA pertinent documentation relating to the fiscal 1979 year-end ADP procurements. Also in late December, VA issued stop work orders on certain of the contracts.

In January 1980, OMB transmitted two of the VA year-end contracts and supporting documentation to the Department of Justice and stated that:

- VA has ignored decisions arrived at in the budgeting process;
- there is a strong indication of favoritism in the letting of some of the fiscal 1979 year-end contracts; and
- because of the possibility of criminal violations involved in some of these procurements, it was requesting that Justice initiate an investigation into the matter.

In February 1980, OMB notified VA that it had completed its review of some of the contracts and that VA could go ahead with them.

In a letter dated April 7, 1980, OMB, alleging certain irregular and questionable procurement practices, recommended that VA terminate seven of the fiscal 1979 year-end contracts including the two which had been referred to Justice, and continue with the remaining contracts and purchase orders.

In a letter dated April 14, 1980, VA informed OMB that it was terminating four of the seven contracts including one of the two referred to Justice.

Of the remaining three, we understand VA has terminated one (which will be recompeted at a later date), is continuing work under another with modifications, and is continuing work under one which is being reviewed by Justice.

GAO involvement

Of 35 ADP procurements in which VA entered into during the fourth quarter of fiscal year 1979, 19 involving about \$3.4 million were associated with program areas that we were not then actively reviewing; for example, procurements for continuation of on-going VA ADP programs for the Target System. The remaining procurements were, for the most part, new starts in the VA ADP medical program--an area that we were reviewing.

These medical ADP new starts for equipment and services involve 16 procurements in the amount of about \$15.7 million. These include 13 new awards in the amount of about \$11.5 million, one exercise of an option to purchase for \$3.8 million involving several modifications to an existing contract, and two procurements using 17 purchase orders in the amount of about \$442 thousand. Alternatively and from a program perspective, five procurements totalling \$1.3 million were for preliminary studies related to VA's planned Health Care Information System--a major system acquisition project

that is being pursued in accordance with OMB's Circular A-109-- and 11 procurements totalling \$14.4 million were for equipment and services in support of various other projects such as VA's pharmacy system, clinical laboratory systems, and conversion of the Automated Hospital Information System at VA's Washington Medical Center.

All of these 16 procurements were awarded in September 1979 and they include the seven contracts recommended by OMB for termination and the two contracts referred by OMB to the Department of Justice.

OBSERVATIONS

Our review was limited and we have not been able to date to fully document our observations. For example, although we have found a significant lack of records of negotiation in the information furnished to us by VA, we have not had sufficient time to determine for all contracts whether (1) negotiations did occur and were not documented, (2) negotiations were not held, or (3) negotiations were required. In addition, we have not had time to discuss fully our observations with either VA, OMB, or the Small Business Administration (SBA), which was involved in some of the procurements under a program authorized by 8(a) of the Small Business Act.

For negotiated procurements over \$100,000, the Federal Procurement Regulations (FPRs) generally require:

- determinations and findings by each agency as to the necessity of deviating from the preferred Federal procurement method of awarding contracts through formal advertising;
- obtaining and analyzing cost or pricing data supporting the contractor(s)' price proposals; and
- using the results of analysis and proper negotiation procedures in well documented negotiations with the vendor(s) (single vendor in noncompetitive or sole-source procurements and with all vendors that are within the competitive range in competitive procurements.).

Failure to follow good procurement policies and procedures generally have the greatest impact on noncompetitive contracts because of the absence of market place forces (i.e., competition) that would otherwise help to ensure fair and reasonable prices.

Regarding VA's fiscal 1979 year-end procurements that we reviewed, we found that in many cases VA did not comply with applicable FPRs in that it did not make determinations and findings supporting negotiated procurements, nor perform cost or price analyses, nor properly document and/or conduct negotiations for any of five large negotiated noncompetitive procurements (over \$100,000) and one small procurement (under \$100,000). For example, VA had in its possession prior price

quotations for much of the hardware procured in three of these procurements--which showed substantially lower total prices available at discount through the General Services Administration (GSA) nonmandatory schedule contracts--it had every reason to perform price and cost evaluations and to negotiate for better prices.

The cost of the equipment procured through three of these noncompetitive contracts was about \$7.3 million (or a little less than half of the \$15.7 million). Schedule prices and discounts available through GSA negotiated ordering arrangements would have yielded discounts of 11 to 15 percent off the schedule list prices. VA accepted a discount of only three percent in consideration of waiving the Government's right to liquidated damages for nonperformance.

In addition, we found similar problems with the competitive procurements reviewed especially regarding negotiation with offerers that were within a competitive range. For example, VA awarded a nonsmall business contract for \$899,996. VA did not negotiate with either this contractor or with the next technically qualified bidder, whose proposal was for \$883,995. The total scores considering both technical and cost evaluations varied by less than a single point.

VA has indicated that in many instances price negotiations were not documented or did not take place because:

--adequate competition had been obtained through the offers received thereby allowing contract

awards without further negotiations and VA contracting officers did not have sufficient time to conduct extensive negotiations;

- conditional awards subject to a post audit and negotiation are not prohibited by the FPRs and there was not sufficient time to perform pre-award audits; or
- the appropriate document was inadvertently not completed.

In addition, VA has indicated that determinations and findings and other FPR requirements for negotiated contracts generally do not apply to the procuring agency when dealing with business firms under the 8(a) set-aside program.

Because of time constraints, we could not make an indepth review of the FPRs in question to determine whether there is sufficient latitude to support VA's position.

However, we agree with OMB's concern over the improper use of the section 8(a) program to avoid the requirements for competition and of the FPR. Also, we believe the use of small disadvantaged business under Section 8(a) of the Small Business Act for the purpose of procuring ADP equipment from a nonqualified manufacturing or regular dealer source through use of a fee-broker arrangement may be contrary to the intent of the Walsh-Healey Act (41 USC 35(a)).

SBA has the final authority and responsibility for certifying an 8(a) firm as a "manufacturer" or "regular dealer"

under the applicable Walsh-Healey provision. On September 28, 1979, SBA, pursuant to the above, certified to VA for one of its 8(a) firms that it was competent to perform a service type contract. We believe that this contract was primarily for the acquisition of hardware rather than services and that the Walsh-Healey requirement that the contractor be a manufacturer or regular dealer should apply. The contract in question is a purchase of ADP equipment and apparently consisted of passing on a shopping list of items for equipment identified by manufacturer model number and quantity (originally obtained directly from the manufacturer's salesmen) to the 8(a) firm who in turn obtained the equipment from the manufacturer for delivery to the agency.

We believe that this issue can be resolved through (1) a review of the agreements between the SBA, 8(a) firm and the equipment manufacturer, and (2) an audit of the value of the services performed related to the contract price.

CONCLUSIONS

VA has indicated that it did not have sufficient time between the availability of year-end funds and the end of the fiscal year to follow prescribed procedures. We submit that the negative impact of the following exceeds any benefits VA hoped to derive from processing its year-end procurements as it did:

- the effort and expense of concerned oversight groups such as the Congress, OMB, and GAO;
- the effort and expense of VA's staff in responding to these groups;

--the turmoil among the contractors caused by stop work orders and contract terminations; and
--the delays which may be caused by the foregoing in providing needed services to our nation's veterans.

We understand that OMB has recently provided this Subcommittee with additional data concerning the subject procurements and that VA is in the process of finalizing a document citing its position on the allegations made by OMB.

We suggest that VA's Inspector General look into any open questions between OMB and VA and try to aid in their resolution. We presently have a review underway relating to SBA's 8(a) program and will include in that review any unresolved questions relating to SBA's involvement in the VA procurements. We also suggest that VA's Inspector General undertake a thorough review of VA's procurement activities to assess whether the practices followed by VA in its fiscal 1979 year-end procurements are indicative of the way VA usually conducts its procurement activities--as suggested by OMB in its May 1, 1980 testimony--with emphasis on compliance with FPRs.

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This concludes our statement. We will be happy to respond to any questions you or other Members of the Subcommittee may have.