

GAO

Testimony

Before the Committee on Governmental Affairs
and the Committee on Armed Services,
United States Senate

For Release on Delivery
Expected at 2:00 p.m., EDT
Thursday, March 10, 1994

PROCUREMENT REFORM

Comments on Proposed
Federal Acquisition
Streamlining Act

Statement of Robert P. Murphy
Acting General Counsel



059270/151045

Good afternoon Chairman Glenn, Chairman Nunn, Senator Roth, Senator Thurmond, and Members of the Committees:

I am pleased to be here today to discuss S. 1587, the Federal Acquisition Streamlining Act, a bill to simplify and streamline the government procurement process. We strongly support this effort. Except for the testing provisions, we believe the bill represents an important reform in the way the government buys its goods and services.

I would like to focus today on what we see as the key issues facing us as we move to reform the procurement system and how they are addressed by this bill.

By virtually any measure, the government's system of buying goods and services does not work well. Over the years, our Office has issued numerous reports disclosing problems in virtually every phase of the acquisition process. We need fundamental change in all aspects of our approach to what we buy, how we buy, and how we ensure we get what we pay for, if we are to obtain the goods and services we need as efficiently and effectively as possible.

There currently are a number of proposals to reform and simplify procurement, including those made by the Section 800 Panel, the Administration, in both the National Performance Review and in comments on proposed legislation, and in several bills pending in

Congress, including S. 1587. All of these proposals contain sound elements on which there is broad agreement, such as facilitating and expanding the acquisition of commercial products, and raising the threshold under which simplified acquisition procedures may be used. These specific proposals come at a time when the compelling need to address budget deficits of historic proportions has created intense pressure to make government more effective and less costly. Also, changes in the world's security and economic environments are causing us to reexamine our spending priorities. We believe that the ingredients to make procurement reform happen are present.

In our view, three fundamental principles should guide our efforts to reform the system:

1. **BUY SMARTER.** We need to eliminate requirements that impede our ability to take advantage of the best industry has to offer. The government must rely on the commercial marketplace to the greatest extent possible.
2. **SIMPLIFY.** We need to reduce significantly the complexity of the current system. Simplification will allow us to maximize the use of diminishing government resources.
3. **MANAGE BETTER.** We need substantial improvements in how we manage the procurement process, including making the necessary investments in people and systems.

With the exception of a few provisions, such as those that would modify current testing requirements, we believe that Senate bill 1587 will do much to further these principles.

1. BUY SMARTER

Contractors have told us that the current system can deter participation in the federal marketplace because it imposes a number of requirements that do not apply in the commercial world. The commercial marketplace, governed for the most part by the Uniform Commercial Code, affords a commercial firm considerable flexibility in establishing the buyer-seller relationship. Like the government, a commercial buyer that sets out to purchase a product or service is interested in obtaining quality at a fair price, and will seek to negotiate those terms that are necessary to satisfying these objectives. This is the essence of the buyer-seller relationship. We think it would be rare, however, that a commercial buyer also would stipulate how a product should be carried to market or seek assurances that the manufacturer has complied with the Federal Clean Air and Clean Water Acts. Yet, that is only a small part of what we demand of firms that do business with the government.

In recent work by our Office, contractors told us that recordkeeping and other government requirements increase what the government pays for goods and services. The companies we spoke with, all of which do some business with the government, universally either established separate administrative organizations for their commercial and government business or added staff to handle government-unique requirements.

Another factor is the impact of detailed government specifications. Detailed specifications have their place, of course, when the government buys truly unique and complex items for which there are no commercial counterparts, such as weapons systems. In some cases, however, the use of detailed design specifications, instead of functional or performance specifications, can eliminate from consideration widely used commercial alternatives and deter participation in the federal market by commercial firms.

Another requirement that may deter some firms from doing business with the government is the Truth in Negotiations Act, which often is cited as an obstacle to participation in the federal market. The Act is intended to put the government on an equal footing with vendors in sole-source negotiations. It provides a basis for ensuring that the government pays reasonable prices when competition is not available by requiring a vendor to provide certified cost or pricing data. Some companies, however, do not have accounting systems capable of producing cost or pricing data

and are unwilling to accept government business on these terms. Two major United States firms recently told us that they refuse to do business with the government if it means having to provide certified cost or pricing data or comply with government accounting requirements.

In short, the way in which the government buys good and services must be changed to promote the use of commercial products and enhance the accessibility of the federal marketplace to all commercial providers if we are to succeed in improving the efficiency of government.

We believe that S. 1587 will make the government a smarter buyer. It should promote competition, which is the best assurance of reasonable prices. The bill, which would apply to a broad class of commercial items, expands the use of commercial items, promotes conformity with commercial practices, enhances the accessibility of the federal marketplace to commercial firms, and provides a means to assess price reasonableness when competition is not available for commercial products.

Commercial Item Definition

The bill defines commercial items as property used in the course of normal business operations for other than governmental purposes, including existing, new, or in some cases modified products, if the

modifications are minor or are of a type customarily available in the commercial marketplace. It also includes incidental services, such as installation and maintenance. We would support adding leased property to the definition of commercial items.

Specifications

I spoke earlier of the problem of detailed government specifications. Section 8002 of S. 1587 addresses this problem by establishing a clear preference for the acquisition of commercial items and requiring that agencies, to the maximum extent practicable, use functional, performance or other specifications that can be satisfied by commercial items. To satisfy these objectives, agencies will be required to conduct preliminary market research to identify commercial or nondevelopmental items that could meet their needs before developing new government specifications or issuing a solicitation.

Greater Consistency with Commercial Practices

Other provisions of S. 1587 establish a special regime for the procurement of commercial items that is more consistent with commercial practice. These provisions, for example, require the development and use of standardized contracts consistent with commercial practice, provide for the use of the contractor's quality assurance system and commercial warranties in lieu of

specialized government requirements, and provide specific authority for agencies to require demonstrated market acceptance as a selection criterion. In addition, S. 1587 would exempt commercial item procurements from a number of statutory requirements that are inconsistent with commercial practice.

TINA Exemption

Sections 1204 and 1251 of S. 1587 would provide a special exemption for commercial items from the requirement for certified cost or pricing data contained in the Truth in Negotiations Act. These sections would allow a commercial vendor to submit commercial-type information, such as information on prior sales, in lieu of certified cost or pricing data. If the information is adequate to determine price reasonableness, the contracting officer may exempt the acquisition from the requirement for certified cost or pricing data. The information would be subject to audit, and the government would be entitled to a price reduction if the information ultimately proved to be materially inaccurate or misleading.

We believe strongly that the government should have effective means to assure the reasonableness of prices that arise from sole-source negotiations. We also recognize, however, that the best assurance of reasonable prices is in obtaining competition. On balance, we believe the middle ground represented in S. 1587, providing for the

submission of information that should be available to most commercial firms in lieu of cost or pricing data, represents a reasonable compromise between the need to assure price reasonableness and the need to remove obstacles to participation in the government market by commercial firms. In this regard, however, we question whether the bill's price reduction provision might not lead to unnecessary litigation and administrative costs. A price reduction requirement with new standards and language could further complicate an already complex area. In our view, as long as the government retains the right to audit the information submitted, we should be able to determine whether the new system is working as intended or whether there are systemic deficiencies that require consideration of different approaches.

In short, we believe that the commercial item provisions of S. 1587 will contribute greatly to making the government marketplace more attractive to commercial firms and enhance the government's ability to acquire and use commercial products.

2. SIMPLIFY

There is broad agreement that the acquisition system is overly complex and in need of simplification and streamlining. Over the years, efforts to address problems in the procurement system have led to the enactment of many new laws intended to assure the fairness and integrity of the system, and to ensure that the prices

the government pays are fair and reasonable. There has been, in addition, an expansion in legislation reflecting the judgment that the power of public purchasing should contribute to the accomplishment of other important national objectives beyond the procurement of goods and services.

We have supported many of these laws. We have a strong interest in all of these objectives. The price we pay for trying to do all of these things through government procurement, however, is an overly complex system for buying goods and services. The Section 800 Panel identified more than 600 laws that affect procurement. As the President's Blue Ribbon Commission on Defense Management described it in 1986, "the legal regime for defense acquisition is today impossibly cumbersome."

The most streamlined procurement procedures currently available to the government are those used for small purchases. All of the current reform initiatives recommend expanding the use of these procedures to reduce contract paperwork, delays in awards, and costs, as well as to speed product delivery. S. 1587 proposes (1) increasing the small purchase threshold from \$25,000 to \$100,000, (2) reserving for small business any contract award with an expected price below the threshold, (3) maintaining existing notice thresholds, and (4) exempting any procurement below the threshold from various statutes. We would, in addition, support the Administration's request that procurements of less than \$2500 be

exempted from the requirements of the Buy American Act.

We agree that, if effectively implemented, raising the small purchase and small business reserve thresholds offers advantages. Higher thresholds can significantly reduce the time and administrative costs associated with the vast majority of government contract actions. For example, a \$100,000 threshold implemented government-wide would cover 99.2 percent of all contract actions while affecting only 16 percent of government contract dollars. Procurements under simplified procedures often can be completed within 1 to 5 days at an average cost of only a few hundred dollars or less. In contrast, in 1978, GSA estimated the average time and administrative cost of conducting a competitive procurement requiring issuance of a solicitation, synopsis in the Commerce Business Daily, evaluation of offers, and writing a contract to be about six months and \$12,000. Sixteen years later, the administrative costs would no doubt exceed the \$12,000 average.

While we support raising the small purchase threshold, we are concerned that small purchases may not receive the management attention needed to ensure that abuses are avoided. Flexibility and limited oversight characterize small purchase buying today. Studies by DOD have shown contracting activities paid more, in some cases, for commercial items using small purchase procedures than the same items cost under GSA Multiple Award Schedule contracts.

Raising the threshold may increase the pressure on government buyers to "split" requirements to avoid the delays and expense associated with contract solicitation and award. It will be important that agencies manage their use of these procedures effectively to avoid abuses.

Electronic Commerce

On October 26 of last year, the President established an electronic commerce initiative for the executive branch. Based on preliminary work, we are encouraged by the initial work done by the Electronic Commerce Commission established to carry out this initiative. We understand that the commission expects to define the architecture for government-wide EDI next month and provide some initial capability by October.

We believe that automated technologies can play a key role in improving the government's business operations and processes, including procurement of products and services. A standardized, government-wide automated system of notices and awards can offer greater public visibility and access to government procurement opportunities and enhance the government's ability to monitor, evaluate, and improve its purchasing practices. Properly implemented, such a system can accelerate the contracting process and reduce workload for both the government and contractors.

Many contracting activities already use automated means to transmit solicitation notices for publication in the CBD. These automated transmissions eliminate conventional mail delays and the number of days needed in the contract award process. Businesses report they can more quickly and efficiently search an automated notice data base than the hard copy CBD publication. The potential benefits of eliminating paper transactions are many: the need for clerks to handle paper and enter data can be minimized; buyers can more quickly locate and compare products, services and prices; order placement, contract administration, and payment processes can be simplified and made more efficient.

We strongly support the implementation of electronic commerce within the government. The use of electronic processes and communications can reduce the workload on acquisition personnel and greatly accelerate procurement process while enhancing the accessibility of the federal small purchase market to commercial vendors.

3. MANAGE BETTER

Realizing an improved procurement system will, of course, require more than changing the procurement laws. Procurement officials must do a better of job of management, and must be held accountable for results.

Our work over many years demonstrates that the procurement system too frequently results in cost overruns, schedule delays and performance shortfalls. As recently as one month ago, we testified that the C-17 program was continuing to experience cost, schedule and performance problems. At that time, we noted that the current \$43 billion estimate to acquire 120 aircraft exceeded the prior DOD estimate for 210 aircraft by \$1.3 billion, delivery schedules had slipped, and aircraft were being delivered with an increasing amount of unfinished work or known deficiencies that required correction after government acceptance. These are not the kinds of observations one makes about a healthy and well-managed program.

In our report, WEAPONS ACQUISITION: A Rare Opportunity for Lasting Change,¹ we attributed many of these problems to a culture in which greater rewards are reserved for initiating or preserving a program than for making the sometimes harder choice not to proceed. In particular, we noted that there are incentives favoring the underestimation of costs and technical difficulties and overstatement of expected capabilities and results.² This is a significant factor in why we later find systems coming in over cost, behind schedule, and with performance shortfalls.

The ultimate responsibility for improving government management

¹GAO/NSIAD-93-15, Dec. 1992.

²Id.

rests with the President and his leadership team. The Congress cannot legislate good management, but it can help by providing the tools needed to achieve that objective and by requiring accountability for management results. The Administrations's NPR proposals to improve management and the Government Performance and Results Act, passed last year, are a significant start in the direction of improved management. We recognize that this is not an area that the bill addresses directly; however, the simplification and enhanced focus on commercial buying that S. 1587 would bring to the procurement system may provide added tools to help the government operate in a more business-like manner.

One final observation about program management: Over the years, we have found the basic principle of "fly before you buy" to be a pivotal management tool in the successful acquisition of large systems. As you know, our Office has long supported independent operational testing and evaluation--conducted as early as possible in the acquisition process--as a critical management control for program improvement before proceeding with the production of costly defense systems. We believe that the testing provisions in this bill move away from that principle, and would likely exacerbate the problems we find with concurrent development and production. We do not support the testing changes in the bill.

The improved framework for procurement reflected in the reforms contained in S. 1587 must be accompanied by investment in people

and improvement of systems in order to achieve real management improvement. As we change the system to emphasize commercial products and more business-like buying practices, the need for well-trained staff will become more critical. The changes to the procurement system proposed in this bill must be accompanied by a commitment for the training needed to support effective implementation.

CONCLUSION

We believe it is critical to any procurement reform effort that it focus on (1) fostering intelligent decisionmaking that takes advantage of commercial ingenuity and expertise, (2) streamlining to maximize the use of declining resources, and (3) managing for results instead of process. We believe that S. 1587 will make an important contribution towards achieving needed reforms.