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Report to Congressional Committees

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CONTRACT MANAGEMENT

Benefits of Simplified Acquisition Test Procedures Not Clearly Demonstrated

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Contents

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Accountability * Integrity * Reliability

United States General Accounting Office
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The Honorable John Warner
Chairman
The Honorable Carl Levin
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Bob Stump
Chairman
The Honorable Ike Skelton
Ranking Minority Member
Committee on Armed Services
House of Representatives

The federal government has significantly changed how it buys goods and services in recent years. In particular, the process has become more streamlined as new contract vehicles and techniques have allowed agencies to buy what they need faster than in the past. For example, Congress authorized a test program to simplify the procedures for the acquisition of commercial supplies and services. This program allows government buyers to eliminate certain procedural requirements when purchasing commercial items not exceeding $5 million.

Congress mandated us to evaluate the test program and to make any appropriate recommendations.[1] In responding to this requirement, we (1) sought information on how federal agencies demonstrated whether the test program produced the desired results and (2) assessed how the authority provided under the test program was being used on selected contracts. In satisfying these objectives, we interviewed federal procurement officials. We also identified three Department of Defense (DOD) buying organizations that were among the largest users of the program. From these organizations, we identified the largest contracts to review. Details on our scope and methodology are provided in appendix I.

[1] National Defense Authorization Act For Fiscal Year 2000, sec. 806 (Use of Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold), P.L. 106-65, Oct. 5, 1999.

Results in Brief

Data was not collected to provide a basis for measuring whether the test program produced the desired results of maximizing efficiency and economy and minimizing burden and administrative costs for both the government and industry. However, the Office of Federal Procurement Policy survey of procurement executives in 1999 showed that these executives believed that the program has had a positive impact on the federal procurement process. These executives believed that the authority provided under the test program should be made permanent. However, the survey did not collect empirical data that would have supported these views.

Our review of 12 contracts awarded using the simplified acquisition test authority raised some concerns. Specifically, government buyers did not always demonstrate that prices were fair and reasonable for the eight sole-source contracts included in our review. This report provides a matter for congressional consideration that would require the Administrator of the Office of Federal Procurement Policy to develop a method for demonstrating that the simplified acquisition procedures authorized under the test program produce the desired results.

Background

In 1994, Congress authorized the use of simplified acquisition procedures for acquisitions not exceeding $100,000.[2] Under those procedures, among other things, agency officials may select contractors using expedited evaluation and selection procedures and are permitted to keep documentation to a minimum.

In 1996, Congress authorized a test program that permits government buyers to use procedural discretion and flexibility, so that commercial items not exceeding $5 million may be obtained in a simplified manner[3]—maximizing efficiency and economy and minimizing burden and administrative costs for both the government and industry. The Federal Acquisition Regulation calls for government buyers to promote competition to the maximum extent practicable when making purchases using the simplified procedures.[4] Under the regulations, government buyers

[2] Federal Acquisition Streamlining Act of 1994, P. L. 103-355, Oct. 13, 1994.

[3] Clinger-Cohen Act of 1996, P.L. 104-106, Feb. 10, 1996.

[4] Federal Acquisition Regulation, part 13.

- are permitted to issue a combined solicitation and Commerce Business Daily notice and require submission of proposals in fewer than 45 days, as would otherwise be required;
- are not required to establish a formal evaluation plan or competitive range, conduct discussions with vendors, or score quotations from offerors; and
- are permitted to reduce documentation required in justifying contract award decisions.

When they award on a sole-source basis, contracting officers are required by regulations to prepare a written justification explaining efforts taken to ensure that offers are solicited. The regulations also require that a sole-source award be advertised in the Commerce Business Daily, unless a regulatory exception applies. Also, if only one response is received, a statement of price reasonableness should be included in the contract file. This statement may be based on such things as (1) market research, (2) current price lists or catalogs, (3) a comparison with similar items in related industry, or (4) a comparison to an independent government cost estimate.

Federal agencies do not use the simplified acquisition procedures provided under the test program to purchase most of their commercial items. However, selected agency procurement officials told us that the test program provides an alternative contract vehicle for acquiring commercial items. Governmentwide procurement data showed that government buyers purchased about $31.6 billion in commercial items for fiscal year 2000 and used the simplified procedures to purchase $1.9 billion in commercial items.[5]

We were told that government buyers purchase commercial items in a more expeditious manner using alternative contract vehicles and techniques. For example, over the past several years, the government has significantly increased the orders placed against the Federal Supply Schedule. The Schedule provides federal agencies with a simplified and streamlined process to obtain commonly used products and services. When using the Schedule, government buyers are not limited by the

[5] However, governmentwide procurement data may have overstated the use of the test program. For example, at the buying organization reported to have made the greatest use of the test program at $62 million in commercial items, the data was significantly overstated. After reviewing the data with agency officials, it was determined that there were no commercial items purchased between $100,000 and $5 million. We did not evaluate the full extent of this potential over reporting problem.

$5-million ceiling imposed with the test program. Nevertheless, government buyers told us that the authority provided under the test program should be made permanent.

The authority to issue solicitations using these simplified procedures to acquire commercial items costing up to $5 million expires on January 1, 2002. If Congress does not extend the test program, government buyers will be limited to using these procedures to acquire commercial items up to $100,000.

Data Not Collected to Measure Benefits of Test Program

Data was not collected to provide a basis for measuring whether the test program produced the desired results. However, in 1999, the Office of Federal Procurement Policy surveyed procurement executives in federal agencies to obtain their opinions on the benefits associated with the test program. This survey showed that these executives generally believed that the program has had a positive impact on (1) time required to award a contract, (2) administrative costs, (3) prices, (4) small business participation, and (5) delivery of products and services.

However, the survey did not collect empirical data that would have supported these views. For example, the survey did not measure the extent to which (1) time required to award contracts was reduced, (2) administrative costs were reduced, (3) prices reflected the best value, (4) small business participation was promoted, or (5) delivery of products and services was improved.

Observations on Using the Test Program for Selected Contracts

Our review of 12 contracts awarded using the simplified acquisition test authority raised some concerns. We identified three DOD buying organizations that were among the largest users of the test program. We selected the four largest contracts at each of these organizations to develop a better understanding of how the authority provided under the test program was being used. Specifically, government buyers did not always demonstrate that prices were fair and reasonable for the eight sole-source contracts included in our review. For example:

- The Air Force established a need for management consulting services, and a follow-on sole-source contract was awarded for about $2.4 million with the possibility of future modifications. This follow-on contract was awarded about 56 days from the original competitive contract award valued at about $900,000. Federal agencies generally are expected to publicize in the Commerce Business Daily notices of proposed contract

actions to enhance competition.[6] This follow-on contract was not advertised in the Commerce Business Daily, as required. In addition, government buyers did not obtain the necessary information to determine if the total contract award price was fair and reasonable. Government buyers relied on a comparison of labor rates negotiated under the initial contract and the contractor's commercial labor rates. The government buyers did not request additional information to determine whether this total price was fair and reasonable. As we reported previously,[7] relying on labor rates alone does not reflect the full cost of a service contract or even critical aspects of the service being provided, such as the number of hours and mix of labor skill categories to complete the work.

- The Air Force established a need for high performance computer hardware systems to support testing and evaluations and awarded a sole-source contract for $3.1 million to a small and disadvantaged business. This contract was awarded in 18 days from the program sponsor's request date. Because this contract was awarded to a small and disadvantaged business, contracting officials were not required to seek competition by advertising the procurement in the Commerce Business Daily. Without competition, a price analysis cannot be accomplished by comparing offers. The government buyer's limited price analysis was based on a review of catalog prices, which did not in and of itself establish a fair and reasonable price.[8] While the government buyer appeared to have negotiated a 30-percent discount from catalog prices, there was no way the buyer, relying solely on the catalog, could determine whether this discount was fair and reasonable.

In four cases, we found that contracts were awarded on a competitive basis and, as such, government buyers could readily demonstrate that the prices were fair and reasonable. For example, the Navy Patrol and Reconnaissance Force established a need to quickly purchase specific photographic equipment. After advertising in the Commerce Business Daily, contracting officials obtained 16 competitive quotes from different companies. The analysis showed an almost $61,000 difference between the selected and highest quoted price. Forty-seven days after the Navy placed this requirement with contracting officials, a competitive contract was

[6] The Small Business Act (15 U.S.C. 637(e)) and the Office of Federal Procurement Policy Act (41 U.S.C. 416).

[7] *Contract Management: Not Following Procedures Undermines Best Pricing Under GSA's Schedule* (GAO-01-125, Nov. 28, 2000).

[8] Federal Acquisition Regulation 13.106-3(a)(iii).

awarded for 24 Kodak digital cameras and support equipment, such as lenses and cases, for almost $200,000.

Conclusions

The authority to issue solicitations using these simplified procedures to acquire commercial items costing up to $5 million expires on January 1, 2002. Federal agencies would like permanent authority to purchase commercial items using these simplified procedures and have argued that there are benefits associated with using the test program. However, these benefits have not been demonstrated. Specifically, the Office of Federal Procurement Policy survey of federal agencies using the test program did not quantitatively measure the extent to which (1) time required to award contracts was reduced, (2) administrative costs were reduced, (3) prices reflected the best value, (4) small business participation was promoted, or (5) delivery of products and services was improved. Moreover, our observations on selected contracts raised concerns about whether federal agencies were determining that prices paid were fair and reasonable for contracts awarded on a sole-source basis.

Matter for Congressional Consideration

Before providing permanent authority for using simplified procedures to acquire commercial items costing up to $5 million, Congress should consider extending the authority until 2005 and requiring the Administrator of the Office of Federal Procurement Policy to develop a method for demonstrating that the use of the simplified test program procedures is producing the desired results. This demonstration project should be done in a fashion that would not deter government buyers from using the simplified procedures. This demonstration project should include an assessment of the extent to which (1) time required to award contracts was reduced, (2) administrative costs were reduced, (3) prices reflected the best value, (4) small business participation was promoted, and (5) delivery of products and services was improved.

Agency Comments

The Office of Federal Procurement Policy and DOD reviewed a draft of this report. Neither agency provided us with a written response, but both provided us with oral comments. The Associate Administrator for Procurement Law, Legislation and Innovation at the Office of Federal Procurement Policy did not agree or disagree with our matter for congressional consideration. She stated that the Office of Federal Procurement Policy, along with the procuring agencies, plans to consider possible legislative alternatives to address the pending expiration of the test program and to evaluate any congressional action taken on this issue. In addition, the Office of Federal Procurement Policy orally provided

technical comments that were incorporated, as appropriate, into the report.

DOD generally agreed with our matter for congressional consideration. The Director of Defense Procurement stated that DOD plans to convene an integrated process team for the purpose of considering assessment mechanisms, which can measure the benefits of the test program at government buying offices, while avoiding extensive and time-consuming manual data gathering activities. The Administrator of the Office of Federal Procurement Policy will be provided with the team's recommendations, for consideration in developing a method to demonstrate that the use of the simplified test program procedures are producing the desired results

We are sending copies of this report to the Honorable Donald H. Rumsfeld, Secretary of Defense; the Honorable Joseph W. Westphal, Acting Secretary of the Army; the Honorable Robert B. Pirie, Acting Secretary of the Navy; the Honorable Lawrence J. Delaney, Acting Secretary of the Air Force; the Honorable Mitchell E. Daniels, Jr., Director, Office of Management and Budget; and Lieutenant General Henry T. Glisson, Director, Defense Logistics Agency. We will also make copies available to others on request.

Please contact me at (202) 512-4841 if you or your staff have any questions concerning this report. Additional contact and key contributors to this report are listed in appendix II.

David E. Cooper
Director
Acquisition and Sourcing Management

Appendix I: Scope and Methodology

Our objectives were to (1) seek information on how federal agencies demonstrated whether the test program produced the desired results and (2) assess how the authority provided under the test program was being used on selected contracts. In satisfying these objectives, we reviewed regulations and other available test program guidance. We met with representatives of the Office of Federal Procurement Policy, which is responsible for government policy on procurement programs. We also held discussions with agency officials to gain an understanding on how they implemented and evaluated the test program's effectiveness. We reviewed specific contracts to obtain information on how the authority provided under the test program was being used on selected contracts.

Our review of selected contracts was limited to those awarded by the Department of Defense (DOD). According to the Federal Procurement Database, DOD was the largest user of the test program. We identified three DOD buying organizations that were among the largest users of the test program authority. We selected the four largest contracts at each of these organizations to develop a better understanding of how the authority provided under the test program was being used. The three organizations were the (1) Air Force's Air Armament Command, Eglin Air Force Base; (2) Army's Defense Supply Service-Washington; and (3) Navy's Fleet Industrial Supply Center-Norfolk. In total, 12 contracts were selected, which represented about $15 million.

We reviewed selected contracts to determine (1) if the buying organizations were seeking and obtaining competitive quotes as a basis for awarding a contract; (2) if the commercial item was advertised in the Commerce Business Daily; and (3) the types of price analysis techniques used and documented in contract files used to justify sole-source awards. We reviewed, analyzed, and summarized test program data obtained from the selected buying organizations, the Office of the Secretary of Defense, and the Office of Federal Procurement Policy.

We conducted our work from August 2000 through March 2001 in accordance with generally accepted government auditing standards.

Appendix II: GAO Contact and Staff Acknowledgments

GAO Contact

Ralph Dawn, (202) 512-4544

Acknowledgments

In addition to the name above, Jeffrey Rose, Tom Taydus, and John Van Schaik made key contributions to this report.

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