

GAO

Testimony

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Committee on Government Operations  
House of Representatives

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PROCUREMENT REFORM

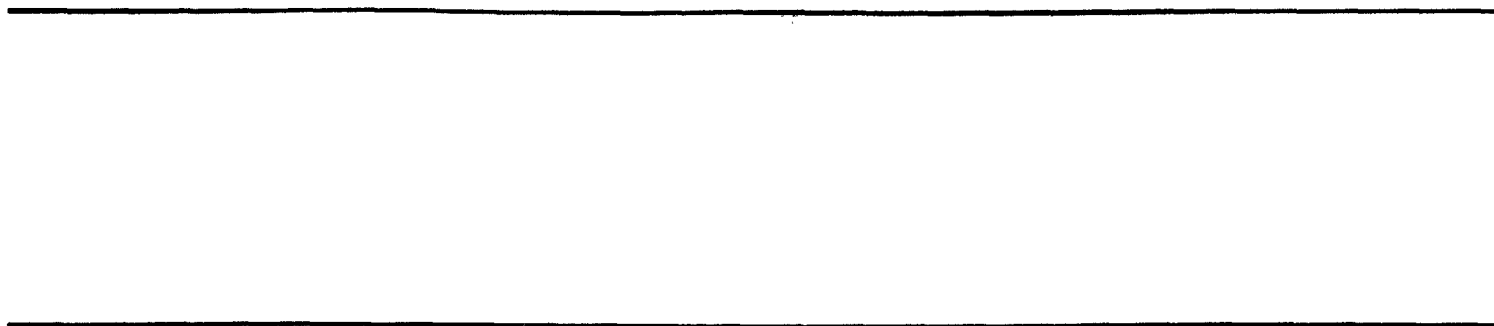
Comments on Proposed  
Acquisition Improvement Act  
of 1993

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the proposed "Federal Acquisition Improvement Act of 1993."

Procurement reform is especially critical in this era of inescapable austerity in the Federal budget. The hearings Chairman Conyers held on procurement reform in the last Congress demonstrated the need to make changes in the way the government spends billions of procurement dollars. He noted that federal procurement does not always get the attention it warrants. We agree.

Procurement reform promises to be an important issue in the 103rd Congress. As you know, the "Section 800" panel on revising defense acquisition laws recently delivered its multi-volume report to the Congress detailing hundreds of proposed legislative changes. In addition, we understand that the Administration's "National Performance Review" also will address procurement issues, and may propose additional reforms. The draft bill represents an important step in this reform effort. It addresses many of the proposals of the "Section 800" panel and will go far toward bringing greater efficiency and fairness to the Federal procurement system. We support the bill, and appreciate the opportunity to work with the Subcommittee staff on its various provisions.

#### Title I--Enhancement of Competition

Title I of the bill, "Enhancement of Competition in Contracting," would put into law a clear preference for the acquisition of commercial items. Despite many reform efforts in recent years, we still have with us the all-too-common practice of buying expensive, specially-designed products when off-the-shelf, commercial products would do the job just as well. Among other changes, the bill would promote the acquisition of commercial items by providing for the use of standard, simplified contracts.

#### Title II--Federal Property Act

Title II of the bill would revise a number of statutory provisions governing civilian agency procurements, in part to conform them to existing provisions applicable to DOD and NASA. One of these amendments is a temporary increase in the threshold for requests for cost or pricing data from \$100,000 to \$500,000.

Title II also would provide for more meaningful disclosure of evaluation factors and weights, particularly with respect

to price or cost to the Government. We support these amendments.

#### Title III--Amendments to Title 10

Title III of the bill includes amendments to Title 10 of the U.S. Code to conform it to changes made to laws governing the civilian section by Titles I and II of the bill. We favor consistency, where appropriate, in the laws governing defense and non-defense procurements, and therefore support these provisions.

#### Title IV--Brooks Act

Title IV of the bill would clarify the authority of the General Services Board of Contract Appeals to dismiss protests brought in bad faith, provide authority to assess costs in certain circumstances, and require GSA to compile data from Federal agencies regarding the procurement of automatic data processing equipment. We support these amendments.

#### Title V--Miscellaneous

Title V of the bill includes a number of miscellaneous amendments to Federal procurement law.

Section 501 of the bill is of particular interest to the General Accounting Office. It would revise provisions of the Competition in Contracting Act dealing with protest costs. Since enactment of CICA in 1984, the Comptroller General has been authorized to declare that a successful protester is entitled to the costs of filing and pursuing the protest, including reasonable attorneys' fees. About 2 years ago, the Department of Justice filed suit in federal district court challenging the constitutionality of this authority.<sup>1</sup> That litigation has been dismissed, but the underlying dispute has yet to be resolved.

We remain prepared to defend the constitutionality of the current statutory provisions. At the same time, we would welcome legislative resolution of this dispute. Section 501 would resolve the issue by making the Comptroller General's determination that a protester should be reimbursed its costs a recommendation to the Federal agency. This would be consistent with GAO's responsibility to make recommendations for corrective action when it sustains a protest. Section 501 fully addresses the Justice Department's concerns, and

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1. United States v. Instruments, S.A. Inc. and Fisions Instruments/VG Instruments, No. 91-1574 (D.D.C. filed June 26, 1991).

we do not think that its provisions would have any adverse effect upon our ability to provide meaningful relief to successful protesters. We expect that recommendations regarding reimbursement of protesters' costs would receive the same level of agency compliance as do our decisions on the merits of protests. Since enactment of CICA in 1984, agencies have failed to comply with GAO recommendations in only five cases.

There is, however, another serious issue involving protests at GAO that the bill does not address, the resolution of which would significantly enhance the stability of our process. We would urge, therefore, that the Committee give consideration to including in the bill a clarification of the Comptroller General's authority to issue protective orders.

Under his authority to prescribe procedures necessary to the expeditious resolution of protests, the Comptroller General currently issues protective orders to safeguard from disclosure information furnished to party representatives that would provide a competitive advantage to the party needing that information. The protective order mechanism has become an integral part of the GAO bid protest process and has been shown to be essential to the fair resolution of bid protests. Several Executive Branch agencies, however, contend that CICA does not contain sufficiently explicit authority for GAO to issue protective orders. We are prepared to work closely with the Committee concerning this matter.

Section 502 of the bill would direct amendment of the Federal Acquisition Regulation to require agencies to provide a requested debriefing to any disappointed offeror when a contract is awarded on a basis other than price alone. The section would establish the minimum information that must be disclosed.

It is clear to us from having reviewed protests for many years that firms often are frustrated in their efforts to learn the basis for agency procurement decisions. When the agency does provide a comprehensive debriefing, it often comes too late for the firm to challenge apparent errors in the award.

We welcome this effort to improve the usefulness of debriefings through explicit, minimum statutory standards and requirements. We support this reform effort and look forward to working with Congress and with the Federal Acquisition Regulatory Council on these important issues.

Section 503 of the bill provides for an increase in the small purchase threshold. The bill would raise the small

purchase threshold from \$25,000 to \$50,000 (to be adjusted automatically for inflation every 5 years) and twice that amount for procurements performed through an OFPP-certified electronic data interchange system.

We support provisions such as these, which are intended to increase the productivity of a Federal workforce that is likely to be shrinking, if appropriate management attention is devoted to their proper implementation. We are concerned, however, that small purchases may not receive sufficient oversight, particularly with respect to determining that prices are fair and reasonable. The bill provides an opportunity for agencies to improve their efficiency, but will increase the need for management attention to ensure that abuses are avoided.

The draft bill's preference for the use of Electronic Data Interchange in small purchase contracting, if effectively implemented, should significantly reduce the burden -- both on business and agencies -- of the current paper-based process while permitting increased opportunities for participation in the procurement process by small businesses. We caution, however, that the use of Electronic Data Interchange requires adequate internal controls to assure the integrity of the information exchange. The Comptroller General, in a 1991 decision<sup>2</sup> outlined the criteria for providing this assurance. We would be happy to provide a copy of that decision to the Committee.

Section 504 of the bill provides for a test program to be administered by the Office of Federal Procurement Policy. Tests would be limited in dollar value, limited in scope and duration, and limited with regard to the statutes that could be waived in conducting any test. With these carefully crafted restrictions, we support this test authority. Section 504 provides for GAO to monitor the tests and to report to the Congress. We look forward to working with OFPP and the Congress in what we believe could be a very fruitful test program.

#### Title VI--GSA Reauthorization

Title VI of the bill, "Provisions Relating to General Services Administration," would authorize appropriations for the General Services Administration through fiscal year 1996, thus establishing a requirement for reauthorization of agency appropriations in lieu of the current permanent authorization.

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2. 71 Comp. Gen. 109 (1991).

We agree that there is a need for increased oversight of GSA on a regular basis. In recent years, Congress has been involved in several individual GSA projects and has kept a watchful eye over some GSA efforts, such as computer procurements and FTS 2000. Congress has not, however, taken as active a role in GSA's overall mission or performance as an agency.

A factor hindering sustained attention to GSA is that it does not rely on direct appropriated funds for much of its operations. The majority of GSA's operating funds are generated by charging agencies for goods and services. In fiscal year 1990, direct appropriations accounted for less than 4 percent of its total budget--about \$274 million of the \$8 billion total.

Periodic reauthorization of GSA will provide a focus for defining and achieving key agency-wide strategic goals and objectives, without regard to how the activities involved are funded.

This concludes my prepared statement. I will be pleased to respond to any questions the Members of the Subcommittee might have.





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