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PROCUREMENT REFORM

Further Opportunities For Change

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Chairman Horn, Ms. Maloney, and Members of the Subcommittee:

I am pleased to be here today to discuss once again a subject that is always timely and pressing, reform of the Government's acquisition system. As you well know, Mr. Chairman, the last Congress took a significant step towards reforming the motley mosaic of contradictory requirements that constitute our acquisition system. That step was the Federal Acquisition Streamlining Act of 1994 (FASA).

The Act established a simplified acquisition threshold and a preference for commercial items, as well as addressing a wide spectrum of issues regarding the administrative burden associated with the Government's specialized requirements. These ranged from cost accounting standards, to socio-economic laws, to the Government's oversight tools, which over the years have resulted in extraordinary differences between the Government and commercial marketplaces. FASA sought to establish a simplified, commercial-based system and to minimize the undesirable consequences of many of these well-intentioned provisions, in an effort to strike a balance between efficiency and oversight.

We vigorously supported the bipartisan FASA effort, and we believe that it represents the most significant advance in at least a decade in reinventing the complex process of supplying the

Federal Government with the goods and services it needs. We are currently assisting the Congress in its oversight of the Administration's efforts to implement the reforms of FASA, an effort in which the Government Reform and Oversight Committee has shown a keen interest by holding hearings last week during which key Administration figures were called upon to explain the status of the implementation process.

As momentous as the FASA effort was, most of those involved believe that it represented just a beginning step, a start to true reform, rather than a culmination of reform. You, Mr. Chairman, have established yourself as a leader in the second phase of reform by holding this hearing for the purpose of airing further ideas for streamlining the process so that it can be the vehicle for the acquisition of better quality and less costly goods and services needed in these times of budgetary constraints.

There are currently a number of reform proposals under discussion, including a preliminary draft Administration bill and suggestions from industry groups. The Administration's preliminary draft is a particularly fruitful source of good ideas, and we address many of its provisions in this testimony. While we have conducted audits and evaluations addressing virtually every phase of the acquisition process, and review almost 3,000 bid protests yearly, it is important to emphasize that we have not had the opportunity to study these proposals in depth, and we may not have

data useful in evaluating them. What we express today are our preliminary opinions on proposals that we believe merit further consideration and study. These reform proposals support the three fundamental principles we articulated just about a year ago in a joint hearing in support of FASA before the Senate Committees on Governmental Affairs and Armed Services. We believe these principles remain as the cornerstones of true reform.

1. Buy smarter. We need to eliminate requirements that impede our ability to take advantage of what industry has to offer.

2. Simplify. We need to reduce further the complexity of the acquisition system to make the maximum use of diminishing Government resources.

3. Manage better. We need further improvements in how we manage the procurement process, including making the necessary investments in people and systems.

Commercial Items

FASA set an important precedent when it established a preference for the acquisition of commercial items and provided for an expanded exemption for such items from the requirement for certified cost or pricing data contained in the Truth in Negotiations Act (TINA). To finish the initiative begun in FASA,

serious consideration ought to be given to exempting ALL commercial items that fit within the definition in title VIII of FASA from the certified data and audit requirements of TINA and from the corresponding requirements of the cost accounting standards. We recognize that some will argue that the commercial market forces will not have sufficient impact on some items contained within the title VIII definition -- those items not yet in the commercial market, but that evolve out of existing commercial items -- to ensure fair and reasonable prices without the assistance of certified data. Nevertheless, we think that the impact of the free market on the basic item should be sufficient. In order to take full advantage of the commercial market, the Government must be willing to bear the same risks as any other large customer.

With regard to services, we think the proposal in the draft Administration bill to free the definition of commercial services contained in title VIII from the requirement that the services be sold in the commercial marketplace at established catalog prices, as opposed to market prices, is one that should be given serious consideration. We can think of no particular reason why the existence of a catalog ought to be the defining criterion.

Simplified Acquisition Threshold

The concept of a simplified acquisition threshold set forth in title IV of FASA, under which streamlined procedures are to be used and Government-specific requirements are to be waived, is a laudable one. The expansion of that concept ought to be considered. For example, it would be worthwhile to consider raising the simplified acquisition threshold from $100,000 set forth in FASA to $200,000. This would result in simplifying an additional 11,000 procurements worth over $1.5 billion, based on fiscal year 1994 data. Similarly, it may be reasonable to raise the micro-purchase threshold from $2,500 to a higher amount. Under FASA, such micro-purchases are exempt from the small business reservation applicable to all other SAT purchases and are configured so as to enable non-procurement professionals to make them. This would result in considerably simplifying significant numbers of low-dollar value procurements.

FACNET

FASA established the Federal Acquisition Computer Network, or FACNET, a Government-wide electronic commerce architecture whereby firms will receive notice of Government acquisitions by computer and be able to submit offers in response electronically. The implementation of FACNET will transform the current cumbersome, paper-driven process into a modern, computer-based system readily

accessible to Government and private sector users. This should significantly reduce staff time for all parties using the system and result in substantial savings. The Administration should be encouraged to pursue vigorously the development and implementation of full FACNET capability on the schedule set forth in FASA.

We recommend, however, cutting the link currently in FASA between the implementation of FACNET and the use of the simplified acquisition procedures up to the full dollar limit of the SAT. Under FASA the simplified procedures can only be used for acquisitions up to $50,000 until FACNET is implemented, at which time the simplified procedures can be used for acquisitions up to the full $100,000. Those procedures will remain in effect at the $100,000 level for 5 years. Then, unless the agency successfully implements a more advanced form of FACNET, the threshold for the simplified procedures reverts to $50,000. While this linkage was intended to encourage the early implementation of electronic commerce through FACNET, we believe that both the simplified procedures under the SAT and the use of electronic commerce are independently meritorious and that one should not necessarily be sacrificed for the other. As each benefits the Government and contractors, each should be implemented as soon as possible.

Notice

Similarly, we believe that the Commerce Business Daily (CBD) notice of Government procurement opportunities, even as streamlined by FASA, could be further modernized by removing the requirement that all acquisitions not conducted through FACNET be subject to a 15-day delay between the publication of the notice in the CBD and the issuance of the solicitation, and the requirement that in all acquisitions above the SAT the solicitation must remain open for offers for at least 30 days. We understand the Administration favors a proposal that contracting agencies establish reasonable deadlines under the particular circumstances of the acquisition instead of the mandated timeframes if the CBD notice meets certain standards of detail and clarity. This is a sound suggestion, as is a companion proposal that statutory timeframes be eliminated for any acquisition conducted through FACNET no matter what its dollar value.

Competitive Range

A critical objective as we move on the path towards a more commercial-type acquisition system is the removal of non-value added restrictions on the Government's acquisition workforce. The Government will never be able to compete successfully in the open market similar to a commercial customer unless rigid restrictions are removed and its workforce is empowered to make decisions based

upon the particular circumstances presented by each individual acquisition.

A good example of such a rigid restriction is the current interpretation of the competition statutes that results in the mandatory inclusion in the competitive range -- for purposes of conducting discussions -- of all competing firms that may have a chance of receiving award. Our studies have indicated that under this rule agencies are including 60 to 90 percent of all firms that compete. For example, a recent survey of 40 information technology competitions by one agency showed that an average of 19 firms submitted proposals. The agency engaged in discussions with an average of 15 of those firms, and then asked them to submit another round of revised proposals.

Almost always the award ultimately goes to one of the top three firms submitting initial proposals. The conduct of negotiations with and the evaluation of best and final proposals from all these firms represents an enormous expense on the part of both industry and Government. This cost would be greatly reduced if contracting officers could, based on their assessment of the market conditions and the needs of the agency, limit the competitive range in a particular acquisition to no more than the three top-rated firms.

Protests

Another area where some further streamlining and reform may be possible is one with which we at GAO are particularly well acquainted, the protest system. First, we believe the administrative and judicial forums that hear bid protests would benefit by a single statutory standard of review by which all protest cases would be decided. That would bring needed clarity and consistency in decision-making and hopefully would put an end to the constant debate over which forum offers either the Government or vendors the best result. The draft Administration bill takes this approach.

Another Administration suggestion that we think has merit is the expansion of the new FASA debriefing process to include, where appropriate, preaward debriefings for those that have been excluded from the competitive range. This would help eliminate preaward protests that are often filed by offerors primarily because they have been given little or no information as to why their proposals were rejected.

Domestic Source Restrictions

In order to further integrate the commercial and government markets we suggest easing the Government-unique domestic source restriction in the Buy American Act by replacing the 50-percent

domestic component test with the "substantial transformation" test found in the Trade Agreements Act. In order to establish that an item is domestic under the Buy American Act, as it currently is implemented, a firm must be able to show that its domestically produced item is made from domestic components that comprise over 50 percent of the total cost of all components -- a difficult task in today's global market. Under the Trade Agreements Act test, the company need only be able to establish that the item was "substantially transformed" from its components into its current form domestically.

We also believe that the current domestic restrictions scattered throughout the U.S. Code, as well as in various authorization and appropriations acts, should be revisited to ensure that they reflect today's markets and today's defense needs. Further consideration should be given to creating a comprehensive consolidated statutory provision containing those restrictions considered essential.

Test Programs

FASA made great strides in establishing the framework for testing innovative concepts through pilot programs to be conducted by the Administrator for Federal Procurement Policy. The requirement in FASA that the exercise of this authority be delayed until the agency proposing to conduct the test has implemented full

electronic commerce -- full FACNET -- unnecessarily impedes improvements in the acquisition process. As stated earlier, FACNET is an important program that has great merit on its own, and it should be implemented as soon as possible. Testing innovations is also important and should be pursued independently.

We suggest that consideration be given to adding two additional test programs to the list already in FASA: first, a test of a more limited form of competition than the current standard of "full and open" competition to be used in the acquisition of a continuing requirement where there is a successful incumbent, and second, a test of evaluation criteria providing for a substantial advantage to satisfactorily performing incumbents in order to recognize the importance of longer-term supplier relationships with firms that provide the Government with value for its expenditures. Similarly, a disadvantage could be assessed against a poorly performing incumbent that is not actually defaulting on its contract obligations. These concepts could show promise in addressing the dilemma faced by agencies that would benefit from longer-term relationships with high quality, high value contractors, but may be hampered from doing so under current rules.

Finally, it may be appropriate to complement the use of simplified procedures under the SAT by testing an exemption of acquisitions conducted pursuant to those procedures from the formal protest process. Our experience is that there have been few

successful protests filed under the pre-FASA small purchase procedures ($25,000 or less). A pilot program limiting protests of such acquisitions to those filed with the contracting agencies might facilitate a streamlined, commercial-like process for the government's most routine acquisitions. After 3 or 4 years of experience we could conduct an assessment of whether, absent the possibility of bid protests, agencies complied with the applicable procurement statutes and regulations.

Small Business

We recommend that the Congress consider reducing some of the current rules regarding the participation of small business firms in the acquisition process. First, the Small Business Administration's (SBA) Certificate of Competency (COC) authority, under which the SBA determines the responsibility of a small business, could be amended to exclude negotiated procurements in which the contracting officer evaluates a firm's past performance as a part of the technical evaluation. Since FASA requires an assessment of each competing firm's past performance during the selection process, we believe that the SBA's role in determining this element of responsibility as a part of its COC authority conflicts with the responsibility of contracting officers to make the judgments needed to select the best contractor.

Similarly, we believe SBA's (8)(a) program, under which the SBA enters into contracts with small and disadvantaged businesses for work to be performed for other Federal agencies, should be streamlined. Agencies that actually are receiving the performance should make the awards themselves without the need, in every instance, for the SBA to participate in the contracting process.

Mr. Chairman, this concludes my prepared statement. I would be pleased to address any questions you or the Members may have.