

STATEMENT OF
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INTRODUCTION

Chairman Towns, Ranking Member Issa, thank you for this opportunity to appear before the Committee to discuss the “State of Federal contracting: [emphasizing the] Opportunities and Challenges for Strengthening Government Procurement and Acquisition Policies.” I will address aspects of our implementation of statutory requirements in acquisition policies, development of the Federal acquisition workforce, acquisition tools available to our managers and contracting officers, and measures that we take to ensure that procurement policies and practices are properly implemented.

I assumed the position as GSA’s Senior Procurement Executive in June of 2000 after having served 20 year’s in the Department of Defense in various positions including the Assistant Deputy Under Secretary of Defense (Acquisition Reform, Acquisition Process and Policies) and the DoD Deputy Program Manager for the Pentagon Renovation. I now serve as the Acting Chief Acquisition Officer in GSA.

ACQUISITION POLICY DEVELOPMENT

GSA’s Office of the Chief Acquisition Officer shares responsibility with the Department of Defense (DoD) and the National Aeronautics and Space Administration (NASA) for writing the Federal Acquisition Regulation (FAR). Contents of the FAR derive from statute, executive order, regulations, and recognized need.

FAR content is affected by current laws that govern agency procurement and acquisition practices. For example, in relation to the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) (the Act or ARRA), we issued five FAR changes. Policies set in these five separate cases:

- Prohibit using funds appropriated or otherwise made available by the Act for any project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.
- Establish reporting requirements for Federal Government contractors receiving ARRA funds, including amounts received, projects or activities for which funds are to be used, estimated number of jobs created or retained, and information regarding subcontractors.
- Following OMB guidance, require the posting of pre-solicitation notices on FedBizOpps (FBO); implement unique requirements for announcing contract awards; establish unique requirements for entering awards into the Federal Procurement Data System (FPDS); promulgate unique requirements for contracts, orders, and modifications exceeding \$500,000; and set unique requirements for actions that are not fixed price or competitive. The FAR also implements the ARRA provision that requires contractors to identify the names and total compensation of each of the five most highly compensated officers for the calendar year in which the contract is awarded.

- Grant Inspectors General, the Recovery Accountability and Transparency Board, and Government Accountability Office (GAO) authority to examine any contractor records and to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding ARRA transactions.
- Establish protections against reprisal for employees of private contractors who disclose to Federal officials information reasonably believed to be evidence of gross mismanagement, gross waste, or violations of law related to contracts using ARRA funds.

Following the enactment of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (P.L. 110-417), we issued or are preparing FAR cases that:

- Prevent personal conflicts of interest for contractor employees performing acquisition functions;
- Limit the length of noncompetitive contracts in unusual and compelling circumstances;
- Establish requirements for purchasing property and services pursuant to multiple award contracts to include publishing a notice in FedBizOpps;
- Address when cost-reimbursement contracts are appropriate and preparation of acquisition plans to support actions taken;
- Prevent the abuse of interagency contracts;
- Set limits on pass-through charges;
- Revise award fee language to link fees to acquisition objectives;
- Address cost determinations and price reasonableness;
- Allow GAO to interview current contractor employees when conducting audits;
- Require the establishment of a database of suspended or debarred contractors for use by contracting officers and suspension and debarment officials.

Similarly, following the enactment of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (P.L. 110-181), the FAR Council issued or is preparing to issue FAR cases that:

- Clarify submission of cost or pricing data on noncommercial modifications of commercial items;
- Clarify rules regarding the procurement of commercial items;
- Extend authority for using simplified acquisition procedures for certain commercial items;
- Establish new competition requirements for task and delivery order contracts
- Add requirements for market research;
- Require public disclosure of justification and approval documents for noncompetitive contracts;
- Set procurement goals for native Hawaiian-serving institutions and Alaska native-serving institutions.

We also work to keep the FAR in compliance with Executive Orders, by, for example:

- Implementing parts of E.O. 13495, which requires that an incoming service contractor must, in good faith, offer employees of the predecessor contractor a right of first refusal for employment under the successor contract, so established workers aren't displaced by the establishment of a new contract.
- Implementing E.O. 13496, which requires Federal contractors and subcontractors to post notices in all plants and offices informing their employees of their rights under the National Labor Relations Act.
- Implementing E.O. 13502, which encourages Federal departments and agencies to consider the use of project labor agreements for Federal construction contracts valued at more than \$25 million.
- Implementing E.O. 13494 regarding labor relations costs.

Further, on March 4, 2009, President Obama issued a Memorandum regarding government contracts that drew considerable attention in the media, throughout government, and in industry. The Memorandum emphasizes five areas of focus in government contracting that need particular attention: (i) competition; (ii) contract type; (iii) oversight; (iv) inherently governmental activities; and (v) the acquisition workforce. All five areas have been the focus of considerable attention in recent years, including enacted and pending legislative initiatives. At GSA, we have focused much attention on FAR content that is related to these five aspects of government contracting.

In addition to maintaining the FAR, GSA is conducting a comprehensive review and update of the General Services Administration Acquisition Regulation (GSAR), GSA's FAR Supplement, to make it current, improve clarity and simplify procedures. The result of the update will ensure that GSA's procurements continue to reflect compliance with applicable laws and regulations.

In March 2008, GSA established a 15-member advisory panel to review and make recommendations related to GSA's Multiple Award Schedules (MAS) pricing and price-reduction policies. Comprised of procurement experts from government and industry, the MAS Advisory Panel was created under the authority of the Federal Advisory Committee Act (FACA). The FACA was enacted in 1972 to ensure that advisory-committee advice is objective and accessible to the public. The panel has accepted comments during a series of public meetings in Washington, DC, the first meeting of which was held in May 2008.

The MAS Panel is providing independent advice and recommendations to GSA on pricing and price reduction provisions of the MAS program. The Panel has reviewed the schedules' most favored customer provisions and price reduction policies and provisions in the context of current commercial pricing practices. The panel will recommend those changes, if any, that are considered necessary to strengthen the MAS program and enable it to continue to negotiate the lowest overall prices for federal customers. The MAS Panel will issue a report to the Administrator of General Services. We expect a report from the Panel by the end of June 2009.

ACQUISITION WORKFORCE

Proper implementation of policies received from all sources and captured in the FAR is dependent on a well trained acquisition workforce. In accordance with OMB/OFPP Policy Letter 05-01 (OFPP 05-01), GSA has expanded the definition of its acquisition workforce to include virtually all employees who “touch” the acquisition process. This definition continues to include GS-1102s, 1105s and 1106s. We have implemented the Federal Acquisition Certification Programs developed by OMB for contracting officers, contracting officer technical representatives and program and project managers. Training is provided through courses that we develop ourselves and through courses available from the Federal Acquisition Institute (FAI). We oversee the agency-wide Contracting Officer Warrant Program and ensure that all warranted contracting officers have been properly trained. GSA is ensuring that its acquisition workforce maintains required professional certifications.

The FAI is under the auspices of the GSA OCAO and serves as a Government-wide training resource for civilian agencies. FAI coordinates with organizations such as the Office of Federal Procurement Policy, Chief Acquisition Officers Council, and the Interagency Acquisition Career Management Council to develop and implement strategies to meet the needs of the current and future acquisition workforce. In conjunction with its partners, FAI seeks to ensure availability of exceptional training, provide compelling research, promote professionalism, and improve acquisition workforce management.

The NDAA of 2008 and 2009 outlined a number of tasks that would benefit the acquisition workforce community. Some of these tasks were accomplished and others are in process.

- Skill gaps were researched and identified. Training was recommended to address these skill and competency gaps.
- FAI added more training sessions nationwide to meet the mandatory training requirement for the acquisition workforce.
- FAI will have a new Senior Executive Service position entitled Associate Administrator for Acquisition Workforce Programs.
- In accordance with the NDAA 08:
 - Our Chief Human Capital Officer (CHCO) organization has received expedited hiring authority to recruit persons into the acquisition workforce.
 - Both CHCO and OCAO developed a GSA Succession Plan for the acquisition workforce.
 - The OCAO is working on the establishment of a Contingency Contracting Corps. Members of this corps will be available to deploy in response to an emergency or major disaster or a contingency operation, both within or outside the continental United States.

Although the ARRA did not specifically address the acquisition workforce, our CHCO may use the OPM authorized excepted service temporary appointments to meet the exceptional hiring needs. Appointments under this authority cannot extend beyond September 30, 2012. Also, these positions are solely for the purpose of performing duties in support of projects related to ARRA requirements.

Right-sizing the GSA Acquisition Workforce

Recruiting and retaining members of the acquisition workforce is challenging. Education requirements are strict and pay levels in the private sector or even within the Federal government, particularly in DoD, can be higher than GSA can now offer. The OCAO is working with CHCO to review and determine how best to recruit and retain employees. In order to gain the correct mix or right-size the acquisition workforce, our office is:

- Researching how to increase the current journeyman level for contracting officers from GS-12 to GS-13 consistently across the agency;
- Educating managers on retention and recruitment tools; and

GSA is also developing an Acquisition Workforce Succession Plan that will assist in managing GSA's Acquisition Workforce from recruitment to retirement. The Succession plan will allow GSA to make decisions about hiring, training and retention with a view to having sufficient trained and skilled acquisition workforce members to meet GSA's acquisition mission.

AUTOMATED ACQUISITION TOOLS

The Acquisition Committee for eGov (ACE), a formal subcommittee of the CAO Council responsible for overseeing government-wide information technology solutions supporting the acquisition community, has overall responsibility for directing the development of acquisition tools used throughout the acquisition community. Within GSA's OCAO, the Office of Acquisition Systems leads our Integrated Acquisition Environment (IAE) and develops the acquisition tools used by the Federal acquisition workforce, private vendors, and members of the general public.

These automated tools include:

- WDOL: Wage Determinations On-Line (www.wdol.gov) The WDOL website provides a single location for federal contracting officers to obtain Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations (WDs) required for each contract action.
- ORCA: Online Representations and Certifications Application (www.bpn.gov/orca) ORCA allows vendors to enter their representations and certifications information electronically once for use on all federal contracts. It also allows contracting officers to view and download completed vendor records.

- FPDS: Federal Procurement Data System (<https://www.fpds.gov>) FPDS is the central repository of information on federal contracting. The system contains detailed information on contract actions over \$3,000 (FY 2004 and later data). The system can identify who bought what, from whom, for how much, when and where. In addition, FPDS provides standard reports and ad hoc reports. (Contracts awarded using ARRA funds will be reported to the Federal Procurement Data System (FPDS). ARRA actions are denoted by the Treasury Account Symbol which is recorded in the FPDS contract report.)
- FBO: Federal Business Opportunities (FedBizOpps) (www.fedbizopps.gov) FBO is the single government point-of-entry for posting solicitations. It allows commercial vendors and government buyers to post, search, monitor, and retrieve opportunities solicited by the entire federal contracting community. FBO also enables federal agencies to securely disseminate sensitive acquisition-related technical data for solicitations to approved business partners. (Contract opportunities including ARRA funds are denoted by a flag.)
- eSRS: Electronic Subcontracting Reporting System (www.esrs.gov) eSRS facilitates reporting of accomplishments toward subcontracting goals.
- EPLS: Excluded Parties List System (www.epls.gov) EPLS is a governmentwide, web-enabled database of parties excluded from receiving federal contracts or certain subcontracts and from certain types of federal financial and non-financial assistance and benefits.
- CCR: Central Contractor Registration (www.ccr.gov) CCR is the single point of registration for vendors wanting to do business with the federal government. It collects Electronic Funds Transfer (EFT), business lines, and socio-economic data. CCR has also expanded to the grantee community.
- FedReg: Federal Agency Registration (www.ccr.gov) FedReg is the single point of agency buyer/seller information for intra-governmental transfers. It is the federal agencies "yellow pages" and contains information about federal entities that buy and sell from other federal entities. CCR validates new CCR registrations with existing FedReg records.
- While not the financial responsibility of IAE, the Past Performance Information Retrieval System (PPIRS) (www.ppirs.gov) takes functional direction from the IAE Program Management Office (PMO). PPIRS provides timely access to past performance information.

An additional requirement found in Section 872 of the 2009 NDAA calls for a database of information regarding the integrity and performance of certain persons awarded Federal agency contracts and grants. This new database is to be used by Federal officials having authority over contracts and grants, and it must identify any person awarded a Federal agency contract or grant in excess of \$500,000. Regarding such persons, the database shall include a brief description covering the most recent 5-year period regarding: any civil, criminal, or administrative proceeding; any termination of a grant or contract; any suspension and debarment; any administrative agreement entered into to resolve a suspension or debarment; or any non-responsible source finding. The ACE recently agreed to a plan to meet Section 872 requirements. DoD will lead the government-wide development and implementation effort of this new tool.

EPLS, one of the tools mentioned above, was the subject of a previous hearing before this committee. I can tell you that we are working to ensure contract identification numbers and related address information is correct and included for each record in the system. We are investigating the use of a common identifier like a DUNS for individuals (roughly 55K of the 60K active EPLS records are for individuals). We have already taken steps to enhance search capabilities and to advise users how to properly search records, and we are taking steps to keep the points of contact list updated. We are reviewing the process to enter debarment information into EPLS that requires users to validate information using authoritative sources like Dunn and Bradstreet and the CCR System. Finally, we have developed a feed from EPLS to CCR to flag records in CCR that are on the debarment list. The capability will be put into production in August 2009. As noted in our response to Chairman Towns' letter regarding EPLS, we will provide a separate written response to his concerns.

Internally, GSA is beginning the acquisition process for an end to end system of systems to facilitate GSA's acquisition mission. Once acquired, the system will allow GSA to leverage both its human resources and policies and processes in performing its acquisition mission.

ASSURING PROPER IMPLEMENTATION OF ACQUISITION POLICIES

While proper implementation of policy is paramount, we would be remiss if we did not verify that those policies were being properly implemented by our acquisition workforce, regardless of how well trained or equipped they may be. Beginning in Fiscal Year 2009, the OMB directed that Federal agencies implement review of their acquisition programs using the A-123 Acquisition Assessment Tool. This involves the standardized assessment of internal controls over acquisition activities and programs in the context of the four established cornerstones of review: policies and procedures; organizational alignment and leadership; human capital; and information management and stewardship. At GSA, through the Procurement Management Review Division, Office of Acquisition Integrity, and the Office of the Chief Information Officer, we have fully implemented this process, in partnership with the Office of the Chief Financial Officer, as part of our GSA-wide Procurement Management Reviews. In addition, we continue to conduct traditional transactional procurement reviews, reviewing contract files in all GSA regions and major contracting activities, for compliance with applicable acquisition statutes, regulations, and policies. Each review results in a final report to the region or contracting activity and action plans that address areas that need improvement. In addition, we gather best practices that are shared with all regional and Service contracting activities.

Further, we use suspension and debarment as a prophylactic measure to prevent the Government from doing business with companies or individuals who demonstrate a lack of present "responsibility," a term of art in use in the government since at least the 1950s in the Armed Services Procurement Regulation (ASPR) and the Federal Procurement Regulation (FPR), the forerunners of today's Federal Acquisition

Regulation (FAR). We have, over time, expanded the definition of responsibility to include what a company does corporately, not just on government contracts. We have also adopted a government-wide policy prohibiting the placement of orders against contracts where the contractor has been suspended or debarred. We do not require the termination of existing contracts because a company has been suspended or debarred unless a proper determination is made under the FAR.

Recent developments in the area of contractor ethics, integrity, and requirements for voluntary disclosures have resulted in new grounds for debarment and suspension of Federal government contractors under FAR Subpart 9.4. These new grounds involve the failure to disclose, in connection with the award, performance, or closeout of a contract, credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery or other gratuity violations; violation of the civil False Claims Act; and significant overpayments on the contract.

ARRA requires that contracts funded under the Act should be awarded as fixed-price contracts through competitive procedures to the "maximum extent possible." Competition is, and likely will remain, a focus of acquisition reform in the coming years. The Director, Office of Acquisition Integrity, is the Competition Advocate for GSA, and is charged with overall responsibility to encourage and promote competition in GSA procurements. This Fiscal Year, the GSA Competition Advocate has hosted telephone conferences of Service and Regional Competition Advocates for the purpose of sharing best practices, exploring new initiatives and discussing specific issues, such as competition requirements of ARRA. At the GSA Expo, the GSA Competition Advocate met with the Service and Regional Competition Advocates to discuss these issues and formulate plans for improving competition and for ensuring that we document our best practices and accomplishments. In addition, we are now reviewing all acquisition plans for procurements using ARRA funding to assure that adequate market research is conducted and that competitive processes are utilized to the maximum extent possible.

We strive mightily to capture accurately in the FAR new acquisition policies, to fully train the acquisition workforce, to properly equip them with automated tools, and to verify that the job is done correctly. We recognize that there may well be viable alternatives to the approaches we have taken, and we are open to suggestions on how to improve.

Mr. Chairman, Ranking Member Issa, that concludes my prepared remarks. I would be pleased to answer any questions the Committee may have.