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ENVIRONMENTAL SYSTEMS TEAM

NATIONAL PERFORMANCE REVIEW

Accompanying Report Number XX
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ABBREVIATIONS

BLM	Bureau of Land Management
DOD	Department of Defense
DOE	Department of Energy
DOI	Department of Interior
EPA	Environmental Protection Agency
FEMP	Federal Energy Management Program
FWS	Fish and Wildlife Service
IPM	Integrated Pest Management

NOAA	National Oceanic and Atmospheric Administration
NIOSH	National Institute of Occupational Safety and Health
OEP	White House Office on Environmental Policy
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
VA	Department of Veterans Affairs

SUMMARY

OBJECTIVES

This report provides specific recommendations to promote and produce environmentally sound behavior in the daily operations of the Federal Government. Through inter-agency coordination, public-private partnerships, innovative contracting mechanisms, and incentives, the government can improve its practices and management policies regarding the environment. It can also set a high standard of environmentally responsible behavior for others to follow.

BACKGROUND

Federal Government activities reflect all aspects of society. It operates office buildings, housing developments, industrial plants, parks and golf courses; it manages lands across the nation that are employed in a variety of activities; it provides aid for research and development; and it regulates many private sector activities. To support these functions, the government owns or operates over 500,000 facilities. Approximately 430,000 of these are residential; the rest are office buildings and industrial and research facilities. The government also manages approximately one-third of all the land in the United States. The sheer size of the Federal Government makes the magnitude of its impact on the environment apparent.

Because the Federal Government as a whole touches the environment in so many different ways the NPR focused on two broad areas: improving the way the Federal Government fulfills its environmental management and oversight responsibilities and improving the way it fulfills the daily responsibilities of operating its thousands of facilities. The NPR has developed recommendations in these two areas, but there are many other examples, such as procurement decisions, green design, other papers we have dropped.

PROBLEM

A Government that pollutes has inefficiencies in its operations and is wasting taxpayers money. The Government pays for the inefficiencies first through higher operating costs, second through remediation and clean-up costs, and, third through the loss of natural resources and a clean environment. Instead of being a model for environmental problem solving, the government has been a part of the problem.

Part 1: Improve Implementation of Environmental Management and Oversight Responsibilities

The Federal Government's traditional environmental management approach has been to concentrate on end-of-pipe pollution control for both its regulation of the private sector and operation of its own facilities. A cultural change is needed across the Federal Government to move it toward an environmental management strategy that emphasizes prevention of environmental problems to ensure greater efficiency and effectiveness. The current approach to assessing the costs and benefits of a purchasing or contracting decision does not incorporate all of the environmental costs associated with each alternative. As a result, opportunities to choose alternatives that minimize economic and environmental costs to the Government are lost.

The traditional approach to managing national resources has been divided among a number of federal agencies. Different agency missions, policies, and cultures, varying demands of constituents, inconsistent planning cycles, and agency organizational structures hamper comprehensive, coordinated ecosystem management and understanding. Recently, as a way to address these organizational and environmental problems, ecosystem management has become the stated goal of several federal departments and agencies. Notwithstanding, many agencies, even offices within an agency, have different views on how ecosystem management should be carried out and how it relates to their mission. For ecosystem

management to succeed, agencies must develop these ecosystem management programs in collaboration with one another, with input from all interested parties and based on a sound scientific foundation.

The government's role as a regulator of private industry has many implications for the condition of the environment. Currently, the enforcement programs of the health, safety, and environmental regulatory agencies are understaffed and underfunded. The multiplying volume, diversity, and technical difficulty in enforcing pollution and workplace health and safety laws has outstripped the capacity of government. Independent accountants paid privately, but liable to the public, have long solved analogous problems in financial regulation and are spreading rapidly in the environmental field in the United States and Europe.

Part 2: Improve Environmental Performance at Federal Buildings and Facilities

The Federal Government paid nearly \$4 billion in energy costs for its buildings in fiscal year 1991. Commercially available, cost effective efficiency upgrades could likely conserve 25 percent of the energy used in Federal buildings without loss of comfort or productivity. While the exact volume and cost of water consumed by the Federal Government is unknown, what is known is that many areas of throughout the country are anticipating or experiencing water shortages. Additionally, many are instituting large price increases. Using less water will not only shrink facility operating expenses, but it can help postpone or eliminate the need for building new or expanded water or wastewater treatment facilities.

The Energy Policy Act of 1992 requires the Federal Government to achieve 20 percent energy usage reductions by the year 2000 and to install all energy and water conservation measures with a ten-year payback or less. Current funding levels and long procurement processes are significantly slowing the achievement of this goal. Agencies' inability to

retain cost savings in the accounts that initially provided the funding for the energy and water efficiency projects also create a disincentive.

MAJOR THEMES AND RECOMMENDATIONS

The recommendations the NPR has made should enable the government to work better and cost less. It will work better as it reduces its negative impacts on the environment and works with communities to solve natural and economic resource problems. The government will cost less as it makes decisions which incorporate as many environmental costs as possible and consider time horizons that reflect the time required to develop environmental costs and benefits.

Part 1: Improve Implementation of Environmental Management and Oversight Responsibilities

The NPR recommends developing a demonstration project to evaluate the effectiveness and efficiency of using environmental cost accounting during the financial analysis of contracting and procurement projects.

The NPR recommends a process to increase collaboration among federal agencies and to break down bureaucratic barriers that prevent agencies from working together. Agencies coordinate in pilot ecosystem management projects where they will do their planning and budgeting together and develop site-specific management plans and goals to achieve overall ecosystem management objectives.

The report proposes a system of private sector accountants to improve the environmental, health and safety compliance process. Conflict and litigation complicate the ability of

governmental regulators to effectively enforce the many environmental, health and safety laws. This recommendation provides the most effective means of getting beyond these problems. Regulatory staffs who must contend with these legal problems and delayed actions face declining voluntary compliance and credibility. This approach can produce more compliance at less cost.

**Part 2: Improve Environmental Performance at Federal Buildings and Facilities
Decisions**

In this area, two issues were raised: increasing the number of energy and water use efficiency projects completed by the government and increasing the environmentally beneficial landscaping practices of the government.

The Clinton Administration can emphasize a commitment to leading by example by spotlighting new methods of to increase energy and water use efficiency in federal facilities. The recommendation highlights the use of streamlined contracting mechanisms and the advantages of the Demand Side Management programs of utilities. The recommendation also requires that agencies incorporate energy and water conservation in the performance evaluation of management and facility managers in order both to hold them accountable for results and to reward them for implementation.

As part of sound environmental management at federal facilities, the report stresses the need to implement environmentally beneficial landscaping in order to reduce expenditures for maintenance, chemical fertilizers and pesticides, and water. These landscaping recommendations will help federal agencies achieve the goals of the recently issued Executive Order on Pollution Prevention and provide educational opportunities on the economic and environmental benefits of landscaping with local plant species.

The NPR recommends that an Executive Order be issued to promote water efficient and diverse native species landscaping on Federal facilities and in projects funded by the Federal Government. In doing so, the Government would lead by example and educate the public on the importance of preserving our native plant communities, while reducing landscaping costs and pollution.

VISION

Our vision is one of a Federal Government that is a continuing force for positive change and uses its power as a consumer, land manager, regulator, aid donor, and educator to:

- promote sustainable economic development;
- prevent continued environmental degradation; and
- restore the health of the nation's damaged environment.

The way the Federal Government incorporates environmental considerations in its activities sends a signal to the rest of the Nation. We want to help make that signal an environmentally sound and positive one. Many decisions can be made so that they incorporate environmental considerations at the beginning of the decisionmaking process while at the same time improving the way the government does business.

We would like to infuse a new environmental ethic into Government actions and to change the way Government employees act and think. By starting in the Federal Government, we hope to begin to change the way the public and industry act and think about the environment. There are opportunities to implement innovative strategies to introduce an environmental ethic into the decisionmaking process at all levels of the Federal Government.

**IMPROVE IMPLEMENTATION OF ENVIRONMENTAL MANAGEMENT AND
OVERSIGHT**

ENV.1 IMPROVE FEDERAL DECISIONMAKING THROUGH ENVIRONMENTAL COST ACCOUNTING

BACKGROUND

On Earth Day 1993, President Clinton directed the Department of Commerce to develop new measures to calculate gross domestic product (GDP) that incorporate changes in the value of the natural environment into the calculations of national income and wealth. This new, "Green GDP" would improve existing economic statistics that ignore the cost of pollution or the value of clean air. While the President's directive focuses on the system of national accounting, it highlights the importance of considering environmental factors in a new way.

The increasing recognition that the health of the economy in the future is dependent upon the health of the environment, lead the President to request this revision of our system of national income accounting. This link should be made at the individual organizational level as well. The Federal Government, through its method of determining the costs and benefits of projects and purchases, is also impacted by the relationship between the economy and the environment. The development of accounting guidelines that could assist in determining the overlooked costs could improve the decisions made by the government.

The use of a cost accounting system that incorporates all of the costs during the initial decisionmaking stage of a project can level the playing field for alternatives that are more environmentally beneficial and, over time, are also more economical. Currently, many proposals are accepted based on the lowest first cost. Time horizons to evaluate the costs

and benefits of specific alternatives are short, therefore, they do not fully incorporate long term environmental degradation and the costs to remediate and clean-up waste sites.

Some of the barriers that prevent fully incorporating environmental costs in the earliest stages of estimating a project are accounting and financial analysis methods. Currently, accounting and capital budgeting practices often obscure the benefits of investments in pollution prevention and other environmentally preferred management decisions. Many businesses know very little about how much they actually spend on environmental protection, including control technologies, insurance, permitting, disposal, legal fees, etc. Many accounting systems, set up years ago for other reasons, place many environmental costs into overhead accounts, obscuring them from managers. Without this information, managers cannot see the advantages of pollution prevention. The lack of information carries over to the financial analysis that companies do to justify investments in new equipment. Without good information, control technologies appear more favorable than pollution prevention.

In response to these problem and to the National Pollution Prevention Policy, the EPA's Office of Pollution Prevention and Toxics as part of its Design for the Environment Program, is working with members of industry, academia, and the financial professions (e.g., accountants, lenders, and insurers) to encourage the adoption of managerial accounting and capital budgeting practices that more fully track and integrate environmental costs into management decisions.

Congress recognized the importance of pollution prevention as a national policy in the Pollution Prevention Act of 1990. The Act creates a pollution prevention hierarchy which makes prevention or reduction of pollution at the source the first priority.¹ The Clinton Administration has also place pollution prevention as a high priority. For example, Carol

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Improve Implementation of Environmental Management and Oversight

Browner, Administrator of the Environmental Protection Agency (EPA), testified during Congressional budget hearings that pollution prevention was one of the agency's highest goals.² President Clinton announced in his Earth Day speech his commitment to this goal. Executive Order 12XXX, issued on August XX, 1993 encourages agencies to set voluntary goals to cut the use of toxic pollutants by 50 percent by 1999. In his speech, the President also called for the Federal Government to live under the laws it makes for other people. This E.O. strives to make the Federal Government a leader and positive example for the rest of the country.

NEED FOR CHANGE

The Federal Government should strive to make decisions that will minimize costs and environmental and health risks over time. Changing the accounting system to reflect a longer time horizon and some of the costs and benefits that accrue over long periods of time will make the government work better and cost less over time. It will also help prevent further degradation of the environment and unnecessary costs to mitigate and clean-up preventable environmental and health problems.

Better accounting practices will enable managers to unearth many of the costs of environmental degradation and regulatory compliance that are often buried in general overhead accounts. Bringing these costs into plain view allows them to be fully considered in the decisionmaking process. Implementation of these practices can be used to shed light on the benefits of pollution prevention and, therefore increase the use of pollution prevention strategies. The cost accounting project has significant benefits to the private sector in terms of cost reduction and both increased profitability and competitiveness.

The same concepts that EPA is working to develop with the private sector could have similar advantages if applied to the Federal sector. As one of the nation's largest purchaser of goods and services, the Federal Government makes many purchasing decision that could be improved with improved accounting and financial analysis. Improved financial tools could be applied in decision to purchase low technology office supplies and furniture to high technology computers, buildings, and weapon systems. The value to the public sector could be tremendous: new approaches could save the Federal Government money, improve the environment, help achieve the nation's pollution prevention goals, and provide leadership to the rest of the country.

The Federal Government faces huge costs and many decades in order to complete the clean up of nuclear and hazardous wastes that have been created over the last 50 years. Other costs involved with the Federal Government's pollution include those associated with noncompliance with environmental laws and regulations. Enforcement actions often involve expensive litigation as well as fines and penalties. The negative publicity from environmental problems also diminishes Federal agency goodwill and causes agency image problems as well as making it difficult, in principle, to enforce environmental compliance from private sector violators. Other costs the Federal Government may bear indirectly include health care related costs as a result of exposure to toxic substances.

At the Naval Surface Warfare Center in Indiana the Pollution Prevention Planning Department has completed an estimate of all of the costs involved with several processes that require the use of hazardous materials. The costs will be used to evaluate the management decisions that are made regarding the use of hazardous materials.

RECOMMENDATIONS

1. Develop a pilot project to demonstrate the use of environmental cost accounting by the Federal Government.

The EPA Pollution Prevention and Toxics Office should design a demonstration project to test the applicability and effectiveness of environmental cost accounting in the Federal Government. The office should convene a group of experts from government, industry, and academia to identify potential demonstration projects and develop accounting guidelines for the demonstration. The group should include financial management and procurement professionals, as well as engineers, scientists, and project managers. The demonstration project could be focused on:

- Purchasing hazardous materials,
- Constructing a new building, or
- Installing new technology to comply with environmental laws.

2. Develop guidelines for the implementation of environmental cost accounting throughout the Federal Government.

If the demonstration project indicates that environmental cost accounting can reduce both the environmental and economic costs of agency actions, then the Pollution Prevention Office should reconvene the group of experts to develop guidelines that can be used throughout the government.

3. Implement environmental cost accounting throughout the Federal Government.

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Improve Implementation of Environmental Management and Oversight

Once these guidelines have been issued the President should issue an Executive Order encouraging all Federal agencies to incorporate these guidelines in their purchasing decisions.

The Federal Government may not be profit motivated, however, it does benefit both the government and the taxpayers if Federal agencies are doing everything possible to minimize costs and health and environmental risks. The accounting guidelines developed by this project could assist agencies in minimizing costs over a longer period of time. These guidelines will provide decision makers with a more complete summation of total costs than is currently at their disposal. This data could include the costs in the future of the potential liabilities and risks associated with the alternatives they are considering. Accounting methods that incorporate these new costs help agencies to take a very long-term view of their actions.

FISCAL IMPACT

The Office of Management and Budget is currently preparing the fiscal analysis for this paper.

ENDNOTES

1. Pollution Prevention Act of 1990 (42 U.S.C.A. Sec. 13101 (b))
2. U.S. Congress, "U.S. Environmental Protection Agency: The President's Budget Request for 1994," testimony by Carol M. Browner, Administrator, April 8, 1993.

ENV.2 DEVELOP CROSS-AGENCY ECOSYSTEM PLANNING AND MANAGEMENT

BACKGROUND

Our nation's diverse ecological systems, or ecosystems, provide us with food, energy, clean water, scientific information, recreational opportunities, and useful materials, like wood. Maintaining healthy ecosystems sustains their productivity and is vital to ensuring a high quality of life for future generations of Americans. To date, the economic development made possible by our country's substantial natural resources has often come with a high ecological price tag. The stress of land development, energy use, infrastructure construction, agriculture and resource extraction has resulted in habitat loss, watershed degradation and deforestation, all of which diminish ecosystem values and functions.

The President's recent Pacific Northwest Forest Ecosystem Plan (Forest Plan) exemplifies ecosystem management--a proactive approach to ensuring sustainable ecosystems and a sustainable economy. In ecosystem management, land and resource managers consider both natural and human components in a given geographic region. Managing ecosystems requires defining land, resource use and conservation goals for specific ecosystems within geographic regions. Monitoring and assessment are important components of ecosystem management. They provide necessary information so that management plans and objectives respond to new information and changing conditions. In the Forest Plan, ecosystem management planning and monitoring levels included regions, smaller ecological provinces and individual watersheds. Understanding how human activities and natural events affect both human and natural communities at various scales within a region improves managers'

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(e.g., Federal, state or local officials, private landowners) ability to efficiently and pragmatically meet short and long-term human needs and expectations.

The Federal Government's broad responsibilities make it an important participant and leader in a process to better manage our nation's natural resources. The Federal Government owns approximately one third of the nation's entire land base. The Bureau of Land Management (BLM) manages more than 60 percent of the nation's public lands for multiple uses, including grazing, mineral extraction, wilderness areas, and recreation. The Forest Service manages our National Forests, including wilderness areas, for multiple uses as well, including timber production and wildlife conservation. The Fish and Wildlife Service (FWS), among other things, manages our diverse National Wildlife Refuge System. The National Park Service (Park Service) oversees the National Parks and Grasslands for recreation and preservation. In the major statutes governing all land management agencies but the Park Service,¹ Congress has basically set a goal to manage federal lands and resources to meet the present and future needs of Americans while striking a balance between resource development and conservation.²

Land management agencies, however, are only part of the federal environmental picture. The Environmental Protection Agency (EPA) is responsible for implementing federal laws to regulate the nation's air and water quality. The National Oceanic and Atmospheric Administration (NOAA) conducts environmental research and manages living marine resource. Numerous other agencies, such as the Bureau of Reclamation, Army Corps of Engineers, Federal Highway Administration, Tennessee Valley Authority, Bonneville Power Administration run programs with significant impacts on the environment. These agencies can also make substantial contributions to sustaining and rehabilitating ecosystems. Agencies previously not associated with ecosystem management, such as the Department of

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Commerce and the Department of Housing and Urban Development also can affect ecosystems positively or negatively depending on the policies they adopt.

To date, many factors -- inconsistent statutory missions, demands of special interests, incompatible data, distinct agency cultures, inconsistent planning and budgeting cycles, and differing agency organizational structures -- have hampered development of coordinated ecosystem management approaches to achieve common objectives. To take the simplest example, federal agencies usually have a headquarters office in Washington, D.C. and a number of regional offices. In most cases, these regional offices have substantially different boundaries which further fragments federal management within a given area. Even within the same agency the relative independence of internal bureaus or regional offices can present problems by creating significant intra-agency conflicts and inconsistencies.

Within the past year, two agencies, the Forest Service and BLM, developed ecosystem management statements. These were developed to articulate the future direction of the agency; however, they too were created and operate without the full participation and collaboration of other important agencies. Moreover, the statements focus on agency-specific approaches rather than one involving a consistent Federal Government approach. Other agencies, even offices within agencies, have developed different views on how ecosystem management should be carried out. As a result, federal agencies, even those with similar mandates, in effect manage the same ecosystem differently, frequently at cross-purposes. Independent non-federal jurisdictions and activities, of course, further complicate sound environmental management.

Recognition of the importance of coordination organized around ecosystems rather than political jurisdictions is not new.

- The Resources Agency of California and nine state and federal agencies recently signed a Memorandum of Understanding to develop a coordinated state-wide biodiversity planning strategy for ecologically similar regions. This initiative organizes the principal land management agencies in the state under the long-term goal of conserving the natural heritage of each major region in California while sustaining economic growth and development.
- The Minnesota Department of Natural Resources is directing an integrated approach to maintain biodiversity based on watersheds, landscapes and regions involving federal agencies, state and local governments and the private sector. The management focus will shift from jurisdictional entities, such as state forests, to ecological land units. An example within this program is the Prairie Stewardship Partnership, which seeks to encourage environmentally sustainable economic development while protecting the health and diversity of ecosystems in the northern tallgrass prairie.³
- The Park Service, Forest Service, and BLM initiated a project to develop a region-wide ecosystem management policy in the Greater Yellowstone Ecosystem, which includes parts of Wyoming, Idaho, and Montana. More than 28 federal, state and local governments share responsibility for managing parts of the ecosystem.⁴ Federal agency policies and programs in the ecosystem were not coordinated and were often conflicting. As elsewhere, agencies had to consider the needs of thousands of private landowners, businesses, interest groups and users of public lands. Notwithstanding, certain interest groups successfully lobbied to keep the plan from being implemented, with little resistance from higher levels of the Federal Government. This federal experience with ecosystem management points to

the importance of a strong policy-level endorsement to ensure the success of any such initiatives.

NEED FOR CHANGE

The announcement of the President's Forest Plan stated that "for too long, contradictory policies from feuding agencies have blocked progress, creating uncertainty, confusion, controversy and pain throughout the region." It is self-evident that the Federal Government should do its utmost to ensure the long-term sustainability of our human communities and the ecological communities upon which they depend. Yet, to date the Federal Government, has been responsible for degrading even obviously valuable ecosystems. In the past, there has been an absence of political will to make difficult decisions regarding the long-term health of the environment. In closing remarks at the Pacific Northwest Forest Conference, President Clinton announced that tough decisions will be made and "we will try to end the gridlock within the Federal Government and we will insist on collaboration not confrontation."⁵

The situation in the Northwest is not unique. Eighty percent of the coastal wetland loss in the United States has occurred in Louisiana, mostly in the Mississippi delta region. One cause of this loss has been the management of the Mississippi River for competing purposes. Continued loss of wetlands in this region may have substantial economic and social costs. The fishing industry in Louisiana, which is directly affected, accounts for approximately \$1 billion per year in revenues and jobs.⁶

The San Francisco Bay/Delta is the most human-altered estuary on the west coast of North and South America. A complex array of agencies, plans, and laws govern activities in the

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estuary. A one-mile stretch of shoreline may be affected by decisions of over 400 government agencies with differing mandates and missions.⁷ The natural hydrology of the Bay and Delta has been altered by a variety of actions which involve federal water management. Among other things, removal of large amounts of freshwater entering the estuary has led to saltwater intrusions which impair the ecosystem's value and natural processes. Additionally, wetlands destruction has been authorized by the Federal Government for agricultural and urban development. These practices have resulted in, among other things, declines in fish population. Salmon, striped bass, and oyster fishing industries have collapsed. Eighty-two percent of tidal wetlands, 90 percent of Delta wetlands and 75 percent of seasonal wetlands have been lost.⁸

The traditional approach to managing ecosystems and the resources contained within them has been piecemeal. Responsibility has been fragmented across numerous federal and non-federal agencies and jurisdictions. It is increasingly obvious that ecological systems ignore political boundaries. Ecosystem management starts with ecological boundaries. It then seeks and considers input from all stakeholders affected by management of the area. Within this framework, federal agencies, state, local and tribal governments, the public, and Congress can work in collaboration to develop specific strategies, refocus current programs and resources, and identify cost-effective investments in the economic and ecological health of the region. Inclusion of humans and their economic need as a part of the ecosystem is a major tenet of the vision of ecosystem management. Resource problems are in a sense not environmental problems but human problems created under a variety of political, social, and economic conditions.⁹

RECOMMENDATIONS

1. **Convene a series of high-level inter-agency meetings to develop and implement a number of cross-agency ecosystem management initiatives.**

The White House Office on Environmental Policy (OEP) should convene these meetings with relevant Assistant Secretaries to select the ecosystems and determine which agency will assume the lead for each initiative.

2. **Conduct a management and budget review for the cross-agency ecosystem management initiatives as a part of the fiscal year 1995 budget process.**

In cooperation with the OEP and the Assistant Secretaries Team, OMB should conduct a management and budget review of each of the selected ecosystems to identify current and proposed plans, inefficiencies and/or conflicting expenditures or plans for the ecosystems.

3. **Convene an interagency ecosystem management workshop.**

The Assistant Secretaries should convene an interagency ecosystem workshop in November/December 1993. The goal of the workshop should be to identify legal and institutional barriers to ecosystem management and ways to resolve them, information needs, and environmental objectives. In addition, the participants should discuss appropriate scales for ecosystem management administration structures (e.g., need for interagency committees, planning at regional, physiographic provinces, and individual watershed level) and the results of the management and budget reviews.

4. **Establish Ecosystem Planning and Management Teams for each of the cross-agency ecosystem management initiatives.**

In January 1994, the Assistant Secretaries Team should establish cross-agency Ecosystem Teams comprised of staff (e.g., ecologists, planners and social scientists) from each of the appropriate regions to begin to develop ecosystem management plans for each of the initiatives. State, local and tribal representatives, and the public should participate in the initial stages of the planning process. The ecosystem management plans would:

- assess historical conditions, current status, and describe future trends;
- set environmental objectives and performance measurements to evaluate progress;
- develop ecosystem monitoring strategies; and
- develop implementation strategies.

5. Complete the ecosystem management plans for the initiatives.

By the fall of 1994, the Ecosystem Teams would complete the ecosystem management plans and develop cross-agency budget submissions.

6. Implement the ecosystem management plans.

The Ecosystem Teams would begin to implement the ecosystem management plans in fiscal year 1995.

7. Report on progress toward achieving established environmental objectives.

By the fall of 1995, the Ecosystem Teams will report to the Assistant Secretaries on progress and barriers to implementation of ecosystem management plans along with

suggested improvements. The Ecosystem Teams should prepare a similar report on an annual basis.

8. Issue an Ecosystem Management Executive Order.

In January 1996, the President should issue an Executive Order which should:

- state a national policy of ecosystem management to ensure sustainable economic development and a healthy, productive environment;
- state that an important component of this policy is coordination with state, local, tribal, and private partners;
- call for implementation of a cross-agency ecosystem management planning process for federal actions which sets measurable objectives at regional and subregional levels, and formulates management strategies to achieve these objectives; and
- direct agencies to interpret their existing authorities as broadly as possible to implement the ecosystem management planning processes and strategies.

The American public, business and conservation communities will all be better served by an approach that manages federal activity at appropriate ecological units to avoid costly environmental degradation, species endangerment and unsustainable economic development. This recommendation integrates environmental management with human needs, considers ecosystem sustainability, and highlights positive connections between economic prosperity and environmental management. Federal expenditures would, as a result be invested where human, economic, and environmental health will be maximized, and should reduce conflicts.

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A cross-agency planning and outreach process should also produce increased cooperation and coordination with state, local, and tribal governments and the public. It is important that state, local and tribal governments be an integral part of the planning process and be given an opportunity to work proactively with federal agencies to plan and execute the initiatives. Otherwise, ecosystem management may be misinterpreted as encroaching on non-federal land use prerogatives.

Institutional barriers to achieving cross-agency action (e.g., different planning cycles, single agency budgeting) may be difficult to overcome. However, by developing the pilot efforts and establishing the Assistant Secretaries Team to focus on these issues, agencies should identify barriers early in the process. Ecosystem management should bring such tough issues to light sooner, when there are more options and options are less costly. Value added from the ecosystem management approach, finally, will depend in large part on successfully getting federal agencies and others to act consistently with ecosystem management objectives and directives. This can be accomplished through the Executive Order and holding Assistant Secretaries responsible for the ecosystem management process.

FISCAL IMPACT

The Office of Management and Budget is currently preparing the fiscal impact analysis for this paper.

ENDNOTES

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1. The Multiple-Use and Sustained Yield Act of 1960; the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by Public Law 94-588; The National Forest Management Act of 1976; and the Federal Land Policy and Management Act of 1976.
2. U.S. General Accounting Office, "National Direction Required For Effective Management of America's Fish and Wildlife," CED-81-107 (Washington, DC, 1981).
3. Council on Environmental Quality, Incorporating Biodiversity Considerations into Environmental Impact Analysis Under the National Environmental Policy Act. Washington, D.C., 1993, p. 9.
4. T. W. Clark et al., "Policy and Programs for Ecosystem Management in the Greater Yellowstone Ecosystem, *Conservation Biology*, 5(3):412-422 (1991).
5. Pacific Northwest Forest Conference, Closing Remarks of President Clinton, April 2, 1993.
6. U.S. Environmental Protection Agency, Office of Policy, Planning and Evaluation, *Long-Term Ecological Sustainability and Economic Viability of the Gulf of Mexico Coastal Wetlands and Fisheries: Recommendations for the Mississippi Delta Region*, (unpublished report, 1993).
7. San Francisco Estuary Project, *Who Manages the Bay and Delta?*, 1991, p. 1.
8. *Id.*
9. D. Ludwig, et al, "Uncertainty, Resource Exploitation, and Conservation: Lessons from History, " *SCIENCE*, Vol. 260, No. 5104, pp. 17,36.

ENV.3 IMPLEMENT HEALTH, SAFETY AND ENVIRONMENTAL LAWS

BACKGROUND

Since the mid 1970s the U.S. has enacted roughly twenty laws or major amendments that cumulatively promised to protect the public against man-made threats to health and the environment as well as against natural hazards. This second great wave of public health legislation in American history multiplied the volume, diversity, and technical difficulty of enforcing the pollution, food and product safety, health, and workplace safety laws. For example, the dozen easily measured pollutants EPA was created to manage became thousands of Latin-named, often invisible risks. The number of regulatees also ballooned.

To get a better feel for what these changes have meant for those responsible for field implementation, consider what happened to the workload facing those trying to ensure the nation's waters are safe. As soon as the Clean Water Act of 1972 was amended to require safeguards against man-made as well as natural pollutants, Clean Water field staffers had to rewrite a quarter (10,000) of their existing permits and somehow handle another 40,000 dischargers not previously covered. The water staff must notify all these firms of the new requirements, educate them, negotiate compliance terms and schedules and provide follow up monitoring and enforcement. Moreover, the typical case now involves many more, harder to measure, often harder to control, complex pollutants. More recent legislation has further multiplied the workload: EPA is now struggling to control hundreds of thousands of "non-point" sources such as pavements and farms, and it has also been made responsible for tens of thousands of (often leaking) underground storage tanks.

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While existing programs like clean water were thus being stretched all across government, the Congress also required the executive branch to take on an array of entirely new programs ranging from the Toxic Substances Control Act (TSCA) through the Hazardous Materials Transportation Act to the "Superfund". Each brought with it further additions to the departments' workloads.

As the gap between workload and resources widened and, for much of the 1980s, as the will to ensure compliance declined, voluntary compliance eroded and in some areas collapsed. By 1983 GAO was reporting that 82 percent of water dischargers were in violation of their permits, many grossly and continuously.¹ GAO also found that 78 percent of the hazardous waste sites located in two states with especially tight regulation that had been required to monitor for groundwater pollution were not complying.² Once voluntary compliance is lost, it is very hard to regain.

When voluntary compliance falls from 98 to 96 percent, the field staff's workload roughly triples: Twice as many people are out of compliance, and many of the others begin to drag their feet. The damage done to voluntary compliance over the 1980s has increased the departments' (and the states') burden more than all the new legislation.

In the 1970s almost everyone complied voluntarily with most of these laws. Of 14,000 registered sources of air pollution in Connecticut during five years in the middle of the decade, for example, only 300 required administrative orders. And, of these, only 20-30 became enforcement problems.³ Regulation cannot succeed without this sort of voluntary compliance.

There is only one other area where regulation must cover almost all of society: tax, securities, and financial regulation. It has worked effectively for fifty years -- without

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generating the chronic pattern of conflict and backlash that has been so harmful to health, safety, and environmental management. Its success is certainly not because it is less intrusive or imposes smaller costs.

Health, safety, and environmental regulation needs badly to learn from its more successful financial cousin, and it has begun to do so. Probably the most important single lesson is the value of creating a profession working at the most difficult interfaces between government and those subject to regulation.

The use of independent environmental accountants, in many ways analogous to CPAs, has been gaining ground rapidly over the last fifteen years. For example, in March of 1993 the European Community passed an Eco-Audit Regulation that encourages the broad use of independent accountants, including to report on firms' integration of environmental considerations into product planning. In June of 1993 the Chemical Manufacturers Association voted to require regular independent third party verification of compliance with its "Responsible Care" standards of safe operations as a condition of continued membership. Some states require independent accountants to certify that properties on transfer are free of hazardous waste, asbestos problems, or groundwater contamination. So increasingly do banks contemplating involvement in property transactions. Pennsylvania uses the approach to check homes for radon problems. Large industrial firms like Union Oil have developed sophisticated software to help them audit their facilities.

As a result, this is a maturing profession with ample technical skill and capacity in the private sector to respond.⁴

NEED FOR CHANGE

These developments have far outstripped the capacity of government.

The attempt of the responsible agencies (ranging from OSHA and EPA to the food inspection services of FDA and Agriculture) to continue doing all the work required to ensure compliance themselves has led to declining credibility, voluntary compliance, and staff morale. It has also embroiled government in direct lose-lose conflict with more and more of the public. The resulting backlash has damaged these programs seriously and replaced consensus with uncertainty.

Although the government can always rush some resources to the visible crisis of the moment, it is fantasy to believe it can protect the public as the law promises with the current resources and approach. The average workplace can expect an inspection only once in 84 years. It would take a decade to pay one visit to each of the most hazardous workplaces. Only two percent of food imports are inspected, and forty percent of that two percent does not meet standards. As new trade agreements increase food imports, this inspection issue for FDA could grow in seriousness. Although OMB-reviewed workload measures showed EPA's workload doubling in the early 1980s and subsequently enacted laws have further added to the burden, EPA is operating with fewer real resources than those it had in 1980. In the early 1980s business investment in pollution abatement declined 38 percent, and suits by private citizen groups won more in penalties against polluters than government.

The courts, using tougher liability rules, limited the decline in voluntary compliance; but active case-specific enforcement is still necessary. Private parties and governments (especially at the state level) are of necessity increasingly relying on independent accountants.

RECOMMENDATIONS

Accelerating the use of such private accountants is the chief opportunity to escape the current conflict-producing incapacity to get the job done. Especially for areas of particularly high risk and in cases of repeat violation, the government could require firms to hire certified independent environmental (or workplace, food safety, etc.) accountants, who would be held legally liable to the public and stockholders much as CPAs are. Their job would be to evaluate and certify regularly that firms are (a) complying with applicable standards (e.g., air emissions or workplace radiation levels) and (b) operating (e.g., handling hazardous materials) in a generally accepted safe manner.

By focusing this tool on especially high risk and/or scofflaw cases, the responsible departments can make the incremental cost to business de minimus. (It can be dropped after sustained compliance is demonstrated, and most businesses already employ such accountants.) This very small investment should have broad and substantial impacts. When government can deal effectively and fairly with the few serious violators, voluntary compliance will improve dramatically: Firms can then comply without feeling like chumps for allowing competitors an advantage. It will also lower government costs and improve morale significantly since commonly very disproportionate effort is required to deal with one or two per cent of all firms.

Very important, using accountants will reduce the conflict that is now so enormously costly both to the public and to business. Litigation drains everyone. Worse, the very high level of conflict the current attempt by government directly to regulate so much of the economy entails has pushed the country's health and environmental programs onto the defensive for most of the last two decades. Substituting independent accountants creates a cushion: They have every interest in preventing the two sides they must please from fighting.

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Improve Implementation of Environmental Management and Oversight

Encouraging the emergence of this group of professionals should also help build a stable and strongly committed middle for fields usually characterized by polarization and broad but not deeply committed support.

Certified, privately paid but publicly liable, independent accountants are an important tool the departments could use in carefully targeted ways to escape the heritage of declining compliance and chronic conflict that afflicts so many of their programs. A sampling of the diverse possibilities follows:

1. OSHA could deputize and train worker-chosen representatives as accountants, creating long-needed on-site presence at especially troubled facilities.
2. FDA could require repeat violation food importers to employ independent accountants to test and certify that their produce is safe.
3. Accountants could be employed at troubled Superfund sites which require regular monitoring before and during remediations. Such accountants could help communities participate intelligently in the process.
4. EPA could help the state and local governments that do 80 per cent of the field work for the environment to learn how to use this approach.
5. The approach can also be used inside government. For example, if the Department of Energy were considering funding an unfamiliar energy-saving investment in another agency, it could ask the beneficiary agency to provide independent certification of the efficacy of the investment.

As these examples suggest, this approach can be used very widely but must be carefully adapted to each case by the responsible department.

The key is to restore voluntary compliance by using independent auditors to put the very few scofflaws under a spotlight without imposing a burden on the other 98 percent.

- 1. The President should ask the heads of major health, safety and environmental regulatory agencies to analyze the current levels of voluntary compliance; to evaluate the most promising means of building voluntary compliance and reducing conflict including the use of independent accountants; and to submit a proposed plan of action within six months.**
- 2. The Regulating Coordinating Group should take as one of its early priorities convening and supporting a cooperative effort by its member agencies to reinvent their commonly troubled field implementation efforts. It should, with OMB, identify legal or administrative barriers to such approaches, including reliance on independent accountants. OMB should take the lead to ensure that necessary changes are made, either in general or by exception to allow particular experiments to proceed.**
- 3. Agency heads and their Assistant Secretaries should seek out major program priorities whose implementation in the field is in trouble and evaluate how independent accountants might be adapted to help solve each such problem. The Regulatory Council's staff should provide technical assistance and build consensus regarding possible cross-cutting issues such as certifying accountants. The examples cited above are all probably important and feasible early opportunities.**

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4. **Independent accountants should be used in sparing, sharply focused ways -- especially to lessen the burden of dealing with the recalcitrant few and to help restore voluntary compliance while minimizing private costs.**

FISCAL IMPACT

The Office of Management and Budget is currently preparing the fiscal impact analysis for this paper.

ENDNOTES

1. U.S. General Accounting Office, "Wastewater Dischargers are not Complying with EPA Pollution Control Permits," GAO/RCED-84-53, December 2, 1983.
2. U.S. General Accounting Office, "Interim Report on Inspection, Enforcement, and Permitting Activities at Hazardous Waste Facilities." GAO/RCED 83-241, September 21, 1983.
3. William Drayton, Economic Law Enforcement, 4 Harvard Environmental Law Review, 1980.
4. The field has grown to the point that there are now competing professional associations.

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Part 2

IMPROVE ENVIRONMENTAL PERFORMANCE AT FEDERAL BUILDINGS AND FACILITIES

[We are preparing an introduction to discuss existing and pending executive orders relating to the purchase of goods with recycled content, alternative fueled vehicles, Energy Star computers, and pollution prevention.

The introduction will also contain a discussion of the following two papers and how they fit into the framework that President Clinton laid out in his Earth Day speech, April 21, 1993.]

ENV.4: INCREASE ENERGY AND WATER EFFICIENCY

BACKGROUND

The Federal Government is the nation's largest energy consumer, with an energy bill of \$3.75 billion in fiscal year 1991 in its own buildings.¹ The General Services Administration (GSA) estimates that federal energy costs to operate office equipment alone is \$115 to \$150 million a year.² On Earth Day, President Clinton signed an Executive Order requiring the purchase of energy efficient computers.³ Other commercially available, cost effective measures including high efficiency lighting, heating, ventilation and air conditioning systems could likely conserve 25 percent of the energy used in federal buildings without loss of comfort or productivity.⁴

Additionally, annual water consumption rates for the Federal Government are estimated at 23 trillion gallons--a figure that does not even include such major federal water users as the GSA; the Department of Defense (DOD), Housing and Urban Development; Veterans Affairs; the Tennessee Valley Authority; and the U.S. Postal Service.⁵ In 1989, the Army's domestic water and sewer costs were \$128 million.⁶

In the U.S., indoor residential showerheads and faucets use approximately 33 percent of all water and 60 percent of the hot water.⁷ The Federal Government owns and leases around 500,000 buildings, 422,000 of which are housing units.⁸ In the past two years, GSA has installed approximately 4,675 water efficiency upgrades, saving approximately 4.1 million gallons of water.⁹ Indoor water use is not the only place where water conservation measures are necessary. A large percentage of the water used in federal facility garden and landscape irrigation is lost to evaporation, runoff, and spillover to paved areas.¹⁰

Much legislation has been aimed at decreasing the magnitude of federal energy consumption.¹¹ Some of this legislation has set goals for reductions; some has provided funding and cost-sharing mechanisms to help realize these goals. None, however, sets sanctions to take against agencies that do not meet their consumption reduction goals. Similarly, past Executive Orders on energy efficiency have set reduction goals, but there was no incentive to pursue efficiency measures and no penalty for not pursuing them.¹²

Previously, water conservation has played little if any role in federal building conservation programs. The Energy Policy Act of 1992 (EPACT)¹³ sets energy and water conservation goals in an effort to improve federal efficiency. EPACT requires each agency to install energy efficiency and water conservation measures with a payback of 10 years or less and to reduce energy use in federal buildings by 20 percent by the year 2000. The Department of Energy (DOE) estimates that each week the Federal Government does not meet the 20 percent goal costs \$20 million.¹⁴

Since 1986, the Federal Government has had the authority to participate in Shared Energy Savings contracts, which allowed agencies to share energy savings with contractors who financed and implemented energy efficiency upgrades. Despite the savings sharing incentive, only a 15 of shared savings contracts have been negotiated. Barriers which have inhibited the use of energy savings sharing projects include, the slow and complex nature of federal procurement, which increased the cost and delayed the savings; the lack of high level encouragement to pursue energy efficiency; a shortage of staff to identify and implement projects;¹⁵ and the difficulties of calculating savings used in the shared savings process. This means there is currently a lack of engineers, contracting officers and project managers competent to handle energy efficiency projects.

Since 1975, federal energy efficiency efforts have been coordinated by the Federal Energy Management Program of the Department of Energy.¹⁶ EPACT, although mainly an energy statute, includes some water efficiency provisions. The Federal Energy Management Program was given responsibility for coordination of the water efforts as well. Key provisions in the EPACT are highlighted below.

- Direct Funding for Efficiency Measures. The EPACT authorized a fund in the Department of Energy (DOE) to provide grants to help agencies meet the statutory requirements. The fund was authorized at \$10 million for fiscal year 1994 and \$50 million for fiscal year 1995. The President's fiscal year 1994 budget request \$6 million for the fund and calls for overall expenditures of \$2.2 billion for implementation of energy efficiency retrofits between fiscal years 1994 and 1998. Use of federal funds through direct contracting is the most financially beneficial method to implement energy efficiency and water conservation projects for the government.
- Energy Savings Performance Contracts. EPACT allows agencies to enter into Energy Savings Performance (ESP) contracts which require the contractor to pay the government if the project does not achieve estimated energy savings. It is anticipated that the ESP contracts will be easier to negotiate and implement than the older Shared Energy Savings contracts.
- Savings Retention.
 - Civilian Agencies. The EPACT allows civilian agencies to retain 50 percent of the energy and water cost savings for additional energy efficiency measures and employee incentive programs.

- Department of Defense. In 1990, the Department of Defense (DOD) was authorized to keep two-thirds of DOD's share of the energy cost savings for future efficiency projects and for the base's welfare and recreation fund.¹⁷ This authority is currently limited to gas and electric utilities. It does not include cooperation with water companies to encourage the reduction of demand for water.¹⁸ Since DOD was permitted to retain a larger portion of its savings under the earlier legislation, it was excluded from the EPACT.
- Bonus Program. EPACT creates a bonus program to reward outstanding federal facility energy managers. The bonus program was authorized for \$250,000 in each fiscal year-- 1993, 1994, and 1995.

NEED FOR CHANGE

New mechanisms or approaches must be implemented to jump start federal initiatives, create real action, and achieve success. While EPACT does not contain comprehensive water efficiency language, it will provide a significant opportunity to reduce both energy and water waste if implemented to the fullest extent possible. The awards for federal facility managers in EPACT will provide incentive if funded, but they are not enough to initiate the widespread actions necessary in the energy and water efficiency area to meet the statutory goals or reap all of the potential savings available to the federal government. Other bottom-up approaches are needed to ensure efficiency projects, such as having agencies revise position descriptions and performance evaluations for facility managers to include conservation efforts as an official duty and evaluation criterion. Top-down leadership is also needed. The Executive Order requiring the purchase of Energy Star

computers fosters excellence in energy efficiency in new ways, but many additional opportunities exist in the areas of energy and water conservation which must be utilized.

Many water utilities are planning price increases over the next several years, which will influence the cost of water at many federal facilities. For example, Southern California's Metropolitan Water District will increase its water rates an average of 22 percent a year over the next two years and then increase between 8 and 12 percent per year until 2000.¹⁹ These price increases are not limited to areas known for water shortages. Since 1985, the Massachusetts Water Resources Authority, which supplies water and wastewater treatment services to communities in the Boston area, has increased its water and sewer charges 428 percent and expects retail water and sewer bills to triple by 2000.²⁰ There are hundreds of federal buildings in these two water districts which will experience these huge price increases. These are not the only places where water and sewer rates will climb. In order to decrease demand for water and energy at federal buildings and lessen the financial impact of spiralling prices, the Federal Government will have to develop and promote new and innovative ways of achieving maximum energy and water use efficiency.

Water conservation is essential to economic health in some parts of the nation. Estimates of future water demand southern California's Metropolitan Water District (MWD) show that by 2010, the average annual water demand in the MWD's service area is expected to exceed the water supply creating a water shortfall of 30 percent.²¹ In 1990, the California Urban Water Agencies sponsored research which indicates that a one-year 30 percent industrial water shortage in California would translate into an estimated \$20 billion in losses and 160,000 lay-offs as attributable to reduced production.²² The Federal Government has many facilities in southern California and other areas experiencing or anticipating water shortages. To lead by example and help local governments solve

pressing problems like this, the Federal Government needs to fully participate in conservation efforts.

In addition, using less water will not only shrink the Federal Government's daily operating expenses, but it can help postpone or eliminate the need for building new or expanded water or wastewater treatment facilities, mitigate detrimental environmental effects on natural resources, and reduce energy usage. The California Energy Commission estimates that 56 percent of the state's municipal electricity use is applied to the pumping of water and the removal and treatment of waste water.²³

EPACT requires each agency to install energy and water conservation measures and reduce energy and water use in federal buildings. Although the act sets specific goals for energy and water reduction, it does not contain sanctions to impose if the goal is not met. The OTA estimated in 1991 that it would take \$2 to \$3 billion to retrofit all government buildings.²⁴ EPACT does not provide agencies with the necessary funds for achieving their resource use goals. The remaining funds necessary to achieve the efficiency goals of the EPACT will need to come from the private sector.

Energy Savings Performance Contracts

Despite improvements the EPACT made in the energy efficiency contracting process, the new ESP contracts still contain many of the complexities of the old Shared Energy Savings contracts.²⁵ A new streamlined contracting method is currently being tested in Southern California where two federal agencies are working with state and local utilities to integrate water and energy efficiency upgrades through energy utilities' demand side management programs. All of the water and energy efficiency upgrades will be accomplished through modification to existing energy utility contracts with the Federal Government. This method

avoids time delay, reduces federal administrative overhead from not having to contract for efficiency audits and upgrades, and provides the opportunity to participate in more of the water and energy utility incentive/rebate programs. The incentive programs provide rebates to customers for installing efficiency measures. This new streamlined method requires the utilities to finance all of the "parts and labor" costs for the efficiency upgrades. The Federal Government will repay the utility through an agreed upon conservation service charge for a set period of time. Utilities guarantee that the Federal Government's bill will never exceed the agreed upon rate, which will generally be 20 to 30 percent lower than its current average bill.

Savings Retention and Bonus Programs

The EPACT allows civilian agencies to retain 50 percent of the energy and water cost savings for additional energy efficiency measures and employee incentive programs. Since DOD was permitted to retain a larger portion of its savings under the earlier legislation, it was excluded from the EPACT. DOD interprets the exclusion to mean that it may not retain savings from water projects, but still may retain the two-thirds allowed for energy efficiency projects under its previous legislation.

In addition to its inability to retain water savings, DOD has other barriers to the widespread implementation of conservation projects. The DOD legislation also permits military installations to accept any financial incentive offered by a utility company. As with individual customers, utilities often offer commercial customers rebates for installing efficiency measures. If a facility manager takes advantage of a utility rebate by paying to install efficient lighting fixtures or low flow faucets, the cost of the efficiency measure is charged to a contract, but the rebate goes to another fund and cannot be used to offset the increased construction costs.

Under current DOD policy, any utility rebate must be credited to the same account and appropriation where the project originated. However, this does not always return rebates to an account that can fund future projects or reduce future utility bills on the installation which in turn may generate more rebates. Some civilian agencies experience the same problem. An additional problem is that when these rebates are credited to the originating account, the funds are subject to the expiration date of the original appropriation. If a rebate is received five days before the end of the fiscal year, if it is not used in the five remaining days of the fiscal year--it cannot be used in the new fiscal year. This process can lead to poorly planned spending and the loss of funds to generate yet more savings.

The DOE bonus fund was not appropriated any funds in fiscal year 1993. The availability of internal agency bonus programs varies; however, most if not all, provide awards for only energy projects. The intent of the bonus program and savings retention provisions is to encourage a change in "corporate culture" regarding conservation; however, with the immediate need for deficit reduction, some believe that the retention of savings is unlikely to survive annual appropriations. The slashing of the relatively small bonus program budgets would eliminate the only real incentive for managers to save the government and the taxpayers significant amounts of money and meet the statutory goals. In addition, the exclusion of water projects will perpetuate the belief that water conservation measures are secondary and unrelated to energy efficiency.

Success Stories

Despite the barriers to energy efficiency and water conservation measures detailed above, there are examples in the federal government which demonstrate savings success. For example, the U.S. Army Corps of Engineers selected the Aliamanu Military Reservation at Honolulu, Hawaii for a shared energy savings contract to upgrade 2600 housing units and

support facilities. The contract was advertised in 1989 and after two years of bureaucratic wrangling and negotiations, a contract was awarded. The contractor will receive a share of the energy savings and maintenance savings generated for fifteen years. The government will receive approximately \$7,077,969 over the 20-year contract period.²⁶ The implementation of the proposed energy and water measures are expected to result in an annual reduction of over 24 million kilowatt hours and over 8.5 million gallons of water. This results in an equivalent savings of 42,430 barrels of fuel oil per year and a reduction in annual pollution emissions of 23,655 tons of CO₂, 107 tons of SO₂, and 64 tons NO_x.²⁷

Using less energy is only one part of the culture change the Federal Government needs to undergo. Another important element is to switch to less environmentally damaging forms of energy. Coal fired power plants produce acid rain. Petroleum based power plants produce greenhouse gases and make our nation vulnerable to dependency on foreign oil. Nuclear power plants generate hazardous nuclear waste. Hydropower dams create water pollution and destroy natural stream flows, degrading the habitat of fish and aquatic plant life.

Some utilities are experimenting with solar retrofits in customer facilities to manage their power demand. Solar generated power reduces long-term energy costs, reduces reliance on foreign energy sources, such as oil, and creates literally tons less pollution. For example, a water heater powered through solar technology can avoid as much as one ton of CO₂ emissions which would have been produced by an electric water heater powered through petroleum based energy.²⁸

The Federal Government is demonstrating the energy and cost-efficiency of solar energy systems. For example, the Department of the Interior funded a model solar project at the Cholla Recreation Site in Tonto National Forest. The solar system--which costs about a

third as much as it would have to extend the commercial grid to the site does not entail a monthly service charge-- provides energy to pump water from the facility's 165 foot well; power the water disinfection process; and provide the lighting, forced air ventilation and the power requirements for the toilet, shower and other buildings.²⁹ In addition, a solar process was adapted to produce hot water for the showers at no cost, either in monetary terms or in the use of non-renewable resources and related environmental degradation. Such models should be replicated wherever cost-effective. They would be particularly well-applied at military facilities, where recent base closings and command consolidations have led to increased energy demand--a demand that should be met with less expensive and less polluting renewable energy sources such as wind energy, natural gas, and cogeneration.

RECOMMENDATIONS

1. Issue an Executive Order on energy and water efficiency issues for federal facilities.

The President should issue an Executive Order addressing the need for energy and water conservation and efficiency measures to be taken in all federal facilities where cost effective. The Executive Order should:

- stress the importance of relationship between water conservation and energy efficiency;
- increase the goal to 30 percent energy savings per gross square foot by 2005;
- set the goal for water conservation at 30 percent reduction by 2005; and
- have agencies set measurable annual energy and water reduction goals to achieve the goals of the Executive Order and submit them with the agency's

annual report to the Department of Energy and the Office of Management and Budget.

The Executive Order should also emphasize the Federal Government's preference for less polluting forms of energy and:

- state that the Federal Government's policy shall be the aggressive use of solar and renewable energy in the federal sector and set a goal that 10 percent of federally consumed energy should be generated from cogeneration, solar, wind and other renewables by 2010; and
- where cost effective, the government shall install solar and wind energy technologies in new federal facility construction projects and in future renovation projects.

The Executive Order should include provisions that the agencies that own or operate federally occupied buildings use the innovative methods below to implement the Executive Order:

- initiate 10 conservation projects in five years. At least five of these projects should include water conservation measures and one with renewable energy;
- actively pursue integrated energy and/or water efficiency upgrades through demand side management programs;
- participate in energy and water utility incentive and rebate programs where available and cost effective;
- establish a reinvention laboratory to showcase energy efficiency, water conservation and renewable energy technologies, as well as innovative contracting techniques at the agency's headquarters facility;

- establish an Energy Efficiency Project Team to include a procurement specialist, an energy manager, and other relevant members, and empowered to undertake only energy efficiency and energy savings performance contracting projects;
- consider energy and water conservation in the performance evaluation of facilities managers; and
- review employee incentive programs to ensure energy and water conservation/efficiency measures are properly rewarded and should provide incentives for outstanding energy managers.

To assist federal energy managers in implementing energy efficiency and water conservation projects the Executive Order should require:

- DOE's Federal Energy Management Program to develop and/or issue to all federal agencies within 120 days:
 - model solicitations to contract for water and energy upgrades;
 - model Energy Savings Performance contracts with a comprehensive list of efficiency measures;
 - a national list of qualified water and energy efficiency contractors;
 - a list of energy and water utilities with demand side management programs; and
 - tracking system for all energy savings efforts going on in different federal sites, so agencies can learn from those experiences.

Upgrades of heating, ventilation, air conditioning, and electrical systems should enhance federal employee productivity through improved comfort, indoor air quality,

and lighting. Reduction in energy consumption will contribute to national security by reducing the nation's dependence on foreign energy sources. Improving the energy and water efficiency of federal facilities will make the government work better and cost less. Federal efficiency-seeking efforts provide new markets and incentives for innovative technologies and will be likely to create jobs in manufacturing of efficiency technologies. Upgrades or replacement of air conditioning systems which contain chlorofluorocarbons (CFCs), an ozone depleting chemical, with CFC-free systems will help reduce the rate of ozone depletion.

2. Allow the Department of Defense to retain savings generated through water efficiency projects.

The President should propose legislation to amend 10 U.S.C. 2865. The proposed legislative change will provide added incentive to DOD to implement water conservation measures to meet the statutory reduction goals of the Energy Policy Act.

3. Permit rebates received from utility companies to remain available until obligated and allow rebates to be used to fund additional energy efficiency and water conservation improvement projects or to reduce the facility's future utility bill.

The proposed change will recognize that the rebates originated from non-federal sources. The change will allow these funds to remain available until obligated. Furthermore, these rebates will be available to fund energy improvement or water conservation projects regardless of size, or alternatively to be used to reduce future utility bills.

FISCAL IMPACT

The Office of Management and Budget is currently preparing the fiscal impact analysis for this paper.

CROSS-REFERENCE TO OTHER NPR ISSUES

ENDNOTES

1. The total energy bill for fiscal year 1991 was \$11.3 billion. Department of Energy, *Annual Report to Congress on Federal Government Energy Management and Conservation Programs, Fiscal Year 1991*, October 22, 1992, p. 10. The Federal Government pays an additional \$4 billion in subsidized energy expenses for low income housing. U.S. Congress, Office of Technology Assessment, *Energy Efficiency in the Federal Government By Good Example?*, OTA-E-492 (Washington, DC: U.S. Government Printing Office, May 1991), p. 3.
2. Trenkle, Anthony, "Government Customer Perspectives," Proceedings: Energy-Efficient Office Technologies The Outlook and Market, Electric Power Research Institute, December 1992, p. 3-6.
3. Executive Order 12845, April 21, 1993.
4. U.S. Congress, Office of Technology Assessment, *Government By Good Example?*, May 1991, p. 3.
5. Environmental and Energy Studies Institute, *Water Efficiency in Federal Facilities and Programs*, June 1993 (Draft), p. 8.
6. *Id.*
- 7.

8. U.S. Congress, Office of Technology Assessment, *Government by Good Example?*, May 1991, p.4.
9. Telephone interview with Debra Yap, Office of Real Property and Management and Safety, General Services Administration, July 29, 1993.
10. See detailed discussion of water efficient landscaping in ENV.5, page XX.
11. Energy Policy and Conservation Act of 1975, Pub. Law 94-163; Energy Conservation and Production Act of 1976, Pub. Law 94-385; Department of Energy Organization Act of 1977, Pub. Law 95-91; National Energy Conservation Policy Act of 1978, Pub. Law 95-619; Comprehensive Omnibus Budget Reconciliation Act of 1985, Pub. Law 99-272; Federal Energy Management Improvement Act of 1988, Pub. Law 100-615; National Defense Authorization Act of 1989, Pub. Law 100-456; National Defense Authorization Act of 1990, Pub. Law 101-189; and National Defense Authorization Act of 1991, Pub. Law 101-501; Energy Policy Act of 1992, Pub. Law 102-486.
12. Executive Order 11912 (1976); Executive Order 12083 (1978); Executive Order 12374 (1982); and Executive Order 12759 (1991).
13. Pub. Law 102-486.
14. Based on 25 percent savings of \$4 billion spent on energy in federal buildings.
15. U.S. Congress, Office of Technology Assessment, *Government By Good Example?*, May 1991, p. 3.
16. The Department of Energy was established in 1977. Prior to that time the Federal Energy Management Program was located in the DOE's predecessor organization the Federal Energy Administration.
17. National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510.
18. 10 U.S.C. 2865
19. Metropolitan Water District of Southern California, *Proposed Executive Summary Annual Budget, 1993-1994 Fiscal Year*, April 2, 1993, p. D-18.
20. Telephone interview with Barbara LaHage, Massachusetts Water Resources Authority, July 20, 1993.

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21. Dziegielewski, B. and Baumann, D., "The Benefits of Managing Urban Water Demands," ENVIRONMENT, Vol. 34, No. 9, p. 7.
22. The loss in revenue is tied to 1990 value of shipments. California Urban Water Agencies, "Cost of Industrial Water Shortages," November 1991, pp. 7-10 - 7-19.
23. California Energy Commission.
24. U.S. Congress, Office of Technology Assessment, *Government by Good Example?*, May 1991, p. 7.
25. See also, discussion in NPR Support. 21.
26. DOE, *Annual Report to Congress*, p. 18.
27. Personal correspondence with David R. Horne, David Horne and Associates, July 12, 1993.
28. Mark Ginsberg, Arizona Energy Officer, Testimony for the National Energy Strategy.
29. The cost of extending the commercial grid power to the site was \$750,000 and a monthly service charge of \$1,000, while the cost of installing a solar system was only \$240,000.

ENV.5 INCREASE ENVIRONMENTALLY AND ECONOMICALLY BENEFICIAL LANDSCAPING

BACKGROUND

The federal government makes landscaping and planting decisions for a wide variety of federal facilities, including public housing projects, park facilities, highway projects, and veterans' cemeteries.¹ These decisions significantly affect the health of the natural systems on which we depend.

Environmentally beneficial landscaping considers the native ecosystem in which the landscaping is to be done and strives to protect it. It also attempts to minimize the effects that the landscaping will have on the surrounding area. Environmentally beneficial landscaping practices include giving preference to regionally native plant and tree species for plantings; emphasizing water-conserving techniques (e.g., efficient irrigation systems, drought-resistant plants); and reducing use of chemical fertilizers, pesticides, and herbicides.

Environmentally beneficial landscaping policies and activities are being implemented at every level of government. For example, the Federal Government requires in the 1987 Wildflower Act that 25 cents out of every \$100 of landscape funding be used to plant wildflowers in federally financed highway projects.² This law, however, does not require the use of native wildflower species. The Department of Veterans Affairs stresses the use of native plants in its National Cemetery System to reduce mowing and water costs.³ And the Fish and Wildlife Service is reintroducing native species to 8600 acres in the Walnut Creek Project in Iowa.⁴

The Federal Government also has programs that combine educational and conservation opportunities. For example, the Department of Agriculture's Soil Conservation Service helps schools and communities develop outdoor learning centers.⁵ These centers provide opportunities to teach mandatory curriculum (such as science, math or English) using environmental and conservation examples. The centers can concurrently accomplish specific conservation objectives.

Several states and cities are also beginning to recognize the value of planting native species; this is reflected in their laws and ordinances. For example, Minnesota recently passed a law to study the feasibility of requiring only native plants on public lands. In California, a state assembly bill mandated municipalities to institute local ordinances that require citizens to use water conservation practices in their landscaping decisions. The city of Austin, Texas has about five ordinances that require city planners and developers to consider the environmental impacts of their actions. These ordinances include requirements to use native species in plantings, protect trees on development sites, use IPM practices, incorporate water conservation techniques in plans, and preserve fragile ecosystems during development projects.

NEED FOR CHANGE

The Federal Government should consider the issues of environmentally beneficial landscaping in order to decrease its impact on the environment, promote public awareness of the impacts of their landscaping decisions, and serve as an example of how landscaping can incorporate these practices and still be beautiful and functional.

Preserve native ecosystems

Native plants add value to the complex ecosystems of which they are a part. They can also reduce landscaping costs and pollution. In many parts of the country, however, they are not used in landscaping: sometimes because exotic species have edged them out, sometimes because they are not deemed attractive, and sometimes because they are simply not commercially available.

The use of native plant species can provide appropriate habitat for wildlife. The right selection of plants creates food, shelter, and nesting areas. Maintenance, chemical fertilizers, and irrigated water expenditures can be reduced because native plants are better suited to the climate, and therefore do not need additional water or chemical fertilizers to thrive.

Labor costs are reduced when native grasses or native wildflowers are planted that do not require frequent mowing, irrigation or fertilization to maintain. Reduced mowing also saves costs for tractor repair and fuel. Labor costs are also reduced because native plants have natural predators that assist in preventing them from growing out of control, therefore requiring less time to maintain them in the desired location.

The introduction of exotic plants can have costly environmental and economic consequences. Throughout the country, there are approximately 14 million acres of federal lands that are infested with exotic weed species.⁶ For example, in California's Redwood National Forest biologists have identified 150 plant species as hazardous to the natural ecosystem. Their budget, however, provides only enough funding to do basic research on management strategies for 10 of these exotic species.⁷

Many native landscaping plants are not commercially available. Few nurseries offer native trees, shrubs, grasses, and wildflowers in the size and quantity needed for federal

landscaping. Government specifications that require the use of native species do not always allow enough time for nurseries to develop sufficient stock. Therefore, the nurseries that are potentially interested in developing a more diverse inventory of native plant species do not do so because they cannot get them commercially viable soon enough to satisfy the specifications. Therefore, they do not even bid on the published proposals.

Reduce use of chemicals

The use of chemicals to maintain landscapes creates environmental, health, and safety problems. Reduced use of chemicals lowers the possibility of contamination run-off into rivers and ground water.

The use of integrated pest management (IPM) can reduce agency expenditures for chemical fertilizers and pesticides. IPM is a method of pest control that uses biological methods to control damaging pests. For example, sterile insects can be introduced in an area to mate with the existing population thereby reducing their ability to reproduce. This method of pest control also includes surveying infested areas and planning pesticide applications to coincide with the most vulnerable stage of the target insect population's development. This avoids blanket preventative spraying. Purchasing chemicals only on an as-needed basis can achieve cost savings not only by purchasing less, but also from avoided disposal costs for unused chemicals.

Implementation of effective IPM programs can reduce chemicals and costs significantly. The National Arboretum, for example, reduced its expenditures for chemical pesticides by 75 percent when it switched to IPM.⁸ Many states have begun to write IPM plans; however, they are difficult to create. The use of IPM would be increased if the Federal Government were to develop a model IPM plan for use by state planners.

Conserve Water

Water used to irrigate lawns and landscapes can account for significant proportions of total water use during peak seasons. The selection of native plants that are adapted to the particular climate can reduce water demand by requiring less irrigated water. The use of less water protects the fresh water supply for both the natural environmental systems and the human population. Accordingly, federal parks, golf courses, and cemeteries should select grass varieties carefully, install efficient irrigation technologies, and schedule irrigation times according to turf needs and weather conditions. All landscapes, especially large turf areas, should have their water needs audited to ensure that plants are receiving the appropriate level of water. Overwatering results in additional water costs, as well as unnecessary use of energy.⁹

Improve conservation education

Current federal environmental and conservation educational programs do not fully exploit the opportunity for public-private partnerships in education and conservation. Soil Conservation Service Outdoor Learning Center program is underfunded and understaffed: currently, there is one full-time person responsible for program implementation.

RECOMMENDATIONS

1. **Require the use of environmentally beneficial landscaping for federal lands and facilities, and federally-funded transportation projects.**

The President should issue an Executive Order (EO) requiring agencies to use environmentally beneficial landscaping wherever appropriate, cost effective, and practical. The order should stress the links between landscaping decisions, protection and enhancement of the environment, and cost-saving opportunities. It should illustrate the principle of leading by example: the EO should announce that environmentally beneficial landscaping principles will be practiced at the White House and the Vice President's residence at the Naval Observatory.

2. Increase the use of native plant species in all federal landscaping activities.

The Executive Order cited above should encourage the use of native trees, shrubs, grasses, and wildflowers in landscaping, wherever cost effective and to the maximum extent practicable. Also, state's federally-funded highway projects should be required to use regional native wildflowers. The EO should require that the term native be defined to encourage the use of regionally native species by representatives of federal agencies involved in natural resource management and plant research and development. The definition, as it is used in developing agency specifications for the purchase of plants, should be flexible enough to allow commercial nurseries to cultivate appropriate native species in the quantity and level of maturity needed. The EO should direct the U.S. Department of Agriculture, through its Agricultural Research Service and/or the Soil Conservation Service to research the production and use of native species as landscape and conservation plants.

3. Reduce the quantity of chemicals applied to federal landscapes.

The Executive Order cited above should encourage agencies to reduce their use of chemical fertilizers, pesticides, and herbicides. It should direct agencies to increase their use of

organic material (preferably material composted on site) for fertilizers and use an integrated pest management approach to insect control. Chemical reductions realized through these actions can assist agencies in achieving compliance with the recently issued executive order on toxic substance use.¹⁰

4. Use water-efficient technologies in federal landscaping project.

The executive order cited above should encourage agencies to use water-efficient technologies to the maximum extent practicable. It should require the use of water audits, where appropriate, to establish exact needs and assist in planning irrigation systems and scheduling, especially for large turf areas. The EO should also require agencies to consider (1) planting locally native turf that may thrive without excessive water or fertilization; (2) the uses for the turf area, and plant grasses of varying water requirements based on use (e.g., planting soft, lush grass that requires more water only where it is highly visible or used frequently); and (3) installing water-efficient irrigation systems. Agencies should also be encouraged to participate in water utility demand-side management programs.¹¹

5. Provide educational and conservation opportunities to the public.

The executive order cited above should encourage agencies to sponsor and participate in activities that provide educational and conservation opportunities to the public. The outdoor classroom program at the Soil Conservation Service should take advantage of the opportunities for partnerships with other similar private and public sector programs. Agencies should also be encouraged to prepare interpretive exhibits and signs explaining their plantings and the special techniques used in landscaping to enhance the environment. Exhibits should explain the stages involved in preparing a native landscape.

6. Establish a government-wide Environmentally Sound Landscape Program.

This program -- to be developed by a panel of representatives from federal agencies with significant landscaping activities or expenditures -- will provide incentives to federal facility and landscape managers to consider the environmental implications of their landscaping plans. Specifically, the program should recognize the contributions and efforts of individual managers and present an annual award to agencies that made significant strides in implementing the executive order. All federal facilities should participate in this program, especially military residential units, federally subsidized public housing units, veteran hospitals and cemeteries, and federal prisons.

The panel will meet within 90 days of the EO, under the coordination of the White House Office on Environmental Policy (OEP). The panel should develop recommendations for the Environmentally Sound Landscape Program. The recommendations should be reported to the Office on Environmental Policy with 180 days of the meeting. These recommendations should address the development of guidelines to federal facility managers on how to increase the use of native species, reduce the use of chemical fertilizers and pesticides, and implement water conservation techniques. These guidelines should allow for climatic and geographic differences, but should provide a framework for agencies to consider as they plan their landscape requirements. The panel should also establish criteria for agency recognition.

FISCAL IMPACT

The Office of Management and Budget is currently preparing the fiscal impact analysis for this paper.

CROSS-REFERENCES TO OTHER NPR ISSUES

ENDNOTES

1. To provide an idea of the extent of federal landscaping efforts, note that the Federal Highway Administration spent over \$77.8 million on landscaping projects in 1992. Telephone interview with Dan Corbett, Budget Examiner, Office of Management and Budget, July 15, 1993. The Department of Veterans Affairs maintains 114 cemeteries throughout the country encompassing 10,000 acres. Telephone interview with Marty Rize, National Cemetery Division, Department of Veterans Affairs, July 14, 1993.
2. The Surface Transportation and Uniform Relocation Assistance Act of 1987.
3. Telephone interview with Marty Rize, National Cemetery System, Veteran's Administration, July 14, 1993.
4. Telephone interview with Bonnie Harper-Lore, Wildflower Program, Federal Highway Administration, Department Transportation, July 26, 1993.
5. Interview with Tom Leverman, Head, Educational Relations, Soil Conservation Service, USDA. July 19, 1993.
6. The *Federal Interdepartmental Weed Committee Report* (1993), estimated the extent of exotic species/weed infestations on federal lands as follows: Bureau of Land Management, 6 million acres; Forest Service, 4.9 million acres; Bureau of Indian Affairs, 1 million acres; Bureau of Reclamation, 1 million acres; National Park Service, .5 million acres; Fish and Wildlife Service, .5 million acres.
7. Telephone interview with Steve Harris, Vegetation Ecologist, Redwood National Forest, July 15, 1993.
8. Telephone interview with Dr. Garvey, National Arboretum July 13, 1993.
9. See ENV.1 for a discussion of the relationship between water and energy use.
10. The EO has not yet been issued, but is expected prior to the release of the NPR. The number will be provided as a citation in the final document.

Part 2

Improve Environmental Performance at Federal Buildings and Facilities

11. Please refer to ENV.4 Increase Energy and Water Efficiency for a discussion of utility demand-side management projects.

FISCAL IMPACT

The Office of Management and Budget is currently preparing the fiscal impact analysis for this paper.

**APPENDIX A: SUMMARY OF RECOMMENDATIONS BY TYPE OF
IMPLEMENTATION ACTION NEEDED**

Agency heads can do alone (1)

**President, Executive Office of the President, or Office of Management and Budget can
do (2)**

Requires legislative action (3)

Good idea, but will require additional work, or may be better suited for future action

APPENDIX B: METHODOLOGY

APPENDIX C: ACKNOWLEDGEMENTS

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Federal Procurement

Divider Title: _____

FEDERAL PROCUREMENT

ISSUE PAPERS

July 26, 1993

National Performance Review

Reinventing Customer Support Services Team

Summary

Introduction

Part 1: Move to Guiding Principles from Rigid Rules

- PROC01: Reframe acquisition policy
- PROC02: Build an innovative procurement workforce
- PROC03: Encourage more procurement innovation

Part 2: Get Bureaucracy Out of the Way

- PROC04: Increase the threshold and simplify small purchases
- PROC05: Repeal the certificate of competency provisions of the Small Business Act
- PROC06: Reform labor laws and transform the Labor Department into an efficient partner for meeting public policy goals
- PROC07: Amend protest rules
- PROC08: Enhance programs for small business and small disadvantaged business concerns
- PROC09: Reform information resources management (IRM) procurements

Part 3: Center Authority and Accountability with Line Managers

- PROC10: Expand use of commercial credit card
- PROC11: Ensure customer focus in procurement
- PROC12: Streamline procurement ethics laws

Part 4: Create Competitive Enterprises

- PROC13: Expand the customer base and supply sources for the Federal Government

Part 5: Foster Competitiveness and Commercial Practices

- PROC14: Foster reliance on the commercial marketplace
- PROC15: Expand electronic commerce
- PROC16: Encourage best value procurement
- PROC17: Authorize two-phase competitive source selection process
- PROC18: Authorize multiyear contracts
- PROC19: Conform certain statutory requirements of civilian agencies and Defense Agencies
- PROC20: Buy for the environment
- PROC21: Promote excellence in vendor performance

IMPLEMENTATION CATEGORIES

The following code is immediately after each recommendation. They summarize who needs to take action on the recommendation. Appendix A organizes all recommendations according to these codes.

- (1) Agency heads can do themselves
- (2) President, Executive Office of the President, of Office of Management and Budget can do
- (3) Requires legislative action
- (4) Good idea, but will require additional work, or may be better suited for future action

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ABBREVIATIONS

ADP	Automated Data Processing
ANSI	American National Standards Institute
ASC	Accredited Standards Committee
ASQC	American Society for Quality Control

BSCA	Board of Service Contract Appeals
CAAC	Civilian Agency Acquisition Council
CBD	Commerce Business Daily
CBO	Congressional Budget Office
CICA	Competition in Contracting Act
COC	Certificate of Competency
CSIS	Center for Strategic and International Studies
DARC	Defense Acquisition Regulation Council
DBA	Davis Bacon Act
DCAA	Defense Contract Audit Agency
DCMC	Defense Contract Management Command
DLA	Defense Logistics Agency
DOD	Department of Defense
DOJ	Department of Justice
DOL	Department of Labor
EC	Electronic Commerce
EDI	Electronic Data Interchange
EEO	Equal Employment Opportunity
FACNET	Federal Acquisition Computer Network
FAI	Federal Acquisition Institute
FAR	Federal Acquisition Regulation
FARC	Federal Acquisition Regulatory Council
FIRMR	Federal Information Resources Management Regulation
FLSA	Fair Labor Standards Act
FTE	Full Time Equivalent
FY	Fiscal Year
GAO	General Accounting Office
GATEC	Government Acquisition through Electronic Commerce
GATT	General Agreement on Tariffs and Trade
GS	General Schedule

GSA	General Services Administration
GSBCA	General Services Board of Contract Appeals
HHS	Health and Human Services
IG	Inspector General
IMPAC	International Merchant Purchase Authorization Card
IRM	Information Resource Management
ISO	International Standards Organization
MSPB	Merit Systems Protection Board
NASA	National Aeronautics and Space Administration
NPR	National Performance Review
OEG	Office of Government Ethics
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
OMB	Office of Management and Budget
PMR	Procurement Management Reviews
RCRA	Resource Conservation and Recovery Act
SBA	Small Business Administration
SCA	Service Contract Act
TINA	Truth in Negotiations Act

SUMMARY

Summary

Federal Procurement Today - Rigid and unproductive:

The Federal procurement¹ system today controls the purchase of \$200 billion annually in goods and services through a process of identifying requirements, preparing solicitations, evaluating and selecting contractors, ensuring performance, paying for items received, and managing contracts. This system frustrates many people:

Line managers find the system too slow and costly; it forces them to extraordinary lengths to get the tools they need to perform public functions.

Contracting officers are overworked and over-regulated as they try to satisfy the needs of line managers, while feeling outnumbered by all the reviewers.

Agency heads face increasing contracting costs and continuing budget management challenges.

Contractors must contend with a plethora of unique and costly government requirements foreign to the commercial world and are forced into non-commercial practices; they are viewed with such distrust that they must certify they are not criminals just to have their offer considered.

Many members of Congress and their staffs are convinced that without detailed instructions to the executive branch, public policy goals will be subverted and constituent interests ignored.

Our procurement system is in need of reinvention. The current acquisition system has been criticized as relying on complex, rigid rules and procedures, extensive paperwork, detailed design and "how-to" specifications, inspections, and audits. Often where law or regulation allow flexibility and management discretion, agency procedures rein it in to the detriment of the line manager. In recent years the rate of statutory changes and resulting implementing regulations has impaired the workforce's ability to assimilate them all. In many cases, contracting activities face reduced productivity in terms of contracting dollars awarded.

We have to work with those who hold a stake in the federal procurement system to get the system to better serve the line manager and the public.

Federal Procurement Tomorrow - Cost-effective performance:

Today begins the process for reengineering the procurement system, which will take years to complete. We make specific recommendations for improvements, but our main goal is to go beyond these by releasing the creative talents of the thousands of dedicated professionals in government and industry to make needed changes. The focus of the executive branch, legislative branch and industry must be concentrated through

complementary actions to achieve more value through a more innovative, responsive, modernized and restructured procurement system.

The procurement vision is to get the procurement system out of the way of line managers by reengineering it to function more in the background, allowing users to be better served with an effective statutory and regulatory infrastructure; and keep it out of the way by making broad reforms to sustain changes.

To do this, we concentrate our recommendations within five themes:

Foster Competitiveness and Commercial Practices

such as by relying more on the commercial marketplace, enhancing vendor performance and expanding the use of electronic commerce;

Move to Guiding Principles from Rigid Rules

by revamping the Federal acquisition policy framework; building a more professional workforce and encouraging innovation;;

Create Competitive Enterprises

by expanding the customer and supplier base of the Federal government;

Get Bureaucracy out of the Way

by increasing the small purchase threshold, simplifying procurement with

small and small business and small and disadvantaged business firms,
streamlining labor provisions and reforming the information resource
management process; and

Center Authority and Accountability with Line Managers

by expanding the use of the commercial credit card and simplifying ethics
laws.

INTRODUCTION

Introduction

As a public undertaking, the federal procurement system is designed to serve government line managers as its customers while reconciling sometimes competing interests of:

Government agencies - organized to perform public missions and acquire goods and services to support these missions;

Suppliers - conducting commercial operations for profit when supplying goods and services to meet government agency needs; and

Policy makers (e.g. Congress) - ensuring that public policy objectives and taxpayer concerns are considered in the allocation of federal resources.

When acquiring supplies and services, the Federal Government strives to obtain the optimum market response to its requirements in terms of quality, timeliness and cost. All the while it must minimize business and technical risks, accomplish public policy objectives and maximize competition while maintaining integrity. It must also assure that the items under contract are delivered or performed in accordance with the terms of the contract. How well these objectives are met are determined in large part by the market and regulatory environments, as well as by the skill of contracting professionals.

Contracting people are working harder just to keep up with the increasing

complexity of the system. While the procurement workforce has grown, productivity has declined. Contract expenditures per contract specialist (1102) were \$9.4 million in 1980, but only \$6.3 million in 1992 (in 1992 dollars). During this period, the number of employees increased 64 percent from 19,428 to 31,794 while dollars increased only 6.5 percent from \$188 billion to \$200 billion. The total contract actions for 1980 was 17.4 million, which increased about 16 percent to 20.02 million actions in 1992. About two of every three contract actions are competitive. Four out of five contract actions are fixed price where maximum risk is placed on the contractor. Cost type contracts, where the government assumes most of the risk because of the difficulty in judging all the unknowns involved in performing the contract, account for one third of all contract dollars spent. Small businesses receive most of the contract actions, although they receive only about one of every ten dollars awarded under contract. This is in keeping with the need to construct some very large systems (e.g., aircraft and submarines) at large facilities, although small businesses often make up a large percentage of subcontractors under such large programs.

The current procurement system has been criticized for relying on complex, rigid rules and procedures, extensive paperwork, detailed design and "how-to" specifications, in-process inspections and audits. Procurement officials appear to focus mainly on process rather than results, creating an intrusive oversight system that can stifle innovation. The rigidity of the system is made worse by the constant threat of second-guessing by numerous audit and independent review bodies. Therefore, following rules rather than finding better ways of supporting an agency's mission becomes the expected and safe course of action.

The years of statutory and regulatory fixes to specific problems have resulted in an expensive system for all taxpayers to maintain. The high overhead associated with complying, and proving compliance, with the government's rules and requirements has made products and services produced for the unique government market too expensive to be competitive commercially. Commercial products which fight it out in the private marketplace daily are forced to abide by a string of special provisions and oversight requirements. A comparison of commercial and military procedures found that it is five times more expensive to bid on a defense contract compared to a commercial solicitation. When the commercial supplier wins a contract, it costs three times more to administer the contract than commercial work because of all the added oversight rules². Estimates of these higher administrative costs for certain Defense contractors have been estimated at 4 percent to 12 percent of government sales, depending on contractor and contract involved. Most of these costs eventually get passed on to the government through higher overhead charges or to the public.

The current system does not adequately accommodate the exercise of professional business judgment within the wide range of approaches that are reasonable. Often where law or regulation allows flexibility and management discretion, agency procedures instead reign it in.

A study by the Merit Systems Protection Board (MSPB) published in July 1992 indicated a need to streamline and simplify the procurement process. Among the findings in its report, the MSPB noted that while the quality of the workforce is reasonably good,

the average contract specialist is sometimes overwhelmed by the increasing complexity of the procurement process. As a result, many customers of procurement organizations are frustrated by the lack of mission support by contracting personnel.

To help understand where specific improvements can be made, the Office of Federal Procurement Policy (OFPP) and MSPB cooperated on a follow-up survey.³ Prior to conducting the survey, small "focus groups" of individuals from the Federal procurement workforce and Federal managers who use the procurement system were assembled. These groups were interviewed extensively and the results were used to help design a formal survey questionnaire. Over one thousand federal managers responded to the survey with a clear message: the system is not accomplishing what its customers want. This group of managers represented a broad cross section of agencies and of the types of goods and services purchased. The typical respondent was experienced mostly with smaller dollar value procurement, worked in relatively small organizations (less than 100 person), and felt that procurement was critical to the success of their mission. The survey asked questions about whether the procurement process assures the achievement of its stated goals and how responsive procurement organizations were to their customers' requirements.

Four major findings surfaced as a result of the analysis of the responses received:

1. There are too many peripheral objectives competing with the customers' objectives

Only 25 percent of the line managers thought that the procurement process creates a

proper balance of the ancillary objectives and values of the procurement system. The managers in the survey noted that there are so many goals for the procurement process, ranging from furthering socio-economic objectives to ensuring that maximum competition is achieved, that their requirements are often just secondary considerations. As a result of the myriad of objectives, managers complained that contracting organizations emphasize strict compliance with regulations and low price above quality and timeliness.

2. The procurement process does not properly emphasize the importance of understanding the customers' requirements

Because contracting organizations are often pre-occupied with meeting other objectives, many managers felt that contracting officials did not have a good sense of the material needs of their customers. About one third of the respondents wanted the contracting organizations to become involved in the process earlier and to assist in the preparation of statements of work.

3. The procurement process sometimes results in paying higher prices for the same or lesser quality

The survey group related a number of specific instances in which regulations resulted in paying a higher price to obtain acceptable items. Mandatory Federal Supply Schedules, small business set-asides, the Davis-Bacon Act, and the Service Contract Act were all cited as examples.

4. Responding to errors, lapses in judgement, and isolated instances of abuse with detailed legislative and regulatory corrections has led to an atmosphere of mistrust and suspicion

These managers complained that many in the procurement offices express a lack of trust and impose excessive levels of internal oversight as a result. Beyond the agency-imposed controls, the respondents felt that the entire body of laws and regulations is designed to leave little room for the exercise of good judgement.

The MSPB and OFPP surveys indicated that neither the procurement professional nor the line manager thinks that the procurement system is easy to navigate as a practitioner or a customer. In addition to the daily frustration in just acquiring the simple tools of a manager's trade, such as a computer or administrative supplies through the small purchase system, large purchases often take years to complete.

The basic procurement process is composed of the following events:

Pre Solicitation Phase: Identify requirement; Develop project plan; Develop specification or statement of work; If non-competitive, prepare and obtain approval for Justification for Other than Full and Open Competition; Appoint Source Evaluation Board; If buying information technology, Federal Information Resource Management Regulation (FIRMR) approval is required; Contract Type decision; and, Final preparation of procurement package.

Solicitation Phase: Development of procurement plan; Synopsis period; Draft solicitation; Issue final solicitation; and, Receive proposals or bids.

Pre Award Phase: Initial review of bids or proposals; Determination of competitive range; Audit; Negotiation; and Final selection of contractor.

The final step is **Award** of a contract.

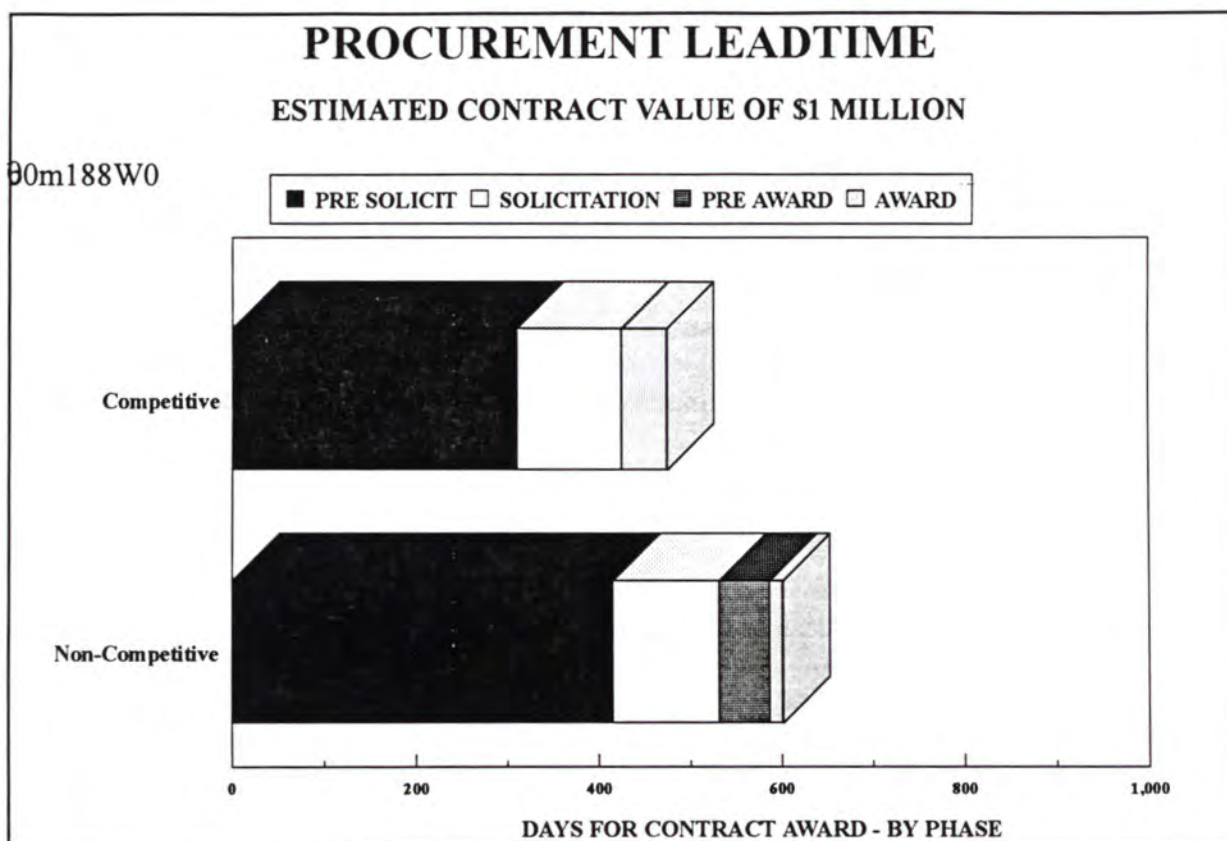


Figure 1. Procurement Leadtime

Figure 1 displays the average lead times to complete the procurement process at a representative contracting organization for a fixed price supply contract under competitive

and non competitive procedures. The work on these relatively less complicated contracts involves twice as much effort in the pre solicitation phase as in the solicitation and award phases.

The pre-solicitation phase involves primarily work by non-contracting people to describe in sufficient detail the product or service that they need to perform their mission. Where a specification already exists or just a commercial description is needed, the pre solicitation phase is normally very short. A key point of this Figure is that line managers often work on an acquisition for several years before the contracting office begins its job. This very long, and often bifurcated process, adds to the frustration of all concerned.

To help improve it, the Federal procurement system has been studied for years: Two major studies were the Commission on Government Procurement in 1972 and Packard Commission in 1986. Significant changes evolved from these studies in new organizations (e.g., Office of Federal Procurement Policy); new law (e.g., Competition in Contracting Act); and regulation (e.g., Federal Acquisition Regulation); but, procurement is still seen as a complex, rigid system which frustrates nearly everyone.

The various public procurement laws passed throughout the years are not a cohesive whole. To help devise a new statutory base for procurement, Congress recently required the Department of Defense to undertake a two year effort to review Defense acquisition legislation. The National Defense Authorization Act for Fiscal Year 1991 (P.L. 101-510, Section 800) directed DoD to establish an advisory panel to review DoD acquisition laws

and make recommendations to Congress for repeal or amendment of laws. The "800 Panel" prepared a report which was transmitted to Congress by Secretary of Defense on January 15, 1993. The 800 Panel identified 889 provisions of law related to DoD acquisition. The laws affecting organizational structure, commissary system, non-appropriated fund activities, fiscal laws, and acquisition workforce were not part of review.

The Section 800 Panel recommended the repeal, amendment or retention of many laws. Their major recommendations have been addressed as follows:

1. Revise and improve laws on procurement integrity (see PROC12: Streamline procurement ethics laws).
2. Raise the small purchase threshold to \$100,000, and reserve all procurements below that amount for small business; exempt purchases below \$100,000 from mandatory clauses (see PROC04: Increase the threshold and simplify purchases).
3. Consider raising blanket delegation of procurement authority or exempting DoD from the Brooks Act for purchases of automated data processing equipment (see PROC09: Reform Information Resources Management Procurement).
4. Form a new single independent agency within the Executive Branch to consider protests (see PROC07: Amend protest rules).

5. Enact new legislation on commercial products that defines newly developed products, exempt commercial item procurements from requirements of a variety of laws, including revising the Buy American Act to allow for the GATT standard of substantial transformation to help US competitiveness (PROC14: Foster reliance on the commercial marketplace).
6. Enact changes in labor laws (PROC06: Reform labor laws and transform the Labor Department into an efficient partner for meeting public policy goals.)

Federal Procurement Tomorrow:

Our procurement recommendations are designed to effect a major culture change in Federal procurement. The recommendations are based on a clear vision of how the procurement process should work on behalf of its customer -- the Federal line manager. Our vision is fully complementary with the basic principles of effective procurement systems regarding such things as integrity, accountability, and value. The efforts of all parties -- from the President and Congress down to individual members of the procurement workforce -- will be needed to achieve this cultural change.

Vision -

Establishing the modern, responsive system needed to support Federal programs into the twenty first century requires that a new guiding vision be developed, centered on key public policy principles legislated by the Congress for the President to implement through Executive Branch organizations.

The result will be a cheaper and faster way to control Federal resources through the procurement process, while making it more responsive to the user. Working within a more transparent procurement infrastructure, line managers will be more in control of acquiring mission-related items, while satisfying legal and regulatory requirements with a minimum of administrative burden. New uses of electronic commerce will lead to fewer transactions passing through the procurement office with a re-engineered procurement infrastructure. This will permit more procurement professionals to team with line managers to better

understand their requirements. It will also enable more focused attention on contractors to get full value for the government within an equitable commercial-style system. The reengineering process will involve the user more within inter-functional groups to help establish tools and techniques to guide improved and measurable performance. Customers of the procurement system will help in redesigning the regulatory system, information resources management and contract management processes. This will be supported by a clear framework of acquisition principles to help managers sort out the various objectives of the procurement system to provide value to the taxpayer.

Principles

The goal of public procurement systems is simple: get the right items at the right time, and at the right price, to support government actions. This relatively simple formula involves questions of accountability, integrity and value - and has effects that stretch far beyond the transaction between the buyer and the seller. Trying to define the right item, the right time and the right price leads one into a variety of public and private functions and political questions. For example, should the item come from private or public production sources? Should a premium be paid to aid local manufacturers? Without a serious and sustained review of such deceptively simple decisions, policy makers may find that their policies are not being supported within the government.

To encourage proper management of the procurement process, our recommendations

are focused around a framework of basic principles which generally apply in market-oriented procurement systems around the world. These are:

Integrity Public confidence is earned by avoiding any appearance of a conflict of interest, maintaining impartiality, avoiding preferential treatment for any group or individual, and dealing fairly and in good faith with all parties.

Accountability Clear lines of procurement responsibility and authority from the legislature to the executive function of government must be drawn, and effective policy direction and audit capabilities must exist.

Professional Workforce A competent workforce responsive to government mission requirements is essential. There must be continual review and training of this workforce to improve individual and system performance.

Openness Policies and procedures must be understood by all sources, and there must be an acceptable procedure to address grievances of suppliers.

Competition Specifications must not unnecessarily favor a single source; solicitations must be widely publicized.

Value Quality, timeliness and cost must be fairly considered to ensure supplier

performance of the contract.

Actions Required

This framework of basic principles helps identify the essence of a new procurement system to help sort out sometimes competing objectives. With \$200 billion flowing through the system each year, it appears that each demand for special treatment or preferences can easily be accommodated even if it does add slightly to the burden. This ever-less-affordable strategy has added so much burden that procurement officials are falling further and further behind in their contract production. There are anecdotes from individual companies about having to hire two people just to respond to each government inspector in the contractor's plant. Studies show that US companies at the forefront of military technology have great difficulty converting to the competitive commercial market, just when the US needs the jobs such a conversion would produce.

Revising the procurement process will affect many special interests. It is unlikely that a comprehensive change to the procurement system can be made unless all of the key parties (The Congress, Agency Executives, Line managers, procurement officials and industry) promote the global changes needed as a cost saving initiative. Reengineering the procurement system will require clear vision, strong leadership and excellent communication with all stakeholders.

The President must work with Congress and Agency Heads to outline his vision for

a procurement system serving the public with a clear focus on measurable results. Many of the current inefficiencies are a direct result of the many laws which provide detailed procedures and timeframes to ensure something considered very important happens within the procurement system. The end result is that since there are so many things considered important and written in law, it is difficult to have a clear focus on what really is important. For example, is it more important to provide information on procurement opportunities or to publish a statement in the Commerce Business Daily 15 days before issuing a solicitation and 30 days thereafter?⁴ Establishing clear principles of public policy for the procurement system would allow Executive Branch implementation of the principle to accommodate the various objectives in a workable and measurable manner. Given the current broad statutory base of procurement law, the Executive Branch has the primary responsibility to make the processes as responsive as possible to the myriad of current objectives. Agencies need to undertake individual improvement projects relying on procurement professionals, line managers and other stakeholder to complete the many tasks necessary. This new vision for Federal procurement must be established at every level through sustainable reform efforts.

End Notes

1. Key definitions from the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.) are "the term 'procurement' includes all stages of the process of acquiring property or services, beginning with the process for determining a need for property or services and ending with contract completion or closeout; the term 'procurement system' means the integration of the procurement process, the professional development of procurement personnel, and the management structure for carrying out the procurement function".

2."Integrating Civilian and Military Technologies: An Industry Survey", Center for Strategic and International Studies, Washington, DC April 1993. P. 12.

3. MSPB and OFPP Survey of the Procurement Process, January, 1993.

4. Section 18, Office of Federal Procurement Policy Act (41 U.S.C. 416).

PART 1:
MOVE TO GUIDING PRINCIPLES FROM RIGID RULES

PROC01: REFRAME ACQUISITION POLICY

Background

The Administrator of the Office of Federal Procurement Policy (OFPP) is responsible for providing overall direction of procurement policy and leadership in the development of procurement systems of the agencies.³ In carrying out these responsibilities the administrator may prescribe governmentwide procurement policies. Policy letters issued by the administrator must be implemented in the Federal Acquisition Regulation (FAR). The FAR is a massive document in excess of 1600 pages. In addition to the FAR, the regulatory system includes agency supplements which in aggregate total an additional 2,900 pages, almost two times as large as FAR.

Congress intended by creating the FAR to eliminate conflicts, redundancies, and inconsistencies in procurements, and to provide federal procurement officials with a set of uniform, government-wide acquisition policies, regulations, procedures, contract clauses and forms. The FAR is supposed to: be well-written, easy to read, and logically organized; reduce excessive paperwork; make it easier to do business with the Federal Government; and facilitate agency, industry and public participation in the process of developing and maintaining the FAR and supplements to it. Individual agency regulations are supposed to be limited to those which are essential to implement governmentwide policies and procedures within the agency, or represent policies and procedures required to satisfy the specific and unique needs of the agency.

The FAR is issued and maintained jointly by the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).⁴ The Federal Acquisition Regulatory Council (FARC) was established to provide direction and coordination of governmentwide procurement policy and procurement regulatory activities.⁵ The Civilian Agency Acquisition Council (CAAC), chaired by GSA and composed of 12 other civilian agencies, and the Defense Acquisition

Regulation Council (DARC), chaired by DOD and composed of DOD and NASA representatives, are responsible for developing regulatory changes.⁶

Need for Change

The FARC's ability to achieve the objectives of the OFPP Act is inhibited by the hundreds of process-oriented statutory requirements that shape the acquisition process and result in many of the regulatory requirements. Fundamental reform of the acquisition system requires fundamental reform of the statutory underpinnings to the system. The Acquisition Law Advisory Panel to the United States Congress on Streamlining Defense Acquisition Law (Section 800 Panel) recognized in their report to Congress that the FAR system has grown more complex over the years because of requirements mandated by statute.⁷ The Panel identified 889 provisions of law related to DOD acquisition. The acquisition system is burdened with so many diverse statutory requirements and competing goals that efficiency of the procurement system has been significantly reduced. For example, the laudable goals of promotion of competition, socioeconomic goals, integrity of the system, efficiency, and simplicity may not be mutually attainable. A fundamental analysis of the objectives of the acquisition system needs to be undertaken by the executive and legislative branches of government. Once the goals are established, a review of the statutory base in meeting these objectives needs to be undertaken.

Such a long-term objective should be established as executive branch policy. It should be recognized, however, that it is virtually certain that such a sweeping reform will not be accomplished very quickly. Accordingly, while such an effort is critical to reform, efforts to improve the FAR by eliminating unnecessary regulatory requirements that are not based in statute should be pursued.

A survey conducted by the Merit Systems Protection Board (MSPB) indicates that line managers widely believe that there are too many procurement regulations, that they are changed too often, and that they are so process-oriented they minimize contracting officer

discretion and stifle innovation.⁸ When asked whether they felt the procurement process appropriately balances the use of public funds with the material needs of the requirements customers, only 26 percent of the line managers surveyed agreed. The comments indicated that there are numerous other objectives which can receive priority over the line managers. One manager expressed confusion over the ultimate objective of the entire procurement process: "The FAR system does not make it clear what the principle goal of the federal procurement system is. Is it to avoid waste, fraud, and abuse? Is it to implement a social economic agenda? Is it to procure the government's requirements at a fair and reasonable cost?" It is true that the FAR itself does not state its principle goal.

A recent study by the Center for Strategic & International Studies (CSIS) concluded that government procurement laws and regulations add cost without value, impede government access to commercial state-of-the-art technology and adversely affect U.S. competitiveness by fracturing its high technology enterprise. The CSIS study found that companies alter their standard business procedures when the Federal Government is the customer. This leads to higher prices for the government.⁹ From industry's perspective, policy makers do not allow industry to participate in the development of policy and regulations early enough in the process for them to have meaningful input. The efficiency of the two-council system has also been questioned.

Efforts have been undertaken to reform the system. GSA initiated a survey of the FAR users in 1990 to obtain feedback on the document and how it could be improved. Over 2,400 responses were received. Ninety-five percent of respondents suggested one or more ways in which the FAR could be improved. Based on survey results and additional input from focus groups of government and industry users, a report and recommendations were developed. The FARC approved a FAR Improvement Project Report¹⁰ which recommended 21 major revisions to the FAR.

Recommendations

1. Convert the Federal Acquisition Regulation from rigid rules to guiding principles. (2)

The President should establish by January 1, 1994, an "Acquisition Policy Reinvention Task Force" to develop goals, mobilize resources and establish mile-stones to accomplish four goals:

- 1) Rewrite the FAR and its supplements. Move from rigid rules to guiding principles where feasible. The Australian regulatory system should be regarded as a guiding model for this effort.
- 2) Promote decision making at the lowest level possible.
- 3) Eliminate unnecessary regulatory requirements.
- 4) Facilitate innovative contracting approaches.
- 5) Recommend acquisition methods which reflect the short technological life cycle of Information Technology (IT) and the need to put up-to-date IT tools in the hands of IT and line managers.

The task force should be composed of agency procurement professionals and line managers. It should consult with all stakeholders, including industry and Congress. It should work closely with and draw on the resources of the FARC and agency procurement executives in accomplishing its tasks. This task force should complete its work by October 1, 1994. The results should be submitted to the Vice President, OMB Deputy Director for Management and the FARC.

2. Implement the task force results. (1,2)

The Administrator of OFPP should take the lead in consulting with congressional leaders on reforming the statutory underpinnings of the system. In addition, the Administrator of OFPP should make recommended changes in policy letters. DoD, GSA and NASA should implement recommended changes in the FAR. Agency procurement

executives should implement recommendations with respect to agency regulations which supplement the FAR.

3. Merge working councils into a single council. (1,2)

DoD, GSA and NASA should conduct a test of a single council system. The two council system has been criticized by some for taking too long to issue changes to the FAR. Although there have been significant management improvements made to the two council system subsequent to the in-depth review of the structure, it is not clear that the system had maximized its efficiency.

To ensure that a single council system is given fair and adequate consideration, it should be operated for at least three years unless the FARC determines compelling reasons exist to discontinue the test. At the end of the test period, a report should be made to the FARC so that a determination can be made whether a single council adequately serves the procurement executives. While it is reasonable to assume that a single council will increase the efficiency of issuing FAR changes, questions necessarily arise whether reduced membership of a single council would permit access by all agencies currently involved in the system.

The FARC should develop procedures for the single council by January 1, 1994, to establish appropriate relationships among the members. For example, the issue of whether the services and the Defense Logistics Agency (DLA) should be allowed to independently vote needs to be addressed considering the statutory role of the Office of the Secretary of Defense. DoD contends that there is currently a single position developed with the DoD. Under a single council DoD contends it would be required to develop the DoD position on issues at a separate meeting so that they continue to speak with a single voice. This and other unforeseen problems, give rise to the need for a test to improve the current regulatory system.

Notwithstanding potential problems raised by DoD, the single council should be

tested. The council should be co-chaired by DoD and GSA and have 12 members: six from DoD and NASA (i.e., a member from each DoD service, DLA, the co-chair from the Office of the Secretary of Defense, and a member from NASA); and six representatives of civilian agencies (i.e., a member from each of the five largest agencies in terms of procurement dollars plus a member from GSA as co-chair). Although this structure would reduce the number of agencies represented, it is as large as practicable, without being too cumbersome for effective debate.

4. Develop process for obtaining input from those affected by policies. (2)

The FARC should, by May 1, 1994, develop a more effective process for obtaining input from those affected by the regulations (e.g., industry, government contracting officers and line managers) when developing regulatory proposals. For example, agency line managers and contracting officials could be asked to participate in a "customer" board of directors to provide advice and general direction to the policy system. Greater use of advance notices of proposed rule making could be made to allow interested private parties to provide input earlier in the process. Public meetings may also be appropriate in some cases.

Fiscal Impact

Cannot be estimated.

End Notes

3. Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405).
4. 48 CFR 1.102.
5. Section 25 of the Office of Federal Procurement Policy Act (41 U.S.C. 421).

6. 48 CFR 1.201.

7. Acquisition Law Advisory Panel to the United States Congress, "Streamlining Defense Acquisition Law", Executive Summary, March 1993, p.1.

8. U.S. Merit Systems Protection Board, Workforce Quality and Federal Procurement: An Assessment, July 1992, p.21.

9. The Center for Strategic & International Studies, "Integrating Civilian and Military Technologies: An Industry Survey," April 1993, p. 16.

10. FAR Improvement Executive Committee Report, "FAR Improvement Project," October 1992.

Cross-References to Other NPR Sections

None.

PROC02: BUILD AN INNOVATIVE PROCUREMENT WORKFORCE**Background**

No matter how good a policy may be on paper, it will not be effective without well motivated, competent people to carry it out. Finding, training and retaining these people will allow the Federal Government to encourage the use of more discretion through guiding principles with less emphasis on detailed rules.

While the procurement workforce has grown, productivity has declined. Contract expenditures per contract specialist (1102) were \$9.4 million in 1980, but only \$6.3 million in 1992 (in 1992 dollars). During this period, the number of employees increased 64% from 19,428 to 31,794 while dollars increased only 6.5% from \$188 billion to \$200 billion.¹

It is important to consider both the quantity and quality of the procurement workforce. Some highlights from more than a decade of data on federal contract specialists are²:

Roughly two thirds of all hires for the contracting series have been made through in-service placement of personnel from clerical, technical, and other such fields. By comparison, few have been acquired through sources external to the government (e.g. recent college graduates).

Throughout the 1980's, 10 percent of the contract specialists on average left the series every year. In the 1990's, however, turnover slowed to a loss rate of just 7 percent.

Thanks to the relatively high turnover of 10 percent and the huge net growth in the series, a large number of contract specialists are relatively inexperienced. As of September 30, 1991, forty-four percent of the contracting workforce had less than six years of experience in their jobs.

Only fifty-three percent of the contract specialists have graduated from a college or university with a bachelors or higher degree. Sixty percent of the college graduates majored in business, law, or public administration.

Given this data, the daunting challenge facing procurement executives is to take the large number of relatively inexperienced personnel -- many of whom are not college graduates -- and equip them with the professional skills and knowledge necessary to competently act as agents for the government in its contractual dealings with the private sector.

Need for Change

Improving the procurement process requires improving the workforce. A better trained, more capable workforce will give improved support to line managers. Action is therefore required to authorize a comprehensive, governmentwide program of procurement workforce improvement to identify, develop, and retain high-quality personnel. This program is needed to meet the staffing requirements in procurement organizations, to encourage employees who desire a procurement career to develop their skills and abilities; and to stimulate employees to engage in self-development activities.

The performance of the procurement system continues to be questioned. The Merit Systems Protection Board's (MSPB) 1992 report on the federal procurement workforce concludes that the federal procurement system is so complex that contracts are often not in the best interests of the government. The report also finds that while the quality of the workforce is generally good, it is not keeping pace with the demands placed upon it by an increasingly complex procurement process. The report notes that supervisors believe employees need to innovate more. The MPSB report recommends that procurement officials receive additional training to assure that they are fully competent.³

The MSPB report is the latest in a series of studies that calls for more effective

procurement programs and workforce. A report issued in 1992 by the Office of Management and Budget "SWAT" team on civilian agency contracting finds, among other things, that contracts are not being adequately administered.

The Secretary of Defense was recently provided authority by Congress to specially manage the defense acquisition workforce.⁴ Included in this legislation were specific criteria for ensuring a standard of education and experience for people entering the contracting field as well as other acquisition occupations. Steps similar to those taken to enhance the procurement workforce in DoD should be taken in all federal agencies so that a comprehensive acquisition workforce improvement effort can be implemented.

The need for highly qualified procurement personnel is important in civilian agencies as well as in defense agencies. In the words of a 1989 GAO study of contract administration in civilian agencies:

"The contracting deficiencies that we identified generally resulted from people failing to properly carry out their responsibilities, rather than from a need for additional rules and regulations governing what should be done when writing or administering contracts."⁵

Examples of authorities needed for all procurement agencies include special authorities for: a) authorizing agency heads to require satisfactory completion of mandatory training as a prerequisite for promotion to higher level positions;⁶ (b) an acquisition corps;⁷ (c) other programs to enable improved training, tuition reimbursement and an acquisition university with special faculty arrangements.⁸

Recommendations

1. **Establish an interagency program to improve the government-wide procurement workforce.** (1,2)

(a) The Administrator, GSA, and the Administrator, OFPP, should agree on a three year plan to properly staff and fund the Federal Acquisition Institute (FAI) program to improve the governmentwide procurement workforce.

(b) The Administrator, OFPP, should establish an interagency Joint Academic and Training Policy Council to provide policy guidance on career management programs for all agencies. The Council would be supported in its policy making by the FAI and the Defense Acquisition University.

2. Provide civilian agencies authorities for improving the workforce similar to DoD's. (3)

Congress should enact legislation giving agencies necessary authority to improve their procurement workforces.

Fiscal Impact

Savings will be realized through enhanced contract negotiating skills and elimination of duplicate activities at various agencies through a coordinated governmentwide program.
[Fiscal estimate under review at OMB]

End Notes

1. Based on data developed by the Office of Federal Procurement Policy.
2. Report on the Federal Acquisition Workforce Fiscal Year 1991. Federal Acquisition Institute, General Services Administration, September 1992.
3. Merit Systems Protection Board Special Study "Workplace Quality and Federal Procurement - An Assessment", July 1992.
4. Title XII of Public Law 101-510 (Defense Authorization Act) added a new Chapter 87 on Defense Acquisition Workforce Improvement to Title 10, United States Code, to establish policies and procedures for the effective and uniform management of the workforce in the Department of Defense (DoD).
5. Report to the Committee on Government Operations, "Civilian Agency Procurement; Improvements Needed in Contract Administration". September 1989. (GAO/GGD-89-109) pp 33-34.
6. Title 10 U.S.C., sections 1722 and 1723.
7. Title 10 U.S.C., sections 1731 through 1737.
8. Title 10 U.S.C., sections 1741, 1744 and 1745.

Cross Reference

None.

PROC03: ENCOURAGE MORE PROCUREMENT INNOVATION**Background**

The Office of Federal Procurement Policy (OFPP) Act requires the Federal Acquisition Institute (FAI), which is located in GSA but is under the policy direction of OFPP, to "promote and coordinate government-wide research and studies to improve the procurement process and the laws, policies, methods, regulations, procedures, and forms relating to procurement by the executive agencies".¹

Throughout the contracting field, innovation is being done through automation and the implementation of new business systems. The FAI is required by law to gather and disseminate innovative procurement ideas. However, it has insufficient resources to do so. It is critical to assemble an organization with the capability to receive new ideas and communicate them quickly to line managers as acceptable alternatives for obtaining supplies and services.

Need for Change

The Merit Systems Protection Board (MSPB) study of the contracting workforce found that the ability to innovate was needed but not being developed by supervisors.² There is no effective organized means for promoting innovation among agencies, even though many federal agencies are doing business in different ways. For example, they are using new automation techniques and procuring things using different methods. In addition, many state, local and foreign governments and commercial enterprises are testing new contracting concepts. The federal government benefits when contracting officials learn new ways of doing business and the lessons learned by others. This knowledge causes agencies to improve cumbersome processes they follow in conducting their procurements. At present, there are legal limits on innovation since to truly test a new idea waiver of existing laws

may be required. The Office of Personnel Management has authority under its statute to conduct demonstration programs and waive laws on a test basis after notification to Congress.

There is a lack of leadership in getting this type of information to line managers. Although FAI is supposed to do this, it can't because sufficient resources are not available. FAI should evaluate innovative procurement ideas the federal government might benefit from using. It should be staffed with a small number of highly qualified people detailed from operational procurement offices for a one-year period. Funding may come from either agencies providing staffing and resources and/or through the sale of published documents.

The FAI has established various committees and working groups to oversee and support FAI career development initiatives. The FAI needs an advisory committee to oversee and support its research programs as well. This committee would help the FAI (1) coordinate its work with other federal research activities, (2) direct its research to the most pressing needs of the procurement community, (3) identify products and services already developed by various contracting activities that could meet those needs if made available governmentwide, (4) obtain access to agency facilities and work sites for the conduct of research, and (5) identify and benefit from research being done in academia and the private sector. In the past, various federal activities have invested heavily in research which has had no practical application, let alone addressed the most pressing concerns of procurement executives, industry, or the Congress. The FAI needs an advisory committee to ensure that its research will be focused on the development of practical products that meet the needs of its customers.

Recommendations

1. **Provide resources to the Federal Acquisition Institute to support innovation of new ideas and procurement techniques.** (1,2)

OMB should identify sufficient resources to enable the Federal Acquisition Institute (FAI) to identify, evaluate and disseminate new procurement ideas and methods. FAI should be a clearinghouse and repository for information on procurement innovations.

2. Establish a steering group for FAI's research. (2)

The Administrator, OFPP should establish a steering group for FAI research representing government acquisition training organizations, academia, and industry.

3. Provide new legislative authority to test innovative procurement methods. (3)

Congress should amend the OFPP Act to give OFPP authority to test innovative procurement methods and to waive laws for purposes of such tests after notification to Congress.

Fiscal Impact

Unknown, but savings should greatly exceed the relatively small investment.

End Notes

1. OFPP Act 41 U.S.S. 405.

2. MSPB Special Study "Workforce Quality and Federal Procurement: An Assessment", July 1992 p.52 Recommendation 2: Encourage and Reward Creativity.

Cross Reference

None

**PART 2:
GET BUREAUCRACY OUT OF THE WAY**

PROC04: INCREASE THE THRESHOLD AND SIMPLIFY SMALL PURCHASES

Background

Congress has long recognized the agencies' need for a simple, low cost process for making relatively small dollar value purchases. For more than 40 years, Congress has required that procurement regulations provide for such procedures. Under the rules for small purchases, defined by law as purchases of \$25,000 or less, which are contained in the Federal Acquisition Regulation (FAR) and its supplements, competitive purchases can be made by obtaining quotations from contractors by telephone, mail, or, in some cases, electronically. The time it takes to make small purchases averages less than a month. Larger purchases over \$25,000, even simple ones, normally take at least three months to complete.

The Small Business Act (SBA) requires that all small purchases be reserved exclusively for small businesses if there is a reasonable expectation of obtaining price quotations from two or more small business concerns that will be competitive in terms of market price, quality, and delivery.¹ Under a small business reserve, a small business may provide products of a large business. The Small Business Act and the Office of Federal Procurement Policy (OFPP) Act require that agencies post, for a period of not less than 10 days, either a notice describing the proposed procurement or a copy of the solicitation in a public place at the contracting office issuing the solicitation if the proposed procurement is expected to exceed \$10,000 (\$5,000 for defense activities), but is not expected to exceed \$25,000. Purchases above \$25,000 must be advertised in the *Commerce Business Daily* (CBD) for at least 45 days.²

In the past, when Congress enacted legislation which increased the complexity of the federal acquisition process, it accommodated the need for economy and efficiency in the procurement process by exempting small purchases. This was typically accomplished by

establishing a "floor" so that the new legislation did not apply to contracts written at dollar values below the existing statutory threshold for small purchases. However, as the ceiling or threshold for small purchases was regularly adjusted to account for the declining purchasing power of the dollar, the statutory floors for applying other statutory requirements were not adjusted. Similarly, the President often included a floor tied to the current small purchase threshold when issuing executive orders affecting the procurement process, but did not provide for these thresholds to be adjusted for inflation. In addition, a number of other laws require contract clauses be included in all contracts regardless of dollar amount.

Individual agencies often add limitations on the use of small purchase procedures or add paperwork requirements to those in the FAR when issuing supplements to the FAR. For example, agencies may place additional limits on use of imprest funds, or require more documentation than contemplated by the FAR.

Need for Change

There are two issues that need to be addressed:

- (1) the small purchase threshold, and
- (2) the various statutory requirements that complicate the small purchase process.

The current small purchase threshold of \$25,000 was established in 1986. The OFPP Act provides for periodic review every 5 years beginning in 1995, but adjustments are limited to the rate of inflation.³ The Acquisition Law Advisory Panel to the United States Congress on Streamlining Defense Acquisition Law (Section 800 Panel) has recommended that Congress raise the threshold to \$100,000 for DOD.⁴

There are several reasons why the small purchase threshold should be raised to \$100,000 across the government. First, it would simplify a significant number of transactions while affecting a relatively small amount of the money the government spends.

For instance, during fiscal year 1992, the Federal Government purchased more than \$199 billion in goods and services. Although 57 percent (11,484,095) of the transactions were small purchases, these transactions represented only 5.6 percent (\$11.3 billion) of the total amount spent. Based on fiscal year 1992 data, if the threshold were raised to \$100,000, an additional 45,550 procurements per year valued at \$2.5 billion could be made using small purchase procedures.⁵ Second, Congress has set \$100,000 as the amount that triggers application of several recent statutes (e.g., procurement integrity and anti-lobbying). Third, as agencies cut back on contracting staffs as part of the overall downsizing of government, they cannot afford to spend scarce resources on contract actions of relatively small amounts that only represent a small percentage of their budgets. Fourth, contractors are reluctant to spend money to make fundamental changes in the way they do business for relatively small sales. Finally, many of the purchases between \$25,000 and \$100,000 may be obtained commercially and can be done simply.

Representatives of the small business community have expressed some concern about ceasing CBD notification for proposed purchases in the event the small purchase threshold is raised. This loss can be compensated for by adopting government-wide small purchase Electronic Commerce (EC) capability along with a single electronic bulletin board for posting notices when EC is not used. While a fully automated EC system is the ultimate goal, procurement processes need to be re-engineered to accommodate EC. In addition, there needs to be a period for industry and government to transition to the full EC environment. The government buys a wide variety of supplies and services from a variety of sources, including thousands of small businesses. In addition, the size and capability of government organizations is also varied. The conversion to EC can not happen overnight and shouldn't happen if it is found to be impractical in isolated cases. A transition period will provide for the identification of exceptional cases and the development of alternatives where possible. The procurement system suffers from too many hard and fast rules that do not allow the line managers to do what makes sense in particular cases. (See PROC15 for a detailed discussion of EC.)

In making any procedural changes regarding notification of procurement actions above the small purchase threshold, it would also be important to assess the impact of trade obligations and to work towards shaping international agreements that encourage use of the latest and most effective technological advances.⁶

Because the floors for applying other statutory requirements have not been adjusted by Congress, the small purchase procedures have -- even at the present \$25,000 level -- become encumbered with unnecessary requirements. For example, the Davis Bacon Act (DBA), which sets wage rates for contracts for construction, alteration, or repair (including painting and decorating), of public buildings or public works, is \$2,000. This threshold has remained unchanged since enactment of the DBA in 1931. As a result, if the government hires a contractor to perform a \$2,500 painting job at a federal building -- a small purchase -- the contracting official is required to:

- look up and select a wage determination (a list of minimum wage rates) or request a wage determination from Department of Labor (DOL) if none of the published wage determinations apply;
- include the wage determination in the solicitation and contract;
- provide the contractor a poster explaining the DBA that is posted at the job site along with the wage determination;
- collect and review the contractor's and subcontractor's weekly payroll records and statements of compliance with the minimum wage and fringe benefit requirements;
- return payroll records for correction if discrepancies are found;
- periodically interview contractor employees to ensure that employees are being paid the proper wages and provided applicable benefits; and
- withhold contract payments and take other steps, if necessary, to enforce the requirements of the DBA.

When Congress originally established the DBA threshold in 1931, it intended that the DBA apply to large purchases.⁷ However, because the thresholds for applying the DBA and other statutes adopted to achieve socioeconomic goals have not been raised over the

years, these requirements are being applied to many small purchases. The requirements of the statutes, identified in Table 1 below, place significant administrative burdens on a process originally intended to be free from such burden. They also thwart the use of commercial credit cards and electronic commerce systems. For example, some government attorneys believe that the requirement to include certain clauses in contracts, even by reference, creates a need to generate paper orders to support over-the-counter purchases that will be paid for using the commercial credit card. This increases transaction costs and defeats the purpose of using the credit card. Raising the thresholds of other statutes and eliminating requirements for contract clauses would make more than 11 million small purchases that fall under the current \$25,000 threshold simpler and less expensive to execute and administer.

Table 1
Statutes Affected and Changes Proposed

Law	Threshold	Proposal
Walsh-Healey Public Contracts Act	Supply contract over \$10,000.	Repeal Law
Work Hours & Safety Standards Act of 1962 (40 U.S.C. 327-333 and 28 U.S.C. 1499)	Construction contract over \$2,000. Service contract over \$2,500.	tie to small purchase threshold as defined in OFPP Act (41 U.S.C. 403). [NPR proposal is for new \$100,000 threshold under OFPP Act]
Convict Labor (18 U.S.C. 4082 (c)(2) and Public Law 89-176)	Zero \$ threshold.	"
Section 503(a) of the Rehabilitation Act of 1973 (29 U.S.C. 793(a))	\$10,000	"

Law	Threshold	Proposal
Vietnam Era Veterans Readjustment Assistance Act of 1972 (38 U.S.C. 2012)	\$10,000	"
Davis-Bacon Act (40 U.S.C. 276(a))	\$2,000	"
Service Contract Act of 1965 (41 U.S.C. 351-358)	\$2,500	"
Drug Free Workplace (41 U.S.C. 701)	\$25,000	"
Gratuities (10 U.S.C. 2207)	Zero \$ threshold	continue to apply law but eliminate contract clause for small purchase contracts.
Covenant Against Contingent Fees (10 U.S.C. 2306(b) and 41 U.S.C. 254(a))	"	"
Officials Not To Benefit (41 U.S.C. 22).	"	"
Anti-Kickback Act (41 U.S.C. 57; 18 U.S.C. 874 and 40 U.S.C. 276(c)).	"	"
Restrictions on Subcontractor Sales to the government (10 U.S.C. 2402 and 41 U.S.C. 253(g))	"	"
Restrictions on Certain Foreign Purchases (22 U.S.C. 2370).	"	"

The Section 800 Panel recommended that several other statutory requirements either exempt contracts with a value that is not in excess of the small purchase threshold or eliminate the requirement for a contract clause to implement the law. Several of the statutes cited in the Section 800 Panel report are DoD unique.

Agencies add limitations to those contained in the FAR which unnecessarily complicate the small purchase process. This adds time and costs. Agencies should not add to government-wide regulations unless absolutely necessary to satisfy unique agency needs.

Recommendations

1. Enact legislation simplifying procurement. (3)

Congress should enact legislation that: (a) increases the small purchase threshold from \$25,000 to \$100,000; (b) continues to reserve small purchases for small business; (c) amends the requirements for posting small purchase opportunities to provide improved access to information on procurements in excess of \$25,000 through the use of electronic techniques (e.g., an electronic bulletin board or electronic commerce); and (d) repeals or amends the statutes identified in Table 1 to either tie their applicability to the small purchase threshold or eliminate the requirement for a written contract clause for small purchases. Unless all of these changes are made simultaneously, the government's efforts to simplify the process and move to an electronic commerce environment will be frustrated. Simply raising the threshold without making the other changes will have minimal impact because the complexities and burdens associated with the other statutory requirements will continue to exist.

2. Enact legislation simplifying Department of Defense (DoD) unique procurement requirements. (3)

Congress should amend DoD unique requirements recommended by the Section 800 Panel, if the Secretary of Defense endorses the recommendations with respect to the simplified acquisition threshold.

3. Amend executive orders to simplify procurement. (2)

The President should amend the executive orders identified below by May 1, 1994, to tie their applicability to the small purchase threshold.

Executive Order Number	Title
12138	Creating a National Women's Business Enterprise Policy
11755	Relating to Prison Labor
11246, as amended	Equal Employment Opportunity
11141	Nondiscrimination because of Age

4. Establish a single electronic bulletin board capability to provide access to information on contracting opportunities. (1)

The Administrator of OFPP, in consultation with the Administrator of GSA and the Secretary of Commerce, should establish by July 1, 1994, an electronic bulletin board capability to be used by all agencies to post purchase opportunities in excess of \$25,000 (see PROC 15 Expand Electronic Commerce). This electronic bulletin board will provide the entire business community with access to information pending full implementation of electronic commerce.

5. Revise agency regulations to eliminate internal barriers. (1)

The heads of federal agencies should charge their senior procurement executive to review and revise agency regulations and internal agency guidance, by October 1, 1994, to rely on the FAR unless it is absolutely necessary to issue agency-specific regulations or internal guidance to satisfy unique agency needs.

Fiscal Impact (in millions of dollars)

	1994	1995	1996	1997	1998
Budget Authority *	--	\$37.1	\$50.6	\$51.7	\$52.9
Outlays (S&E)	--	\$37.1	\$50.6	\$51.7	\$52.9
Change in FTEs	--	1,215	1,621	1,621	1,621

* In addition to these administrative savings, there is likely to be a reduction in the paperwork burden on contractors doing business with the government. While we cannot accurately estimate these program savings, for every percentage point reduction in contract prices, the government will save \$849 million per year. To the extent such savings do occur, they will contribute to the overall governmentwide savings resulting from NPR recommendations.

End Notes

1. Section 15(j) of the Small Business Act (15 U.S.C. 644(j)).
2. Section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and Section 8(e) of the Small Business Act (15 U.S.C. 637(e)).
3. Section 4(II) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(II)).
4. Acquisition Law Advisory Panel to the United States Congress, "Streamlining Defense Acquisition Laws", Executive Summary of the report of the Acquisition Law Advisory Panel to the United States Congress, March 1993, p. 28.
5. Statistics provided by the Federal Procurement Data Center.
6. The U.S./Canada Free Trade Agreement, for example, requires that contracting opportunities above \$25,000 be advertised in the *Commerce Business Daily* for at least 40 days.
7. This is supported by the fact that when Congress first provided for small purchase procedures in the Armed Services Procurement Act in 1947 (and the Federal Property and Administrative Services Act in 1949), it defined small purchases as those under \$1,000.

Cross-References to other NPR Sections

- | | |
|--------|--------------------------------------|
| PROC15 | Expand electronic commerce |
| PROC10 | Expand use of commercial credit card |

PROC05: REPEAL THE CERTIFICATE OF COMPETENCY PROVISIONS OF THE SMALL BUSINESS ACT

Background

Contracting officers are required to make purchases from, and award contracts to, responsible contractors. To be considered responsible a contractor must:

- (1) have adequate financial resources to perform the contract, or the ability to obtain them;
- (2) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (3) have a satisfactory performance record;
- (4) have a satisfactory record of integrity and business ethics;
- (5) have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them;
- (6) have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (7) be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Contracting officers make responsibility determinations on a daily basis. In doing this, contracting officers develop a level of expertise that allows them to make responsibility determinations for contractors being considered for contracts valued in the millions and billions of dollars. No purchase or contract is to be awarded unless the contracting officer has made an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer is required to find the prospective contractor non-responsible.

If the prospective contractor is a small business concern, the contracting officer must

refer the determination of non-responsibility to the Small Business Administration (SBA) for consideration under the Certificate of Competency (COC) program. The COC program empowers the SBA to certify to government contracting officers whether the small business is responsible or not. If SBA issues a certificate of competency (COC), the contracting officer must award the contract to the small business concern. The objective of the law is to ensure that individual small business concerns who are capable of performing are not unfairly denied a contract. The process of referring the matter to SBA normally extends the procurement lead time by 15 days.

During fiscal year 1992, procuring agency contracting officers referred 3,113 non-responsibility determinations to SBA. In 41 percent of the cases the small business involved applied for a COC. SBA issued COCs to 44 percent of these small businesses. Procuring agencies reconsidered their determinations and made direct awards to 6.5 percent of the small businesses that applied for a COC prior to SBA making a decision. The contracting officer may reverse the determination of non-responsibility and award the contract if new information causes the contracting officer to determine that the small business is actually responsible to perform the contract. The SBA reports that the total saved by awarding contracts to the small businesses which were issued COCs was \$35 million. This amount is based on the difference in the price of the contract awarded to the small business as compared to the next low offeror who would have received the contract if the small business had been found non-responsible.¹

There is not a way to estimate the impact of the requirement for referral to SBA on other contracts. While there are no studies to document the impact, anecdotal evidence from the OFPP Merit Systems Protection Board survey² of line managers indicates that the program does have an impact on the overall procurement system. There is a widely held perception that SBA will almost always issue a COC. Accordingly, some contracting officers simply find certain small businesses responsible, even though they do not believe the small business can perform satisfactorily.

The fact that the SBA certifies a small business as competent does not necessarily

mean that the contracting officer acted arbitrarily or in bad faith. Often new information comes to light. In other cases, it boils down to a simple difference of opinion. The process of making a responsibility determination requires the exercise of judgement. There is no formula. Therefore, reasonable people can differ as to whether a contractor is or is not responsible.

Need for Change

While a relatively small percentage of contracting officer determinations are referred to the SBA, the impact of the COC program on the overall procurement system is significant.

Contracting officers are responsible for awarding contracts only to responsible contractors and for ensuring that contractors meet their contractual obligations. Contracting officers are also responsible for providing contracting support to the line managers who carry out the agency's mission. Basically, contracting officers are given responsibility and accountability but not the authority to carry out that responsibility. SBA, on the other hand, has no responsibility or accountability for ensuring that the contractors they certify as competent actually perform the contract for which they are certified.

The COC program is built on the premise that some contracting officers may not treat small business concerns fairly and may deny them contracts to which they are entitled. There are no studies to support such a conclusion. First, contracting officers, in view of the governmentwide and agency small and disadvantaged business participation goals, have a natural incentive to maximize awards to such concerns. Second, contracting officers have a duty to consider every offer, including those submitted by small business concerns, in a fair and impartial manner.

If a small business feels it has been treated unfairly, it can seek redress in the contracting office, file a formal protest under the agency's procedures or file a protest with the General Accounting Office (GAO) or, in the case of ADP procurements, with the GSA

Board of Contract Appeals (GSBCA). In reviewing such protests the reviewing official will determine whether the contracting officer has a reasonable basis for the non-responsibility determination. If the GAO or GSBCA find that the contracting officer does not have a reasonable basis for the determination or acted arbitrarily or in bad faith, the contracting officer's determination will be overturned.

Recommendation

1. Repeal the Certificate of Competency provisions of the Small Business Act. (3)

The Congress should repeal the certificate of competency provisions of the Small Business Act (15 U.S.C. 637) and provide agency contracting officers, who have the responsibility and accountability for awarding contracts to responsible contractors and ensuring contractors perform under contracts, with the authority to make final responsibility determinations regarding small businesses as they do for large businesses.

Fiscal Impact

It is not possible to estimate the impact on the overall procurement system. According to the SBA, the budget for the COC program is \$5.75 million and is operated by 48 FTE nationwide.

End Notes

1. Statistics provided by Robert J. Moffitt, Associate Administrator for Procurement Assistance, Small Business Administration. The estimate of savings does not consider whether or not it costs the government more to administer the contracts once awarded.
2. Unpublished survey of managers by the Office of Federal Procurement Policy and Merit Systems Protection Board, January 1993.

None.

**PROC06: REFORM LABOR LAWS AND TRANSFORM THE LABOR
DEPARTMENT INTO AN EFFICIENT PARTNER FOR MEETING
PUBLIC POLICY GOALS**

Background

This issue paper addresses four labor laws that are implemented through the procurement process. They are:

(1) The Davis-Bacon Act of 1931 which requires that each contract for the construction, alteration or repair of public buildings or works in excess of \$2,000, to which the Federal Government is a party, specify the minimum wages to be paid to various classes of laborers and mechanics.¹ The minimum wages, including fringe benefits, are those the Secretary of Labor determines to be "prevailing" for the laborers and mechanics employed on projects of a similar character in the area in which the work is to be performed. The requirements of the act are incorporated in more than 70 other statutes which authorize federally assisted construction.

(2) The Copeland Anti-Kickback Act of 1934² which regulates payroll deductions on federal or federally assisted construction. This law prohibits anyone, under penalty of fine and/or imprisonment, from inducing an employee to "give up any part of the compensation to which he is entitled under his contract of employment" and requires contractors to submit a weekly statement of compliance. Further, the Copeland Act regulations require contractors on federal projects to submit and certify weekly payroll reports detailing daily hours worked, wage rates, total earnings and any deductions.

(3) The Service Contract Act of 1965 which requires that contractors, on covered contracts in excess of \$2,500, pay service employees the minimum wage prevailing in the locality and provide specified minimum fringe benefits. The act applies to federal contracts if the principal purpose of the contract is to furnish services in the United States through the use of service employees.³ It also prohibits employment under hazardous or unsanitary

conditions.

(4) The Walsh-Healey Public Contracts Act which requires that contractors manufacturing or furnishing materials, supplies, articles and equipment to the Federal Government under contracts that exceed \$10,000 qualify as a manufacturer or regular dealer, pay all employees working under the contract at least the minimum wage as determined by the Secretary of Labor, agree that no employee will be required to work in excess of 40 hours a week unless paid overtime, avoid use of convict labor or persons under 16 years old, and agree that no part of the contract will be performed in unsanitary, hazardous, or dangerous work places.⁴

These prevailing wage laws were enacted because the federal procurement system generally required that contracts be awarded to the lowest responsible and responsive bidder through a sealed bid process. This can have a negative impact on local labor standards. In labor intensive industries, like construction and service industries, the most expedient way to lower a bid may be to lower labor costs. In recognition of the influence that the government's buying power has on the economies of local areas, Congress enacted laws to protect minimum wages and benefits in order to avoid contractors obtaining contracts by simply lowering wages. The objective was to require contractors to compete by becoming more efficient, applying new technologies, or using a more productive workforce. With the enactment of the Competition in Contracting Act in 1984, Congress shifted the focus away from the sealed bidding process and to the concept of providing full and open competition using the most appropriate method of procurement. This change, however, does not diminish the underlying purpose and need for prevailing wage laws. Even though procuring agencies may have greater flexibility to consider other factors in addition to price in selecting contractors, price remains a principal selection criterion for almost all covered contracts, and employee labor standards -- except with respect to some key employees--are not considered in the selection process.

In addition, Executive Order 11246, "Equal Employment Opportunity," requires federal contractors with contracts in excess of \$10,000 to not discriminate in employment

because of race, creed, color, sex or national origin and to take affirmative steps to promote the employment opportunities of these protected groups.⁵

Need for Change

The Davis-Bacon Act has been a recurring public policy issue as well as the subject of a number of government and private studies. These studies have produced recommendations ranging from repeal of the act to suggestions for amendments to various provisions. Few "studies" are supported by hard evidence and there are few common areas of agreement in these studies.

Some contend that the requirements for submission of payrolls and statements of compliance are burdensome. Others argue, without supporting documentation, that the act serves as an impediment to small and minority business participation in federal construction contracting. For example, the more than 1,600 delegates to the 1986 White House Conference on Small Business ranked repealing the Davis-Bacon Act as their seventh most important recommendation out of 60 reported to the President and Congress. The Office of Advocacy of the U.S. Small Business Administration (SBA) contends in its 1986 *Issue Alert* that the act causes some construction workers on federal projects to be paid rates above those that would ordinarily prevail; limits the opportunities of non-union contractors to bid on public projects; disfavors small businesses and minority groups; imposes administrative and paperwork burdens which fall most heavily on small contractors; and generally raises the cost of federal construction, thus contributing to inflation.⁶ These contentions, however, are not supported by data, and others, including DOL, would strongly dispute these contentions.

The 1992 Budget Resolution passed by the House of Representatives urged the House Committee of jurisdiction on the Davis-Bacon Act to study the potential for possible savings to the Federal Government from the reform of the Act and report reform legislation to the full House of Representatives.⁷

The Acquisition Law Advisory Panel to the United States Congress on Streamlining Defense Acquisition Laws (Section 800 Panel) recommended the thresholds for application of the Davis-Bacon and Service Contract Act be increased to \$100,000, the requirement for submission of weekly payrolls be modified, the Davis-Bacon Act wage schedules be issued annually per locality, and the Walsh-Healey Public Contracts Act be repealed except for the provisions of the Act dealing with convict labor.⁸

Over time, the protections provided by the Walsh-Healey Public Contracts Act have been superseded or duplicated by subsequent legislation and congressional action. The overtime pay provisions are the same as the Fair Labor Standards Act (FLSA) and minimum wage provisions are also effectively the same as the FLSA because the Secretary has not issued a wage determination since 1963. The act's prohibition against purchasing goods made with child labor is duplicated by the FLSA which prohibits oppressive child labor in any facility that ships goods in interstate commerce. The convict labor provisions are the only provision that have not been overtaken by events, but these provisions could easily be incorporated into the provisions of the existing executive order on convict labor.

The Service Contract Act places a 5-year limitation on the term of service contracts subject to the Act and requires a new wage determination be incorporated in multiyear contracts at least every 2 years. The 5-year limitation is inconsistent with the government's need to enter into long term contracts. (See PROC18). It is contrary to the objectives of the Act to limit the term of contracts. As long as the act requires the incorporation of new wage determination every 2 years the service employees interests are protected. Long term contracts provide more stable employment for service employees because the contractor is not turning over as often.

The statutory provisions related to debarment need to be simplified. Currently, the Davis-Bacon Act authorizes the Comptroller General to debar contractors for violations and disburse back wages to employees. The Service Contract Act and the Walsh Healey Act require the DOL to notify the Comptroller General when it debars a contractor for violating the law. Under each statute, the Comptroller General is required to prepare and

distribute a list of the parties debarred. Currently the Comptroller General distributes a list and also provides the list to the General Services Administration (GSA) so the information may be included on the *List of Parties Excluded from Federal Procurement or Nonprocurement*, which it maintains and distributes through the Superintendent of Documents. The requirement to process recommendations for debarment and/or notices of debarment to the Comptroller General for distribution has become an unnecessary duplication of effort. The information should be sent directly to GSA for inclusion on the *List of Parties Excluded from Federal Procurement or Nonprocurement*.

Due to budget limitations, DOL has not been able to maximize the use of information technology in implementing the various labor laws. For example, most wage determinations under the Davis-Bacon Act are published and contracting officers select the one that applies to a particular construction project if the cost is estimated to exceed \$2,000 and proceeds with the procurement. On the other hand, the regulations implementing the Service Contract Act are structured so that every time a contracting officer needs to award a service contract over \$2,500 he/she must submit a form to DOL and wait for 30 to 60 days for a response before he/she can proceed with the procurement. DOL has, however, entered into agreements with some of the major procurement agencies that provide for the use of "blanket" wage determinations.

Improvements are also needed in DOL regulations. Specifically, the regulations which provide for interested parties to challenge a wage determination issued under the Service Contract Act as being at substantial variance with the wages prevailing in the locality do not provide time frames for resolving cases. Wage determinations that are based on collective bargaining agreements may also be challenged when there is a question of whether the collective bargaining agreement was a product of "arm's-length negotiations". The DOL's track record in terms of providing a timely hearing and resolution of substantial variance cases is not good. For example, some cases are being dismissed as moot because the government contract involved was already expired.⁹

In addition, regulations implementing the executive order on EEO provide for a

paper intensive process which adds little or no value but delays contract awards. The regulations issued by DOL implementing the executive order require contracting officers to request a preaward EEO compliance review/clearance before awarding a contract in excess of \$1 million.¹⁰ Contracting officers submit requests for preaward clearances to the Office of Federal Contract Compliance Programs at the DOL. The DOL processes the request and notifies the contracting officer, in writing, that the clearance is granted or that a full review is scheduled. In either case, the contract is awarded. During fiscal year 1992, approximately 23,000 requests were submitted but only 185 full reviews were completed.¹¹ (Due to reduced staff and budget, most requests were cleared because an on-site review could not be conducted within 30 days.) The small number of full reviews conducted by DOL does not justify the cost associated with processing every action over \$1 million through DOL. The DOL can enhance enforcement of the executive order by making more effective use of their resources.

Recommendations

1. Enact legislation to simplify labor laws. (3)

In addition to enacting the changes in labor laws, including changes in the Davis-Bacon Act, Service Contract Act and Walsh Healey Public Contracts Act, recommended in PROC04 Increase the Threshold and Simplify Small Purchases, Congress should:

(a) amend the Davis-Bacon Act to (1) apply the new threshold to federally funded and assisted contracts, (2) authorize the Secretary of Labor to debar individuals and firms for violations and to disburse payments to employees directly from payments withheld under the terms of contracts, and (3) provide for the listing of persons or firms debarred on the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* maintained by GSA.

(b) amend the Copeland Act to (1) eliminate the requirement for submission of certified payrolls and substitute a requirement that the contractor submit, along with each request for a progress or final payment, a certification that all persons employed on the project have been paid the full wages earned without unauthorized deductions, (2) require the contractor maintain payroll and other basic records relating to payroll for a period of 3 years after completion of the work, submit them to the contracting officer if instructed to do so, and make them available for inspection by authorized representatives of the Department of Labor or the contracting agency, (3) require the contracting agency to suspend all payments to the contractor if the contractor fails to respond to a request for payrolls, and (4) authorize the Secretary of Labor to debar contractors who fail to submit payrolls when requested to do so or otherwise refuse to make records available for inspection. The certification would be submitted as a part of the normal progress and final payment request to avoid an additional submission and certification. The contractor would be required to maintain records for each employee on hours worked daily and during the payroll period, hourly rates of wages paid (including rate of contributions or costs anticipated for bona fide fringe benefits), all deductions made and actual wages paid.

(c) amend the Service Contract Act to (1) eliminate the 5 year limitation on the term of contracts but retain the requirement for adjustment of wages and benefits under multiyear contract at a minimum every 2 years and (2) provide for listing of names of persons or firms debarred for violations of the act on the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* maintained by GSA.

(d) repeal the Walsh Healey Public Contracts Act.

2. Amend executive order on convict labor. (2)

The President should amend Executive Order 11755, upon repeal of the Walsh Healey Public Contracts Act, to incorporate the convict labor provisions of the Walsh Healey Public Contracts Act. This will provide for the continued procurement of goods

from the Federal Prison Industries as well as goods made by federal and state prisoners, inside or outside of prison, under the circumstances described in 18 U.S.C. 1761.

3. Provide on-line access to wage schedules through an electronic system. (1)

The Secretary of Labor should establish an electronic system, by January 1, 1995, to provide on-line access to both Davis-Bacon and Service Contract Act wage determinations. The system should provide a mechanism for electronically requesting specific project wage determinations under Davis-Bacon and for requesting Service Contract Act wage determinations in those cases where a collective bargaining agreement is involved.

4. Revise labor regulations to facilitate improvements in service.

The Secretary of Labor should revise labor regulations to: (1) require hearings on substantial variance cases under section 4(c) of the Service Contract Act be held and decisions rendered within 60 calendar days, or the secretary be notified of the delay and provided an explanation, and (2) eliminate the requirement for a preaward equal employment opportunity clearance before awarding contracts or first-tier subcontracts for an estimated or actual amount of \$1 million or more.

Fiscal Impact (in millions of dollars)

	1994	1995	1996	1997	1998
Budget Authority *	--	\$16.2	\$22.1	\$22.6	\$23.1
Outlays (S&E)	--	\$16.2	\$22.1	\$22.6	\$23.1
Changes in FTEs	--	519	692	692	692

* In addition to these administrative savings, there is likely to be a reduction in the paperwork burden on contractors doing business with the government. While we cannot accurately estimate these program savings, for every percentage point reduction in contract prices, the government will save \$849 million per year. To the extent such savings do occur, they will contribute to the overall governmentwide savings resulting from National Performance Review recommendations.

End Notes

1. Davis Bacon Act, 40 U.S.C.276a--6, March 3, 1931.
2. Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act.
3. Service Contract Act of 1965, 41 U.S.C.351-358.
4. Walsh-Healey Act, 41 U.S.C. 35-45.
5. Executive Order 11246, Equal Employment Opportunity, September 24, 1965.
6. U. S. Small Business Administration, Office of Advocacy, "The Davis-Bacon Act and Small Business," *Issue Alert Number 2*, March 1986, p.1.
7. *Reducing the Deficit: Spending and Revenue Options*, p. 179.
8. Acquisition Law Advisory Panel to the United States Congress, "Streamlining Defense Acquisition Law", Chapter 4, Socioeconomic Laws, Small Business, and Simplified Acquisition Threshold, January 1993, pp. 4-25 to 4-63.
9. Board of Service Contract Appeals.
10. 41 CFR 60-1 and 60-4.
11. Information provided by the Office of Federal Contract Compliance at the U.S. Department of Labor.

Cross-References to Other NPR Sections

- | | |
|--------|--|
| PROC04 | Increase threshold and simplify small purchases. |
| PROC18 | Authorize multiyear contracts |

PROC07: AMEND PROTEST RULES**Background**

Protests by disappointed bidders of government actions during the solicitation phase of a contract are a vital means to allow objective review of meritorious grievances of suppliers. By forcing a review of questionable or improper actions, the procurement system is strengthened and integrity and accountability of government maintained. However, unless the protest is clearly frivolous, and thus subject to summary dismissal, it delays further action on the procurement no matter how likely it is that the government's actions were correct. This delay can force all competitors and the government to freeze their actions until the protest is resolved unless the government can demonstrate that the acquisition is "urgent and compelling" and the award could be made within 30 days.

In 1992, 3,200 protests were filed with the General Accounting Office (GAO). Another 350 protests involving the acquisition of automated data processing (ADP) under the Brooks Act¹ were filed with the General Services Board of Contract Appeals (GSBCA). Nevertheless, line managers fault the protest system for redirecting contracting officer attention away from serving the customer to following rigid procedures and compiling paperwork in an effort to make their decisions "protest proof".

A protester can file a protest under a solicitation before the contracting agency, GAO, the Court of Federal Claims, the District Court, or the GSBCA (if ADP is involved), as shown in the table:

Forum	Standard of Review	Remarks
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Contracting Agency	Administrative review to assure actions were in keeping with policies, laws & regulations.	Allows higher level management to have feedback on how contracting officials are performing. May not be seen as objective.
General Accounting Office	Is there a violation of law or regulation, with presumption of correctness of the agency action and acceptance of agency's version of facts unless disproved.	GAO has moved toward more formal proceedings, with the possibility of hearings.
General Services Board of Contract Appeals	Is there a violation of law, regulation, or delegation of procurement authority. The GSBICA gives due weight to the statutory goals of economic and efficient procurement with no presumption of correctness of the agency action (i.e. a <i>de novo</i> review).	1) De novo review allows GSBICA to review entire record anew without having to defer to rationally based agency decisions. 2) It allows the GSBICA to substitute its judgement for that of the contracting officer. 3) More time is required to prepare and defend such a case. 4) Suspension of procurement freezes parties in place while GSBICA conducts its review.
District Courts	Was there a clear violation of law or regulation, or no rational basis for the government action.	Protester must show that the government violated a statute that was created to protect their interests (e.g. small business act).

Court of Federal Claims	The court's standard of review is whether there was a clear violation of statute or regulation or whether there was no rational basis for the government action.	Has nation-wide jurisdiction, can conduct hearings around the country, and is more experienced in government contract issues as a result of its jurisdiction to resolve contract performance controversies.
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Need for Change

People in industry and government have stated that communication between suppliers and the government have been curtailed because of the fear that a protest will be inadvertently triggered by a misunderstanding of approach.² This causes inadequate debriefings of offerors which create suspicion and can generate the protest that the caution was meant to avoid. The procurement system cannot improve without improved channels of communication between buyers and sellers.

Prior to 1984, protests were a relatively cheap administrative procedure for contractors to force an objective review of contracting agency actions. The system became more complex in 1984 when the Competition in Contracting Act (CICA) established both GAO and GSBCA with formal authority to undertake ever more formal reviews using different standards of review. Where company presidents or marketing executives would argue their protest cases, now highly trained legal professionals usually do so. This is primarily because the GSBCA uses "dispute" resolution procedures where the entire contract record is reviewed anew (or de novo). This means that the GSBCA, a quasi-independent body, can potentially substitute its judgement for that of agency contracting officials. Because of the unique use of disputes procedures for protests, CICA changes were to be on a test basis for 3 years. However, after 18 months, the protest provisions became permanent in law through other legislation.³

The vast majority of protests are filed in the administrative forums--the GAO or the GSBCA.

If a protest is filed in either administrative forum before award, the government is required to suspend work on the procurement except in urgent and compelling situations. A protest can be filed at any time prior to the closing date for receipt of proposals (e.g., challenging the fairness of the bid solicitation, or within 10 days of contract award (e.g., challenging the award). If the protester wins the protest, the government could be required to re-solicit the requirement, reevaluate the offers, cancel the contract (if already awarded), or take other appropriate action. The protester is entitled to recovery of his bid and proposal costs in many instances and recovery of attorney's fees.

These remedies were intended to protect disappointed bidders, but at the expense of the government. For example, while the government can be compelled to pay a protester's legal fees, a protester can not be assessed any penalty for delaying government award or for defending against a frivolous protest. Avoidance of delay in government programs is the incentive for the government to conduct procurements that conform to the rigid reading of the many statutes and regulations governing the procurement process, and document the fact. Because of the significant consequences of contracting officer decisions, a uniform standard for judging correctness of those decisions will help ensure consistent actions by the government.

The Report of the Acquisition Law Advisory Panel to the United States Congress on Streamlining Defense Acquisition Law (Section 800 Panel) reviewed the protest process. A key recommendation of this panel was that the Court of Federal Claims should be the single judicial forum to consider all protests that can now be considered by any District Court of Claims.⁴ This change would allow for the judicial body with recognized expertise to resolve these sometimes complex contracting issues.

Recommendations

1. **Establish a uniform standard of review for all protest forums by changing the standard of review at the GSBICA to conform to that used in the Courts. (3)**

Congress should amend Section 111(F)(1) of the Federal Property and Administrative Services Act to change the standard of review at the GSBICA to the standard of review of the courts--specifically, "was there a rational basis for the government action?"

Suggested language is:

(f)(1) Upon request of an interested party in connection with any procurement which is subject to this section (including procurements subject to delegation of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the "board"), shall review any decision by a contracting official alleged to violate a statute or regulation. In conducting such review, the board shall affirm the contracting official's decision unless it is found to be in clear violation of a statute or regulation designed to protect the interest of the protester, or without a rational basis.⁵ The authority of the board... [etc.]

2. **Allow penalties for frivolous protests. (3)**

Congress should require protesters who tie up agency protests by filing frivolous protests to pay costs and fees incurred because of their action.

3. **Establish a single forum with the judicial branch to consider protests. (3)**

Congress should enact legislation to establish the Court of Federal Claims as the sole court with jurisdiction over bid protests.

4. **Allow continued performance up to the point of award as part of any**

suspension of the delegation of procurement authority when a protest is filed with the GSBICA. (1)

GSBICA should ensure that contracting activity is not frozen in place when a protest is filed, but instead allow for continuance of procurement actions short of awarding a contract.

Fiscal Impact

Savings will accrue to the Federal Government if these recommendations are adopted. However, it is not possible to estimate the amount.

End Notes

1. Section 111 of the Federal Property and Administrative Services Act, (40 U.S.C. 541 et seq.)
2. Discussion with representatives of the Council for Excellence in Government May 11, 1993.
3. Section 961(c) of P.L. 99-500 (Paperwork Reduction Act Reauthorization) amended the Competition in Contracting Act (P.L. 98-369) to make the GSBICA protest authority permanent.
4. Section 800 Panel Report, p. 1-214.
5. The current provision is as follows:
"(f)(1) Upon request of an interested party in connection with any procurement which is subject to this section (including procurements subject to delegation of procurement authority), the board of contract appeals of the General Services Administration (hereafter in this subsection referred to as the "board"), shall review any decision by a contracting officer alleged to violate a statute or regulation. Such review shall be conducted under the standard applicable to review of contracting officer final decisions by boards of contract appeals. The authority of the board... [etc]."

Cross-References to Other NPR Sections

None.

PROC08: ENHANCE PROGRAMS FOR SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Background

It is the policy of the government to place a fair proportion of its contracts with small business concerns and small disadvantaged business concerns. It is also the policy of the United States that small business concerns and small disadvantaged business concerns have the maximum practicable opportunity to participate in performance of federal contracts as subcontractors.¹ To implement this policy, the Small Business Act requires federal agencies to obtain small business subcontracting plans from prime contractors when the value of the procurement exceeds \$500,000 (\$1 million for construction) and offers subcontracting possibilities.² This requirement applies when contracting with state and local governments or with entities which are controlled or regulated by state and local governmental bodies (e.g. public utilities).

The Small Business Act requires the President establish annual government-wide goals for procurement contracts awarded to small business concerns and small disadvantaged business concerns. The governmentwide goal for participation by small business concerns must be established at not less than 20 percent of the total value of all prime contract awards for each fiscal year. In addition, a goal for participation by small disadvantaged business concerns must be established at not less than 5 percent of the total value of all prime contracts and subcontract awards for each fiscal year.³

A number of programs have been established to carry out the policies and facilitate agencies' achievement of the goals. The most commonly used programs are the small business set-aside program, the 8(a) program and program for subcontracting with small business and small disadvantaged business concerns.⁴

The small business set-aside program authorizes agencies to reserve individual procurement exclusively for participation by small business concerns. The 8(a) program is

a business development program administered by the Small Business Administration (SBA) for small businesses owned and controlled by socially and economically disadvantaged U. S. citizens. To participate, firms must apply and be found to meet eligibility criteria. Program participation is limited to nine years. Participants may receive a variety of business development services including management and technical assistance, direct SBA loans, surety bond waivers, the transfer of government surplus property, and government contracts awarded under special procedures. The SBA enters into all types of contracts with other agencies and lets subcontracts for performing federal contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors". Federal agencies award contracts to SBA who subcontracts with eligible 8(a) firms either on a sole source or competitive basis for performance of the work. The contracts must be awarded on a competitive basis if the anticipated award price will exceed \$5 million for manufacturing or \$3 million for all other acquisitions.⁵

Small businesses awarded contracts under these programs are limited in the amount of subcontracting that they can do in performing the contract. For service and supply contracts, the small business concern must perform at least 50 percent of the cost of contract performance incurred for personnel with its own employees. For construction, small business general contractors must perform at least 15 percent of the cost of the contract, not including cost of materials, with their own employees; small business special trade contractors must perform at least 25 percent of the contract with their own employees.⁶ In addition, small businesses must supply the product of another small business under the small business set-aside and 8(a) programs.

In addition to the small business set-aside and 8(a) programs, which apply governmentwide, the Department of Defense (DoD) has special statutory authority to conduct small disadvantaged business set-asides.⁷ Under the set-aside program, DoD has the authority to limit competition on a specific procurement to small disadvantaged businesses. The program requires a self-certification from the offeror. This certification may be challenged, but there is no requirement for pre-certification by SBA.

Need for Change

Contracting with the SBA under the 8(a) program can add as much as 30 days to the procurement process. This time is consumed processing the paperwork through SBA to the 8(a) contractor, back to SBA and finally to the procuring agency.

According to a 1992 report of the U.S. Commission on Minority Business Development there is no longer a valid need for contracting with SBA because of the growing sophistication of small disadvantaged businesses. The tripartite arrangement was originally established to insure that agency efforts to achieve low cost contracts did not harm small disadvantaged businesses struggling to enter the market place and to permit SBA to insure that the proposed 8(a) contractor had the technical and financial capability to perform the contract. The Commission concluded that the tripartite arrangement is "a process which consumes more time than needed, but contributes nothing of real substance to the development of the 8(a) firm." ⁸ The Acquisition Law Advisory Panel to the United States Congress on Streamlining Defense Acquisition Laws (Section 800 Panel) reached the same conclusion. ⁹

The administrative burden imposed on small business by the limitation on subcontracting is enormous. Every quotation the small business obtains from a prospective supplier or subcontractor has to be evaluated not only from a "make or buy" standpoint prior to contract award, but also from a large or small business supplier perspective. The small business must compare costs from each source and consider the expertise of the small business supplier to meet the requirements of the solicitation as a subcontractor, even if the large business supplier is a known acceptable source. The small business submitting a offer to the government must expend extra time locating sources in order to comply with the limitation on subcontracting instead of selecting the supply or service provider for the price. This limitation is prejudicial to small businesses as large businesses do not have to comply with such requirements.

Civilian agencies need authority to conduct small disadvantaged business set-aside

because the 8(a) program does not encompass all small disadvantaged businesses. Some firms have graduated from the program but still qualify as small businesses under the applicable size standard, while others have never applied to the program. To the extent that these firms are not included in competitions for 8(a) awards, the procuring agency's array of choice over cost and capability is limited. Procuring agencies need the flexibility to use either the 8(a) program or small disadvantaged business set asides as tools to achieve the statutory goals.

With respect to the requirements for obtaining subcontracting plans, federal agencies have experienced difficulty in getting subcontracting plans when contracting with state and local governments or entities regulated by such governments. The problem is most prevalent in the monopolistic public utilities area, where consumers have no choice, leaving the Federal Government with few options in terms of enforcing the requirements for subcontracting plans. Currently, thousands of staff hours and dollars are expended each year debating the issue, trying to persuade utilities of the merits of the federal government's position, or otherwise litigating the issue. These efforts produce little benefit for the small business community.

Attempts to resolve the problem have been unsuccessful. Public utilities refuse to enter into contracts, insisting that the federal government can procure service under tariffs like every other customer. When the federal government does take service under tariffs, many utilities argue they are not subject to the requirement for a subcontracting plan because they do not have a contract with the federal government. Some utility firms continue to express this position notwithstanding written opinions from the General Accounting Office (GAO) and the Department of Justice (DOJ) that the subcontracting plan requirements apply even in the absence of a written contract.

Additionally, utilities and state and local governments complain that the federal subcontracting plan requirements overlap with state or local laws which require similar plans that are designed to provide contracting opportunities for small and small disadvantaged business concerns.¹⁰ They argue that the overlap, creates an unnecessary

intrusion by the Federal Government on state and local affairs and a duplication of effort, paperwork and reporting.

Resolving this problem will help federal agency managers by allowing them to use their resources in more productive endeavors.

Recommendations

1. Authorize procuring agencies to contract directly with 8(a) contractors. (3)

Congress should enact legislation to permit agencies to award contracts directly to small and disadvantaged businesses. The legislation should provide for SBA to continue to determine that awarding a contract under the 8(a) program will not adversely effect another small business and to certify the eligibility of 8(a) contractors. The statutory goals and an agency's normal desire to provide good mission support are strong incentives for agencies to award contracts to small disadvantaged businesses and work closely with them to provide mission excellence. Eliminating contracting with the SBA will expedite the award of contracts in supporting mission accomplishment. This recommendation would not alter the SBA's responsibility for providing business development services or SBA's responsibility to insure that a small disadvantaged business meets program requirements prior a federal agency entering into the contractual arrangement.

2. Repeal statutory limitations on subcontracting and substitute regulatory limitations to provide greater flexibility. (3)

Congress should amend the Small Business Act to repeal the limitations on subcontracting. Such limitations should be addressed by the Administrator of SBA through regulations governing the small business status of offerors. Small business status should be dependent upon the contractor performing a significant proportion of the work and being in

management control of performance. A firm's status as a small business would be subject to self-certification, protest, and appeal procedures in size determinations by SBA.

3. Authorize civilian agencies to conduct small disadvantaged business set-asides.

(3)

Congress should amend the Small Business Act to provide civilian agencies the same authority that DoD currently has for establishing its own set-aside competitions. The legislative amendments should be structured to ensure the continued support of the 8(a) program by precluding agencies from reducing the number and dollar value of 8(a) contracts. Giving civilian agencies the same authority as DoD to seek small disadvantaged business participation has three benefits: the federal manager has a wider range of choice on capability and cost; agencies are in a better position to meet their 8(a) goals; and small disadvantaged business's potentially gain greater access to federal business.

4. Exempt state and local governments from subcontracting plans in certain cases.

(3)

Congress should amend the Small Business Act to: (a) provide an exemption of the subcontracting plan requirement when services are acquired from a state or local government or from an entity that is controlled by them if state or local law requires a similar program; (b) either exempt entities providing services under tariff from or clearly state they are subject to the subcontracting plan requirement even though no written agreement exists; and (c) provide that failure of an entity providing service under tariff to submit an acceptable subcontracting plan constitutes a cause of action to seek judicial enforcement.

State and local laws should only be recognized as meeting the exemption if they are designed to achieve essentially the same purpose as that embodied in the federal law. By recognizing state and local government programs which are designed to serve the same purpose as the federal subcontracting plan requirement, the Federal Government would

eliminate the duplication of effort which results when various levels of government impose similar requirements all designed to serve the same purpose. The legislative change would also provide a meaningful mechanism to enforce the requirement if it is retained.

Fiscal Impact

Some savings will accrue to the federal government if changes are enacted. However, it is not possible to estimate the amount. Primary benefit is the reduction in acquisition lead time.

End Notes

1. Section 19.201 of the Federal Acquisition Regulation (48 CFR 19.201).
2. Section 8 (d) of the Small Business Act (16 U.S.C. 737(d)).
3. Section 15(g) of the Small Business Act (15 U.S.C. 644(g)).
4. Subparts 19.5, 19.7 and 19.8 of the Federal Acquisition Regulation (48 CFR 19.5, 19.7 and 19.8).
5. Section 8(a) of the Small Business Act (15 U.S.C. 637(a)).
6. Section 921(c)(2) of the Defense Authorization Act of 1987, Pub. L. 99-661.
7. Section 1207(e)(3) of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note).
8. Final Report , United States Commission on Minority Business Development (1992), p. 53.
9. Acquisition Law Advisory Panel to the United States Congress, on Streamlining Defense Acquisition Laws, report of the Acquisition Law Advisory Panel to the United States Congress, January 1993, Chapter 4, Socioeconomic Laws, Small Business, and Simplified Acquisition Threshold, p. 4-111.
10. General Accounting Office, Report to the Chairman, Committee on Government Operations, House of Representatives on GSA procurement, "Public Utilities' Plans for Small and Disadvantaged Subcontractors", p.22.

Cross-References to Other NPR Sections

None.

PROC09: REFORM INFORMATION RESOURCES MANAGEMENT (IRM) PROCUREMENTS

Background

The Brooks Act¹ authorizes and directs the Administrator of the General Services Administration (GSA) to "coordinate and provide for the economic and efficient purchase, lease and maintenance of automated data processing (ADP) equipment by federal agencies." It was passed in 1965 at the start of the era of large mainframe computers, when ADP was a new and highly specialized product controlled by a few large companies. The act originally covered only contracts for ADP hardware. Amendments to the act in 1986 broadened its coverage to include contracts for ADP software and support services. The act was also expanded to cover any contracts which included an ADP component, except for contracts of the Department of Defense and to include telecommunications systems and services.

The Act authorizes GSA to delegate its authority to procure ADP to other federal agencies. GSA normally delegates authority to procure up to a total of \$2.5 million in ADP equipment and services over a period of five years. GSA will sometimes make an exception, based upon reviews of an agency's management of ADP systems; delegations of up to \$17.5 million have been made. Agency procurement requests (APRs) above these levels are reviewed by GSA which provides individual delegations for each of these procurements. GSA reviews about 700 agency APRs per year. Although GSA is assigned the role of ensuring that the government effectively acquires and manages its ADP resources, GSA is precluded from interfering with agencies' determination and specification of their ADP requirements, selection of ADP products and services, and determination of how products are used. In addition, the regulation² governing ADP acquisition requires agencies to analyze their ADP requirements and possible alternatives for all ADP procurements over \$50,000. The term "information resources management" refers to the

management of agency information activities and resources including ADP hardware, software and services. The term "Information Technology (IT)" used in the balance of this paper is the contemporary term describing ADP and telecommunications hardware, software and services.

Need for Change

Five major challenges confront federal managers:

1. According to reports issued by the General Accounting Office (GAO) and the Inspectors General (IG) of certain agencies, the government has major problems acquiring complex IT products and services. These include failure by agencies to clearly define their requirements; failure to re-engineer existing systems for rational and efficient processes before beginning automation; inadequate leadership on IT procurements by agency management; inadequate linkage of IT strategies to agency strategic plans, and other management failures. GSA, GAO and private organizations agree that techniques of good management must be made a part of sound plans to manage IT procurements. These include: mobilizing the right team, clearly defining requirements, tying IT procurement strategy to overall agency strategy, providing strong senior management support, and automating systems only when they have been re-engineered for maximum efficiency.

2. The law and the Federal Information Resources Management Regulation (FIRMR) fail to recognize that many IT items are commercial products in the marketplace. These are goods and services which are mass produced and offered for sale, lease or license on the open market. The competitive marketplace is sufficient to discipline commercial IT procurements within the rules for government IT acquisitions. The laws and regulations underlying IT acquisitions should differentiate between commercial and non-commercial acquisitions.

3. The federal acquisition process is so time-consuming that it fails to keep pace with technology. The federal acquisition cycle is more than three times longer than that of

industry (Figure 1). This is due to lengthy agency reviews with unnecessary rules and procedures; excessive documentation of transactions to forestall protests before the GSBCA; time added by GSA review of large agency procurement requests; and the existence of FIRMR provisions that duplicate agencies' normal IT acquisition planning procedures.

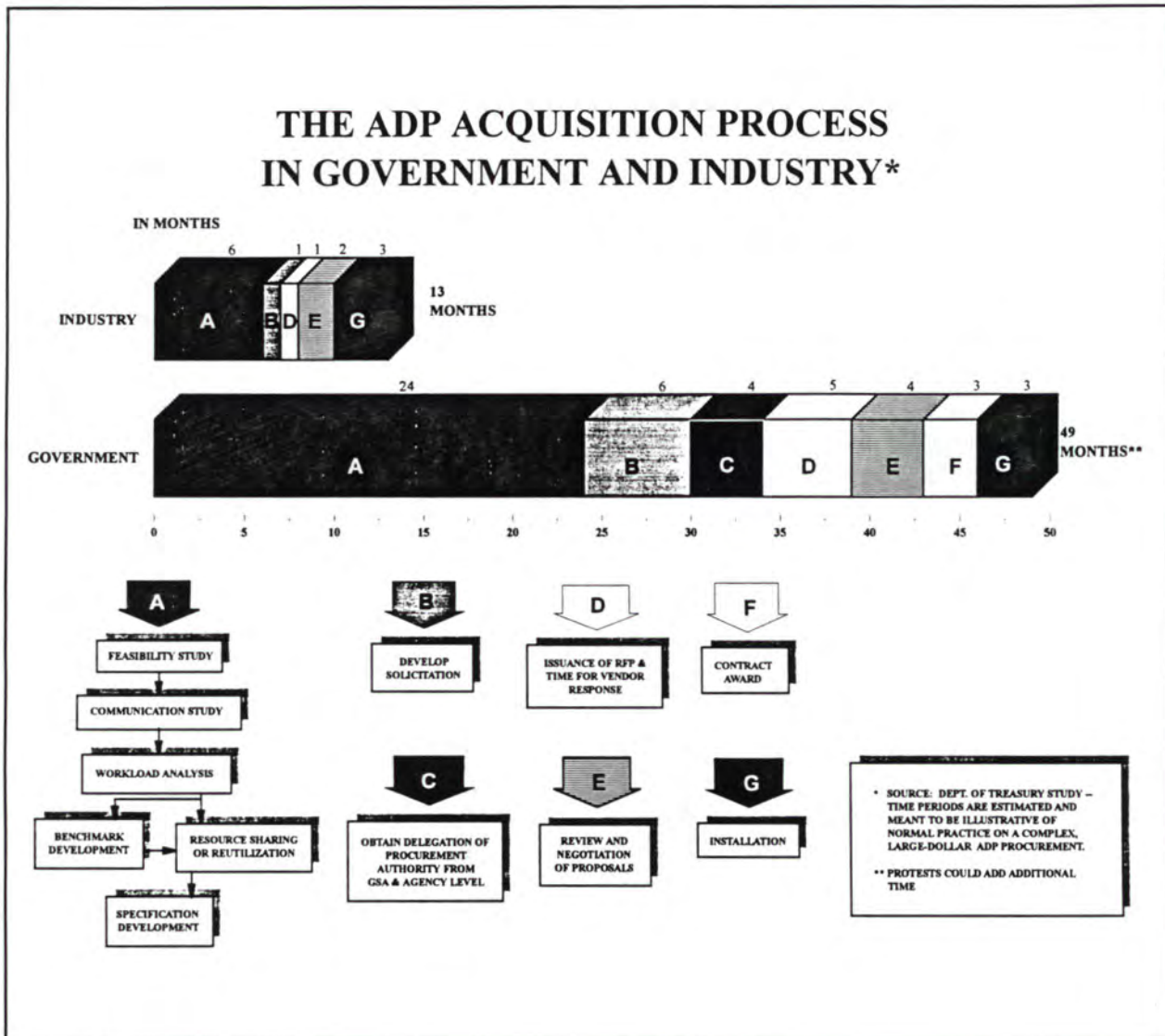


Figure 1

4. In some IT procurements, there are benefits which transcend the mission of a single agency. These benefits include savings from large purchases, learning the lessons and best practices of other agencies, and understanding common technology issues underlying multi-program activities (e.g., "one-stop shopping" efforts to provide services across agency lines). Agency acquisition planning must include outreach to, and team work with, other agencies where an acquisition has such benefits.

5. The party responsible and accountable for good management of agency programs, including IT acquisitions, should be clearly and unambiguously identified. Making a third party, such as GSA, an overseer or controller of an agency management process dilutes that agency's responsibility and accountability.

GSA has tried hard to meet these challenges through innovative training programs, an aggressive triennial review program of agency IRM management capabilities, sponsorship of various forums, and working with problem agencies. However, the problems continue. There is reason to believe that no central management agency, no matter how excellent, can solve problems that are essentially agency problems. Technology development is so rapid that a continuous influx of talent and state-of-the-art knowledge is necessary if any central management organization is to handle the role GSA currently is asked to play. Given scarce resources and the limitations in pay and personnel management practices inherent in the Federal Government, it is unlikely that such a central management organization could amass and continually refresh the talent required to guide agency procurements. In addition, by making GSA responsible for IT procurements, the issue of who is responsible and accountable for managing IRM acquisition and obtaining maximum results is considerably muddled.

Recommendations

1. **Increase delegation of authority to agencies.** (1)

The Administrator, GSA should, by October 31, 1993, raise delegations for competitive procurements as follows:

- a. For agencies with information technology budgets reported to the Office of Management and Budget (OMB) Circular No. A-11, section 43, information technology exhibits 43A and 43B, over \$1 billion in the prior fiscal year: \$50 million
- b. For agencies with information technology budgets reported to the Office of Management and Budget (OMB) Circular No. A-11, section 43, information technology exhibits 43A and 43B, from \$100 million through \$1 billion in the prior fiscal year: \$20 million.
- c. For agencies with information technology budgets reported to the Office of Management and Budget (OMB) Circular No. A-11, section 43, information technology exhibits 43A and 43B, from zero through \$100 million in the prior fiscal year: \$5 million.

These are minimum levels that should be delegated to all agencies, with the higher levels delegated to those agencies with good management records, as demonstrated by GSA IRM reviews. GSA should work closely with agency heads to ensure that these delegations are passed through to operating components and line managers with minimum restrictions and with an emphasis on expected performance outcomes and measures of success.

2. Eliminate requirements and alternatives analysis for commercial IT items. (1)

The Administrator of GSA should, by October 31, 1993, authorize a waiver from the FIRMR provisions on requirements and alternatives analyses for commercial IT defined as goods and services which are mass produced and offered for sale, lease or license on the open market. Furthermore, the Administrator should revise the regulations by March 31, 1994, to incorporate this interim waiver authority.

3. Establish an inter-agency team to develop a plan for improving management of federal IT acquisitions. (1)

The Administrator of GSA should establish an inter-agency team to develop a government-wide approach to improve management of government IT acquisitions. The team should:

- act on behalf of all agencies with the goal of obtaining their agreement to work within the team's recommendations.
- be chaired by an agency team member to report the team's findings and recommendations to the Administrator.
- be composed primarily of senior agency management officials able to draw on IRM officials, the private sector expertise, Congress, and central management agencies (OMB, OFPP, NIST, etc.) to analyze issues and develop guiding principles, best practices, and performance measures for a streamlined, well-managed IT acquisition process.
- develop an interagency team approach for managing those IT procurements which have potential effects beyond a single agency
- review GSA's on-going role in IRM with the goal of placing maximum accountability for IT with agency heads and emphasizing GSA's role and capability of providing acquisition consultation and management services consistent with current law.
- determine what categories of service contracts should be considered "commercial" in nature and should not be covered by the FIRMR.

The Administrator, GSA should provide the Vice President, by March 31, 1994, his plan of action to implement the team's recommendations.

4. **Modernize the Brooks Act.** (3)

Congress should amend the Brooks Act to exclude commercial items and, as recommended in PROC07 (see cross-reference for protest recommendations), improve the protest rules. Commercial items to be excluded are defined as those items that:

- a. Have been sold, leased, or licensed to the general public;
- b. Have been offered for sale, lease, or license to the general public;
- c. Are not yet available in the commercial marketplace, but will be available in time to satisfy the delivery requirements under a government solicitation; or
- d. Are items that, but for minor modifications made to meet government requirements, would satisfy the criteria set forth in a, b, and c above.

Fiscal Impact (in millions of dollars)

	1994	1995	1996	1997	1998
Budget Authority	56.5	57.8	59.1	60.4	61.7
Outlays	56.5	57.8	59.1	60.4	61.7
Change in FTEs	135	135	135	135	135

These estimates are based on a study done by the Johnson Space Center. The study calculated the time and cost added by complying with the requirements of the FIRMR over and above the time and cost of conducting a procurement under normal procedures followed by the Center for other procurements.

End Notes

1. Section 111 of the Federal Property and Administrative Services Act (Title 40 U.S.C. 541 et seq.)
2. Sections 201-20.1 and 201-20.2 of the Federal Information Resources Management Regulation (41 CFR 201-20.1 and 201-20.2)

Cross-References to Other NPR Sections

CSS04: Streamline and Improve Contracting Strategies for the Multiple Award Schedule Program, includes two recommendations to improve IRM acquisition. These are elimination of synopsis requirements (recommendation 2) and raising the maximum order limitations (recommendation 3).

PROC07: Amend Protest Rules, includes a series of recommendations for improving the protest process.

PART 3:
CENTER AUTHORITY AND ACCOUNTABILITY WITH LINE MANAGERS

PROC10: EXPAND USE OF COMMERCIAL CREDIT CARD**Background**

In most federal agencies, employees have three ways to obtain goods and services they need. They can either submit a procurement request to a contracting officer, go to a central stockroom, or make the purchase themselves after getting approval from their budget office. Managers are frustrated because the cost of doing the paper work to obtain the items they need often exceeds the cost of the item and is very time-consuming. An efficient method for making small purchases is to use a commercial credit card service available through a General Services Administration (GSA) contract.¹ The use of the credit card is particularly effective when a manager has an urgent need for supplies or services, or in cases where technology changes rapidly. For example, a manager would benefit by being able to quickly acquire a single, fully equipped personal computer, software and related supplies.

Any federal agency may choose to participate in the credit card program. Under the program, authorized federal employees may use a commercial credit card to pay for goods and services purchased on behalf of the Federal Government. The card, called IMPAC (International Merchant Purchase Authorization Card), is recognized internationally and is accepted wherever the VISA card is accepted. Within the government, GSA is now the only supply source that accepts IMPAC.

There is a very effective system in place to ensure accountability for the use of the card. It is restricted to purchases and payments of less than \$25,000, which by law are treated in a streamlined manner as small purchases. IMPAC may not be used to obtain cash advances. Average total purchases under the IMPAC program are \$1.7 million per day. However, the IMPAC program is designed to handle significantly larger volumes. The average individual purchase is \$250.

IMPAC payments are processed using the same procedures established for holders of

standard VISA cards. The employee signs the sales draft and receives a copy of the draft. Merchants receive prompt payment through VISA's international settlement system. Various daily, monthly, and quarterly reports are available to the government so that use of the cards can be monitored and controlled. Card holder receive monthly statements to verify billings. After the billings on a particular statement are verified by the card holding employee, the statement is approved by an approving official then sent to the agency's finance office for payment.

Many agencies do not permit the use of IMPAC, or they so restrict the use of IMPAC as to make it impossible for most managers to use. Agencies that do use IMPAC determine which employees get the cards and set limits on the types and amounts of small purchases that can be made by each employee with a card. In some cases agencies place limits on how much certain offices can purchase using IMPAC.

Need for Change

There are several reasons to expand the use of IMPAC. First, IMPAC substantially improves the ability of managers to monitor, evaluate and control administrative activities and expenses. It enables managers to better manage cash and control funds. Less cash needs to be kept on hand, which reduces the cost of keeping imprest (petty cash) funds stocked with cash. The reports of IMPAC activity permit careful tracking of the amount, type and timing of small purchases. This information enables managers to find ways to save money when making small purchases.

Second, using IMPAC reduces administrative costs by reducing the paper associated with small purchases (purchase orders and invoices). This reduces the amount of time people spend processing paperwork and allows them to be more productive. IMPAC costs less than traditional methods of making small purchases. The General Accounting Office estimates that using the credit card instead of a purchase order saves between \$29 and \$227 per transaction.²

Third, all transactions under IMPAC are more readily verified through a consolidated review, approval and payment process. This permits managers to carefully and efficiently verify the transaction, receipt, and dollar value of every small purchase.

Although the use of IMPAC can be expanded quickly and easily, there are some obstacles to expansion:

- government attorneys have reached different conclusions regarding the need to convey statutory requirements in writing to vendors when credit card purchases are made.
- some government attorneys are concerned that the absence of written purchase contracts may create difficulties in the event a dispute arises over a credit card purchase. However, the dispute resolution procedures that apply to other VISA card holders also apply to the government card holder. Therefore, the program does provide adequate means to resolve disputes.
- the public may perceive that making credit cards available to federal employees creates opportunities for abuse and a reduction in competition. Concerns about abuse are addressed through controls built into the program. For example, credit cards are coded to reflect individual limits on the types and amounts of purchases that can be made. Vendors are required to confirm a purchasers' limits through the electronic VISA system for purchases over \$50. Competition requirements still apply to purchases made under IMPAC.

Recommendations

1. **Agency heads should provide managers with the ability to authorize employees who have a bona fide need to purchase small dollar value items directly using IMPAC.** (1)

H heads of all federal agencies should, by May 1, 1994, ensure that managers are able

to authorize employees to make small purchases directly through the IMPAC program. In addition, they should:

- direct their respective comptrollers and procurement executives to adopt internal procedures to govern the use of IMPAC. Such procedures should provide for dealing with fraud or misuse swiftly and sternly.
- ensure that anyone authorized to use the credit card has had appropriate training in the use of the credit card consistent with small purchase procedures.
- encourage vendors who do not accept the IMPAC to make arrangements to do so and provide information on how they can sign up to the program.
- direct contracting activities to review IMPAC purchases to identify high dollar aggregate purchases from individual merchants so they can negotiate discounts with vendors with significant sales volume.
- limit internal procedures to those necessary to ensure the maximum effective use of IMPAC.
- reduce the number and use of imprest funds in favor of use of the credit card to save money through improved cash management.

2. All government supply sources should accept the IMPAC credit card. (1)

By May 1, 1994, the heads of all agencies operating as government supply sources (Federal Prison Industries, Defense Logistics Agency, GSA, Department of Veterans Affairs, etc.) should start accepting the IMPAC. In order to do so, the agencies need to establish themselves as merchants under the IMPAC program.

3. Amend the Federal Acquisition Regulation (FAR) to promote use of credit cards. (2)

The Federal Acquisition Regulatory Council should amend the FAR to promote and

facilitate the use of credit cards in conjunction with small purchase procedures. The Administrator of OFPP should reassess the legal issues that may impair the use of credit cards to support over the counter and telephone orders for which there is no contract documentation. Unless clearly prohibited the FAR should authorize oral small purchases below \$2,500 when made with a credit card.

4. Amend Department of the Treasury regulations to authorize the use of IMPAC for cash advances. (1)

The Secretary of the Treasury should amend regulations, by May 1, 1994, to authorize use of the credit card to get cash advances. The authorization to use the card to obtain cash should be limited to employees who currently serve as imprest fund cashiers. The card should be coded so only employees who have been specifically identified as being authorized to obtain cash can do so. These employees could go to a local bank to obtain cash as needed instead of holding cash in imprest funds and filing vouchers to replenish the imprest fund. Documentation for cash expenditures can be processed as a normal part of the monthly reconciliation and payment of the credit card bill. This will improve cash management and reduce paperwork associated with maintaining imprest funds.

Fiscal Impact (in millions of dollars)

	1994	1995	1996	1997	1998
Budget Authority	178.1	182.2	186.2	190.3	194.4
Outlays	178.1	182.2	186.2	190.3	194.4

End Notes

1. GSA Schedule Number IG 615, Governmentwide Commercial Credit Card Service, July 28, 1992.
2. General Accounting Office, Cash Management, Benefits and Limitations of the Small Purchase Credit Card Program, GAO/AFMD-90-89BR, September 1990, p. 28.

Cross-References to Other NPR Sections

PROC15 Expand Electronic Commerce

PROC11: ENSURE CUSTOMER FOCUS IN PROCUREMENT**Background**

In most federal agencies there is an internal office that assesses procurement operations. Assessments are done utilizing a variety of review activities, including Procurement Management Reviews (PMRs). Executive Order 12352¹, dated March 17, 1982, requires the agency procurement executive to evaluate the performance of the agency's procurement system against specific criteria and to certify that such criteria have been met. System criteria guidelines were established by the Office of Federal Procurement Policy (OFPP) in 1984 and were intended to serve as guides for agencies in establishing and reviewing their procurement systems. While the system criteria established by OFPP address the effectiveness and efficiency of the system, they tend to focus on the process as opposed to outcomes of procurements. The criteria fail to reflect the reinventing principles advocated by the National Performance Review including a focus on results for the line manager customer.

Need for Change

An ever-growing body of rules and regulations has emerged as the government has tried to reduce the incidence of fraud and prevent the waste of taxpayer's money. An OFPP survey of federal line managers indicates that many managers feel that procurement professionals focus on meeting process and rules at the expense of fast and reliable service and quality results. The survey indicates considerable miscommunication and lack of trust between line managers and procurement professionals, and there is widespread concern by both parties that this is destructive.

The OFPP² survey results point to the conclusion that customer input should be taken into account in measuring the effectiveness of procurement services. The goal of

procurement organizations is to provide quality supplies and services required by users when they are needed, at a reasonable price, and in accordance with applicable laws and regulations. Line managers - the customers - determine quality, not the procurement organization that supports them. Compliance with laws and regulations should be one criterion in assessing the effectiveness of procurement services, but this should be done with customer input regarding the quality of services provided.

Some agencies have recognized the need to receive input from their customer. For example, one procurement organization within the Department of Commerce is setting up a Board of Directors, composed of senior level customers to rate the procurement organization against mutually agreed upon goals.³ The National Aeronautics and Space Administration has recently included customer input as one of the elements of its PMRs.

Such approaches will restore balance to the contracting officer's basic role of providing excellent customer service within the limitations of law and regulations. It will also focus the attention of all parties on the importance of meeting the customer's needs, rather than only on the intricacies of the process used to meet them. Taking customer input into account will help motivate procurement personnel to focus more on providing customer satisfaction. It will also focus reviewers more on the importance of customer satisfaction and meeting the missions needs.

Recommendations

1. **Revise Executive Order 12352 to conform to the new vision for federal procurement.** (2)

a. OFPP should establish by January 15, 1994, an interagency task force to review E.O. 12352. The task force should ensure that the Executive Order is consistent with the following themes:

1. Move to guiding principles from rigid rules.

2. Get bureaucracy out of the way.
3. Center authority and accountability with line managers.
4. Create competitive enterprises.
5. Foster competitiveness and commercial practices.

b. Based on the task force's findings, by July 31, 1994, OFPP should prepare for the President, a revised executive order consistent with these principles to guide the operations and assessment of procurement systems.

Fiscal Impact

None.

End Notes

1. Executive Order 12352 on Federal Procurement Reforms, of March 17, 1982
2. OFPP/MSPB survey, January, 1993
3. Office of Procurement Operations, Office of the Secretary, Department of Commerce.

Cross-References to Other NPR Sections

None.

PROC12: STREAMLINE PROCUREMENT ETHICS LAWS**Background**

Integrity and accountability are two basic principles of Federal Government service which cannot be compromised. Because the consequences of breaches of proper behavior are severe, the laws and regulations governing government and contractor behavior must be clear and understood by all parties affected.

Executive Order 12834 (Ethics Commitments by Executive Branch Appointees) was issued on January 20, 1993, to express the President's concern for clear and enforceable standards of behavior.¹ This order set forth contractual post-employment restrictions exceeding the statutory restrictions placed on Executive Branch employees. Ethical behavior is demanded and expected of every federal employee, regardless of an employee's grade or occupational series. However, to ensure these high ethical standards are being applied throughout government, the law requires changes.

Amendments to the Office of Federal Procurement Policy (OFPP) Act in 1989 established new and stricter rules on procurement ethics and "revolving door" (post-employment) activities of many federal procurement officials.² These procurement integrity provisions were met by loud protests from both industry and government employees because they are considered to be overly burdensome and an impediment to proper and necessary communication between buyer and seller to ensure the contract requirements are understood.

In 1990 and 1991, OFPP and the Office of Government Ethics (OGE) jointly submitted a legislative proposal to Congress that would have revised the procurement integrity provisions.³ The OFPP/OGE proposal would simplify ethics requirements and make them consistent across the government by not singling out procurement officials as inherently suspect individuals. It would also eliminate several agency-specific statutory requirements. Moreover, the current procurement integrity provisions of the OFPP Act

would be deleted, eliminating the requirement for contractors to certify that they have not done anything wrong to obtain a contract. The proposal also calls for the OFFP Act to be amended to prohibit disclosure or receipt of certain sensitive source selection or proprietary information. Anyone who disclosed or tried to obtain such information would be subject to criminal and civil penalties.

The Acquisition Law Advisory Panel to the United States Congress on Streamlining Defense Acquisition Laws, known as the Section 800 Panel, has adopted the OFPP and OGE joint proposal, as their recommendation to Congress, almost verbatim. This proposal has not been enacted by the Congress.

Need for Change

The current law limits discussions which can lead to misinterpretation of government requirements by contractors and cause delays and protests to challenge the mistakes. It treats all contractors as presumed wrongdoers, requiring a certification of honesty before submitting an offer in response to a solicitation.

Critics argue that the current procurement integrity provisions are too complex and do not provide clear guidance as to whether and when the prohibitions are triggered. The Section 800 Panel found the restrictions on communication between buyer and seller to be especially troublesome:⁴

Despite its laudable objectives and purpose, however, no single portion of the procurement integrity amendments to Title 41 seems to have generated more uncertainty or anxiety in the procurement community. By virtue of their complexity and the severity of the penalties for noncompliance, the information disclosure restrictions have imposed what some have characterized as a "code of silence" on both Government and industry personnel during the course of a procurement, during which the former have often feared to offer and the latter feared to seek even the most routine

information without specific authorization or, frequently, legal guidance.

As characterized by a senior NASA official, "if there is any doubt whether a document or information should be discussed during a source selection, it does not get communicated." To guard against the enormous penalties for error, some corporations and government activities are said to have furnished their representatives with "Miranda cards" that coach them through a litany of preliminary questions each ought to ask the other before safely addressing the business at hand.

Another problem with current post-employment restrictions is that they are layered over several other post-employment laws that apply to former Department of Defense and Department of Energy employees who have been involved in procurement activities.

The Section 800 Panel adopted the same revisions proposed by OFPP and OGE and added one provision. The Section 800 Panel's proposal would institute a new revolving door law. The new law would amend 18 U.S.C. 207 to prohibit certain former procurement officials from representing, aiding or advising any person concerning a procurement for one year after government service. This recommendation strikes a proper balance between safeguarding the public against conflicts of interest and deterring qualified people from entering public service.

Recommendation

1. Simplify procurement ethics law. (3)

Congress should enact legislation to simplify ethics requirements and make them consistent across the government by clearly prohibiting disclosure or receipt of certain sensitive source selection or proprietary information and, deleting the current procurement integrity provisions of the OFPP Act to eliminate such things as the requirement for contractors to certify that they have not done anything wrong to obtain a contract.

Fiscal Impact

None.

End Notes

1. E.O. 12834 "Ethics Commitments by Executive Branch Appointees" of January 20, 1993.
2. Section 27 of the OFPP Act (Procurement Integrity), 41 U.S.C. 423.
3. The "Procurement Ethics Reform Act", S.2775, submitted to the 101st Congress on June 20, 1990, and resubmitted to the 102nd Congress on February 14, 1991 introduced as S.458 on February 21, 1991.
4. Report of the Acquisition Law Advisory Panel to the United States Congress on Streamlining Defense Acquisition Laws, January 1993, Pages 6-127-129.

Cross-References to Other NPR Sections

None.

**PART 4:
CREATE COMPETITIVE ENTERPRISES**

PROC13: EXPAND THE CUSTOMER BASE AND SUPPLY SOURCES FOR THE FEDERAL GOVERNMENT

Background

Governments at various levels cannot enter into cooperative arrangements to use each others' supply sources. In addition, others that are not authorized to use federal supply sources includes federal grantees, qualified nonprofit agencies for the blind and others with severe disabilities which are awarded government contracts under the program operated by the Committee for Purchase from People with Disabilities.

The Federal Government supply sources, such as the Defense Logistics Agency (DLA), the General Services Administration (GSA) and the Department of Veterans Affairs (VA), consolidate the requirements of various federal agencies for procurement. As a result, these procuring agencies are able to secure price advantages associated with volume buying. In certain circumstances, it is advantageous for the federal government to use supply sources set by the state and local governments.

Federal Government supply sources are currently authorized to procure and supply personal property and non-personal services for the use of executive agencies, mixed ownership government corporations,¹ the District of Columbia, the Senate, the House of Representatives, the Architect of the Capitol, and certain other organizations that are authorized by law to use federal supply sources. However, they cannot acquire items for state or local governments and federal agencies can not use state or local supplies sources.

Federal agencies are required to acquire certain supplies and services from qualified nonprofit agencies for the blind or others with severe disabilities approved by the Committee for Purchase from People with Disabilities.² Normally the contracts with these nonprofit agencies are fixed-price contracts. The Federal Acquisition Regulation (FAR) provides that agencies may authorize certain contractors (generally cost-reimbursement contractors) to use government supply sources if it is in the government's interest to do so.³

Need for Change

Federal managers will benefit if they have the option of using state and local government supply sources in addition to federal sources and the open market. There are a number of examples where governments at various levels could benefit by developing mutually beneficial business relationships.

One example, which recently occurred with the Department of Veterans Affairs (VA), demonstrates the potential benefits. A State Veterans Home was constructed on the federal VA Medical Center site in Albany, New York. This provided veterans with convenient access to both VA and state medical facilities. Even though the state home was located on federal property, the VA and the state could not consolidate their common service requirements under one contract. Both VA and the state had to enter into separate contracts for services such as snow removal, trash removal, and laundry. As a result, the VA and state were unable to achieve the cost efficiencies that could have resulted through a single contract.

Allowing governments at various levels to enter into agreements to use each others' sources represents a win-win situation for the governments and the taxpayers. Governments at all levels will reduce administrative staffs and costs if they are authorized to use each others supply sources. In addition, all levels of government will be able to negotiate better prices as a result of the increased volume of sales under the contracts. Contract consolidation will be particularly beneficial to governments in the areas of new technology, such as alternate fuel vehicles, energy efficient computers, and products containing recycled material. Governments at all levels would have a greater impact on the marketplace and could acquire products and services at lower cost.

An example of how partnerships between various levels of government can benefit citizens is the recent development of a new product -- recycled latex paint. This product was created through a partnership between the County of Marin, State of California, a

major paint company located in Torrance, CA and GSA's Federal Supply Service. The County of Marin and other counties throughout the State of California operate household hazardous waste programs. Waste paint collected under these programs accounts for twelve percent of the new recycled latex paint produced. GSA's Federal Supply Service purchases the latex paint and markets it to federal agencies worldwide. The recycled paint is priced well below its virgin counterpart.

If grantees could use government supply sources they would be able to do more with the funds provided to them through the grant. Similarly, nonprofit agencies awarded contracts under the Javits Wagner O'Day Act, operating handicapped concessions such as snack bars for the federal government, would be able to reduce the cost of the supplies or services provided to federal agencies under such contracts if they were able to acquire the supplies used to produce the item or service at a lower cost. The workforce and procurement systems are already in place at the federal level to accomplish this.

Recommendations

1. **Allow state and local governments, grantees and certain nonprofit agencies to use federal supply sources.** (3)

Congress should authorize federal supply sources to supply personal property and non-personal services to state and local governments (including Indian tribal governments), grantees and nonprofit agencies awarded contracts under the Javits-Wagner O'Day Act. The use of federal supply sources would be optional for all these non-federal entities.

2. **Allow federal agencies to use state and local government supply sources.** (3)

Congress should authorize federal agencies to use state and local government supply sources when it is cost effective to do so.

Fiscal Impact

Savings will accrue to the Federal Government and to state and local governments if the legislative change proposed is enacted. However, it is difficult to estimate the amount.

End Notes

1. Identified in the Government Corporation Control Act (31 U.S.C. 9101).
2. Javits Wagner O'Day Act (41 U.S.C. 46-48c).
3. Part 51, Federal Acquisition Regulation (48 CFR Part 51)

Cross-References to Other NPR Sections

None.

PART 5:
FOSTER COMPETITIVENESS AND COMMERCIAL PRACTICES

PROC14: FOSTER RELIANCE ON THE COMMERCIAL MARKETPLACE**Background**

Line managers often have difficulty acquiring items sold in the commercial marketplace because of the complex, rigid rules and procedures, extensive paperwork, detailed design specifications, and in-process inspections and audits for these items. To make things worse for the government, some contractors feel pressured to separate their government (primarily military) production facilities from their commercial facilities to minimize the burden of government regulations as they compete in the world marketplace.

Controls on buying unique items developed for the Federal Government help assure accountability, but are costly when imposed on items competing in the commercial marketplace. The Center for Strategic and International Studies (CSIS) reports that it costs five times more to bid on a government requirement than on a commercial job. Once a contractor has obtained a government contract, it costs that contractor three times its usual administrative expenses to comply with government controls.¹ Also, the Defense Science Board found that integrated circuits built to military specifications cost the government up to fifteen times as much as better circuits cost private buyers.²

Need for Change

When the government contracts with commercial vendors, it sometimes imposes long and detailed requirements. Such requirements are often unlike anything the commercial firm includes in other sales contracts. To help reduce the effect of these impediments and increase the use of commercial items, Congress directed the Department of Defense to prepare a "simplified uniform contract"³ which still contains about 100 clauses due to statutory clause requirements⁴. The Report on Streamlining Defense Acquisition Laws by the Acquisition Law Advisory Panel to the United States Congress reviewed this problem

and recommended changes in statutes.⁵ The panel identified 889 provisions of law related to defense acquisition and found that many of the statutes create barriers for commercial firms because they disrupt established manufacturing methods, sources of supply and personnel practices. When the commercial item is on the shelf and the government asks a firm to certify it has used special sources for components, the firm cannot easily do so. To build a new item using government-required practices is generally not economical for the government or the firm, especially if it is a small business.

Where the size of the procurement is suitable to pay a contractor to apply contract provisions unique to the government, it costs the contractor, and eventually the government, more money. Any burdens that the government imposes on U.S. suppliers affects the competitiveness of U.S. industry, because it raises suppliers' thresholds of profitability. The procurement system must only require extra costs which are absolutely necessary to satisfy public interests. In general, the more we rely on commercial techniques in the commercial marketplace, the more economic benefits the country will have. It will cost us less to buy better products faster.

The major impediments to increased government-commercial integration can be grouped into five areas:

- complex rules and procedures make it difficult for contracting officials to perform market research, evaluate different ways of meeting needs, and select the best values;
- government-unique "how to" specifications and standards limit competition and creativity by failing to use existing specifications for form, fit, function and performance;
- cost, pricing, and commercial sales data submission requirements and special cost accounting standards impose substantial burdens and risks on contractors;
- technical data rights provisions discourage contractors from investing in and applying advanced commercial technologies to solve government problems;

and

- the determination of a "domestic end product" under the Buy American Act⁶ is difficult to use and conflicts with the Trade Agreements Act⁷ test of "substantial transformation" of component into an end product, often putting U.S. suppliers at a disadvantage with suppliers from other countries.

A number of recommendations for reform have been identified. The Section 800 Panel on streamlining Defense Acquisition Law reviewed these challenges and recommends specific changes in statutes. The President's Report on High Technology, issued in February 1993, includes recommendations to ease the burden on commercial contractors. In addition, because of the economic impact of a shrinking defense budget on major employers in the United States, the National Economic Council is also addressing the issue in its study of conversion of the defense industry.

Recommendations

1. Change the law to make it easier to buy commercial items. (3)

Congress should:

- a. amend the OFPP Act to provide a new definition of commercial items;
- b. amend the Truth in Negotiation Act to relax the requirements for cost and pricing data when a contract for commercial items is involved and provide an expanded definition of "adequate price competition;"
- c. provide new exemptions to technical data requirements in commercial item acquisitions;
- d. restructure the Buy American Act to allow for the substantial transformation test now applied under the Trade Agreements Act⁸ to increase the competitiveness of US firms; and,
- e. provide for a new Federal Government commercial code which would describe

"commercial style procedures" and applicability of selected provisions of law.

Fiscal Impact

The cost to industry of doing business with the government is high. A recent informal study done for the Defense Systems Management College, while not definitive, indicates the added costs for all federally-imposed requirements range from a negligible impact up to 12 percent of total contract costs, depending on the contractor and individual contract. While we cannot accurately estimate the savings that will accrue from greater reliance on the commercial marketplace, they will contribute significantly to overall government-wide savings resulting from NPR recommendations.

End Notes

1. CSIS Report "Integrating Civilian and Military Technologies: An Industry Survey", April 1993. Washington,DC. p.12.
2. Defense Science Board 1986 Summer Study, "Use of Commercial Components in Military Equipment", January 1987.
3. Section 824 of the FY 1990 National Defense Authorization Act, P.L. 101-189.
4. The simplified contract format was issued as Parts 210 and 211 of the Defense Federal Acquisition Regulation Supplement.
5. Section 800 of the National Defense Authorization Act for FY 1991 (P.L. 101-510).
6. Act of March 3, 1933 (41 U.S.C. 10a-10d).
7. Title 19 U.S.C. 2501.
8. 19 U.S.C. section 2501 through 2581.

Cross-References to Other NPR Sections

None.

PROC15: EXPAND ELECTRONIC COMMERCE**Background**

Electronic commerce (EC) is the comprehensive, end-to-end electronic exchange of information needed to conduct business.

Since 1979, the private sector and the Accredited Standards Committee (ASC) X12 of the American National Standards Institute (ANSI) have aggressively sponsored electronic data interchange (EDI). Within the Federal Government, the Federal Information Processing Standards Publication 161 (FIPS PUB 161) established the EDI standard.¹ In EDI, data that would traditionally be conveyed on paper documents are transmitted or communicated electronically according to established rules and formats. Major industry associations and their member firms are committing significant resources to EDI.

Industries from retail to aerospace have successfully implemented EDI and found it cost effective. EDI will soon be the preferred way of conducting business within the private sector, which includes the government contractor community. Even many small businesses have voiced their support and encouragement for the government to use EDI to provide electronic notification of small purchase opportunities.

Need for Change

The private sector is turning to EDI because it saves money. The Federal Government must catch up with the private sector in communicating its requirements electronically to reduce its costs of doing business. Several federal acquisition organizations and their personnel have recognized this need and started implementing local versions of EDI. However, if the federal acquisition community is to maintain an effective and efficient interface with its vendor community, it must implement EDI in a standard and consistent manner. Vendors should be able to connect with the federal EC system through a

single implementation standard and should not be required to comply with varying implementations to conduct business with different federal agencies.

The government should build its EC system in consideration of the following private sector EDI community findings and observations:

(1) successful implementation of EDI requires the full commitment of the Chief Executive Officer of a company. Without this top management commitment, company-wide implementation of EDI will not only be wasteful and disorganized, but it will likely fail.

(2) the requirement to use EDI should be based on a business decision and its implementation should be assigned to the functional organization (e.g. purchasing) that it supports -- not the Information Resources Management (IRM) organization.

(3) implementation of EDI and the development of specific EDI Transaction Set guidelines and conventions should begin with basic business transactions, such as request for quotations and purchase orders. Other more complex transactions, such as contracts, should follow.

(4) re-engineering functional processes (i.e., eliminating a particular step in a process such as purchasing wherever possible to avoid the expense of automating it), is necessary to realize the full benefits of EDI.²

Recent operational tests involving a small purchase EDI network have verified the following benefits:³

Benefits to industry are the potential for greater business opportunities; one time registration for all of the government; reduction in the need for local company representatives; increased access to procurement information; and, establishment of a single standard electronic small purchase system implementation.

Benefits to the government are increased competition; improved customer support; existing agency automated acquisition systems can be used; and, commercial Value Added Network services (e.g. subscription computer services such as Prodigy or CompuServe) are provided at no cost to the government.

The federal procurement system involves over 20 million contract actions and \$200

billion each year. In addition to updating the technology to buy better, all procurement procedures should be reviewed to determine if they are still needed and eliminated wherever possible.

Recommendations

1. Establish a government-wide program for engaging in electronic commerce. (2)

The President should issue an Executive Order by January 15, 1994, that:

(a) Requires OMB/OFPP to establish a governmentwide acquisition re-engineering and EC program and provide overall direction of policy and leadership in the development, coordination, installation, operation and implementation by executive agencies of a federal EC system. The EC system will be coordinated with OIRA to identify and contain enabling technology and procurement electronic data interchange (EDI) Transaction Sets. The enabling technology will consist of a data communications network, supporting databases and interfaces that interconnect government automated systems to the network. The procurement EDI Transaction Sets will comply with FIPS PUB 161 and facilitate the electronic interchange of standard procurement information between government and industry automated acquisition systems.

(b) Requires the Administrator of General Services, working with the Director, National Institute for Standards and Technology, by July 1, 1994: (1) to support the EC system by preparing a technical plan for coordinating the design, development, implementation, operation and maintenance of the EC system. The plan should identify roles and responsibilities, milestones, cost estimates, performance requirements and, interfaces with other systems and capabilities such as the government bank card and EFT payment systems and the Computer Assisted Logistics System (CALS) capability for "digitizing" drawings and other acquisition related documents; (2) in cooperation with DOD and EPA, establish a EC system National Stock Number (NSN) Item supporting database

that includes comprehensive data on NSN items, commercial items, environmentally preferred items, and other vendor products and services, and (3) identify and eliminate any regulatory barriers to full implementation of the EC system by October 1, 1996. The Administrator will consider establishing an interagency committee to advise on this effort, as well as a special program to consult with industry representative on the system.

(c) Requires the Administrator of the Small Business Administration (SBA): (1) to develop plans to coordinate and promote the use of the EC system by small businesses. These plans should incorporate outreach efforts by SBA, agency Offices of Small and Disadvantaged Business and Utilization, Small Business Development Centers and other appropriate organizations to inform and provide consistent and comprehensive EC system training for small businesses; and (3) in cooperation with GSA and the Department of Treasury replace the Procurement Automated Source System (PASS) with a more comprehensive and useful EC vendor profile and registration supporting database that includes PASS and SF-129 data on performance, debarment and suspension data, vendor credit card and EFT banking data and other vendor registration and profile information.

(d) Requires the Department of Commerce, in cooperation with the heads of agencies, to collect and distribute CBD information to the vendor community through the EC system.

- (e) Requires the heads of the agencies to cooperate with OFPP, GSA and NIST to:
- implement the EC system in their respective agencies and to develop plans for phasing-in the implementation of the EC system and phasing-out local network systems that perform comparable acquisition functions.
 - identify those acquisition functions and activities that are not for implementation on the EC System and determine how they should be handled.
 - re-engineer those acquisition processes for which acquisition EDI transaction sets are proposed. Except for possible transition purposes, the government should take advantage of re-engineering results prior to approving

government-wide use of standard acquisition EDI transaction sets. Re-engineering efforts should include the possible adoption of the full range of capabilities and benefits advocated by the EC/EDI community. For example, the EC system can support the implementation of "Just-In-Time" inventory--a capability in the private sector that has significantly reduced and, in some cases, eliminated the costs of warehousing and stockpiling of inventories. In undertaking the re-engineering process, the Administrator of OFPP may waive any rule or regulation deemed inconsistent with this goal. Alternative means to assure public policy goals or the essential purpose of the rule or regulation to be waived shall be considered as part of the re-engineering process.

- provide for a transition period as EC system capabilities evolve and include transition plans and requirements in EC system implementation plans for each agency.
- participate in the interagency development of standard acquisition EDI Transaction Sets; and,
- support and implement, as appropriate, the standardization and sharing of agency automated acquisition systems.

(f) Requires the heads of agencies to significantly expand the use of credit card and EFT vendor payments under guidance provided by OMB and the Department of Treasury.

2. Amend Federal Acquisition Regulations to facilitate electronic commerce. (2)

The Federal Acquisition Regulatory Council should revise the Federal Acquisition Regulations, within 3 months, to support full implementation of EDI and EC by the federal acquisition community.

Fiscal Impact (in millions of dollars)

	1994	1995	1996	1997	1998
Budget Authority	--	155	322	497	507
Outlays	--	155	322	497	507
Changes in FTEs	--	397	795	1,192	1,192
Cost of Promotion					
effort (BA and O)	+\$ 5	+\$ 5	+\$ 5	+\$ 5	+\$ 5
Change in FTEs	+100	+100	+100	+100	+100

These estimates are based on the results of a fiscal year 1992-93 pilot test conducted by the Wright-Patterson Air Force Base. The test, known as the Government Acquisition Through Electronic Commerce (GATEC), indicated potential savings of 10 percent in the cost of commodities due to increased competition and paper work reduction. Major reductions in government purchasing personnel were achieved through elimination of paper work and procedural requirements.

End Notes

1. Federal Register/Vol. 56. No 61/ Friday, March 29, 1991, Page 13123 contained the announcement of the National Institute of Standards and Technology of the Secretary of Commerce approval of the EDI standard.
2. The evaluation of federal department and agency acquisition systems and the possibility of standardizing them should be considered under an EC initiative. For example this would include revising the financial support systems to facilitate greater use of credit card and Electronic Fund Transfer payments.
3. Government Acquisition through Electronic Commerce (GATEC).

Cross Reference

PROC14 Foster Reliance on the Commercial Marketplace

PROC16: ENCOURAGE BEST VALUE PROCUREMENT**Background**

Determining the successful competitor for a government contract requires a full assessment of available information. The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late delivery, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that government purchases be made at the lowest price, this does not require an award to a supplier solely because the supplier submits the lowest offer.¹

There are two basic methods of procurement--sealed bid and negotiation. When sealed bid procedures are used, there is a public bid opening and the award must be made to the responsible offeror submitting the lowest offer based on price and price related factors (e.g., transportation charges) only. When the negotiated method of procurement is used, however, the government has considerable latitude in structuring the procurement and can consider both price and other factors (e.g., technical capabilities, qualifications of key personnel, etc.) in selecting the contractor. Agencies have broad discretion in selecting factors to be considered, but must always consider price or cost to the government.

When a procurement is structured to consider both price and other factors in making the selection so that trade-offs can be made in order to provide the "greatest value" to the government, it is often referred to as a "best value" procurement. The average person makes purchases on the bases of the "best value" or "greatest value" every day. For example, when buying batteries and Brand A costs \$1.00 and lasts 10 hours and Brand B costs \$1.50 but lasts 20 hours, the average person would consider Brand B to be the best value.

Federal regulations provide for awards based on the greatest value and cite as examples of where the approach can be used.² Examples cited are in the acquisition of research and development or professional services or cost-reimbursement contracts. The process outlined in the regulation for "greatest value" or "best value" procurements is

complex and requires far more time and resources than other types of procurements.

Need for Change

Even though the regulations make it very clear that it is the prospective contractor who must demonstrate that it is responsible, many contracting officers feel that the burden of proof is theirs. Contracting officers are often reluctant to reject offers from contractors who have a poor past performance record or who otherwise do not appear to be capable of performing. The reluctance is, in part, due to the fear of being second guessed by reviewers, protests or other legal action. (See PROC21 Promote excellence in vendor performance.)

Agencies do not always think about innovative ways to include quality considerations, such as past performance, when developing acquisition strategies. There needs to be a total rethinking and redefining of what best value means and how it can be used in all types of procurement strategies. This includes not only negotiated procurements that use price and other factors, but also other negotiated and sealed bid procurements.

In the area of "greatest value" or so called "best value" procurement, many cases before the General Accounting Office (GAO) and/or the General Services Board of Contract Appeals (GSBCA) indicate a need to train the procurement workforce on when and how to effectively use the technique in selecting sources. In addition, the survey of Federal Acquisition Regulation (FAR) users conducted by the General Services Administration (GSA) in 1990, indicated that the FAR coverage on source selection or use of the "greatest value" approach needed to be improved.³

Several agencies (e.g. Defense Logistics Agency (DLA), GSA and National Aeronautics and Space Administration (NASA)) have undertaken efforts to streamline the source selection process, share information on "best practices" and educate contracting personnel on when and how to use the process effectively. Despite these efforts, the federal procurement workforce, as a whole, needs further training on the use of source

selection techniques.⁴

Recommendations

1. **Define "best value" and provide regulatory guidance to implement a program for buying on a "best value" basis. (1&2)**

The Administrator of OFPP should work with regulatory agencies (DoD, GSA, and NASA) to formally define the concept of "best value" by October 1, 1994. In doing so, the definition and related policy and regulatory guidance should be structured so that: (a) it applies to all procurements, (b) fosters the notion that the government will measure vendor performance and only deal with contractors who demonstrate a commitment to quality, and (c) promotes the concept of "value for money". Subpart 15.6 of the FAR should be reviewed and appropriately revised as a part of this effort. In developing FAR coverage, every effort should be made to minimize complexity and provide for a streamlined process of making contract awards when price and other factors are considered in the evaluation process. Guidance should be provided on issues such as drafting solicitation language to clearly communicate the award factors to be considered and their relative weight, making cost/technical trade-off decisions and debriefing offerors.

2. **Issue "best practices" guide on use of sources selection procedures. (2)**

The Office of Federal Procurement Policy should identify agencies with successful programs for the use the "greatest value" approach and, with their help, develop a best practices guide by May 1, 1994, that will share the "lessons learned" by these agencies with procurement personnel throughout the government.

3. **Train procurement officials on source selection techniques. (2)**

The Federal Acquisition Institute should develop by May 1, 1994, a competency based course to provide training to government contracting officials on the use of various source selection techniques.

Fiscal Impact

Cannot be estimated.

End Notes

1. 48 CFR 9.103(c).
2. Subpart 15.6 of the Federal Acquisition Regulation, 48 CFR 15.6.
3. FAR Improvement Executive Committee Report, "FAR Improvement Project," October 1992, p.16.
4. [wayne-- need to get cites for publications]

Cross-References to Other NPR Sections

PROC21 Promote Excellence In Vendor Performance

PROC17: AUTHORIZE A TWO-PHASE COMPETITIVE SOURCE SELECTION PROCESS

Background

Federal law requires executive agencies to evaluate sealed bids and competitive proposals based solely on the factors specified in the solicitation. In the case of competitive proposals, the law requires that the government conduct, before award of the contract, written or oral discussions with all responsible sources who submit proposals within the competitive range, considering only price and other factors included in the solicitation.¹

In certain negotiated procurements, the requirement to consider price in establishing the competitive range and include all proposals with a reasonable chance of being selected for award are in the competitive range, creates problems for both prospective offerors and the government. Contracts that require an offeror to do a substantial amount of design work in order to prepare its proposal are affected. For example, in design-build construction procurement it is very costly for prospective offerors to compete because they must do a considerable amount of the design work before they can price their proposal. Under a design-build construction contract, the contractor is responsible for designing and constructing the building or other public work. This differs from the traditional approach where a contract is awarded to an architect-engineer firm who designs the project. After the design is complete, bids for construction are solicited and a separate contract is awarded.

When the government uses a design-build approach, contractors often complain of the high cost to compete for such projects and urge the government to use a two-step process that would focus on qualifications and concepts in the first step and limit competition in the second step to a specified number of contractors. This would limit the contractors expense in the first stage and assure those contractors who do incur the expense in the second phase that they have a realistic chance of being selected for the award.

Need for Change

Executive agencies and departments involved in contracting for design-build construction projects, lease construction projects, prototype production or other similarly complex projects where the cost of preparing and submitting a proposal is significant and the proposal cannot be priced without substantial design effort being undertaken would benefit by using a two-step process.

The two-step process will provide for more efficient use of government personnel by allowing them to focus on the detailed proposals of the five first qualified offerors and expedite the selection, evaluation, and award process. Five offerors will provide adequate price competition, while offering the government a range of designs or approaches to satisfying the governments requirement. This would benefit both prospective contractors and the government. This process will shorten the lead time for such procurement, reduce cost, and provide for more timely fulfillment of the customers needs.

The regulations and case law related to the establishment of the competitive range currently preclude the government from predetermining the number of offerors who will be considered to be within the competitive range. The government is required to see what the market produces and then determine which offerors, when evaluated against the factors specified in the solicitation, have a reasonable chance of being selected for award. In a tight economic market with limited commercial activity, there can be intense competition for government contracts. For example, it is not uncommon for the government to receive more than 25 offers on major design-build construction projects. Often the offers are from well qualified local firms and national real estate developers, and the competitive range ends up including several offerors who have submitted outstanding proposals. Negotiating with all offerors in the competitive range requires a substantial amount of time and resources for the government and the offerors.

If the government continues to use the current process, it will discourage some of the best offerors from competing because they are becoming more and more reluctant to

expend the effort when faced with unlimited competition for the award. If competition is limited in the second stage, the offerors are willing to expend the resources because they feel that they have a realistic chance of getting the award.

Recommendation

1. **Authorize the use of a two-step selection process for certain types of contracts.** (3)

Congress should amend the Federal Property and Administrative Services Act² and the Armed Services Procurement Act³ to authorize the use of a two-step selection process for the evaluation and award of contracts when a substantial amount of project design work must be accomplished before offerors can develop a price proposal. The process would provide for the submission of statements of qualifications, performance data, and limited technical proposals in the first step. Based on evaluation of these submissions, the government would invite up to five (5) offerors to submit detailed technical proposals and price proposals. No more than 5 offerors would be selected based on an evaluation of the qualification statements and limited technical proposals against selection criteria/factors specified in the solicitation. In the second step the government would evaluate the detailed technical and price proposals and conduct discussions, as necessary, prior to the final selection of the offeror.

Fiscal Impact

The two-step selection process would provide for more timely contract awards and for a more efficient utilization of personnel, but an estimate of the fiscal impact cannot be made.

End Notes

1. Section 303b of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 303b), and section 2305(b) of the Armed Services Act (10 U.S.C. 2305(b)).
2. Section 303b of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 303b).
3. Section 2305(b) of the Armed Services Act (10 U.S.C. 2305(b)).

Cross-References to Other NPR Sections

None.

PROC18: AUTHORIZE MULTIYEAR CONTRACTS**Background**

Most federal agencies operate with annual appropriations. This limits their ability to contract for periods which extend beyond the end of the fiscal year (e.g. maximum of one year). The lack of authority to cross fiscal year lines creates uncertainty as to whether a contractor will be available after September 30 and imposes additional paperwork burdens on contracting personnel. There are circumstances where contracting for more than one year would reduce the overall cost of acquiring supplies and services. The use of multiyear contracts provides contractors with a guarantee of work over a period of years, lowers risk, and as a result produces lower contract prices. It would also provide the agencies with a tool to deal with the shrinking federal work force.

Need for Change

The General Accounting Office (GAO) has identified several benefits of multiyear contracting.¹ Specifically, GAO indicated that they believed that:

- Contract prices could be reduced for agency service and supply needs;
- Administrative costs to federal agencies could be reduced;
- The quality of performance and service from contractors could be increased;
- Competition for government contracts could be increased; and
- Small business interests would be enhanced and enable them to be more

competitive in their market segment.

The Department of Defense (DoD) has multiyear contracting authority and multiyear funding authority for many of its weapons programs. The authority enables defense contractors to spread their costs over a large production base thus reducing the cost per item. While not in the same business, many civilian agencies buy supplies, equipment

systems, and services to support programs that go beyond the fiscal year appropriation limitation.

In addition, the ability to award multiyear contracts will allow federal agencies to shrink the work force by reducing the administrative time and resources associated with recompeting contracts annually. It will also provide federal managers with continuity in terms of dealing with contractors and avoid going through a learning process every year.

Another problem, which is tied to the limitation on contracting with annual funds for periods which extend beyond the end of the fiscal year, relates to severable services (e.g. services which are performed on a regular basis over a period of time like janitorial, guard services, etc.). Currently, agencies are precluded from contracting for severable services for periods which extend beyond the fiscal year unless they have specific statutory authority to do so. While a few agencies (e.g. HHS) have been authorized to contract for periods that cross fiscal years so long as the term does not exceed one year, most agencies do not have similar authority. As a result, agencies are placed in an impossible situation: award all severable service contracts so they expire September 30 or take the risk of being accused of technically violating the Anti-Deficiency Act.

To ensure against violation of the Anti-Deficiency Act,² agencies use "availability of funds" clauses in their contracts. However, when these clauses are used the contracting agencies is required to notify each contractor, in writing, that funds are available to continue performance beyond the end of the fiscal year. This exercise creates a costly, unnecessary administrative paper work exercise that is exacerbated when Congress fails to pass appropriations bills. In such cases, a notice must be sent to contractors for each continuing resolution.

Recommendations

1. **Authorize multiyear contracts.** (3)

Congress should amend the Federal Property and Administrative Services Act to authorize agencies to contract for periods not in excess of 10 years when: (a) appropriations are available and adequate for payment for the first fiscal year; (b) the agency determines that the government's need for the property or service being acquired is reasonably firm and continuing; and (c) such a contract will serve the best interests of the United States by encouraging competition or promoting economics in administration, performance and operation, and will not inhibit small business participation. In the event funds are not made available for subsequent fiscal years, the contract would be cancelled and cancellation costs paid from funds originally available for performance or currently available for acquisition of similar property or services not otherwise obligated.

2. Allow contracts for severable services to cross fiscal years. (3)

Congress should amend the Federal Property and Administrative Services Act to authorize civilian agencies that use annual appropriations to enter into contracts for severable services that cross fiscal years so long as the term does not exceed one year unless the contract is a multiyear contract specifically authorized by statute. This legislation will allow federal agencies to reduce their administrative costs by eliminating the need for "availability of funds" clauses.

Fiscal Impact

Savings should accrue from these recommendations; however, it is not possible to estimate the amount.

End Notes

1. General Accounting Office report number PSAD-78-54, dated January 10, 1978, entitled "Federal Agencies Should Be Given General Multiyear Contracting Authority for Supplies and Services.

2.31 U.S. Code, 1341.

Cross-References to Other NPR Sections

PROC06 Reform labor laws and transform the Labor Department into an efficient partner for meeting public policy goals.

PROC19: CONFORM CERTAIN STATUTORY REQUIREMENTS OF CIVILIAN AGENCIES AND DEFENSE AGENCIES

Background

There are three statutory requirements that used to apply governmentwide, but have been repealed or amended for only the defense agencies. They are:

- The requirement to obtain commercial pricing certifies when other than full and open competition is used. The law requires that offerors certify that prices offered for parts or components are not more than their lowest commercial prices, or to submit a written statement specifying the amount of the difference between their lowest commercial price for the parts of components and the prices offered.¹
- The limitation on accepting an initial offer and awarding a contract to other than the offeror submitting the lowest priced offer.²
- The requirement to obtain certified cost or pricing data before awarding a negotiated contract that exceeds \$100,000.

In addition, DoD has been given authorities to enter into cooperative agreements in order to carry out advanced research projects primarily through the Defense Advanced Research Projects Agency but civilian agencies have not been given similar authority. Procurement contracts are often not well suited for research and development projects because they involve support, stimulation, and cooperation. Cooperative agreements provide the flexibility and innovation required. In research and development, the government funding is often more like an investment.

Need for Change

The DoD Inspector General found that the commercial pricing certificate was not

cost effective because the government was paying the lowest commercial price for items of supply procured even when the certificate was not obtained. Its continued use imposed a burden on the procurement process without a beneficial return. As a result, Congress repealed the requirement in enacting the National Defense Authorization Act for fiscal year 1991. This can logically be extended governmentwide.

DoD may make contract awards to other than the lowest priced acceptable offeror based on an initial offer without discussions. When an offeror which is not the low offeror clearly provides the best technical proposal at a reasonable price, it may be in the government's best interest to award to that offeror without discussion. Award without discussions is appropriate in this circumstance when neither technical nor price improvements are expected to result from a round of discussions with offerors and when the superior proposal will not be significantly improved. This avoids unnecessary administrative costs for the offerors and the government.

The threshold for obtaining cost and pricing data was increased to \$500,000 for DoD, NASA and the Coast Guard but left at \$100,000 for civilian agencies. The current statute provides that the \$500,000 threshold will be reduced to \$100,000 for contracts or subcontracts awarded, or modifications made after December 31, 1995. In addition, defense agencies have statutory authority to levy penalties on contractors who knowingly submit defective pricing and civilian agencies do not.³

The current \$100,000 threshold for submission of certified cost or pricing data should be escalated for civilian agencies to reflect the effects of inflation (the \$100,000 figure from 1962 equates to \$520,000 in 1992 dollars) and be consistent with the \$500,000 threshold for DoD, NASA and the Coast Guard. In addition, the \$500,000 threshold should be maintained for DoD after January 1993. Raising the threshold will significantly reduce the paperwork burden on the government and contractors, and will make the threshold consistent with the threshold for the Cost Accounting Standards that was raised to \$500,000 in 1988.

The Acquisition Law Advisory Panel to the United States Congress on Streamlining

Defense Acquisition Laws (Section 800 Panel) recommended in its January 1993 report to Congress that the \$500,000 threshold be maintained for DoD. In making their recommendation the Panel points out that the \$500,000 threshold takes into account inflation since the passage of TINA in 1962.⁴

Civilian agencies that conduct advanced research projects have a need for the same flexibilities as DoD has been provided under 10 U.S.C. 2371. The additional flexibility will be provided for developing a more supportive and innovative arrangements for the conduct of research.

In order to maintain a common government-wide approach to the acquisition of property and services, statutory changes need to be made to provide for consistency in the requirements for civilian agencies and defense agencies. The current inconsistency in the statutory requirements has resulted in inconsistent governmentwide application of TINA requirements.

Recommendations

- 1. Repeal requirement for commercial pricing certificates and authorize contract awards without discussions. (3)**

Congress should amend the Federal Property and Administrative Services Act to repeal the requirement for certificates of commercial pricing (41 U.S.C. 253a(b)(B)) and amend the act to authorize the award of a contract without discussions with offerors when the solicitation states that award may be made without discussions unless discussions are determined to be necessary. These changes will assure a common approach throughout the entire Federal Government which will benefit industry and government alike.

- 2. Maintain the \$500,000 threshold for cost and pricing data requirements for DoD. (3)**

Congress should amend the Truth in Negotiations Act (10 U.S.C.2306a) to maintain the dollar threshold for application of the statute at \$500,000 by eliminating all words in the statute that refer to the threshold reverting to \$100,000 after December 31, 1995, and repeal section 803 of the National Defense Authorization Act for fiscal year 1991 (Pub. L. 101-510), as amended. The amendment should also provide for periodic adjustment of the threshold to reflect the effect of inflation. The permanent increase in the threshold will allow DoD, NASA, and the Coast Guard to maintain the benefits that result from the higher threshold after December 31, 1995.

3. Establish a \$500,000 threshold for cost and pricing data requirements for civilian agencies. (3)

Congress should amend the Federal Property and Administrative Services Act (41 U.S.C. 254(d)) to make it conform to 10 U.S.C. 2306a in order to provide consistent application of the Truth in Negotiations Act requirements to all federal agencies. The increase in the threshold and provision for periodic adjustment of the threshold to reflect the effects of inflation will increase the efficiency and effectiveness of civilian agency acquisitions resulting in better service to the federal manager. Civilian agencies will be able to reduce procurement lead time by 45 to 60 days for procurement between \$100,000 and \$500,000. The paperwork and administrative burden placed on contractors when submitting offers to the civilian agencies for certain negotiated contracts between \$100,000 and \$500,000 will be reduced. The administrative cost of awarding negotiated contracts for civilian agencies will decrease as a result of the threshold increase.

4. Authorize civilian agencies to use cooperative agreements for advanced research projects. (3)

Congress should provide civilian agencies with statutory authority to enter into

cooperative agreements for advanced research projects comparable to that currently available to the Department of Defense.

Fiscal Impact

These recommendations should provide significant relief to contractors who in turn should pass their savings onto the government as lower costs. However, the savings cannot be estimated with any degree of precision.

End Notes

1. 41 U.S.C. 253e
2. 40 U.S.C. 253b.
3. Truth in Negotiations Act (10 U.S.C. 2306a).
4. Acquisition Law Advisory Panel to the United States Congress, "Streamlining Defense Acquisition Laws", Executive Summary of the report of the Acquisition Law Advisory Panel to the United States Congress, March 1993, p. 42.

Cross-References to Other NPR Sections

PROC14 Foster Reliance on the Commercial Marketplace

PROC20: BUYING FOR THE ENVIRONMENT**Background**

"Buying for the environment" means using the federal procurement process to support programs intended to preserve the world's natural resources for future generations of Americans. The procurement process is used to: (1) encourage the development of markets for products which are energy efficient, contain recovered materials, or do less harm to the environment than competing products; and (2) conserve the world's natural resources by promoting the use of new technologies.

A number of laws (e.g., the Energy Policy Act of 1992 and the Resource Conservation and Recovery Act (RCRA)) and executive orders require the Federal Government to play a leadership role in developing and carrying out programs that provide for the protection of the environment. Many of these require the government to be an enlightened, environmentally conscious and concerned consumer.

RCRA requires federal agencies to maximize their purchases of products made with recovered materials.¹ The Act requires: (1) the Environmental Protection Agency (EPA) to issue guidelines that designate items which are or can be produced from recovered materials; (2) agencies, to the extent they purchase designated items, to purchase the items with the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, unless the items are not available within a reasonable period of time, fail to meet performance standards, or are unreasonably priced; (3) agencies to eliminate from product specifications unnecessary requirements for virgin materials; and (4) the Office of Federal Procurement Policy (OFPP), in cooperation with EPA, implement these requirements, and report to Congress every two years on agencies' progress in implementing RCRA.

RCRA also requires agencies to develop affirmative procurement programs. The programs must contain four elements: (1) a preference program, (2) a promotion program,

(3) procedures for obtaining and verifying estimates and certifications of the content of recovered materials, and (4) annual review and monitoring.

From 1976, when RCRA was enacted, until the 1990's, implementation throughout the federal government was perfunctory at best. EPA issued only five guidelines designating recycled paper products, cement and concrete containing fly-ash, rethreaded tires, re-refined lubricating oil, and building insulation containing recovered materials. Agencies did not collect purchase information data, and there were no inter-agency efforts to promote the purchase of recycled products.

The Energy Policy Act of 1992² requires federal agencies to establish energy management programs to reduce energy consumption by 20 percent by the year 2000 using 1985 consumption as the base. Agencies are also required to install all available energy and water conservation measures in federal facilities when the payback period is 10 years or less.

The Energy Policy Act imposes a number of requirements for the procurement of supplies and services including the requirement that:

- agencies negotiate with electric, water and gas utilities to design cost-effective demand management and conservation incentive programs and provide for the use of energy savings performance contracts. Demand management and conservation incentive programs are established by utilities because it is more cost effective for them to invest their funds in conservation instead of constructing additional power plants in order to accommodate project customer demands. The utilities are in effect buying conservation through rebate and other incentive programs which pay customers for installing energy efficient equipment or changing their operations to save energy.
- federal contractors, and their subcontractors, which manage and operate federally-owned facilities, use energy conservation measures designed to reduce energy cost in government-owned and contractor operated facilities

which are ultimately borne by the Federal Government.

- the Administrator of GSA, the Secretary of Defense, and the Director of the Defense Logistics Agency undertake a program to include energy efficient products in carrying out their procurement and supply functions.
- GSA coordinate and hold regular biennial workshops in each of the 10 standard federal regions on energy management, conservation, efficiency, and planning strategy. The Administrator is required to invite Department of Energy (DOE), State, local, tribal, and county public officials who have responsibilities for energy management or may have an interest in such matters. These workshops must address the procurement and use of energy efficient products.

Need for Change

Congress and the General Accounting Office (GAO) have criticized agencies' implementation of RCRA.³ EPA took more than 6 years to issue its first guideline, and has so far issued a total of 5. For calendar years 1990 and 1991, the Federal Government estimates that for the five items covered by the guidelines only 26 percent of all paper purchased had recovered content; less than three percent of tire purchases were for retreads; and less than one percent of re-refined oil was purchased.⁴

Over the last two years, agencies have placed greater emphasis on the procurement of recycled, environmentally preferable and energy efficient products and services. For example, the OFPP issued a policy letter in November 1992 which emphasized the need to procure environmentally sound and energy efficient products and services as well as those made with recovered material. The Council on Federal Recycling and Procurement Policy⁵ has been instrumental in assisting agencies to develop and implement their affirmative procurement programs, identify and purchase recycled products, and eliminate barriers to RCRA implementation. Recently, a Council workshop developed implementation language

for incorporation in the FAR.

Few agencies have made substantial efforts to purchase products that are not covered by EPA guidelines or to purchase items containing more recovered material than the minimum content standard by EPA. However, it is possible to do so. For example, GSA has contracted for more than 900 products (mostly paper products) containing recovered materials and an additional 1,200 products that have other environmentally beneficial features.⁶ As a central procurement agency for the Federal Government, GSA has marketed these products to other federal agencies.

One of the reasons RCRA is difficult to implement is that there are no common definitions for certain critical terms. EPA proposed consensus definitions for certain terms used by consumers and industry but included a disclaimer that the terms used in federal procurement may differ from the proposed consensus terms because of RCRA definitions. EPA deferred to the Federal Trade Commission (FTC) with respect to environmental marketing claims.

Currently the law requires estimates, verification and certification of a certain nature because it presumes agencies will select vendors based on highest recycled material content. Of all the acquisition strategies available this is the least likely to be used. The result is a paperwork burden on industry that is not linked to the acquisition strategy.

Another problem is the requirement that purchase contracts stipulate that information on the amount of recycled material contained in products be collected. This imposes paperwork burdens of dubious value to the government. The paperwork burden is particularly large for small transactions.

Agencies are currently implementing the Energy Policy Act of 1992. The DOE is in the process of developing regulations covering certain aspects of the law, including those which deal with energy savings performance contracts. GSA is responsible for taking action on those aspects of the act dealing with intergovernmental energy management planning and coordination.

Governmentwide implementation of the act can be facilitated by the establishment of

indefinite delivery contracts for energy audits and retrofit projects. Such contracts should be made available to federal agencies for optional use. The Naval Facilities Engineering Command in San Diego established such contracts for small retrofit projects (e.g., replacement of small motors, lighting fixtures) that can serve as the model for establishing contracts for use by all government agencies.

GSA and the Navy have been working with public utilities, such as San Diego Gas & Electric, to take advantage of services that the government is entitled to under tariffs approved by the public service commission, such as energy audits and demand management and conservation programs. In some cases, when public service commissions approve public utilities rates they provide for a portion of the rate charged be used for programs to promote conservation. Until recently, federal agencies were not able to take advantage of such programs because of statutory limitations. However, with the enactment of the new provisions of the Energy Policy Act which authorizes agencies to accept financial incentives, goods, or services generally available to customers who participate in utility incentive programs, there is a need to provide for use of area-wide contracts as the contractual mechanism for obtaining such services. GSA is responsible for negotiating area-wide utility contracts for use by federal agencies in acquiring utility services.

Many of the requirements of the Energy Policy Act require contracting personnel to develop new and innovative contracting methods in order to aid agencies in achieving the goals for saving energy by the year 2000. Contracts will be needed for new technology and new financing sources (e.g. energy savings performance contracts) will be involved as well. An example of a means to both innovate procurement processes and reduce the use of paper is to promote an electronic commerce system.

Recommendations

- 1. Amend the Resource Conservation and Recovery Act (RCRA) to clarify procurement issues which impede achievement of its procurement objectives. (3)**

Congress should amend the Resource Conservation and Recovery Act to: (1) delete statutory definitions and task EPA to establish mechanisms for the coordination of interagency and industry strategies for maximizing the use of products containing recovered materials and develop consensus objectives and terminology that will be more compatible with that used at the state and local government level and in private industry; (2) establish a threshold for application of affirmative procurement program requirements to individual contracts that is tied to the proposed \$100,000 small purchase threshold, (3) eliminate the statutory requirement for vendor certification and provision of estimates; and (4) permit agencies other than DOD and GSA⁷ to retain and use funds generated from the sale of recycled materials. Congress should permit the EPA and agencies to determine the best strategy for acquiring the product as well as the best approach for ensuring compliance with contract requirements. Congress should also consider the necessity for EPA to issue guidelines. As an alternative to the guideline approach, Congress should consider placing responsibility and accountability for procuring environmentally preferable products consistent with the demands for efficiency and cost effectiveness with agency heads.

2. Develop "best practice" guides on buying for the environment. (1)

The Council on Environmental Progress⁸ should coordinate the development of one or more guides on contracting issues related to implementation of energy management programs and buying for the environment by October 1, 1994. These guides should be distributed to government procurement personnel and be used in conducting the conference workshops that are required under section 156 of the Energy Policy Act. The guides should address procurement issues that are being raised by operational procurement personnel such as how to determine whether the project is a service contract or a construction contract, what can be ordered from area-wide utility contracts and how orders are placed, what are

the government's obligations in terms of awarding contracts under the Energy Policy Act to small business concerns, and procedures for establishing energy performance contracts.

3. Encourage multiple award schedule contractors to identify environmentally preferable products. (1)

The Administrator, GSA should, by January 1, 1994, develop and include a contract clause in multiple award schedule contracts to require contractors to identify in their brochures and on their schedule price lists products (including packaging) that are environmentally safe. Contractors should only be permitted to identify products for which they have documentation to support the environmental marketing claims that meet the guides for making such claims issued by the Federal Trade Commission.

4. Provide energy efficiency information in DLA and GSA catalogs and automated systems. (1)

The GSA and DLA should, by January 1, 1994, provide energy efficiency information in their supply catalogs and other publications in order to aid agencies in ordering from supply sources. Automated systems which provide information to ordering agencies and/or provide for electronic ordering should also be modified to provide the same type of information.

5. Encourage multiple award schedule contractors to identify equipment that meets the EPA Energy Star requirements. (1)

GSA should, by January 1, 1994, develop and include a contract clause in multiple award schedule contracts for computer equipment to require contractors to identify equipment that meets "EPA Energy Star" requirements for energy efficiency in their

brochures and on their schedule price lists.

6. Encourage federal agency area wide utility contracts for energy audits. (1)

GSA should, by January 1, 1994, encourage federal agency use of area-wide utility contracts for requesting energy audits when the utility company's approved tariff requires the utility to provide such service to all customers. Utilities should be required to perform audits in compliance with federal procedures for life cycle costing. To provide an alternative to ordering energy audits from the public utilities, GSA should also establish, by October 1, 1994, indefinite delivery service contracts for use by all agencies in obtaining energy audits. Use of the contracts would be optional.

7. Establish indefinite delivery contracts for energy retrofit services. (1)

GSA should, by October 1, 1994, establish indefinite delivery contracts, similar to those currently used by the Navy, for energy retrofit services that would allow user agencies to order certain services such as replacement of small motors, retrofitting of lighting fixtures, etc.

Fiscal Impact

Not possible to estimate the costs.

End Notes

1. Resource Conservation and Recovery Act (42 U.S.C. 6962).

2. Public Law 102-486, October 24, 1992.
3. U. S. General Accounting Office, Report Number GAO/RCED-93-58, Solid Waste: Federal program to buy products with recovered materials proceeds slowly, May 1993.
4. Data provided by the Office of Federal Procurement Policy in the Office of Management and Budget.
5. Established by E.O. 12780 "Federal Agency Recycling and the Council on Federal Recycling and Procurement Policy".
6. Data provided by the Federal Supply Service of the General Services Administration.
7. Authority for GSA is contained in P.L. 102-486, Section 153; for DOD it is in 10 U.S.C. 2577.
8. Established by Executive Order "Federal Recycling, Acquisition and use of Environmentally Preferable Products and Services.

Cross-References to Other NPR Sections

May need to reference environmental teams paper.

PROC21: PROMOTE EXCELLENCE IN VENDOR PERFORMANCE**Background**

When the government makes a contract, it takes on a private-sector partner to accomplish a public purpose. The government must be assured that its partner is reliable by examining its past performance. Procurement actions should also encourage suppliers to value government business and to provide high quality supplies and services on time and at a reasonable price. For an agency's needs to be properly considered, they must be expressed in requirements that suppliers can meet with a minimum of administrative procedures and in a manner compatible with public policy goals. Improvements in vendor performance by measuring a contractor's accomplishments against contract terms, as well as improvements in the government's management of the contract, will lead to greater value for the taxpayer.

The most important means for improving vendor performance in work for the government is for the evaluation process in source selection to seriously take into account vendor past performance when making new contract awards. One of the most unfortunate features of the current procurement system is that the evaluation process for making contract awards gives little or no weight to past performance of vendors on earlier contracts.

Need for Change

Evaluation of vendor past performance plays a crucial role in vendor selection in the private sector. Where past vendor performance is not taken into account in making new contract awards, the quality of the performance the government gets from its vendors is likely to be significantly worse than otherwise, for two reasons:

- Information is limited about how vendors performed in the past in terms of delivery,

customer service, adaptability, attitude on contract administration issues, or ability to solve problems the government is asking the vendor to solve.

- Without information on past performance as an important factor in making new contractor awards, a powerful incentive for better vendor performance is lost.

The Federal Acquisition Regulation (FAR) permits taking past vendor performance into account. Nonetheless, most contracting officers have not used it to maximum advantage. Vendors often have to provide some outside references in a negotiated procurement, but vendors get to choose which references to give. Many line managers feel references are often not candid for fear of possible legal liability, and the weight given vendor scores on their references in evaluation scoring systems is generally extremely small. In limiting themselves to outside references, agencies deprive themselves of the information that is both most likely to be accurate and that, if used, exerts the most powerful incentive effect on vendor performance -- information about vendor performance on contracts within the agency itself.

Other guidance on past performance is starting to address this issue. In January 1993, OFPP issued a Policy Letter¹ directing agencies to include vendor past performance as an evaluated criterion on negotiated procurement over \$100,000. The contents of this policy letter will shortly be incorporated into the FAR. The OFPP Policy Letter directs agencies not to disadvantage vendors who have not previously competed for government business by using methods giving such vendors a neutral score on past performance (that is, a score lower than well-performing vendors but higher than poorly performing ones).

To help improve vendor performance, the government must improve its management activities. The Merit Systems Protection Board study on the quality of the Contracting Workforce of 1992 found that the distrust built into the present federal procurement system is not effective in reducing waste, fraud or abuse, despite its high cost. The following quote from a contractor, included in the MSPB study is representative of how contractors view the system:²

"...Increased oversight has become cumbersome, delayed the process, and has

created an atmosphere of fear and distrust. This has greatly impacted the decision-making process and has increased overall costs to both the government and the contractor. "

A recent study by the Center for Strategic and International Studies (CSIS) indicated that contractor compliance with government controls costs three times what commercial companies spend on administrative costs.³ Burdens that the government imposes on its suppliers often are translated into higher prices charged to the government, and sometimes to commercial customers.

In many respects, the success of any procurement action hinges on how well the contract is administered to assure value to the government. Before award of a contract, the contracting officer must ensure that the contractor has adequate financial resources; ability to perform within the required schedule; a satisfactory performance record; a satisfactory record of integrity and business ethics; and, the necessary organization, facilities, skills and understanding to complete performance under the contract. Signing a contract commences the contract administration phase. In broad terms, contract administration responsibilities comprise fiscal and cost accounting methods, control of government property, quality control, production control, pricing and price re-determination where authorized, compliance with standard contract clauses, subcontracting consent, and, in some cases, contract terminations.

Each agency is organized differently to provide contract administration. Within the Department of Defense (DoD) there are two specialized organizations: the Defense Contract Management Command (DCMC) with 19,000 people looking after \$750 billion under 420,000 contracts for 25,000 contractors; and, the Defense Contract Audit Agency (DCAA) with 6,000 people to audit about \$260 billion in contract work each year. Civilian agencies often rely on their contracting officer to perform administration and their Office of Inspector General to perform contract audits. However, most IGs use DCAA for some or all of their audits. The interagency OMB "SWAT" Team Report on Civilian Agency Contracting of December 1992 found certain weaknesses in the performance of contract

audit and administration functions.⁴ An inter-agency group on Civilian Contract Administration Services (CIVICAS) has been formed to assess alternative means for heads of agencies to efficiently meet their responsibilities to ensure performance under properly managed contracts.

Current contract administration activities are not reviewed from a government-wide perspective to measure their output or value. Defense agencies are being drawn down while civilian agencies are looking to improve their contract administration practices. There is no coordinating body to set performance goals or help determine the effectiveness of contract actions in meeting line manager needs through the contracting process. While the Office of Federal Procurement Policy (OFPP) could establish standards in this area, the idea of reinventing the procurement system must be broadly cast in all agencies. An interagency group is needed to spur improvements in changing the contract administration phase into a team approach of the government and its contractor seeking the best means to meet the contract requirements.

Some examples of the types of programs which capture the tenets of a team approach built on trust are the Process Oriented Contract Administration Services (PROCAS) program developed by the Defense Logistics Agency. This program works with contractors to accredit internal control procedures to lessen government controls. Another example in the audit area is provided by Motorola's experience with DCAA. In 1988, it took one year to get, review, report and decide on overhead rates, mainly because the contractor did not always know what government wanted. DCAA worked with internal company auditors in 1989 and cut the total process that year to 5 weeks. This meant big savings for everyone. Another cooperative approach to improve contract administration is the work of the Army's Corps of Engineers to avoid costly disputes and an adversarial environment under their construction contracts. Under a "Partnering" concept which sets out how the parties will work through any disagreements that arise under the contract, the Corps has not had a single case of litigation where it was used. This helps keep both parties focused on the contract goals as a team.

Measurable performance enhancements are also needed to improve productivity. The International Standards Organization (ISO) 9000 and ANSI/ASQC Q90 are world class quality management standards that government contractors can implement to improve the quality of goods or services. ISO 9000 is a management system that demands commitments from a firm to provide goods and services that conform to quality requirements.

Recommendations

1. Establish an inter-agency Excellence in Vendor Performance Council. (2)

By January 15, 1994, the Administrator, OFPP should establish an interagency Excellence in Vendor Performance Council to:

(a) establish policies and techniques to measure contractor performance under contracts and use this information in source selection decisions. OFPP should work with line agencies to experiment with different methods for getting past performance to play a significant role in the procurement process and to publicize best practices throughout the government. A change in the procurement system throughout the government so that past performance becomes a genuine and serious part of the source selection process must now occur. Such a change will include:

- Developing systems for systematically gathering and tallying ongoing performance information on an agency's vendors, obtained from those interacting with vendors (users and contract administrator personnel).
- Giving past performance a weight in evaluation scoring systems significant enough to have a real impact on award decisions and be noticed by the vendor community.
- Making satisfaction of customers (users and contract administration personnel) with vendor performance one measure used to evaluate contracting officers involved in the contract award process.

(b) establish procedures for a cost-effective government-wide contract administration program emphasizing cross servicing agreements among agencies to manage contracts to avoid unnecessary duplication.

(c) engage government contractors in establishing partnering programs and measurable goals for reducing administrative burdens on both government and industry while ensuring contractor performance and value to the government.

(d) obtain contractor input in policy deliberations through surveys, town meetings or other means to help develop effective and accountable contract management programs.

Fiscal Impact

Significant savings should accrue by reducing the extra costs and burdens under the present contract administration system. However, it is not possible to estimate the amount.

End Notes

1. OFPP Policy Letter 92-5, "Past Performance Information" of December 30, 1992.
2. Workforce Quality and Federal Procurement: An Assessment, A Report to the President and the Congress of the United States by the Merit Systems Protection Board, Washington, DC, July 1992. p. 39.
3. Integrating Civilian and Military Technologies: An Industry Survey. The Center for Strategic And International Studies, Washington D.C. April 1993, p.12
4. Summary Report of the SWAT team on civilian agency contracting. December 3, 1992, p.11.

Cross-References to Other NPR Sections

None.

METHODOLOGY

Between April and June we gathered information from three categories of sources.

We interviewed a combination of line managers; agency procurement executives; representatives from industry, academia, and public interest groups; individuals from state government; union representatives; selected staff members from the House and Senate; and officials in charge of the specific programs we have addressed in our recommendations. Our effort also included frequent discussions to utilize the experiences and knowledge of our peers on the National Performance Review.

We drew heavily on formal analyses and reports prepared by the General Accounting Office (GAO), the General Services Administration (GSA), a Commission, and groups such as the National Academy of Public Administration (NAPA) and the Harvard Kennedy School of Government. In addition, we and individuals from Canada and Australia regarding their procurement and management experiences.

Finally, we drew on information obtained by the Merit Systems Protection Board (MSPB) in connection with a study they are conducting of the opinions of Federal agency line managers regarding the procurement system. The study was based on 1,500 responses to a January 1993 survey sent to 3,000 line managers. These responses paint a clear picture of the state of procurement from the line manager customer's point of view.

FISCAL IMPACT OF RECOMMENDATIONS

In Millions of Dollars ¹							
	1995		1998		Cumulative		1998
ID# Recommendation	BA	O	BA	O	BA	O	Change in FTEs
PROC04 Small Purchases ²	37	37	53	53	192	192	1,621
PROC06 Reform Labor Laws/DoL as Efficient Partner ³	16	16	23	23	84	84	692
PROC09 Reform IRM Procure- ment Process	58	58	62	62	296	296	135
PROC15 Expand Electronic Commerce	155	155	507	507	1,479	1,479	1,192

In Millions of Dollars ¹							
	1995		1998		Cumulative		1998
PROC20 Expand Use of Credit Card	178	178	194	194	931	931	---

1. In addition to the issues and savings summarized below, the issue PROC14, Foster Reliance on the Commercial Marketplace, should result in significant savings for the government. The cost to industry of doing business with the government is high. A recent study done for the Defense Systems Management College, while not definitive, indicates the added costs for all federally-imposed requirements range up to 12 percent or more of the total contract costs, depending on the contractor and individual contract. We cannot accurately estimate the savings that will accrue from greater reliance on the commercial marketplace, because NPR addresses only a portion of these federally-imposed laws, and we cannot estimate the speed and breadth with which the changes we do recommend will take place. However, it is clear that the recommendations in PROC14 have the potential for contributing significantly to overall savings resulting from NPR recommendations.

2. In addition to these administrative savings, there is likely to be a reduction in the paper work burden on contractors doing business with the government. While we cannot accurately estimate these program savings, for every percentage point reduction in contract prices, the government will save \$849 million per year. To the extent such savings do occur, they will contribute to the overall governmentwide savings resulting from NPR recommendations.

3. There should also be a reduction in construction contract costs by eliminating the

requirement to submit payrolls for contractors. During fiscal year 1993, federal construction contract costs for contracts exceeding \$100,000 totaled \$11 billion. While we cannot accurately estimate these program savings, for every percentage point reduction in contract prices, the government will save \$111 million per year. To the extent such savings do occur, they will contribute to the overall governmentwide savings resulting from NPR recommendations.