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UNITED STATES GENERAL ACCOUNTING OFFICE

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STATEMENT OF

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PROCUREMENT, LOGISTICS, AND

READINESS DIVISION

before the

Senate Committee on

Governmental Affairs

on

GAO Views on S.2127

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Mr. Chairman:

We are pleased to be here today to comment on S.2127. We strongly support the bill and believe that it could, if properly implemented, be an effective framework for improving Federal procurement. There are, however, some areas where we believe technical improvements are needed in the wording of the bill and in response to a recent Committee request we will work with the Committee on these matters.

MAGNITUDE OF THE PROBLEM

The Committee has asked us to provide some background information on the extent of competition in the Department of Defense and civil agencies.

To the extent data was available we have analyzed DOD procurements over the last 10 years to identify competitive and noncompetitive procurements. Competition (of all types) reached a high of 43.6 percent of all DOD procurement dollars in fiscal year 1974 and declined to a low of 32.9 percent in fiscal year 1980. It then climbed again to a level of 36.6 percent in fiscal year 1981. Addressing only price competition, we find it has declined from a high of 34.4 percent in fiscal year 1973 to a low of 24.9 percent in fiscal year 1980 and then recovered somewhat to 29.7 percent in fiscal year 1981. (See Attachment I.)

DOD shows improvement in fiscal year 1981 in the level of competition and specifically in price competition, which increased almost 5 percent in one year. Our analysis, however, shows this improvement was due to a change in the petroleum

situation (the oil glut). In 1980, petroleum accounted for 10 percent of the value of DOD's procurements and was 21 percent competitive. In 1981, it accounted for 14 percent of DOD's procurements and had become 66 percent competitive. Except for this increase in competition on petroleum products, the level of competition in DOD has declined. 1/

GAO has previously reported that the primary reasons for the decline in DOD's level of price competition during the fiscal year 1972-78 period were (1) increased spending on and a concurrent loss of competition for procurement of petroleum and nuclear submarines, (2) increased use of design and technical competition for major weapon systems, and (3) greater emphasis on set asides for businesses owned and controlled by socially or economically disadvantaged persons.

For civil agency procurements, data on competition is only available for fiscal years 1979-81 and it shows that competition declined from 52 percent to 46 percent during that period. (See Attachment II.)

In fiscal year 1981, Federal Government contract awards exceeding $10,000 in value totaled $125.7 billion, according to the Federal Procurement Data Center, which is the official Federal procurement data base. Approximately $69 billion of the total (or 55 percent) was categorized as negotiated

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1/We have adjusted the DOD data for fiscal years 1979 through 1981 to correct for the reporting deficiencies discussed in our report, "Reporting Competition in Defense Procurements--Recent Changes Are Misleading," dated March 8, 1982 (GAO/PLRD-82-45).

noncompetitive. Of this amount about $54.2 billion (or 79 percent) was awarded by the Department of Defense, and about $14.8 billion (or 21 percent) was awarded by Federal civil agencies. About $22.3 billion (or 32 percent) of the $69 billion was obligated by defense and civil agencies for new contract actions and the remaining $46.7 billion (or 68 percent) was for actions under existing contracts, such as modifications. About $5.8 billion of the $22.3 billion was for new noncompetitive Buy Indian, 8(a) and follow-on awards after competition. New contract actions are especially significant decisions because they limit the Government's choices when contract modifications or follow-on new contracts are necessary.

MANY UNWARRANTED SOLE-SOURCE DECISIONS

Our Office has recently examined statistical samples of new, sole-source contracts over $10,000 awarded by the Department of Defense and six major Federal civil agencies to assess the adequacy of their sole-source decisions. The civil agencies were the National Aeronautics and Space Administration; the Veterans Administration; and the Departments of Energy, Interior, Transportation, and Health and Human Services.

The reviews showed that the Department of Defense and these major civil agencies frequently did not base their contract awards on competition to the maximum extent practical. A July 1981 report 1/ showed that the Department of Defense should have competed 25 (or 23 percent) of the 109 new, sole-source

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1/"DOD Loses Many Competitive Procurement Opportunities," dated July 29, 1981 (GAO/PLRD-81-45).

contracts GAO reviewed. We estimated that DOD lost opportunities to obtain available competition on about $289 million in new fiscal year 1979 contract awards. In an April 1982 report 1/ we estimated that for the six civil agencies reviewed competition was feasible on 32 percent of the new, sole-source contracts in our universe. We also noted that an additional 8 percent could have been competitive with better agency planning or management. We estimated that the six civil agencies lost opportunities to obtain available competition on $148.5 million or about 28 percent of the dollar value of our universe. The dollar amounts for both defense and civil agencies represent initial contract obligations, which in some cases may be substantially increased through later contract modifications.

The percentage of civil agency sole-source contract awards on which competition was found to be feasible varied from a low of 20 percent at HHS and 21 percent at NASA to a high of 73 percent at the Department of Energy and 49 percent at the Department of Transportation.

Basically both of these reviews showed that (1) many contracts were awarded sole-source unnecessarily, and (2) specific actions should have been taken to ensure that competition was obtained when available.

1/ "Less Sole-Source, More Competition Needed on Federal Civil Agencies' Contracting," dated April 7, 1982 (GAO/PLRD-82-40).

CAUSES OF MISSED OPPORTUNITIES
TO OBTAIN COMPETITION

Why did agency officials fail to obtain competition on awards that could have been competitive? The major factors identified in both reports included:

--Ineffective procurement planning or the failure of contracting officers to perform market research adequate to ensure that sole-source procurement was appropriate.

--Inappropriate reliance of procurement officials on the unsupported statements of agency program, technical, or higher-level officials.

In addition, both reports show that a lack of commitment to competition on the part of key agency personnel was a major problem. Instances of overly restrictive specifications and failure to use available data packages to obtain competition were also found.

S.2127

Senate Bill 2127 proposes several important changes in the procurement statutes governing Federal agencies which address these and other problems. First, the bill would remove the present strong statutory preference for sealed bidding and in its place substitute statutory provisions that (1) focus on competition, whether achieved through sealed bids or competitive proposals, and (2) seek to limit noncompetitive procurements. We agree that it is competition, not just competition through sealed bidding, that should be emphasized. We also agree that noncompetitive procurements should be limited to very special

and well-defined circumstances and have specifically recommended this type of requirement in a recent report. 1/

Second, the bill would strengthen procedures for publicizing prospective awards consistent with one of our recent recommendations that we consider especially important. 2/ The bill would require for other than small purchases that notices be published by the Secretary of Commerce and include a statement inviting bids, proposals or other responses within 30 days.

In our previously mentioned report we analyzed civil agency officials' use of the Commerce Business Daily on a statistical sample of noncompetitive contracts. We found that agency officials publicized a notice which invited competition on the prime contract on only 2 percent of the awards. Meanwhile, they publicized a preaward sole-source notice, which stated that the Government intended to negotiate with a particular contractor, on 39 percent of the awards. These were in lieu of notices inviting competition. These sole-source notices are published for information purposes, such as alerting potential subcontractors to subcontracting opportunities. Although this purpose is worthwhile, we believe such notices fail to encourage additional proposals on the prime contract. Even less satisfactorily, no preaward notices at all were publicized for the remaining 60 percent of the awards and usually there was no valid exception to the regulatory requirement to publicize such notices. We

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1/See page 22 of GAO/PLRD-82-40, previously cited.

2/See page 33 of GAO/PLRD-82-40, previously cited.

believe this is an area of serious abuse which results in potential competitors being effectively restricted from competing. Therefore, we strongly support this provision in the bill.

Third, the bill requires agencies to use advance procurement planning and market research to obtain competition. As previously discussed, our recent reviews of defense and civil agencies' sole-source contracts identified ineffective procurement planning and inadequate market research as major deficiencies needing correction.

Fourth, section 303(a) of the bill requires agencies to specify their needs and solicit offers without bias or favoritism with respect to any prospective source. In addition, section 311(a) forbids the specifications in solicitations for sealed bids or competitive proposals to include restrictive provisions or conditions that are not necessary to achieve agency needs. Overly restrictive specifications are a persistent problem. We recently recommended that the heads of all major Federal departments and agencies take steps to better ensure that contract specifications are not unnecessarily restrictive. Following are two examples from our recent reviews of noncompetitive contracts.

Example #1

The Sacramento Army Depot, Sacramento, California, used specifications which exceeded its minimum needs. As a result, it bought 20 closed-circuit TV systems for $153,000 noncompetitively, even though other competitors offered products that met the Army's needs. Specifically, system requirements for camera

weight and picture resolution did not necessarily represent the Army's minimum needs.

The Army established 3 pounds, plus or minus 0.5 pounds, as its minimum camera weight need. However, its only desire was to buy a camera that did not unnecessarily hamper a soldier's ability to do basic tasks. Army officials agreed that cameras weighing less than 2.5 pounds or more than 3.5 pounds might work as well. Thus, the camera weight, as stated on the noncompetitive certification, represented only a desired weight, not the Army's minimum needs.

On the basis of testing two cameras, one having a line resolution of 600 and the other 800, the Army determined that a 600-line camera did not meet its needs. The Army then established 800 as the required line resolution. However, it did not test resolutions between 600 and 800. The possibility exists, and the Army agreed, that other cameras with resolutions of less than 800 but more than 600 probably could do the job.

Because the camera weight and line resolution appeared as fixed requirements, the Army contracted noncompetitively despite the availability of other cameras that might have done the job.

<u>Example #2</u>

The Bartlesville Energy Technology Center, Department of Energy, awarded a sole-source contract, initially obligating $218,000, to study a patented process for determining the amount of oil remaining in an abandoned reservoir. The Department claimed that the sole-source contractor was unique because it was the only nonpetroleum company having the required license

granted by the patent holder. We contacted the company that held the patent and found it did not require that firms hold licenses to use the patented process in conducting a study as set forth in the contract. We concluded that the Department had unnecessarily restricted competition by not identifying the minimum requirements correctly. Other firms told us they would have competed for the award if they had been given the opportunity. The agency contracting officer agreed that competition should have been obtained.

In addition to unnecessarily restrictive wording in specifications and similar documents we identified a more serious and widespread restriction on competition. That is, agency officials often made arbitrary decisions that no capable firms other than the sole-source were available and thus did not attempt to attract other sources. As a result, only one source usually received the solicitation for noncompetitive procurements. If agency officials take actions prescribed by S.2127 to publicize prospective awards, this will remove a significant barrier to competition. The actual attraction of new sources will only be forthcoming, however, if specifications do not include restrictive features which are nonessential to meeting the Government's needs.

Fifth, the bill provides a Government-wide ceiling of $25,000 for small purchases. The Congress, in December 1981, raised the small purchase ceiling for the Department of Defense to $25,000. This bill would also raise it for civil agencies, which are currently held to the $10,000 ceiling which the

Congress established in 1974. We support raising the ceiling to $25,000 Government-wide as long as reasonable competition is achieved. We believe the additional purchases to be made under simplified procedures will save administrative costs and reduce the paperwork burden on both the Government and small business.

The bill allows the Administrator for Federal Procurement Policy to adjust the $25,000 ceiling. While we support this approach, we believe that as a matter of policy any future adjustments should be made in consultation and coordination with the Congress, the agencies and the private sector.

As noted earlier, although we endorse S.2127 in general, we believe there are several areas where the bill could be improved. The most important of these relates to the term "competitive procedures," defined in the bill as procedures under which an agency enters a contract after soliciting bids or proposals from more than one source capable of satisfying the agency's needs. It is likely that this definition will be interpreted to mean that these awards are "competitive" even if the agency received only one bid or proposal. This could have a dramatic but deceptive effect on competitive statistics.

More importantly, categorizing one-bid or one-proposal awards as "competitive" will often have the effect of covering-up whatever problems inhibited receipt of more than one offer, such as restrictive specifications; poor timing of the procurement, perhaps because of inadequate market research; or the failure to publicize the prospective award. In other words, classifying the awards as "competitive" groups them with awards

on which there was more than one offer. Since the procurement data system does not indicate how many offers were received, there is no easy way to identify these "competitive" awards based on one offer so as to analyze and correct whatever problems might have lead to the failure to receive more than one offer. The failure to identify and correct these problems will result in their being repeated.

To remedy this situation we suggest that the bill be revised to include a minimum standard for awards to be considered competitive: the receipt by the agency of at least two offers on each solicitation from offerors regarded as capable of meeting the Government's needs.

The other problems we have with the bill are technical and as requested, we will be discussing these with the Committee staff.

This concludes my prepared statement. I will be happy to address any questions you may have.

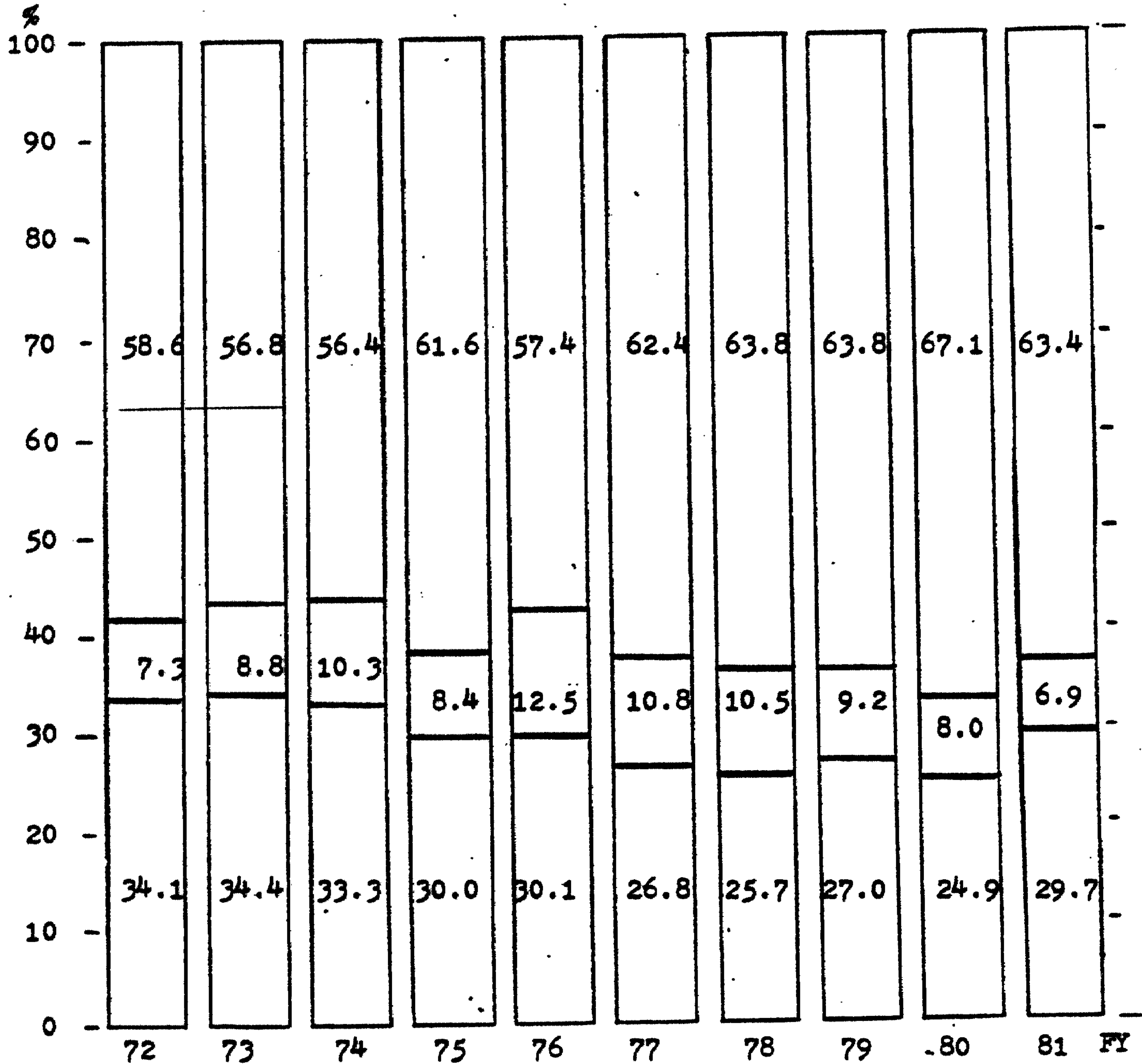
ATTACHMENT I

DOD MILITARY

PRIME CONTRACT AWARDS

FY 72 - 81

NONCOMPETITIVE (TOP)
DESIGN AND TECHNICAL COMPETITIVE (MIDDLE)
PRICE COMPETITIVE (BOTTOM)
PERCENT OF DOLLARS



 ATTACHMENT II

CIVIL AGENCY AWARDS

FY 79 - 81

NONCOMPETITIVE (TOP)

COMPETITIVE (BOTTOM)

PERCENT OF DOLLARS