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Implementation of the Certification Requirements
of the Procurement Integrity Law

Statement for the Record
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Division

Before the
Subcommittee on Oversight of Government
Management
Committee on Governmental Affairs
United States Senate



Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to provide a statement to the Subcommittee on the implementation of certain aspects of Section 27 of the Office of Federal Procurement Policy Act--commonly known as the Procurement Integrity law. At the request of the Subcommittee, we have obtained information on some of the experiences of federal agencies and contractors in implementing the certification requirements of the law during the initial 4-1/2 months it was in effect (July 16 through November 30, 1989). As you know, the certification requirements became effective on July 16, 1989, but the Ethics Reform Act of 1989 suspended the requirements for 1 year starting December 1, 1989. These requirements once again became effective on December 1, 1990.

Among other things, the Procurement Integrity law requires that competing contractors and federal procurement officials, including contracting officers, execute written certifications prior to the award or modification of contracts exceeding \$100,000. Officials representing both parties must certify that they have no information of any conduct that is prohibited by the applicable provisions of the Procurement Integrity law. Prohibited conduct includes offering or accepting gratuities, soliciting or discussing future employment or business

opportunities, and soliciting or disclosing proprietary or source selection information during the conduct of any procurement.

SCOPE AND METHODOLOGY

OF OUR REVIEW

We solicited information from both government and industry officials who had experience in implementing the law's certification requirements. As agreed with the Subcommittee, we distributed questionnaires to 17 federal agencies--including 7 defense and 10 civilian agencies--and 6 contractors--2 large, 2 medium-sized, and 2 small--that were awarded federal contracts during the initial 4-1/2 months the law was in effect. In these questionnaires we asked for information on (1) how many contract-by-contract certifications were signed by government contracting officers and competing contractors' officials or employees; (2) how many periodic, annual, or one-time certifications for training or similar purposes were signed by government procurement officials and contractor employees; (3) how many violations or possible violations were reported by those signing the certifications; (4) what the nature of the reported violations or possible violations was; and (5) what actions were taken on the violations or possible violations. As agreed with the Subcommittee, we did not verify the information the respondents provided to us.

All 17 federal agencies responded to our questionnaire. According to Federal Procurement Data System information, the 17 federal agencies accounted for approximately \$177 billion (more than 95 percent) of the \$184 billion in procurement funds obligated by federal executive agencies in fiscal year 1989--the latest year for which data were readily available. The defense agencies included the Army, Navy, Air Force, and four other major defense agencies--the Defense Logistics Agency, the Defense Communications Agency, the Defense Mapping Agency, and the Defense Nuclear Agency. The other agencies were the top 10 civilian procuring agencies, based on the Federal Procurement Data System information. Included among these organizations were the Department of Energy, the National Aeronautics and Space Administration, and the General Services Administration.

We received questionnaire responses from four of the six contractors. (The other two chose not to respond.) In addition to the questionnaire, we also met with officials and members from two national trade groups--the Aerospace Industries Association and the Electronic Industries Association--to learn of their experiences in implementing the law.

RESULTS IN BRIEF

The 17 federal agencies responding to our questionnaire reported the following information for July 16 through November 30, 1989:

- Federal contracting officers and contractor officials signed an estimated 103,000 contract-by-contract certifications. Defense activities and their contractors accounted for more than one-half of these certifications.

- Government officials in the selected agencies signed an estimated 400,000 periodic or one-time training certifications.

The four contractors that responded--2 large, 1 medium-sized, and 1 small contractor--reported that more than 28,000 of their employees signed periodic or one-time certifications, as required. This total cannot be projected to any larger population of federal contractors because our sample was too small and was judgmentally selected.

Although one of the purposes of the law's key certification requirements is to disclose information on any violations or possible violations, the written responses to our questionnaire showed that no violations and 11 possible violations were

reported by the 17 agencies.¹ Six of these possible violations were identified and reported to the agencies by federal agency personnel and five by defense contractor personnel.

OVERVIEW OF POSSIBLE

VIOLATIONS THAT WERE REPORTED

Based on agencies' responses, of the 11 possible violations:

-- Three cases were under investigation. These cases involved a protest of an alleged "sweetheart deal" between a labor union and a successful bidder, an alleged conflict of interest, and an unspecified matter, and were referred to the applicable agency's inspector general, legal counsel, and criminal investigative office, respectively. It is possible, because of the subject matter of the first two cases and the unknown nature of the third, that all three cases may fall outside the scope of the Procurement Integrity law. Because each of these alleged violations involved an ongoing investigation, agency officials provided minimal details of these cases to us.

¹As this statement was being finalized, a Department of Defense official told us that the Army will amend its questionnaire response because they had identified 11 additional possible violations. These 11 possible violations were being reported by Army officials located in Europe and related mostly to the actions of foreign nationals employed by the Army. No further details of these possible violations have been provided.

-- Three other cases concerned possible disclosure of procurement sensitive information. In the first case, it was alleged that a Department of Agriculture official disclosed procurement sensitive information to a prospective offeror. Ultimately, this offeror withdrew from the competition, and the Department disciplined the government official involved in this matter. The second case concerned an Air Force contractor who reported that he had heard a rumor from two suppliers that he was not going to receive a particular government contract. Subsequently, the Air Force determined that the rumor did not have any impact on the award of the contract. The final case stemmed from an alleged request by a contractor to a Navy official for procurement sensitive information. The Naval Investigative Service later reported that it found no evidence that the Procurement Integrity law had been violated.

-- Another case involved discussion of post-government employment. An official of a company competing for an Air Force contract offered employment to a non-commissioned officer who had knowledge of the procurement. The contractor subsequently withdrew the job offer and stated that no further offer would be made. An Air Force criminal investigation of this matter was discontinued when it was determined that no benefit would be gained by this effort.

-- Another case concerned the alleged acceptance of a gratuity. In this case, two Air Force employees reportedly accepted free lunches at a contractor's facility. Although Air Force officials provided no explanation in their response to our questionnaire, they determined that no violation of the Procurement Integrity law had occurred.

-- Another Air Force case cited allegations concerning disclosure of procurement sensitive information, a conflict of interest, and post-government employment. In reporting this case to us, the Air Force treated this matter as one possible violation. More specifically, the case concerned (1) the alleged "leaking" of procurement information by government employees to potential offerors, (2) an allegation by a contractor that an employee of one of its subcontractors was a friend of the Air Force contracting officer, and (3) a contractor who planned to use a retired Air Force officer to help prepare a proposal for a program for which the officer had assisted in developing specifications and estimating funding while in the military service. Upon review, Air Force officials determined that no violations of the Procurement Integrity law had occurred.

- The remaining two cases occurred prior to the law's July 16, 1989, effective date and pertained to contracts valued at less than \$100,000.

The 11 cases are discussed more fully in appendix I.

PARTICIPANTS' PERSPECTIVES ON THE
CERTIFICATION AND RELATED REQUIREMENTS

In the questionnaire responses and our interviews with industry officials, most respondents indicated that they believed the certification requirements in the Procurement Integrity law should be eliminated, and all the respondents cited far more disadvantages than advantages to the law's certification and related requirements. The most commonly expressed disadvantages were the following:

- The requirements imposed an unreasonable burden to implement and administer. Respondents commented that implementing the certification requirements had been time-consuming, had required additional staff, had been a record-keeping chore, and had increased procurement costs.
- Some provisions of the law and related Federal Acquisition Regulation were unclear. Officials stated that some key terms, such as "procurement official," "identifying when a

procurement action begins," and what constitutes a "substantially involved individual," were still not clearly defined despite recent revisions.

- The law overlapped existing statutes. For example, some respondents stated that offering and accepting gratuities, soliciting and discussing post-government employment, and disclosing proprietary and source selection information were addressed to some extent by other laws.

- The law had caused a "chilling effect" on communications between industry and government officials. Respondents stated that communications between some private and government officials had been curtailed for fear of inadvertently disclosing source selection and proprietary information. For example, one well-known national contractor required its procurement personnel to ask government officials "good faith inquiry" questions related to the Procurement Integrity law from a "Miranda-type" card at the outset of contractual discussions.

Not all of the comments we received from agency, contractor, and trade association officials were negative. For example, most officials we contacted stated that the law's certification requirements had increased the awareness of those participating

in the federal procurement process regarding the need for procurement integrity.

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Mr. Chairman, this concludes my statement. I would be happy to provide responses for the record to any questions you or other members of the Subcommittee may have.

ADDITIONAL INFORMATION ON
REPORTED VIOLATIONS AND POSSIBLE VIOLATIONS
OF THE PROCUREMENT INTEGRITY LAW

The 11 possible violations cited by the 17 agencies in their written responses to our questionnaire occurred during the initial 4-1/2 months the Procurement Integrity law was in effect (July 16 through November 30, 1989). Of these possible violations, two were reported to the federal agencies by defense activity personnel, four by civilian activity personnel, and five by defense contractor personnel. We did not reach independent conclusions concerning the extent to which the alleged conduct may have violated the Procurement Integrity law. A description of these 11 cases is shown below.

Pending Cases

As of January 1991, three possible violations were being investigated, and agency officials provided minimal details on these cases to us.

-- In the first case, the Navy said an unsuccessful bidder for a contract alleged (1) that a labor union had provided data on

"union employee labor costs" to the winner of the contract, but not to an unsuccessful bidder and (2) the winning bidder had made a "sweetheart deal" with the union regarding vacation costs for its employees and, thus, was able to undercut the unsuccessful bidder in bidding on the contract. This case was referred to the Department of Defense Inspector General's office, which referred it to the Naval Investigative Service, where it was under investigation.

-- In the second case, the Department of the Interior said that during a procurement review, "hearsay" information came to the attention of a Bureau of Reclamation official in its Denver, Colorado, office. The "hearsay" information included statements that (1) an Interior procurement official who was involved in contract negotiations with a contractor was related to one of the contractor's officials and (2) favoritism was shown in the award of this contract. The contract was for over \$5 million. Interior officials referred this case to their Inspector General in March 1990. As of January 1991, Interior officials said that the allegations were still under investigation and that the procurement official continues to work in the same position.

-- In the third case, the Army told us in January 1991 that the Corps of Engineers' legal counsel was gathering background information on a possible violation and when this information

was gathered, it would be immediately forwarded to the Office of the Secretary of Defense. The Army did not disclose the nature of the alleged possible violation.

Cases Involving Disclosure
Of Sensitive Information

Three possible violations concerned the disclosure of procurement sensitive information.

- In the first case, the Department of Agriculture said that a contracting officer received an anonymous letter in November 1989 alleging that (1) a Farmers Home Administration official involved in an automated data processing support services procurement had provided procurement sensitive information to a prospective offeror and (2) this information created an unfair advantage for the prospective offeror. The contracting officer placed the procurement "on hold" while the Department of Agriculture Inspector General investigated the allegations. Subsequently, technical staff revised the specifications and the due date for proposal submission was extended. The prospective offeror dropped out of the competition and the agency disciplined the Farmers Home Administration official.

-- The second case was reported to the Air Force by a prospective Air Force contractor. This case occurred during early implementation of the Procurement Integrity law. During the source selection process, an Electronic Systems Division, Air Force Systems Command, request for proposal was modified to include the certification requirements of the law. A prospective contractor then reported a rumor he had heard from two suppliers that he was not going to receive the contract award. This possible violation was reported to the Electronic Systems Division Commander. Subsequently, the contracting officer determined that the possible violation did not have an impact on the award or the selection of a source.

-- The third case concerned an alleged request by a contractor to a government official for procurement sensitive information. The case was reported to the Navy by the Naval Sea Systems Command and was investigated by the Naval Investigative Service. The Naval Investigative Service found no evidence that a violation of the Procurement Integrity law had occurred.

Case Involving Post-
Government Employment

Another case, which concerned discussions of post-government employment, was reported by an Air Force contractor to the

Sacramento Air Logistics Center, Air Force Logistics Command. The contractor advised the contracting officer that one of its subdivisions had offered a job to an Air Force non-commissioned officer who was planning to retire. The contractor withdrew its job offer and agreed that no subsequent job offer would be made. Although the solicitation was issued competitively, only one firm responded. Since the individual involved could not affect the selection of the source, the possible violation was considered to have no impact. A criminal investigation was requested by the Center's legal office but was discontinued when the office determined no benefit would be gained.

Case Involving Gratuities

Another case, which concerned a free lunch provided to each of two government employees, was reported to the Air Force by one of its contractors. Two engineers from the Wright Research and Development Center, Aeronautical Systems Division, Air Force Systems Command, had a free lunch with contractor personnel during a review of an existing contract at the contractor's facility. This possible violation was reported to the Aeronautical Systems Division Commander, and the employees were reminded by their supervisor of their responsibilities in accordance with Air Force regulations. No further action was taken because accepting the free lunches was determined to be an oversight on the part of the employees. Although no reason was provided in its response to our

questionnaire, the Air Force stated that it determined that the Procurement Integrity law was not violated in this case.

Case Involving Multiple Allegations

In another case, the Sacramento Air Logistics Center, Air Force Logistics Command, reported three allegations relating to the same contract. Two of the allegations were made by the Air Force contracting officer and the third was made by the contractor. In responding to our questionnaire, the Air Force considered this to be a single possible violation.

- In the first allegation, a contracting officer said that he believed some member, or members, of the government's source selection team was "leaking" information to potential contractors during the evaluation of their offers. The contracting officer had previously reported this to Air Force and Navy criminal investigators, but no strong evidence had been found to support his allegation. All source selection team members, however, had been reminded of their duty to safeguard source selection information. No subsequent problems had been noted.

- In the second allegation, a contractor said that an individual working for one of its subcontractors was a friend of the contracting officer. The agency found that this acquaintance

was circumstantial and insignificant with no impact on the procurement.

-- According to the third allegation, (1) several years before a requirement for a proposed procurement was solicited, a lieutenant colonel developed specifications and estimates to obtain funding for a program, (2) the officer subsequently retired and went to work for a contractor who would be competing for a contract related to this program, and (3) the retired officer was going to be placed on the contractor's proposal preparation team for that contract. The contracting officer took exception to the retired officer's direct participation on the basis of the Air Force's standards of conduct regulation. Because this was an issue during the conduct of the procurement, the contracting officer reported a possible violation in his certification. As a result, the retired officer was removed from the contractor's proposal preparation team and was not allowed to attend any meetings as the contractor's representative. In the final analysis, the contracting officer determined that the retired officer did not influence the government's selection of the winning contractor because he was not employed by the government when the solicitation was developed or when the offers were evaluated.

Remaining Cases

The remaining two cases were reported by the Department of Interior's Bureau of Reclamation office in Denver, Colorado.

- One case concerned conflict of interest allegations, including personal financial interest, against an Interior procurement official in the award of a \$97,000 contract in June 1988. According to the allegation, during the period of the contract award, this official, who served on the technical evaluation committee for the contract and was the contracting officer's technical representative, was living with, and jointly owned a house with, a woman who had a high-level position with the company that was awarded the contract. On July 3, 1989, Interior officials reported the facts of their inquiry to their Inspector General for further action. On August 14, 1989, the Inspector General, choosing not to pursue the case, returned it to Interior officials. An Interior official informed us that when the Inspector General returns cases, it is generally believed that criminal prosecution will not be undertaken. On January 6, 1990, Interior officials recommended that the procurement official be suspended, placed on 90 days suspension without pay, and transferred to its Washington, D.C., office. Before these recommended actions were initiated, however, the procurement official took discontinued service retirement (which means the retiree has

served 25 years, but is under 55 years of age), effective March 9, 1990.

-- The second case related to a contract awarded in October 1987 and modified in the amount of \$60,000 in May 1989. This case began with a complaint by a potential contractor on March 13, 1989, to a Congresswoman. The allegations were that technical requirements were unnecessarily restrictive, and, therefore, a potential contractor could not get his technical work accepted. On July 26, 1989, Interior's Phoenix, Arizona, procurement suboffice also alleged that the technical requirements were so restrictive that they would result in a sole source contract. In investigating this case, Interior officials noted that the alleged violations occurred prior to July 16, 1989, the effective date of the law, and thus recommended to its Personnel Management Division that the alleged violations be investigated under other ethics guidelines, rather than under the Procurement Integrity law. On September 11, 1989, the Personnel Management Division notified its Inspector General that there had not been a violation of the Procurement Integrity law, since all the allegations referred to revised specifications included in the contract modification and not to a new solicitation. Further, Division officials stated that all alleged violations occurred prior to the July 16, 1989, implementation of the Procurement Integrity law. As of January 28, 1991, Interior

had not received any response from the Inspector General on this matter. An Interior official informed us that generally if the Inspector General's office is satisfied with Interior's determination, it does not respond to the Department.
