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Report to the Chairman, House Committee on Government Operations

September 1987

ADP PROCUREMENTS

Food and Drug Administration Circumvented Procurement Regulations

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Information Management and
Technology Division

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September 11, 1987

The Honorable Jack Brooks
Chairman, Committee on Government
Operations
House of Representatives

Dear Mr. Chairman:

This report responds to your July 10, 1987, request that we review allegations of improper computer procurements at the Food and Drug Administration (FDA). According to FDA employees, procurements for FDA's Import Data System, a major automation initiative, and its office automation project, were split into smaller procurements to keep the dollar amounts and equipment quantities below thresholds specified in the Federal Information Resources Management Regulations (FIRMR)[1] and the Department of Health and Human Services' (HHS) procurement guidelines. You requested that we (1) review the allegations and determine if federal procurement regulations had been circumvented and (2) describe any corrective actions being taken by FDA.

The following is a summary of our findings:

- FDA split a $1 million procurement request for computer equipment for its Import Data System into 11 smaller procurement requests. According to FDA's Director of Information Resources Management, the Public Health Service procurement officer directed that the requisitions be split to stay within the maximum order limitations for using the General Services Administration's (GSA) schedule contracts[2] because (1) there was limited time left before the end of the fiscal year and (2) FDA's procurement request to HHS stated that the agency would use GSA schedule contracts. The FIRMR requires GSA approval for GSA schedule contract procurements over $300,000 and applicable maximum order limitations and prohibits the fragmentation of agency requirements to circumvent delegation of procurement authority thresholds. In its review of the agency's procurement request, HHS did not detect FDA's plan to use the

[1]The FIRMR is the primary regulation for use by federal agencies in their management, acquisition and use of automatic data processing resources.

[2]Procuring computer equipment from GSA schedule contracts is a method by which federal agencies competitively procure small orders. GSA and the vendor establish maximum order limitations and scheduled prices. Agencies have blanket delegation of procurement authority to order from the GSA schedule provided that for each purchase they stay within the established maximum order limitations and dollar amount.

GSA schedule for this procurement, which exceeded the schedule's limitations.

- For its office automation project, FDA purchased equipment costing $725,000 from GSA schedule contracts by dividing the procurement into 20 separate purchase orders. The agency's information resources managers stated that they followed their draft procurement guidelines and "management philosophy," which is to procure computer equipment by field office. The purpose of the draft guidelines and philosophy is to develop a better rapport with local vendors for more responsive service and to take advantage of local market pricing. By following these draft guidelines in procuring equipment, FDA circumvented the FIRMR regulations, which (1) limit agency procurements under GSA schedule contracts to certain maximum order quantities or a $300,000 purchase price, and (2) require the agency to summarize its requirements and advertise in the Commerce Business Daily for competitive bids when the total value of the order exceeds $50,000. These procurements also circumvented HHS guidelines, which require approval from HHS for procurements over $150,000.
- Two other computer equipment procurements totaling about $40,000 had been inappropriately split into smaller procurements, and this was not detected in FDA's review and approval process. FDA plans to strengthen the review process by training purchasing agents to guard against split orders and performing periodic inspections of the purchase order files.

FDA's Associate Commissioner for Regulatory Affairs and the Deputy Director for the Office of Regulatory Resources Management commented that the FIRMR is unclear and hard to interpret, but stated that the agency would take action if HHS believed its actions were in error. In this regard, on September 4, 1987, GSA requested HHS to place a hold on the Import Data System procurements. On September 9, 1987, the Public Health Service took steps to cancel the purchase orders for the System.

We are recommending that the Secretary of Health and Human Services take action to bring FDA's acquisition strategy for the Import Data System and its draft computer equipment procurement guidelines into compliance with applicable GSA procurement regulations and HHS guidelines; review any other planned ADP procurements for compliance with applicable procurement regulations; and review the Department's procedures for approving agency procurement requests.

In carrying out this audit, we collected and reviewed relevant procurement documents, examined federal procurement regulations and HHS

guidelines, and interviewed FDA, Public Health Service, and HHS agency officials. We also compared FDA's acquisition strategies to federal procurement regulations and HHS guidelines and obtained the opinion of GSA procurement analysts on FDA's acquisition strategies. However, we did not evaluate GSA's role and responsibilities for reviewing these procurements. See appendix I for details on our scope and methodology.

Background

FDA's primary mission is to protect and promote the American public's health. Under the direction of HHS and the Public Health Service, FDA is responsible for setting regulations and ensuring that (1) food is safe, pure, and wholesome; (2) drugs (for humans and animals), biological products, and therapeutic devices are safe and effective; and (3) radiological devices and procedures do not result in unnecessary exposure to radiation. To help achieve these objectives, FDA established the Office of Regulatory Affairs. This office enforces compliance with FDA's regulations and has authority over FDA's field operations.

In 1986 and 1987, FDA adopted two automation initiatives to strengthen the surveillance of imported foods and the management of its resources. One initiative is the Import Data System, which will provide computer support for monitoring the status of products selected for testing. FDA is procuring computer equipment to support this project and has increased its fiscal year 1987 Information Technology System budget by $1.4 million. FDA's second initiative is its office automation project, which will improve the quality and timeliness of its management decision process. For this project, FDA is procuring equipment for local area networks[1] for its headquarters and field offices. FDA estimates that this project will cost an additional $4.2 million to complete.

FDA Split Requisitions for the Import Data System to Circumvent Federal Procurement Thresholds

On May 29, 1987, while awaiting approval from HHS for the procurement, FDA prepared two requisitions—one for Digital Equipment Corporation central processing units, totaling $622,036.61, and one for Systems Industries disk drives, totaling $387,924.00. On June 23, 1987, after receiving approval for the procurement from HHS, FDA split these 2 requisitions into 11 requisitions. Two days later, the original 2 requisitions were canceled and the 11 new requisitions were signed and approved by FDA's regulatory affairs and information resource managers. As shown in appendix II, the fragmented requisitions were for the

[1]A local area network is a telecommunications network that serves a small geographical area. Local area networks typically interconnect computers, terminals, and peripheral equipment.

same equipment that was included in the original requisitions. As of August 21, 1987, FDA had submitted 10 of the split requisitions to be advertised in the Commerce Business Daily.[4] Of these 10, FDA had issued 2 purchase orders to acquire equipment from the GSA schedule contract. One of the orders was for $87,432.84 for 3 Digital Equipment Corporation central processing units; the other was for $73,881.00 for 12 Systems Industries disk drives.

GSA has granted agencies authority to procure automated data processing (ADP) equipment by placing orders against a GSA schedule contract, provided that (1) the order is within the maximum order limitations of the applicable schedule contract and (2) the total purchase price of the items in the order does not exceed $300,000 (FIRMR §201-23.104-1(b)(1 and 2)). If these requirements are not met, the agencies need to obtain approval from GSA to use the GSA schedule contract, prepare a sole source justification, or compete the project as a whole. GSA regulations also specifically prohibit agencies from fragmenting their ADP requirements to circumvent established delegation of procurement authority thresholds, including those applicable to GSA schedule contracts (FIRMR §201.23.103(a)(2)). The regulations do not further explain what constitutes an improper fragmentation of ADP requirements, but the placement of purchase orders for the same equipment within a very short time period would fall within this prohibition. (See 46 Comp. Gen. 713, 717-8 (1967); Quest Electronics, B-193541, March 27, 1979, 79-1 CPD 205).

By splitting the requisitions, FDA circumvented both the GSA maximum order and the $300,000 limits for using the GSA schedule contract. In this case, Digital Equipment Corporation's GSA schedule contract stipulates that no more than 5 central processing units of any one type may be used in one purchase order; FDA's procurement request to HHS specified 12 central processing units. Systems Industries' GSA schedule contract stipulates that each line item of a requisition must be limited to a quantity of 10. FDA's original May 29, 1987, requisition to Systems Industries specified 12 disk drives and 36 add-on disk drives. Both of these quantities exceeded the specified quantity limit. In addition, since both the central processing unit and disk drive requisitions exceeded the $300,000 maximum order threshold in the FIRMR (§201-23.104-1(b)(2)), FDA's actions to split the requisitions also circumvented this provision of the FIRMR. Further, FDA's acquisition strategy violates HHS's Information

[4]FIRMR (§201-32.206(f)) requires advertising in the Commerce Business Daily when placing an order that exceeds $300,000 against the GSA schedule contracts.

Resources Manual (chapter 4-10-30), which also prohibits fragmenting computer acquisitions.

FDA's Director of Information Resources Management stated that the Public Health Service procurement officer directed FDA to split the requisitions to stay within the maximum order limitations for using GSA's schedule contracts because there was limited time left before the end of the fiscal year.[5] The Public Health Service procurement analyst said that he instructed FDA to split the requisitions to carry out FDA's acquisition strategy of using the GSA schedule contract as stated in an April 1987 procurement request to HHS.

By splitting the requisitions to circumvent the limitations of the GSA schedule contract, FDA and HHS management do not have assurance that the lowest cost will be obtained. According to an HHS analysis of ADP contracts awarded from October 1983 through March 1985, the "larger competitive ADP procurements, if properly bundled, (that is, consolidated) can result in a 20- to 40-percent savings over schedule buys."

HHS Did Not Detect FDA's Flawed Acquisition Strategy for the Import Data System

In April 1987, FDA prepared an Agency Procurement Request to HHS, a formal request for approval to procure equipment supporting the Import Data System. This procurement request stated that FDA would purchase Digital Equipment Corporation central processing units and supporting computer hardware for 12 FDA field offices, at a total purchase price of about $1 million. In its request, FDA specified an acquisition strategy of "compatibility limited competition (that is, the equipment must be compatible with that of Digital Equipment Corporation) to be advertised in the Commerce Business Daily. The GSA schedule will be used and any system on the GSA schedule will be considered as having been openly bid." The procurement request showed FDA's plan to use the GSA schedule for an amount exceeding both the applicable maximum order limitation and the $300,000 threshold. For example, as discussed previously, Digital Equipment Corporation's GSA schedule contract stipulates that no more than 5 central processing units may be used on one purchase order. FDA's procurement request specified 12 central processing units. On June 10, 1987, HHS issued a Delegation of Procurement Authority, which formally approved FDA's request.

[5]A January 7, 1987, GSA Board of Contracts Appeals decision found that a lapse of funding at year's end was not a sufficient legal reason to split orders

The HHS official who approved FDA's acquisition request told us that he was not aware of the maximum order limitation of 5 central processing units in Digital Equipment Corporation's GSA schedule contract, and if he had been, he would have questioned FDA's acquisition strategy. This official also said that it was unclear from the procurement request that FDA would fragment its purchase requisitions to circumvent federal procurement regulations. However, GSA procurement analysts told us that the $1 million procurement request should have alerted HHS of the potential for fragmenting purchase orders, and HHS should have initiated a thorough review of the maximum order limitations. Further, GSA procurement analysts told us that this appears to be a "sole source" procurement. As such, the FIRMR (§201-11.002-1(b)) requires the agency to complete a justification for other than full and open competition.

FDA's Procurement of Office Automation Equipment Circumvented Procurement Regulations

From April 13 to June 29, 1987, FDA prepared 20 requisitions to 3 vendors for 9 different FDA offices. The procurements were for the same type of equipment—local area network devices supporting FDA's office automation project. FDA specified the vendor for each procurement and purchased the equipment from the GSA schedule contract. Although each requisition was less than $50,000, the total purchase cost was about $725,000—$207,000 to Digital Equipment Corporation, $444,000 to Bridge Communications, and $74,000 to Systems Industries (see appendix III).

In splitting these procurements into 20 separate purchases, FDA circumvented the following FIRMR regulations and HHS guidelines:

- The FIRMR provides an agency with authority to procure ADP equipment by purchase order against a GSA schedule contract up to the maximum order limitation of the applicable contract (§201-23.104-1(b)(1)). In this case, the GSA contract schedule for Bridge Communications stipulates that no more than 50 units may be included on each purchase order FDA's total Bridge Communications orders were 152 units, exceeding the 50-unit limit.
- The FIRMR provides an agency with authority to procure ADP equipment by purchase order against a GSA schedule contract at a purchase price not in excess of $300,000 (§201-23.104-1(b)(2)). FDA's procurements exceeded this threshold.
- The FIRMR requires agencies placing an order against the GSA schedule contract to summarize the requirements and advertise them in the Commerce Business Daily when the total value of the order exceeds $50,000 (§201-32.206(f)). FDA's procurements exceeded this threshold.

- HHS' Information Resources Manual requires agencies to obtain approval from HHS for procurements exceeding $150,000 (chapter 4-10-30). FDA did not submit an agency procurement request to HHS although both the Digital Equipment Corporation and the Bridge Communications procurements exceeded $150,000.

FDA also violated the FIRMR (§201-23.103(a)(2)) and HHS guidelines (chapter 4-00-20(f)) which prohibit fragmenting procurements to circumvent established delegation of procurement authority thresholds.

FDA's Office of Regulatory Affairs managers and the Director of Information Resources Management told us that these procurements were in accordance with FDA's draft procurement guidelines, dated June 1, 1987. Although 10 of the 20 requisitions were prepared before the draft guidelines were developed (see appendix III), these agency officials explained that they also have been following their "management philosophy." FDA's philosophy and draft guidelines state that purchase orders should be prepared by field offices whenever possible, because this would (1) allocate funds to field offices for accounting purposes, (2) develop better rapport with local vendors for more responsive service, and (3) take advantage of local market pricing. FDA's staff manual guide (FDA 1440.2), dated September 5, 1986, states that field offices have the authority to procure computer equipment when the total value does not exceed $50,000. Further, FDA's Director of Information Resources Management and Chief of Information Management told us that these office automation requisitions were sent directly to the field offices by an Office of Regulatory Affairs management analyst, bypassing FDA's Division of Contracts and Grants Management Office. These officials recognized this internal control problem and said that they will require all future procurement requisitions to be reviewed by this division.

The Deputy Director of FDA's Division of Contracts and Grants Management Office stated that, although his office would have reviewed these requisitions, he did not know if his office would have consolidated them. The Deputy Director also stated that his office agrees with FDA's management philosophy of purchasing by field office. In this particular case, FDA's management philosophy and draft guidelines do not follow federal regulations and HHS guidelines that foster competition of computer procurements.

With regard to FDA's philosophy of procuring by field office to obtain more responsive service and local market prices, this equipment was procured from national companies, with standard service agreements

and set prices from the GSA schedule contract. Further, GSA and Public Health Service procurement analysts told us that having separate accounting procedures for field offices should not inhibit the consolidation of computer procurements. After reviewing FDA's draft guidelines, HHS procurement analysts told us that FDA should alter or drop any internal guidance that might discourage consolidation.

Other Procurements Split Due to Weaknesses in Management Controls

In analyzing the alleged improper procurements, FDA's information resources managers told us that two purchases, totaling about $40,000, had been "inappropriately split-up" yet not identified in the review and approval process. One of these procurements was for Digital Equipment Corporation terminals, procured through the GSA schedule contract, costing $14,363.84. The equipment is to support the office automation functions at FDA's Denver office. On March 5, 1987, FDA prepared two requisitions—one for 10 and another for 3 terminals and supporting equipment. Our analysis showed that had this procurement not been split, it would have exceeded the maximum order limitation for Digital Equipment Corporation's GSA schedule contract, which stipulates no more than 10 of any line item may be used on one purchase order. FDA information resources managers explained that these requisitions "simply were not caught" in the review process.

Another procurement, a direct purchase from Digital Equipment Corporation, was inappropriately split on June 24, 1987, into two requisitions—one for $24,881.97; another for $2,691.56. This procurement was for communications equipment to connect terminals, personal computers, and word processors. The Director of Information Resources Management said that the requisitions "were logged into FDA's Division of Information Resources Management Office for approval at different times and reviewed by different staff members. We simply missed them." According to a GSA procurement analyst, these split requisitions circumvented the Federal Acquisition Regulation (FAR Part 5, subpart 5.1), which states that when the purchase price exceeds $25,000, the agency is required to advertise in the Commerce Business Daily.

FDA Planned Limited Corrective Actions

We discussed the above procurements with FDA's Associate Commissioner for the Office of Regulatory Affairs and Deputy Director of the Office of Regulatory Resource Management. These officials said that, with respect to the Import Data System and the office automation procurements, the FIRMR regulations were unclear and difficult to interpret. They said that they planned to continue with these procurements.

but stated their willingness to take action if HHS believed their actions to be in error. On September 4, 1987, GSA requested HHS to place a hold on the procurements for the Import Data System. On September 9, 1987, a Public Health Service contract specialist told us that the Service was canceling the purchase orders for this project. Regarding the two smaller procurements totaling $40,000, FDA is planning to train the purchasing agents to guard against split orders and perform periodic inspections of the purchase order files.

Conclusions

There are serious weaknesses in FDA's management controls over ADP procurements. FDA's acquisition strategy for purchasing equipment for the Import Data System by splitting 2 procurement requests into 11 smaller requisitions circumvented GSA delegation of procurement authority thresholds, as prescribed in federal procurement regulations and HHS guidelines. Procurements of computer equipment supporting the office automation project were also divided into smaller procurements in violation of the same regulations and guidelines. FDA used its own draft procurement guidelines to support its actions in conducting these procurements. These guidelines are inconsistent with federal regulations and HHS guidelines.

Weaknesses also exist in HHS's review and approval of agency procurement requests. Specifically, HHS did not detect FDA's plan to use the GSA schedule contract for the Import Data System procurement although the agency's procurement request exceeded the schedule's maximum order limitations and dollar threshold, as prescribed in the FIRMR.

Recommendations

We recommend that the Secretary of Health and Human Services

- withdraw FDA's delegation of procurement authority for the Import Data System project until FDA brings its acquisition strategy into compliance with GSA procurement regulations and HHS guidelines;
- review any other ADP procurements planned by FDA to ensure that they are in compliance with applicable regulations and guidelines;
- direct FDA to establish ADP procurement guidelines that are consistent with applicable regulations and guidelines; and
- review the Department's procedures for approving agency procurement requests for computer equipment to ensure that such procedures are in compliance with GSA regulations and HHS guidelines.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from its issue date. At that time, we will send copies to other interested parties.

Sincerely yours,

Ralph V. Carlone

Ralph V. Carlone
Director

Contents

Abbreviations

ADP	automated data processing
FAR	Federal Acquisition Regulation
FDA	Food and Drug Administration
FIRMR	Federal Information Resources Management Regulations
GSA	General Services Administration
HHS	Department of Health and Human Services

Scope and Methodology

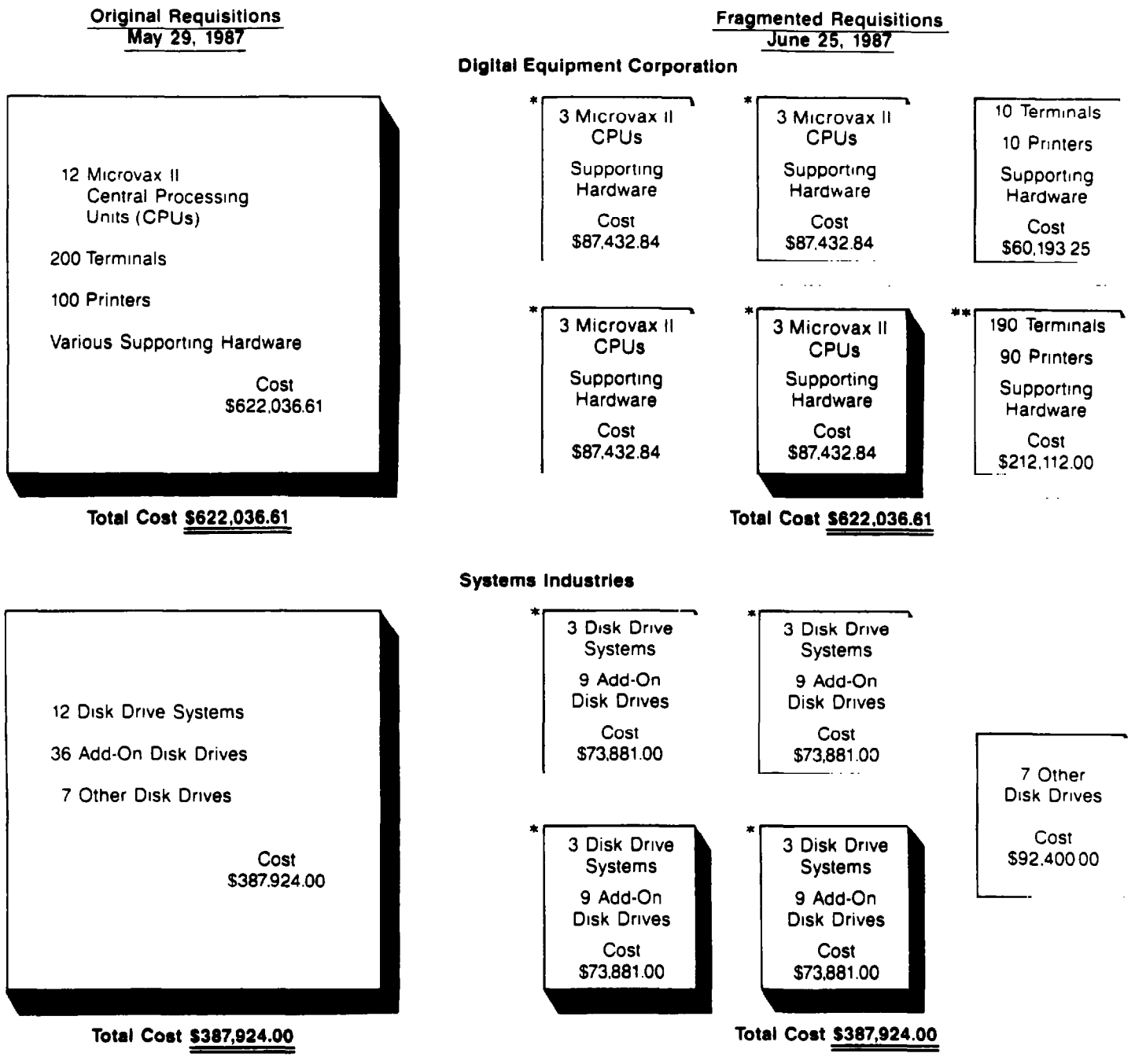
We concentrated our review on the specific procurements included in the allegations that supported FDA's Import Data System and office automation initiatives. We interviewed the staff making the allegations and reviewed the procurement documentation provided. To assess whether federal procurement regulations had been circumvented, we

- Collected and reviewed relevant documents, including equipment requisitions and purchase orders, FDA's procurement request, and HHS' delegation of procurement authority for the Import Data System project, and other supporting material.
- Examined pertinent federal regulations including the FIRMR, HHS's Information Resources Manual, and FDA's procurement guidelines to compare these regulations and guidelines to FDA's procurement actions and acquisition strategy.
- Interviewed FDA managers, contract specialists, and Information Resources Management officials to obtain information on the allegations and acquisition strategies.
- Discussed key procurements with Public Health Service and HHS procurement analysts to obtain their opinions on the alleged improper procurements.
- Discussed the procurements with GSA procurement analysts to obtain additional information on the federal regulations, and their opinions on the extent to which the alleged improper procurements circumvented federal procurement regulations.

To obtain information regarding corrective actions being taken by FDA, we interviewed regulatory resource and information resources managers and reviewed their evaluations of the allegations and corrective actions planned.

We conducted our review from July to September 1987. The scope of our work was focused on determining whether federal regulations were circumvented for the procurements that were the subject of the allegations. We did not evaluate other aspects of FDA's procurements such as the technical justifications for the equipment being procured. We did not review GSA's role and responsibilities for reviewing these procurements. Also, we discussed key facts with HHS procurement officials and FDA's Associate Commissioner for the Office of Regulatory Affairs and the Deputy Director, Office of Regulatory Resources Management, and have included their comments where appropriate. However, we did not request official agency comments on a draft of this report. Our work was performed in accordance with generally accepted government auditing standards.

Comparison of Original and Fragmented Requisitions for the Import Data System



Office Automation Project Requisitions

Date	Vendor	FDA Office	Co
04/13/87	Bridge Comm	Buffalo NY	$49 280
04 13/87	Bridge Comm	San Francisco, CA	49 280
04/13/87	Bridge Comm	Orlando, FL	49 280
04, 13/87	Bridge Comm	Los Angeles CA	49 280
04/17/87	Bridge Comm	Brooklyn NY	49 280
05/08/87	Digital Equipment	Buffalo, NY	13 323
05 08/87	Digital Equipment	San Francisco CA	15 408
05/08/87	Digital Equipment	Orlando FL	11 216
05/08/87	Digital Equipment	Los Angeles CA	14 459
05/08/87	Digital Equipment	Brooklyn NY	15 357
06/26/87	Digital Equipment	Baltimore, MD	44 966
06/26/87	Digital Equipment	Philadelphia PA	44 966
06/26/87	Digital Equipment	Dallas TX	47 761
06/25/87	Systems Industries	Philadelphia PA	24 627 00
06/25/87	Systems Industries	Baltimore, MD	24 627 00
06/25/87	Systems Industries	Dallas, TX	24 627 00
06/25/87	Bridge Comm	Dallas, TX	49 280 00
06/25/87	Bridge Comm	Philadelphia, PA	49 280 00
06/25/87	Bridge Comm	Baltimore MD	49 280 00
06/29/87	Bridge Comm	Rockville MD	49 280 00
Total			**724.861.43**

Totals By Vendor
Bridge Communications $443 520 00
Digital Equipment Corporation $207 460 43
Systems Industries $73.881 00

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