

GAO

Testimony



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Legal Opinion Concerning Synopsis
Requirements for Certain Types of
Automatic Data Processing Equipment and
Services Acquisitions

Statement of
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Before Legislation and National Security
Subcommittee of the Committee on Government
Operations, House of Representatives



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Mr. Chairman and Members of the Subcommittee:

You have asked us to testify concerning our legal opinion of August 14, 1989, B-158766.16.

Briefly, the August 14 opinion responded to questions you asked as to whether the General Services Administration (GSA) and other executive agencies are required to publish notices in the Commerce Business Daily (CBD) of certain types of procurement actions. In your letter you stated that while notice of solicitations for bids or proposals expected to exceed \$25,000 must, by statute, be published in the CBD, GSA has established a threshold of \$50,000, before orders placed under nonmandatory schedule contracts for automatic data processing (ADP) equipment are to be published.

Your first question was whether GSA's action was consistent with the \$25,000 threshold established by statute. In reply, we stated that GSA did not have the authority to establish a threshold higher than \$25,000 by regulatory action. The regulation appears to be based on a statutory provision that allows a head of a procuring agency to waive

CBD notice in the case of any procurement for which the agency head determines (after consultation with the administrators of the Office of Federal Procurement Policy and the Small Business Administration) that it is not appropriate or reasonable to publish the notice. Although this provision gives the agency head discretion to waive the notice requirement for any individual procurement, we concluded that the provision does not authorize establishing a \$50,000 threshold for requiring notice for a class of procurement actions.

You also asked whether orders placed by executive agencies under so-called indefinite delivery, indefinite quantity contracts for ADP services and equipment must be published for orders exceeding \$25,000. While these contracts guarantee only a minimum quantity, that quantity, as well as the specified maximum quantity, must be realistically based on the most current information available to the procuring agency. These contracts are to be used when the agency cannot predict the precise quantity it will need, and it is otherwise inadvisable for the agency to commit itself for more than the minimum quantity. We stated that these contracts are similar to requirements type contracts and therefore that orders placed under these contracts are not required to be published in the CBD.

Finally, you asked what meaning we give to the term "similar arrangement," found in the statutory publication requirements. Specifically, the statute provides that an agency intending to place an order expected to exceed \$25,000 under a basic ordering agreement, or similar arrangement, is required to publish such intention in the CBD. We concluded that the term refers to the placement of an order which results in a new contract, such as the placement of an order under a nonmandatory schedule contract.

I will be pleased to answer any questions.