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STATEMENT OF  
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BEFORE THE

SUBCOMMITTEE ON SPACE SCIENCE AND APPLICATIONS, HSE03511

HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY

ON

[ SOLE SOURCE PROCUREMENT IN THE FEDERAL SYSTEM ]

Mr. Chairman and Members of the Subcommittee, I am pleased to assist in your consideration of the proposed reprogramming of NASA funds to procure modified CENTAUR vehicles for use *AGC00036* with the space shuttle. NASA proposes to proceed with a sole source procurement, and I have been invited here to discuss Federal procurement statutes and regulations relative to a sole source versus competitive procurement.

The procurement statutes permit, as an exception to the general requirement for formal advertising, the negotiation of contracts under certain specified circumstances. In fact, there are seventeen negotiation exceptions applicable to NASA, as set forth in the Armed Services Procurement Act, at 10 U.S.C. § 2304(a).

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However, even when negotiations are appropriate, the contracting agency is still required to obtain competition to the extent feasible. The pertinent part of 10 U.S.C. § 2304(g), requires that:

"\* \* \* proposals, including price, shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured \* \* \*."

But sometimes it is not feasible to obtain competition. Section 2304(a)(10) of title 10 permits the negotiation of contracts if:

"the purchase or contract is for property or services for which it is impractical to obtain competition \* \* \*."

This statute is implemented in NASA Procurement Regulation (NASA-PR) § 3.210-2 which provides that the authority to negotiate may be used in a number of circumstances, including cases:

(i) when supplies or services can be obtained from only one person or firm ('sole source of supply') \* \* \*."

Further, NASA has provided the following guidance for its contracting officer:

"While competition must be obtained whenever possible, there are circumstances where one institution or company has exclusive or predominate capability by reason of experience, specialized facilities, or technical competence to perform the work within the time required and at reasonable prices." (NASA-PR § 3.802-3(a)).

Before a contract may be awarded on a sole source basis, NASA's regulations require that the contracting officer obtain appropriate approvals based upon a written "Justification for Noncompetitive Procurement". NASA PR § 3.802-3(c) sets forth detailed instructions for preparing a justification in a manner calculated to highlight those factors which would support, or negate, the conclusion that only one firm can satisfy the Government's needs in a timely manner.

As you may know, GAO through its bid protest forum, reviews Government procurement practices, including the award of sole source contracts. Specifically, under our published Bid Protest Procedures, a firm which believes that it is improperly being denied an opportunity to compete for a Government contract may request that our Office review the legality

of the agency's actions. Our decision is based on written arguments, briefs and documents filed by the protester, contracting agency, and other interested parties.

In our protest decisions, we have recognized that a sole source award may be made when, among other reasons, the minimum needs of the Government can be satisfied only by supplies or services which are unique; where time is of the essence and only one known source can meet the Government's needs within the required time frame; where only a single source can provide an item which must be compatible and interchangeable with existing equipment; and when only one firm could reasonably be expected to develop or produce a required item without undue technical risk.

On the other hand, a sole source procurement is not justified simply because the contracting agency believes a particular firm may be able to perform the contract better or at a lower cost than any other firm. Rather, the agency must use the competitive process to determine which firm is superior or will perform the contract at the lowest cost.

Our decision in Hughes Aircraft Company, 53 Comp. Gen. 670 (1974), 74-1 CPD 137, is an example of a sole source award which GAO found to be legally justified. NASA had

awarded a development contract to Philco-Ford for three weather satellites. Subsequently NASA decided to award a contract for two additional weather satellites to Philco-Ford on a sole source basis, and Hughes protested. In response to the protest, NASA explained that a sole source award was necessary because adequate specifications were not available for a competitive procurement. In NASA's judgment, only the original manufacturer could successfully perform the contract within the relatively short time frame. We found no reason to disagree with NASA's judgment.

The proposed CENTAUR procurement is subject to the same basic rules concerning sole source awards. NASA, applying these rules, believes that a sole source award is justified. As you know, we are not familiar with the details of this case and are not in a position to comment on NASA's position.

That concludes my statement Mr. Chairman. I hope that my comments have proved helpful, and I will be happy to respond to questions.