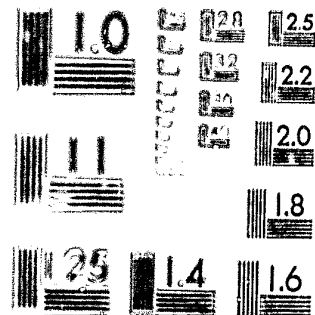


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National Institute of Justice
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Washington, D. C. 20531

DATE FILMED

6/26/81

GSA CONTRACT FRAUD INVESTIGATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FEDERAL SPENDING
PRACTICES AND OPEN GOVERNMENT

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

JUNE 22, 23, SEPTEMBER 14, 15, 1978

Printed for the use of the Committee on Governmental Affairs



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United States General Accounting Office
Washington, D.C. 20548

FOR RELEASE ON DELIVERY
Expected at 9:30 a.m. EST
Monday, Sept. 18, 1978

Statement for the Record of
Jerome H. Stolarow, Director
Procurement and Systems Acquisition Division

Before the
Senate Subcommittee on Federal Spending
Practices and Open Government
Committee on Governmental Affairs
on
Activities of the General Services Administration

855

Mr. Chairman, members of the Subcommittee on Federal Spending Practices and Open Government, I welcome this opportunity to respond to some questions the Subcommittee has raised on the General Services Administration's (GSA) responsiveness to our audit reports, on the implementation of A-109 and on the Federal Supply Schedules.

Before addressing these questions, I would like to point out that the General Accounting Office (GAO) has continuously reviewed the General Services Administration's management of providing goods and services to the Federal agencies. We examined into the construction of Federal buildings, the leasing of building space, maintenance of property (personal and real), disposal of surplus property, the procurement and management of common supplies, the National Archives Service, ADP and Telecommunication Services, the industrial stockpile, and Federal preparedness.

From 1974 to 1978, we issued over 200 reports to the Congress, congressional committees, individual congressmen, and the Administrator of General Services on these matters, many of which contained recommendations for improving management controls, which if uncorrected could lead to fraudulent activities.

In our previous testimony to this Subcommittee on June 23, 1978, we discussed briefly our report, PSAD-77-60,

dated April 14, 1977, which addressed the lack of control over self-service store stocks. We stated that this lack of control could prevent prompt detection of thefts. We also commented on the failure of GSA and agencies to control the issuance and usage of shopping plates. This leads to impulsive buying of items nonessential to government needs or to procurement of items for personal use.

We also testified that in our report, PSAD-76-179, dated December 27, 1976, we noted contractors had billed the Government for unauthorized and unsupported labor and material charges on repair contracts. This continued to happen even though the problem was reported by GSA's internal auditors in 1973.

Also on July 6, 1978, we reported to the Administrator of General Services concerning the sufficiency of competition in GSA contract awards. In that report, we advised the Administrator of significant indicators of potential problems, such as a high proportion of negotiated contracts for construction and repair work and the high incidence of contracts awarded after receiving only one or two bids on formally advertised solicitations. The information in our report is directly related to the thrust of an investigation being conducted by a recently formed task force to recommend corrective action on activities susceptible to criminal

abuse. This information was available to that task force for use in its work.

RESPONSIVENESS TO AUDIT REPORTS

On the question of GSA's responsiveness to our audit reports, in our testimony of June 23, 1978, we pointed out some instances where GSA had not responded to our recommendations requiring corrective action. As a result, the Chairman asked the Administrator to establish a system for responding to GAO's past and present findings requiring corrective action. The Chairman also wanted our comments as to whether the procedure established by GSA would be acceptable to us.

Section 236 of the Legislative Reorganization Act of 1970 requires the head of any Federal agency to submit a written statement on actions taken with respect to GAO recommendations to:

1. The House and Senate Committees on Government Operations not later than 60 days after the date of the report; and
2. The House and Senate Committees on Appropriations with the first request for appropriations submitted by the agency more than 60 days after the date of the report.

Office of Management and Budget (OMB) Circular No. A-50, dated October 28, 1971, which implements the Legislative Reorganization Act of 1950, requires agencies to give careful consideration to the findings, suggestions, and

recommendations in GAO reports and to take prompt corrective action where appropriate. Agencies, however, are not obliged to accept findings, suggestions, and recommendations, except where GAO is exercising its settlement power on the legality of a payment or other transaction.

Generally the statements required by the Legislative Reorganization Act of 1970 are prepared by the service or staff office whose area of responsibility is covered by the report. Generally, all statements are signed by the Administrator or the Deputy Administrator.

When GSA concurs with our recommendation, the heads of the services and staff offices are responsible for the timely initiation and completion of the corrective action and for followup. GSA procedures require followup reviews by the Office of Audits on a selected basis only. In addition, the Office of Audits is required to report to the Administrator on significant problems or delays in starting and completing corrective actions.

We were informed by the Administrator's office that, as a result of the Chairman's request for a system to respond to GAO's findings and recommendations, the Administrator of General Services plans to place primary responsibility on the Director of Audits to followup on the Services implementation of corrective actions required by GAO reports. Under the new procedures, each

week the Director of Audit will meet with the Administrator to discuss outstanding GAO recommendations. The commissioners of the particular services, to which the recommendations were directed, will also attend. The Administrator will schedule quarterly meetings with the Director of Audits and all of the commissioners to discuss in detail and point by point the recommendations that are active. These meetings will give the Director of Audits the opportunity to raise, at the first opportunity, any problems or delays on the part of the services.

Will the system be satisfactory to GAO? We believe the system will be as good as the Administrator intends it to be. If the Administrator is aggressive with the commissioners, we believe those recommendations with which they concur should be acted upon more readily. In the event that GSA does not agree with our recommendations, they will at least have been discussed by GSA's top management and there should be no uncertainty about the agency's position having been considered and approved at the highest level.

IMPLEMENTATION OF OMB CIRCULAR A-109

On the question of implementing A-109, we have found that the Office of Federal Procurement Policy (OFPP) and GSA are now working closely together to identify and overcome A-109 implementation problems. Progress has been slow due primarily to the complexity of some changes which must be

made in GSA operations and in the review and approval of major space acquisitions by the Office of Management and Budget (OMB) and the Congress. GSA officials are revising the policy documents for implementing A-109. Their current thinking had not been incorporated at the time of our review. GSA and OFPP officials indicated that GSA intends to incorporate the A-109 acquisition process into these documents.

We testified on June 23, 1978, that:

- GSA's plans for implementing A-109 called for no substantive changes in its acquisition process--a process which did not include some key elements recommended by the Commission on Government Procurement and included in A-109.
- GSA and OFPP had differing opinions on A-109's application to public buildings and were not working together to resolve those differences.

Progress by GSA and OFPP since the June hearings include:

- a draft change to the GSA order on major systems acquisition in the Public Buildings Service (PBS),
- a draft OFPP pamphlet on major space acquisitions,
- a revised draft of a GSA order on major system acquisitions in the Automated Data and Telecommunications Service (ADTS),

- a draft Federal Procurement Regulation (FPR) which is to clarify the relationship between OMB Circular A-109, FPRs, and Federal Property Management Regulations for major ADP and telecommunications acquisitions by the executive branch,

- a draft OFPP pamphlet on major acquisitions of automatic data processing (ADP) systems,
- establishment of a GSA Office of Acquisition, and
- effort toward a seminar on A-109 for GSA officials.

GSA and OFPP officials agreed that the GSA orders and the pamphlet on space acquisition need further revision. Priority has been given to preparing the two OFPP pamphlets. GSA and OFPP officials plan to submit drafts of the pamphlets for the record at your scheduled September 18 hearings. They said that these drafts will identify remaining problems to be resolved.

Preparation and issuance of (1) the change for the GSA order for PBS and (2) the GSA order for ADTS will then be completed. GSA officials said that these documents will be consistent with the OFPP pamphlets. Target dates for the various steps to be taken to issue these and to complete the implementation of A-109 have not been established. The draft pamphlets will be widely distributed for comment, therefore, several months may elapse before they are issued.

Automated Data and
Telecommunications Service

We reviewed the latest available draft order for ADTS and the draft FPR for major ADP and telecommunications acquisitions. The draft OFPP pamphlet was not completed in time for our review. With the exception of some minor comments which we made to OFPP and GSA officials, we found the available documents to be consistent with A-109. Moreover, GSA has given procurement authority to other agencies for several ADP acquisition programs which, according to OFPP officials, are being carried out in accordance with A-109.

Public Buildings Service

OFPP has directed that A-109 will not be applied to any major space acquisition program until the implementation approach developed by GSA has been coordinated with us and presented to the House and Senate Public Works Committees. OFPP officials reviewed the draft change to the GSA order for PBS and the draft OFPP pamphlet on acquisitions (prepared by GSA) and recommended specific revisions. GSA officials acknowledged the shortcomings and is making the revisions. Again, priority has been given to revising the OFPP pamphlet.

The major problem currently being addressed for space acquisitions concerns a conflict between GSA practice in implementing Public Law 86-249 (40 U.S.C. 601-616) and the

A-109 acquisition process relative to the identification and exploration of alternative solutions. Current practice is for GSA to present a prospectus to the Congress identifying the selected approach to satisfy space needs. The Congress then normally authorizes and appropriates full funding to implement the solution.

GSA interprets the law to mean that it is prohibited from spending money--other than for in-house effort--toward a solution to a space need until a resolution has been adopted by the Public Works Committees of the House and Senate if the solution is expected to involve a total expenditure in excess of \$500,000. Under A-109, GSA would spend money for private industry to identify and explore alternative solutions before the final solution is known. These expenditures would conflict with GSA's interpretation of the statute.

OFPP, OMB, and GSA officials have been considering alternative approaches to resolve this conflict including changing the way projects are approved and funded. Their recommended approaches will be presented to the budgeting side of OMB and to the appropriate congressional committees.

Previous testimony

In our June 23 testimony, we identified key elements of A-109 which were not present in GSA's acquisition process for major space acquisitions. GSA has corrected or made progress in all areas we identified.

One concern was that GSA would use in-house market survey techniques to identify alternative solutions to space needs. Also, the Congress would not be given the opportunity to consider the need before GSA recommended a particular solution. Inherent in this difference was GSA's intention not to formally consider alternative solutions by allowing the private sector to explore viable alternatives.

GSA currently is trying to resolve problems associated with funding the identification and exploration of alternative solutions. According to agency officials, the space need will be communicated to the Congress before the identification of alternatives and there will be a formal solicitation for proposals to satisfy the space need.

We also commented on GSA's normal approach of (1) selecting a single architect-engineer (A-E) firm from a list of qualified firms for construction projects and (2) selecting a lessor without formal competition and then negotiating the lease price. The Commission on Government Procurement and A-109 favor open competition. In the case of A-E's, the Commission felt selection would be based, in part, on the proposed concept of the end product and competition would normally be maintained with at least two competing conceptual designs.

GSA has also instituted improvements in this area. GSA is prohibited by statute from requesting system design concept proposals from A-E firms. GSA has, however,

directed that a "level 3" competition will be used in all A-E selections. Under this approach, two or more A-E firms will be selected from a list of qualified firms to prepare competing designs.

Full implementation of the Commission's recommendations will not be achieved because (1) "newer and smaller" firms will not be considered unless they are on the list of qualified firms and (2) the initial selection of two or more A-E firms will be based on their qualifications rather than on consideration of proposed concepts.

Remaining Effort

It should be noted that even after the GSA and OFPP policy documents are issued, full implementation of A-109 will be far from complete. Full implementation will change the way GSA operates, particularly in PBS. For this reason, a great deal of training will be needed.

At the present time only the GSA officials involved in preparing the A-109 implementing documents are knowledgeable of the A-109 acquisition process and the changes its implementation will bring. Other GSA personnel will require training.

GSA's Office of Acquisition which was established on September 12, 1978, is charged with implementation policies and procedures for A-109. It will also be responsible for monitoring compliance and for acquisition training. In

the interim, GSA has been reviewing its acquisition training needs and has been developing an acquisition training plan. Also, OFPP has set up a 2-day seminar for about 30 GSA officials (probably Headquarters personnel) on A-109 and its application in PBS and ADTS. These are important steps in the right direction. Many GSA office personnel will require training. For example, regional office personnel who currently perform the in-house market survey will have a new role in major system acquisitions.

Summary

In summary, we believe that unlike its posture at June 23, 1978, GSA is now working toward implementing the A-109 acquisition process. Progress has been slow and a lot remains to be done just to issue the OFPP and GSA policy documents, especially for space acquisitions. Full implementation of this new policy into day-to-day operations will require additional effort and more time.

FEDERAL SUPPLY SCHEDULES

You asked for our conclusions on certain problems with the Federal Supply Schedules. Specifically, you asked for conclusions on whether the Federal Government receives proper discounts for purchasing in volume, and whether the prices charged GSA customers are unreasonably high.

We issued two reports last year (PSAD-77-69, dated March 4, 1977, and PSAD-77-87, dated March 11, 1977,) urging GSA to

obtain better prices for their schedule customers. In one report, we stated that some contractors were charging the Government more for their products than they charge commercial customers. For instance, prices charged the Federal Government by 5 of 12 multiple award contractors were much higher than prices charged other customers who bought less or comparable quantities.

This happened because GSA did not have procedures for considering the total purchases expected under a contract when evaluating the prospective contractors' offers and negotiating contract prices. As a result, GSA did not obtain volume discounts normally available to other customers under aggregate purchase agreements, original equipment manufacturers' agreements, and individual large quantity orders. Had GSA obtained prices comparable to what other customers received, the Government could have saved as much as \$1.2 million on purchases totaling \$11.2 million from the five contractors.

We recommended to GSA that it develop procedures to enable it to obtain aggregate and original equipment manufacturers' discounts and/or refunds normally made available to other customers. In June 1978, GSA issued formal instructions to correct this problem. In its instructions, GSA stated that it was seeking additional discounts based on the Government's volume of purchases. GSA is seeking these discounts at the end of the contract period or in the form of additional

front-end discounts. We do not yet know how successful this action will be in reducing prices.

In a related report, we stated that GSA needs to improve its evaluation of contractors' proposed prices. Our work centered on how GSA selects a benchmark contractor for use as a target in negotiating discounts with other contractors. GSA's procurement files showed that the contractor with the best offer was often not chosen as the benchmark contractor, nor was there adequate support to justify any other selection. For instance, we examined GSA's procurement files for eight multiple award schedules under which 547 suppliers had contracts. Our purpose was to determine how the benchmark contractors were selected and if the selections were adequately justified. Procurement files for three of the eight schedules contained sufficient information to identify the process followed in comparing contractors' offers, but did not contain the basis for benchmark selections. Thus, there is doubt that GSA negotiated the best possible price. GSA promised action to correct this problem.

This summer we started a followup assignment to determine if GSA had corrected the problems we previously found and also to obtain some insight into how agencies buy products from the schedules. There are indications that much still needs to be done to improve not only prices obtained through the schedule contracts, but also in the guidance GSA provides to

agencies on how to use schedules. We observed, for instance, that discount houses are often able to sell items at a lower price than is available through the schedules. We are also aware that some State governments receive better prices than GSA for items on the schedules. It seems that GSA should be able to obtain similar or better prices. However, before reaching a firm conclusion on this, we should compare the terms and conditions of the sale under each method. We plan to address this in our ongoing work.

END