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STATEMENT OF
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BEFORE THE
SENATE COMMITTEE ON SMALL BUSINESS
ON
[SMALL BUSINESS ADMINISTRATION CONTRACTING PRACTICES]

Mr. Chairman and Members of the Committee, I am pleased to be here today to assist you in your consideration of the requirements for competition in Government contracting. While I have no specific knowledge of the Small Business Administration procurement actions involved in these hearings, I understand there is concern with the number of contracts awarded on a sole source basis, and I have been asked to discuss applicable procurement principles.

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Competition may be described as the cornerstone of the Federal procurement system. Whether goods and services are obtained by the sealed bid method of procurement, which has been favored by Congress since the Act of March 3, 1809, or whether the relatively more flexible negotiation method of procurement is used, the procurement statutes require that competition be sought to the maximum extent practical.)

The policies underlying this requirement and the advantages of competition are well known: to give all qualified firms or individuals a chance to obtain a Government contract; to prevent favoritism, collusion, fraud, or conflict of interest; and to obtain for the Government the goods or services which it needs at the most advantageous price.

[To this end, the Government must describe its needs in the broadest possible terms.) An example is that the Government cannot require a Cadillac when a Chevrolet will do or a Lincoln when a Ford will do. In addition, [the Government must make its needs known as widely as possible, through publicizing its intent to purchase in the Commerce Business Daily and by using bidders' mailing lists.] Finally, the Government must award contracts to the firms or individuals whose offers are most advantageous to the Government.] When sealed

bids are submitted, this means award to the lowest-priced, responsive, responsible bidder; in negotiated procurement, technical merit may outweigh cost, so that award need not be made at the lowest price.]

For civilian agencies, [there are 15 statutory exceptions, listed in 41 U.S. Code § 252, [to the general requirement for formal advertising.] Often used exceptions are, ^(Sichus) urgency and the fact that it is not practicable to secure competition by formal advertising. Even if one of the exceptions permitting negotiation applies, however, it does not automatically follow that a sole source award is justified. Rather, a sole source award must be justified on the basis of the specific facts of the procurement, and the regulations state that the contracting agency must not only be sure that a competitive award cannot be made, but also must act to avoid subsequent sole source awards.]

As you may know, the General Accounting Office, through its bid protest forum, reviews the award of Government contracts. Under our published procedures, a firm which believes it has improperly been denied an award or the opportunity to compete for an award may request that we review the legality of the agency's actions. Our decision is based on the written record, including arguments submitted by the protester and the contracting agency and comments by all interested parties.

[Sole source awards are closely scrutinized by GAO. We will uphold a sole source award if there is a reasonable or rational basis for the award.] For example, it may be that only one firm or individual can provide the goods or services the Government needs, such as an unique product. Also, there may be only one known source which can meet the Government's needs within the required time frame and at a reasonable price. A firm may possess proprietary data or designs, or it may be the original manufacturer of an item which must be compatible and interchangeable with existing equipment--spare parts or components for a major weapons system, for instance. In such circumstances, a sole source award may be made.

[On the other hand, sole source awards cannot be justified merely because it is easier or more convenient for an agency to deal with an incumbent contractor, because the agency is familiar with a particular supplier or its equipment, or simply because it prefers one contractor over others who could compete for the work in question.]

[Even when contracts are set aside for small business firms or firms operating in labor surplus areas, there must be competition among those firms.]

[Despite the requirements for competition, sole source contracting frequently occurs.] For example, during fiscal

year 1979, I understand that approximately only 36 percent of the total dollar volume of the Department of Defense's contracts was competitively awarded.

In a report issued only last month, our Office reviewed a representative sample of more than 250 Department of Defense contracts for management support services. These contracts covered a broad range of topics, from a study of factors affecting attrition in the Army to engineering support for major weapons systems; consulting contracts also were included in the sample. Approximately 82 percent of the contracts reviewed, with a total dollar value of \$156.7 million, were sole source.

I might note in passing that [when an agency seeks this type of service, it must be careful to avoid contracting for work which should be performed in-house, or by its own employees. Service contracts should not be used to circumvent civil service rules regarding hiring and compensation. Whether the contract is proper depends upon such things as the degree of Government supervision and control over the work being performed.]

Another GAO study, issued in late 1979, concerned the Department of Energy's contracting practices. Of 124 contracts reviewed, 38 had been awarded on a sole source basis. All were justified, at least in part, on grounds that the contractor was the only one capable of doing the work. In

this report, GAO questioned the justifications for 29 of the sole source awards. We will be glad to submit copies of these reports for the record if you wish.

[In addition to sole source contracts, a number of other contracting practices also may have the effect of reducing or eliminating competition.] ^{Such as informal commitments} For example, while only a contracting officer has authority to award a contract, in our study of the Department of Energy, we found that informal commitments were being made by program officials who believed work must be begun immediately, without the delays associated with normal contracting procedures. This problem may have occurred because officials had not planned far enough in advance or because they encountered emergency program requirements.

In any case, [while there may be reasons for making informal commitments, and while procedures for ratifying this type of commitment exist, they are not meant to be a way of life.]

Various bills have been presented to the Congress to encourage competition. For example, [the Chiles Bill], S-5, introduced in the 96th Congress, [proposed the use of] functional specifications -- that is, [specifications based on performance, rather than design, as a way of encouraging competition.] The proposed bill would have made the requirement that agencies

issue a notice of intent to make a sole source award at least 30 days in advance of the proposed award date part of the procurement statutes.)

As you may know, under Public Law 96-83, (the Office of Federal Procurement Policy) in October 1980 (submitted a proposal for a Uniform Procurement System to the Congress. Its goals are to encourage competition and to simplify the procurement process.) Among the means of increasing competition which (OFPP proposes are greater reliance by the Government on the private sector for goods and services and the use of commercial products whenever possible.) Specific legislation is due to be submitted to the Congress by October 1981.

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