



United States General Accounting Office
Washington, DC 20548

March 31, 2004

The Honorable Susan M. Collins
Chairman
The Honorable Joseph I. Lieberman
Ranking Minority Member
Committee on Governmental Affairs
United States Senate

The Honorable Tom Davis
Chairman
The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

Subject: *Agencies' Use of Procurement Flexibilities Provided in the Homeland Security Act of 2002 (P.L. 107-296)*

In the wake of September 11, 2001, Congress enacted the Homeland Security Act of 2002. Title VIII, subtitle F, section 852 of the act provided for a temporary set of emergency procurement flexibilities intended to address the immediate needs for procurement of property (other than real property) or services to be used to defend against or recover from terrorist threats, including nuclear, biological, chemical, or radiological attacks. These flexibilities, which expired on November 24, 2003, included:

- Increasing the threshold for simplified acquisition procedures in support of humanitarian, peacekeeping, or contingency operations from \$100,000 to \$200,000 for contracts awarded and performed within the United States. For contracts awarded and performed, or purchases to be made outside the United States, the threshold was \$300,000. In addition, the small business set-aside threshold was raised to be consistent with the increased simplified acquisition threshold.¹ (Section 853)

¹ Simplified acquisition procedures refer to the methods prescribed in the Federal Acquisition Regulation (FAR) Part 13 for making purchases of supplies or services valued below the simplified acquisition threshold. These procedures are designed to: (1) reduce administrative costs; (2) improve opportunities for small, disadvantaged, and women-owned businesses to obtain a fair proportion of government contracts; (3) promote efficiency and effectiveness in contracting; and (4) avoid unnecessary burdens for agencies and contractors. Federal Acquisition Regulation, at 13.002 [hereinafter FAR], (January 2004).

- Increasing the micro-purchase threshold from \$2,500 to \$7,500 to allow agencies the use of purchase cards above the current limit.² (Section 854)
- Waiving certain provisions of law and the dollar threshold related to commercial item procurements.³ (Section 855)
- Requiring the head of an agency, when appropriate, to use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852. It also waived certain dollar thresholds for small business procurements.⁴ (Section 856)

Section 857 of the Homeland Security Act directed us to report no later than March 31, 2004, on the extent to which federal agencies have used the flexibilities. As agreed with your staff, we contacted the Departments of Defense (DOD), Energy, Homeland Security, Justice, Transportation, and the National Aeronautics and Space Administration (NASA) to determine if they had used the temporary procurement flexibilities and, if so, (1) which flexibilities were used; (2) how much was spent; and (3) what was procured.

Of the six agencies, four (the Departments of Energy, Homeland Security, Justice, and Transportation) reported no use of the procurement flexibilities. Justice and Energy indicated they did not use the flexibilities because existing procurement rules provided sufficient flexibility. Homeland Security responded that this might also explain why it did not use the flexibilities. Transportation reported it did not use the procurement flexibilities because no requirement was received for the purchase of products and/or services designed for the defense and recovery from terrorist threats, including nuclear, biological, chemical, or radiological attacks.

NASA indicated that the statute did not levy a reporting requirement or require establishment of a formal financial or procurement tracking system to account for use of the flexibilities authorized by the law and that it would have to conduct a labor-intensive data call in order to answer our questions. NASA did, however, conduct an informal survey of the three procurement activities that would be most likely to use the flexibilities afforded under the act (Johnson Space Center, Kennedy Space Center, and Goddard Space Flight Center), and, according to NASA, these activities responded that

² Micro-purchase refers to an acquisition of supplies or services valued at or below the micro-purchase threshold. FAR Part 13 states the purchase card is the preferred method for purchasing and paying for goods and services below the micro-purchase threshold. FAR, supra note 1, at 13.201 (b).

³ Section 855 provided the head of an executive agency with the authority to make section 852 procurements without regard to whether the property or services are commercial items. In addition, it waived the \$5,000,000 limitation on such procurements. P.L. 107-296 (2002).

⁴ Section 856 waived the Small Business Act dollar thresholds for contracts awarded to disadvantaged small business concerns. P.L. 107-296 (2002). The dollar thresholds are \$5,000,000 for contracts assigned a standard industrial classification code for manufacturing and \$3,000,000 for all other contracts. 15 U.S.C. 637 (a)(1)(D)(i)(II) (2003). Section 856 also waived the Small Business Act HUBZone dollar thresholds of \$5,000,000 for contracts assigned a standard industrial classification code for manufacturing and \$3,000,000 for all other contracts. 15 U.S.C. 657a(b)(2)(A) (2003).

they had not used the flexibilities. NASA also indicated a willingness to conduct a more thorough review but warned that such a review would take considerable time to complete.

In April 2003, DOD's Director of Defense Procurement and Acquisition Policy encouraged the military services and defense agencies to take advantage of the flexibilities. However, in responding to our inquiry, DOD indicated that, because the law did not levy a formal reporting requirement, it did not implement a tracking system and, therefore, could not quantify use of these flexibilities. DOD also indicated that responding to the survey questions would require a labor-intensive, time-consuming manual data call. Considering that the authority for these flexibilities expired on November 24, 2003, DOD did not believe it was a wise expenditure of public funds to conduct a manual data call to obtain the information we requested.


AGENCY COMMENTS

The Departments of Justice, Transportation, and Homeland Security had no comment on our correspondence. We received e-mail comments from the Department of Energy and NASA and oral comments from DOD. All indicated that they agreed with the contents of the correspondence.

We conducted our review from December 2003 to March 2004 in accordance with generally accepted government auditing standards.

We are sending copies of this letter to other interested congressional committees and to the Secretaries of DOD, Energy, Homeland Security, Justice, and Transportation; and the Administrator, NASA. This letter will also be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you have any questions regarding this report, please contact me at (202) 512-4841 or Michele Mackin, Assistant Director, at (202) 512-4309. Other major contributors to this correspondence were Susan Tindall and Najeema Washington.



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