

Procurement Problems of NARA Illustrate What's Wrong with the System

Written by Nick Sanders

Friday, 19 November 2010 00:00

Yes, we know: What's NARA? Of course *you* recognize the acronym of the National Archives and Records Administration, but for the other readers, let us provide [a link](#) to its website. As you can see, NARA is "the nation's record keeper". And, as we will learn today from [this story](#) at FierceGovernmentIT.com---

About a third of all National Archives and Records Administration personnel have lost regular access to email [and] personnel within NARA's office of general counsel have lost email service for at least a full day and senior management, including officials in the office of the archivist, have had diminished access,

We think NARA's story is illustrative of the problems faced by many Executive Branch agencies, and show the unintended consequences of protectionist legislation, such as the Trade Agreements Act. The TAA was enacted in 1979, and was aimed at implementing trade agreements with other countries. Implemented in § 25.4 of the FAR, it permits a waiver of the Buy American Act in certain circumstances. The Buy American Act (BAA) restricts purchases of supplies to end products made in the United States. We note that there is a two-part test for determining whether a product qualifies as a domestic end product; and we further note that several exceptions to the Buy American Act are available to a contracting officer (as enumerated at FAR § 25.103).

Regarding the TAA, Wikipedia reports—

1. In general, a product is 'TAA compliant' if it's made in the United States or a 'Designated Country.' Designated Countries include
2. those with a free trade agreement with the US (e.g., Canada, Mexico, Australia, Singapore, etc.) countries that participate in the World Trade Organization Government Procurement Agreement (WTO GPA), including Japan and many countries in Europe; a least developed country (e.g., Afghanistan, Bangladesh, Laos, Ethiopia, and many others);
3. Caribbean Basin countries (Aruba, Costa Rica, Haiti and others).

Notably absent from the list is the People's Republic of China. A full list of Designated Countries is in FAR 25.003

We haven't had much to say about the TAA before this, though we've tangled with it in the past. It's a bit complicated, but is implemented in contracts through (among other clauses) the solicitation provision 52.225-6 ("Trade Agreements Certificate"). That provision

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requires offerors to identify the country of origin for all products that are not made in the United States or designated countries. As noted above, sometimes this can work in a company's favor, since certain countries are exempted from the restrictions of the Buy American Act. But many times it can hurt the chances of a contract award, since—

The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

Okay, back to the story of NARA, as told by our friends at FierceGovernmentIT.com.

Early in the summer of 2010, NARA “discovered a need for ... HP network equipment—a host bus adapter card and a fiber channel pass through module”. The estimated cost of the necessary equipment was about \$121,000. According to the story—

They first tried buying the equipment through a General Services Administration schedule, but learned that they couldn't, since the adapter card doesn't comply with the Trade Agreements Act, which is embodied in Part 25 of the Federal Acquisition Regulation. The TAA mandates that when federal agencies buy equipment worth more than \$203,000, the gear should originate either domestically or from a long list of countries party to certain kinds of trade relationships with the United States. ... Although the NARA equipment value clearly is below the TAA threshold, GSA has made it a condition of granting a schedule to private sector companies that *all* equipment, irrespective of size order, sold through a schedule must be TAA compliant. Other government-wide purchasing vehicles, such as NASA's SEWP program, don't require that.

Let's stop right there for some critical examination. Look at the end of the paragraph above—the part where the writer reports that GSA requires that “*all* equipment, irrespective of size order ... must be TAA compliant.” We checked and, yes indeed, GSA has interpreted the TAA to apply to every Multiple Award Schedule contract. Moreover, GSA websites states, “In accordance with the TAA, only U.S.-made or designated country end products shall be offered and sold under Schedule contracts.”

GSA's interpretation strikes us as plain stupidoverly simplistic. For example, it ignores the exceptions to the BAA provided by the FAR. And as a result of its position, GSA has

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self-limited the number of companies that might be willing to offer the Federal government goods at prices significantly discounted by the insanely high volume that would be generated. In fact, if memory serves, Sun Microsystems ("one of the government's top technology providers") [cancelled](#) its GSA schedule in 2007 because of issues with its pricing practices.

But let's move on and finish the NARA story. Finding it could not purchase the necessary IT equipment from the GSA, what did the archivists do? FierceGovernmentIT.com reported—

NARA officials then tried buying the equipment by issuing a stand-alone solicitation. But, when they awarded a contract, the equipment they received turned out to a likely counterfeit, the J&A states. 'At the very least the equipment was 'grey market' such that HP would not honor the warranty,' it adds. NARA's inability to procure the necessary HP equipment has resulted in an ever expanding deterioration of email service to approximately 1,400 NARA users,' the J&A says.

So what did NARA do next? Six months after noting its need, it decided to enter into a sole source contract with Hewlett-Packard, the maker of the equipment, to procure what it needed.

Now, an inexperienced observer might say "what a waste of time and effort!" NARA knew it needed HP equipment, and it knew how much it should cost. What could be more obvious? Why waste six months trying to go through the GSA and then running a competition for such a trivial (in terms of Federal government procurements) sum of money? Didn't the NARA procurement people have better things to do? Well, no, they didn't.

Remember that the U.S. Government very much prefers to buy its goods and services via competition, in order to get the "best value". In fact, the Obama Administration has made it a priority to reduce sole source acquisitions—as we've [reported](#) in the past. So it takes quite a bit of bureaucratic effort to get a sole source justification approved, even for something as obvious as these items.

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And notice that the competition did result in an apparent “low bidder” or “best value” contract ... but for parts so suspicious that HP wouldn’t warranty network performance with them installed. Consider, if you will, whether national security networks ought to rely on similar competitions—or if they should simply go directly to the appropriate sources on a sole-source basis (as we would assert is obviously the right move).

It strikes us that this is a good “poster child” story for much that is wrong with the current Federal acquisition environment. Many people would tell the NARA procurement folks to go do what they needed to do and quit fooling around for such a trivial amount of money. Other people would tell GSA to get over its TAA-phobia and get with the commercial practices of the global marketplace. But in fact the current system is set up to frustrate “common sense” acquisition approaches, and to emphasize compliance with overly restrictive rules and regulations that act to limit true competition while, at the same time, mandating it.

And woe to the contracting officer who risks his or her career by taking the common-sense approach, especially when doing so might run afoul of a Presidential (and Congressional) hyper-sensitivity to single and sole-source awards. The fact is that sometimes you can’t get competition, and sometimes trying to obtain competition is just plain silly. We think this story of NARA’s half-year search for \$121,000 worth of HP-compatible parts is illustrative of that point. And we think it ought to spark some discussions in Washington, D.C., about fixing the system so that the procurement folks can get their jobs done with a minimum of fuss.

Or maybe the *status quo* is just fine as is? After all, the more complex the rules and regulations are, the more the need for consultants who understand them and can advise contractors (and their attorneys) on how to comply with them.

Hmmm ...

Forget we said anything. Carry on.