Statement of the Honorable Henry Waxman, Ranking MinorityMember
Committee on Government Reform
Legislative Hearing on
The Services Acquisition Reform Act

April 30, 2003

Thank you, Mr. Chairman. Today we will hear testimony about the Service Acquisition Reform Act (SARA). This legislation was introduced just yesterday. The issues addressed by this legislation are complex and they affect billions of dollars in federal spending. They deserve a thorough and detailed examination.

Mr. Chairman, you have stated that this legislation is needed to "streamline" the procurement process. I support streamlining efforts. But efforts at streamlining must be weighed against the competing goal of protecting against waste, fraud, and abuse. We need to review each provision of this legislation to ensure balance.

The federal government is the largest purchaser of goods and services in the world, spending over $200 billion annually on everything from fighter jets to paper clips to janitorial services. In recent years, there has been an especially rapid growth in the procurement of services. Contracting for services, which is a major subject of the legislation we are considering, now accounts for 43% of total contracting. Each year, the government spends a staggering $87 billion on service contracts, a larger amount than any other category of contracts.

There are two key laws that protect the taxpayer from waste, fraud, and abuse in service contracts: the Truth in Negotiations Act (TINA) and the cost accounting standards. These provisions ensure that the government is not overcharged on federal contracts. TINA applies when the government enters a sole-source contract over $550,000. It requires the contractor to submit to the federal government cost and pricing data that justifies the reasonableness of the price being charged. The idea is that this cost and pricing data serves as a substitute for competition.

The cost accounting standards apply to cost-based contracts above certain thresholds (generally $7.5 to $15 million). Cost accounting standards require that contractors consistently and accurately account for their costs. These standards are essential for ensuring that the federal taxpayer is not overcharged for costs such as overhead or executive pensions.

Chairman Davis believes that these accounting standards can sometimes be too burdensome. In particular, he is concerned that many smaller companies and start-up companies refuse to do business with the federal government because of the burdens of complying with these standards. Thus, many of the provisions in the bill waive the application of TINA and the cost accounting standards to service contracts by deeming these contracts to be "commercial items." Under existing law, TINA and cost accounting standards do not apply to contracts for commercial items on the theory that market forces keep prices down for commercial items.

Mr. Davis may have a point. We do need to ensure that smaller companies and other companies that don't normally do business with the federal government are able to do so.

But we must do so in a way that protects the taxpayer against waste, fraud, and abuse. We need to retain that balance.

My concern is that the bill before us goes too far. Halliburton just received a sole-source, cost-based contract to put out oil fires in Iraq and perform other oil-field construction. The contract is potentially worth up to $7 billion. I don't think anyone here would believe that Halliburton should be excused from complying with cost accounting standards, especially given the company's track record of overcharging the government. Yet as I read this bill, the Halliburton contract could be considered a "commercial service" contract that is exempt from these accountability safeguards.

None of us wants to see a return to the days of $600 toilet seats. Yet some of these provisions could lead to $600 per hour contracts to repair broken toilets.

These are far from academic concerns. For years, GAO, the Inspectors General, and private sector watchdogs have pointed to contract management at federal agencies as an area at high risk for waste, fraud, and abuse. The Department of Energy and NASA spend more than 90% of their budgets on contracts with the private sector, yet they are consistently cited by GAO as examples of poor contract management. DoD spends over one hundred billion a year on contracts, yet it too is cited by GAO. Billions are lost through cost escalation and failed projects.

Given this record, we should be strengthening the government's tools to ensure accountability, not weakening them.

I am also concerned about other provisions in the SARA legislation, such as a provision that allows employees from private contractors to take over the management of federal procurement decisions. In essence, this provision could put the fox in charge of the henhouse.

Another problematic provision expands so-called "share-in-savings" contracts. Under a share-in-savings contract, the contractor agrees to bear the initial project costs, often entailing capital outlays, until the client agency begins to achieve specified results from the work. Payment is based on a percentage of the savings realized by the agency.

These contracts sound great, but they could rapidly become a kind of slush fund. Since the contracts don't require up-front payments, agencies don't have to come to Congress for authorization to enter the contracts. Once again, this removes accountability.

Mr. Chairman, these are major issues, with potentially major cost consequences. I know that you want to move the legislation quickly. But it is more important that we do this right than we do it fast.